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As filed with the Securities and Exchange Commission on February 8, 2011

Registration No. 333-171375

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

PRE-EFFECTIVE AMENDMENT NO. 1
to

FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

SUPERNUS PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**2834**	**20-2590184**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

1550 East Gude Drive
Rockville, MD 20850
(301) 838-2500
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Jack A. Khattar
President and Chief Executive Officer
1550 East Gude Drive
Rockville, MD 20850
(301) 838-2500
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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Approximate date of commencement of proposed sale to public:
As soon as practicable after this Registration Statement becomes effective.

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 (the "Securities Act"), 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. ☐

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

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

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 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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SUBJECT TO COMPLETION, DATED FEBRUARY 8, 2011

PRELIMINARY PROSPECTUS

Shares

Supernus Pharmaceuticals, Inc.

Common Stock
$ per share

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

We have granted the underwriters an option to purchase up to additional shares of common stock to cover over-allotments.

We have applied to list our common stock on the Nasdaq Global Market under the symbol "SUPN."

Investing in our common stock involves risks. See "Risk Factors" on page 9.

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

	Per Share	Total
Public Offering Price	$	$
Underwriting Discount	$	$
Proceeds to Supernus (before expenses)	$	$

The underwriters expect to deliver the shares to purchasers on or about , 2011 through the book-entry facilities of The Depository Trust Company.

Citi **Barclays Capital**

Cowen and Company **Stifel Nicolaus Weisel**

, 2011.

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus.

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SUMMARY

This summary highlights selected information appearing elsewhere in this prospectus. While this summary highlights what we consider to be the most important information about us, you should carefully read this prospectus and the registration statement of which this prospectus is a part in their entirety before investing in our common stock, especially the risks of investing in our common stock which we discuss under "Risk Factors," the information set forth in "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes beginning on page F-1.

Unless the context requires otherwise, the words "Supernus," "we," "us" and "our" refer to Supernus Pharmaceuticals, Inc. and its subsidiaries.

Supernus Pharmaceuticals, Inc.

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists.

We use our proprietary technologies to enhance the therapeutic benefits of approved antiepileptic drugs, or AEDs, through advanced extended release formulations. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we filed a new drug application, or NDA, in January 2011, and Epliga (extended release oxcarbazepine), which is in Phase III clinical trials. Our ADHD product candidates include SPN-810 (molindone hydrochloride), a novel treatment for impulsive aggression in patients with ADHD, and SPN-812, a novel non-stimulant treatment for ADHD. Both of these programs are in Phase II. In addition to these four lead product candidates, we have several additional product candidates in various stages of development, including SPN-809, for which we filed an investigational NDA in 2008 and which would represent a novel mechanism of action for the U.S. antidepressant market. We believe our broad and diversified portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

The table below summarizes our current pipeline of novel product candidates.

Product	Indication	Status
SPN-538	Epilepsy	NDA filed
Epliga	Epilepsy	Phase III
SPN-810	Impulsive Aggression in ADHD	Phase II
SPN-812	ADHD	Phase II
SPN-809	Depression	IND filed

Our Late-Stage Neurology Portfolio

Epilepsy is a chronic neurological disorder characterized by recurrent convulsive seizures resulting from hyperactivity in the brain cells. It is estimated to affect 50 million people worldwide[(1)] and

(1) Bialer, M., *Key factors in the discovery and development of new antiepileptic drugs*, published January 2010 in *Nature*.

2 million people in the United States.[2] Achieving reliable seizure control for patients, and avoiding the serious health and life dangers that can be associated with sudden unexpected, or breakthrough, seizures depends on patients being compliant and diligent in taking their medications. We believe there are a number of benefits associated with extended release products in epilepsy that create a significant market opportunity for us, including:

(2) U.S. Centers for Disease Control and Prevention, *Epilepsy Self-Management Tools* (citing DiIorio, C., *The Prevention Research Centers' Managing Epilepsy Well Network*, published September 2010 in *Epilepsy & Behavior*).

- Extended release products have been shown to improve compliance and reduce breakthrough seizures.[3]

(3) Balzac, F., *Medication Noncompliance in Epilepsy*, published March 2006 in *Neurology Reviews*.

- Extended release products have been shown to reduce side effects and improve tolerability.[4]

(4) Miller, A.D., *Improved CNS tolerability following conversion from immediate- to extended-release carbamazepine*, published June 2004 in *Acta Neurologica Scandinavia*.

- Managed care plans have not limited the success of extended release products.[5]

(5) IMS Health data and Epilepsy Foundation, *Private Health Insurance and Medication Switching*.

- Extended release products have performed well in the market.[6]

(6) IMS Health data.

SPN-538 (extended release topiramate)

Our most advanced product candidate, SPN-538, is a novel oral once-daily extended release topiramate product for the treatment of epilepsy. Topiramate is marketed by Johnson & Johnson under the brand name Topamax and is available in a generic form. Topiramate is currently available only in immediate release form and is indicated for monotherapy and adjunctive therapy of epilepsy and for the treatment of migraine. It works by enhancing the inhibitory effect of the GABA (Gamma-Aminobutyric Acid) neurotransmitter that regulates neuronal excitability throughout the nervous system, blocking the excitatory effect of the glutamate neurotransmitter, blocking the sodium channel and inhibiting the carbonic anhydrase enzyme. The side effects associated with taking topiramate, which have tended to limit its use, include, among others, dizziness, fatigue, somnolence and slowing of certain cognitive functions.

SPN-538 is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release products that are taken multiple times per day. SPN-538's pharmacokinetic profile delivers lower peak plasma concentrations and lower input rate over an extended time period, resulting in smoother and more consistent blood levels of topiramate during the day compared to immediate release Topamax. We have completed ten clinical trials in support of our NDA, which we filed in January 2011. We are pursuing a regulatory strategy under Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, which would allow us to rely in our filing on the existing data and knowledge the U.S. Food and Drug Administration, or FDA, has from the NDA of Topamax.

Epliga (extended release oxcarbazepine)

Our second late-stage product candidate, Epliga, is a novel oral once-daily extended release formulation of oxcarbazepine and is currently in Phase III trials. Oxcarbazepine is marketed by Novartis under the brand name Trileptal and is available in a generic form. Trileptal is indicated for monotherapy and adjunctive therapy of epilepsy. Oxcarbazepine is an active voltage-dependent sodium channel blocker that, despite its effectiveness in treating epilepsy, is associated with many side effects

that tend to limit its use. The side effects associated with taking oxcarbazepine include, among others, dizziness, double vision, somnolence, nausea and vomiting.

With a novel pharmacokinetic profile that delivers lower peak plasma concentrations, a slower rate of input, smoother and more consistent blood levels compared to immediate release products such as Trileptal, we believe Epliga has the potential of improving the tolerability of oxcarbazepine by reducing the side effects experienced by patients. We have completed eight clinical trials to support filing the NDA in the second half of 2011. We are pursuing a Section 505(b)(2) regulatory strategy, which would allow us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Trileptal.

Our Psychiatry Portfolio

ADHD is a common CNS disorder characterized by developmentally inappropriate levels of inattention, hyperactivity, and impulsivity. ADHD affects an estimated 6% to 9% of all school-age children and 3% to 5% of adults in the United States.[7] An estimated 60% to 80% of children with ADHD continue to meet the criteria for ADHD into adolescence, and as many as 67% of children who have ADHD may have coexisting conditions such as oppositional defiant disorder, conduct disorder, anxiety disorder and depression.[8] In addition, approximately 25% of children with ADHD also exhibit persistent conduct problems, such as impulsive aggression.[9]

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(7) Dopheide, J.A., *Attention-Deficit-Hyperactivity Disorder: An Update*, published June 2009 in *Pharmacotherapy*.

(8) Floet, A.M.W., *Attention-Deficit/Hyperactivity Disorder*, published February 2010 in *Pediatrics in Review*.

(9) Jensen, P.S., *Consensus Report on Impulsive Aggression as a Symptom Across Diagnostic Categories in Child Psychiatry: Implications for Medication Studies*, published March 2007 in *Journal of the American Academy of Child and Adolescent Psychiatry*.

SPN-810 (molindone hydrochloride)

We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. Molindone hydrochloride is unusual among anti-psychotics in that it is not associated with weight gain.

We have completed four clinical trials for SPN-810, including a Phase IIa trial in which we tested the safety and tolerability of immediate release molindone hydrochloride in children with ADHD who suffer from serious persistent conduct problems. This open-label, dose-ranging trial randomized 78 children, 6-12 years of age, into one of four treatment groups, which were given four different doses of immediate release molindone hydrochloride, between 10 mg and 40 mg per day, depending on weight, three times a day over a six-week treatment period, after 2-5 weeks of titration. SPN-810 was well tolerated in the trial with no clinically meaningful changes in standard hematology, clinical chemistry values, vital signs or electrocardiogram results. SPN-810 also showed improvements on the primary and secondary outcome measures, such as conduct problem and ADHD scales, across all four treatment groups.

SPN-812

We are developing SPN-812, which is currently in Phase II, as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. We initiated a proof-of-concept Phase IIa trial in mid-2010, and expect the results of this trial in the first

quarter of 2011. The trial is a randomized, double-blind, placebo-controlled trial in approximately 50 adults with a current diagnosis of ADHD, with approximately 25 subjects per treatment group. SPN-812 has not been developed and marketed in the United States and, therefore, it would be considered and reviewed by the FDA as a new chemical entity.

Our Proprietary Technology Platforms

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and to enable the treatment of new indications. Our key proprietary technology platforms include: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). These technologies create customized product profiles designed to meet efficacy needs, permit more convenient and less frequent dosing, enhance patient compliance and improve tolerability in certain specific applications. Our proprietary technologies have been used in the following approved and marketed products: Carbatrol (carbamazepine), Equetro (carbamazepine), Adderall XR (mixed amphetamine salts), Sanctura XR (trospium chloride), Oracea (doxycycline) and Intuniv (guanfacine). We do not expect these products to contribute to our future cash position as we have either monetized the future revenues associated with them or we developed them when we were formerly Shire Laboratories. In addition, we have used our proprietary technologies to develop an oral formulation of treprostinil diethanolamine which is currently in Phase III trials for pulmonary arterial hypertension.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry. Key elements of our strategy to achieve this goal are to:

- *Build in-house sales and marketing capabilities, focused on specialty markets in the United States, to promote SPN-538 and Epliga.* We are currently focused on attaining regulatory approval for, and bringing our two late-stage epilepsy product candidates, SPN-538 and Epliga, to market. As SPN-538 and Epliga progress towards U.S. regulatory approval, we intend to build our own targeted, specialty sales force to promote, if approved, SPN-538 and Epliga in the United States. We intend to direct our marketing efforts to high potential prescribers of both product candidates.

- *Continue to advance our product candidates in our psychiatry portfolio, including SPN-810 and SPN-812.* As part of our longer term strategy, we intend to further develop our product candidates in our psychiatry portfolio to enable further diversification of our pipeline and future growth. For example, we are currently preparing to initiate a Phase IIb trial of SPN-810.

- *Develop differentiated products by applying our technologies to known drug compounds.* We intend to continue to focus our development activities on known drug compounds and compounds with established mechanisms of action and thereby reduce the risks, costs and time typically associated with pharmaceutical product development. We intend to leverage our proprietary and in-licensed technologies and expand our patent portfolio to further develop and protect our diverse pipeline of product candidates.

- *Establish strategic partnerships to accelerate and maximize the potential of our product candidates worldwide.* We intend to continue to seek strategic collaborations with other pharmaceutical companies to commercialize our product candidates outside the United States. We believe that we are an attractive collaborator for pharmaceutical companies due to our broad portfolio of proprietary technologies and our product development track record.

- *Leverage our management team's expertise to develop and commercialize our broad portfolio of product candidates.* We intend to leverage the expertise of our executive management team in

developing and commercializing innovative therapeutic products. We plan to continue to evaluate and develop additional CNS product candidates that we believe have significant commercial potential through our internal research and development efforts or, if appropriate, external collaborations.

Risks Associated With Our Business

Our ability to implement our business strategy is subject to numerous risks and uncertainties. As an early stage pharmaceutical company, we face many risks inherent in our business and our industry, as more fully described in the section entitled "Risk Factors" immediately following this summary, including the following:

- We are dependent on the success of our product candidates, which may never receive regulatory approval or be successfully commercialized.
- Final marketing approval of SPN-538, Epliga or any of our other product candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.
- We have never generated any revenues from the sales of our own products, and we may never achieve or maintain profitability.
- If other versions of extended or controlled release topiramate or oxcarbazepine are approved and successfully commercialized, especially if approved before SPN-538 or Epliga, our business would be materially harmed.
- If the FDA or other applicable regulatory authorities approve generic products that compete with any of our product candidates, the sales of those product candidates may be adversely affected.

You should carefully consider all of the information set forth in this prospectus and, in particular, the information under the heading "Risk Factors," prior to making an investment in our common stock.

Corporate Information

We were incorporated in Delaware in 2005. Our principal executive office is located at 1550 East Gude Drive, Rockville, Maryland 20850. Our telephone number is (301) 838-2500.

We are the owner of various U.S. federal trademark registrations (®) and registration applications (TM), including the following marks referred to in this prospectus pursuant to applicable U.S. intellectual property laws: "Supernus®," "Epliga®," "Microtrol®," "Solutrol®," "ProScreen®," "OptiScreen®," "ProPhile®," and the registered Supernus Pharmaceuticals logo. All other trademarks or trade names referred to 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
Over-allotment option	We have granted the underwriters an option for a period of up to 30 days to purchase up to additional shares of common stock at the initial public offering price.
Use of proceeds after expenses	We estimate that the net proceeds from this offering will be approximately $ million, or approximately $ million if the underwriters exercise their over-allotment option in full. We expect to use the net proceeds from this offering to fund our clinical trials and for other general corporate purposes.
Risk factors	You should read the "Risk Factors" section of this prospectus beginning on page 9 for a discussion of factors to consider carefully before deciding to invest in shares of our common stock.
Proposed NASDAQ Global Market symbol	SUPN

The number of shares of our common stock to be outstanding after this offering is based on 55,371,061 shares of common stock outstanding as of September 30, 2010 after giving effect to the conversion of 49,000,000 shares of our preferred stock outstanding as of September 30, 2010 into 49,000,000 shares of our common stock at the closing of this offering.

The number of shares of our common stock outstanding immediately after this offering excludes:

- 1,729,458 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2010, with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.48 per share (of which options to acquire 940,324 shares of common stock were vested as of September 30, 2010);
- 411,765 shares of common stock remaining to vest under a restricted stock award; and
- 2,487,716 additional shares of common stock reserved for future grants under our 2005 Stock Plan as of September 30, 2010.

Unless otherwise indicated, all information in this prospectus:

- assumes the issuance and sale of shares of our common stock in the offering at the initial public offering price of $ per share;
- assumes our planned -for- reverse stock split of our common stock to be effected in connection with this offering;
- gives effect to the automatic conversion of all outstanding shares of our preferred stock into 49,000,000 shares of common stock upon the closing of this offering; and
- assumes no exercise by the underwriters of their option to purchase up to shares of our common stock in this offering to cover over-allotments.

SUMMARY FINANCIAL DATA

We have derived our statement of operations data for the years ended December 31, 2007, 2008 and 2009 from our audited consolidated financial statements included in this prospectus. We have derived our balance sheet data as of September 30, 2010 and statement of operations data for each of the nine months ended September 30, 2009 and 2010 from our unaudited consolidated financial statements included in this prospectus. The unaudited consolidated financial statement data include, in our opinion, all adjustments (consisting only of normal recurring adjustments) that are necessary for a fair presentation of our consolidated financial position and consolidated results of operations for these periods.

Our historical results are not necessarily indicative of future operating results, and the results for the first nine months of 2010 are not necessarily indicative of results expected for the full year or for any other period. You should read this summary consolidated financial data in conjunction with the sections entitled "Risk Factors," "Capitalization," "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, all included elsewhere in this prospectus.

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars, except share and per share data)				
Consolidated Statement of Operations Data:					
Revenues					
Development and milestone revenues	$ 1,405	$ 2,697	$ 1,550	$ 1,181	$ 97
Royalty revenues	2,828	6,192	44,963	41,884	8,635
Total revenues	4,233	8,889	46,513	43,065	8,732
Costs and expenses					
Research and development	19,269	30,463	29,260	21,804	26,080
General and administrative	4,011	4,287	4,649	3,503	3,388
Total costs and expenses	23,280	34,750	33,909	25,307	29,468
Income (loss) from operations	(19,047)	(25,861)	12,604	17,758	(20,736)
Other income (expense):					
Interest income	1,773	1,057	514	101	623
Interest expense	—	(8,678)	(12,658)	(9,210)	(9,831)
Other	—	—	—	—	54
Total other income (expense)	1,773	(7,621)	(12,144)	(9,109)	(9,154)
Net income (loss)	$ (17,274)	$ (33,482)	$ 460	$ 8,649	$ (29,890)
Cumulative dividends on Series A convertible preferred stock	$ (3,430)	$ (3,430)	$ (3,430)	$ (2,573)	$ (2,573)
Net income (loss) attributable to common stockholders	$ (20,704)	$ (36,912)	$ (2,970)	$ 6,076	$ (32,463)
Net income (loss) per common share					
Basic	$ (4.21)	$ (6.61)	$ (0.53)	$ 1.08	$ (5.12)
Diluted	$ (4.21)	$ (6.61)	$ 0.01	$ 0.15	$ (5.12)
Weighted average number of common shares					
Basic	4,921,376	5,587,467	5,653,506	5,610,047	6,345,420
Diluted	4,921,376	5,587,467	56,324,761	56,282,411	6,345,420
Net income (loss) used to compute pro forma net income (loss) per common share — basic and diluted (unaudited)(1)			$ 460		$ (29,890)
Weighted-average number of shares used in calculating pro forma net income (loss) per share — basic and diluted (unaudited)(1)			56,324,761		55,345,420
Pro forma net income (loss) per share — basic and diluted(1)			$ 0.01		$ (0.54)

(1) Pro forma net loss per share basic and diluted have been calculated assuming the conversion of all outstanding shares of the Company's Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of this offering, as if they had converted at the beginning of the period. Pro forma net loss per share basic and diluted do not give effect to the sale of shares of common stock that we are offering pursuant to this prospectus or any related estimated net proceeds therefrom. See Note 2 to our audited consolidated financial statements for an explanation of the method used to calculate the pro forma basic and diluted net income (loss) per common share and the number of the per share amounts.

	As of September 30, 2010		
	Actual	Pro Forma (unaudited)	Pro Forma as Adjusted
	(in thousands of dollars)		
Consolidated Balance Sheet Data:			
Unrestricted cash and cash equivalents, and marketable securities	$ 45,822	$ 45,822	$
Restricted cash and cash equivalents, and marketable securities	1,680	1,680	
Working capital	33,835	33,835	
Total assets	57,502	57,502	
Accumulated deficit	(85,210)	(85,210)	
Total stockholders' deficit	(35,917)	(35,917)	

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below with all of the other information included in this prospectus before deciding to invest in our common stock. These risks may result in material harm to our business and our financial condition and results of operations. In this event, the market price of our common stock may decline and you could lose part or all of your investment.

Risks Related to Our Business and Industry

We are dependent on the success of our product candidates, which may never receive regulatory approval or be successfully commercialized.

To date, we have expended significant time, resources, and effort on the development of our product candidates, and a substantial majority of our resources are now focused on seeking marketing approval for and planning for potential commercialization of our two most advanced product candidates, SPN-538 and Epliga, in the United States. All of our other product candidates are in earlier stages of development and subject to the risks of failure inherent in developing drug products. Accordingly, our ability to generate significant product revenues in the near term will depend almost entirely on our ability to successfully obtain marketing approval for and commercialize SPN-538 and Epliga. Neither SPN-538 nor Epliga are approved for marketing in any jurisdiction and, therefore, unless they obtain regulatory approval, they may never be commercialized.

Our ability to successfully commercialize any of our products candidates will depend, among other things, on our ability to:

- successfully complete our clinical trials;
- produce, through a validated process, sufficiently large quantities of our product candidates to permit successful commercialization;
- receive marketing approvals from the U.S. Food and Drug Administration, or FDA, and similar foreign regulatory authorities;
- establish commercial manufacturing arrangements with third-party manufacturers;
- build and maintain strong sales, distribution and marketing capabilities sufficient to launch commercial sales of our product candidates;
- establish collaborations with third parties for the commercialization of our product candidates in countries outside the United States, and such collaborators' ability to obtain regulatory and reimbursement approvals in such countries;
- secure acceptance of our product candidates from physicians, health care payors, patients and the medical community; and
- manage our spending as costs and expenses increase due to clinical trials, regulatory approvals and commercialization.

There are no guarantees that we will be successful in completing these tasks. If we are unable to successfully complete these tasks, we may not be able to commercialize SPN-538, Epliga or any of our other product candidates in a timely manner, or at all, in which case we may be unable to generate sufficient revenues to sustain and grow our business. In addition, although we believe that we have already incurred the majority of the costs related to the development of SPN-538 and Epliga, if we experience unanticipated delays or problems, these costs could substantially increase and our business, financial condition and results of operations will be adversely affected.

Final marketing approval of SPN-538, Epliga or any of our other product candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.

Our business depends on the successful development and commercialization of our product candidates. We are not permitted to market any of our product candidates in the United States until we receive approval of a new drug application, or NDA, from the FDA, or in any foreign jurisdiction until we receive the requisite approvals from such jurisdiction. Satisfaction of regulatory requirements typically takes many years, is dependent upon the type, complexity and novelty of the product and requires the expenditure of substantial resources. We cannot predict whether or when we will obtain regulatory approval to commercialize our product candidates and we cannot, therefore, predict the timing of any future revenues from these product candidates, if any.

With respect to our two most advanced product candidates, SPN-538 (extended release topiramate) and Epliga (extended release oxcarbazepine), we are pursuing a regulatory strategy pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, or FDCA, which would allow us to rely in our filings on the existing data from the NDAs of Topamax and Trileptal, respectively. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and effectiveness for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant or clinical trials demonstrating safety and effectiveness. The FDA has substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons. For example, the FDA:

- could determine that we cannot rely on Section 505(b)(2) for SPN-538 or Epliga;
- could determine that the information provided by us was inadequate, contained clinical deficiencies or otherwise failed to demonstrate the safety and effectiveness of SPN-538, Epliga or any of our product candidates for any indication;
- may not find the data from bioequivalence studies and/or clinical trials sufficient to support the submission of an NDA or to obtain marketing approval in the United States, including any findings that the clinical and other benefits of our product candidates outweigh their safety risks;
- may disagree with our trial design or our interpretation of data from preclinical studies, bioequivalence studies and/or clinical trials, or may change the requirements for approval even after it has reviewed and commented on the design for our trials;
- may determine that we have identified the wrong reference listed drug or drugs or that approval of our Section 505(b)(2) application for SPN-538, Epliga or any of our other product candidates is blocked by patent or non-patent exclusivity of the reference listed drug or drugs;
- may identify deficiencies in the manufacturing processes or facilities of third party manufacturers with which we enter into agreements for the manufacturing of our product candidates;
- may approve our product candidates for fewer or more limited indications than we request, or may grant approval contingent on the performance of costly post-approval clinical trials;
- may change its approval policies or adopt new regulations; or
- may not approve the labeling claims that we believe are necessary or desirable for the successful commercialization of our product candidates.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, some pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA changes its interpretation of Section 505(b)(2), or if the FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) application that we submit. Any failure to obtain regulatory approval of our product candidates would significantly limit our ability to generate revenues, and any failure to obtain such approval for all of the indications and labeling claims we deem desirable could reduce our potential revenues.

Our trials may fail to demonstrate acceptable levels of safety and efficacy of our product candidates, which could prevent or significantly delay regulatory approval.

We may be unable to sufficiently demonstrate the safety and efficacy of our product candidates to obtain regulatory approval. We must demonstrate with substantial evidence gathered in well-controlled studies, and to the satisfaction of the FDA with respect to approval in the United States (and to the satisfaction of similar regulatory authorities in other jurisdictions with respect to approval in those jurisdictions), that each product candidate is safe and effective for use in the target indication. The FDA may require us to conduct or perform additional studies or trials to adequately demonstrate safety and efficacy, which could prevent or significantly delay our receipt of regulatory approval and, ultimately, the commercialization of that product candidate.

In addition, the results from the trials that we have completed for our product candidates may not be replicated in future trials, or we may be unable to demonstrate sufficient safety and efficacy to obtain the requisite regulatory approvals for our product candidates. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced development, even after promising results in earlier trials. If our product candidates are not shown to be safe and effective, our clinical development programs could be delayed or might be terminated.

Our product candidates may cause undesirable side effects or have other properties that delay or prevent their regulatory approval or limit their commercial potential.

Undesirable side effects caused by any of our product candidates could cause us or regulatory authorities to interrupt, delay or halt development and could result in the denial of regulatory approval by the FDA or other regulatory authorities, and potential products liability claims. Immediate release topiramate and oxcarbazepine, drug compounds upon which our SPN-538 and Epliga product candidates are based, respectively, are known to cause various side effects, including dizziness, paresthesia, headaches, cognitive deficiencies such as memory loss and speech impediment, digestive problems, somnolence, double vision, gingival enlargement, nausea, weight gain, and fatigue. The use of SPN-538 and Epliga may cause similar side effects as compared to their reference products, or may cause additional or different side effects. Any undesirable side effects that are caused by any of our product candidates could have a material adverse effect upon that product candidate's development program and our business as a whole.

In addition, if any of our product candidates receive marketing approval, and we or others later identify undesirable side effects caused by the product candidate, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of the product candidate or otherwise require us to take the approved product off the market;
- regulatory authorities may require additional warnings, or a narrowing of the indication, on the product label;
- we may be required to create a medication guide outlining the risks of such side effects for distribution to patients;

- we may be required to modify the product in some way;
- the FDA may require us to conduct additional clinical trials or costly post-marketing testing and surveillance to monitor the safety or efficacy of the product;
- sales of approved product candidates may decrease significantly;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining the commercial success of our product candidates and could substantially increase commercialization costs.

If other versions of extended or controlled release topiramate or oxcarbazepine are approved and successfully commercialized, especially if approved before SPN-538 or Epliga, our business would be materially harmed.

Other third parties may seek approval to manufacture and market their own versions of extended release topiramate or oxcarbazepine in the United States. If any of these parties obtain FDA approval before we do, they may be entitled to three years of marketing exclusivity. Such exclusivity would delay the commercialization of SPN-538 and Epliga and, as a result, we may never achieve significant market share for these product candidates. Consequently, revenues from product sales of these product candidates would be similarly delayed and our business, including our development programs, and growth prospects would suffer. For example, we are aware that Upsher-Smith Laboratories, or Upsher-Smith, is currently conducting a Phase III clinical trial for USL255 (extended release topiramate). If Upsher-Smith's USL255 product is approved by the FDA before SPN-538, then Upsher-Smith may obtain three years of marketing exclusivity based on its Phase III clinical trial, which would significantly delay our entry into the U.S. market. Even if SPN-538 is approved before USL255, we may not be entitled to any marketing exclusivity and, other than under circumstances in which third parties may infringe or are infringing our patents, we may not be able to prevent the submission or approval of another full NDA for any competitor's extended or controlled release topiramate product candidate, including USL255. In addition, we are aware of companies who are marketing outside of the United States modified-release oxcarbazepine products, such as Apydan, which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration. If companies with modified-release oxcarbazepine products outside of the United States pursue or obtain approval of their products within the United States before we do, such competing products may be granted three year marketing exclusivity, which would significantly delay Epliga's entry into the U.S. market. Such a delay would limit the potential success of Epliga in the United States, and our business and growth prospects would be materially impaired. Accordingly, if any third party is successful in obtaining approval to manufacture and market their own versions of extended release topiramate or oxcarbazepine in the United States, we may not be able to recover expenses incurred in connection with the development of our product candidates or realize revenues from SPN-538 or Epliga.

If we do not obtain marketing exclusivity for our product candidates, our business may suffer.

Under the Hatch-Waxman Amendments, three years of marketing exclusivity may be granted for the approval of new and supplemental NDAs, including Section 505(b)(2) applications, for, among other things, new indications, dosage forms, routes of administration, or strengths of an existing drug, or for a new use, if new clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application. This exclusivity, which is sometimes referred to as clinical investigation exclusivity, prevents the FDA from approving an application under Section 505(b)(2) for the same conditions of use associated with the new clinical investigations before the expiration of three years from the date of approval. Such exclusivity, however, would not prevent the approval of another application if the applicant submits a Section 505(b)(1) NDA and has conducted its own adequate, well-controlled clinical trials demonstrating safety and

efficacy, nor would it prevent approval of a generic product or Section 505(b)(2) product that did not incorporate the exclusivity-protected changes of the approved drug product. Under the Hatch-Waxman Amendments, newly-approved drugs and indications may also benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Amendments provides five-year marketing exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, or NCE, meaning that the FDA has not previously approved any other drug containing the same active pharmaceutical ingredient, or active moiety. Although protection under the Hatch-Waxman Amendments will not prevent the submission or approval of another full Section 505(b)(1) NDA, such an NDA applicant would be required to conduct its own preclinical and adequate, well-controlled clinical trials to demonstrate safety and effectiveness. If we are unable to obtain marketing exclusivity for our product candidates including SPN-538, our competitors may obtain approval of competing products more easily than if we had such marketing exclusivity, and our future revenues could be reduced, possibly materially.

Delays or failures in the completion of testing of our product candidates would increase our costs and delay or limit our ability to generate revenues.

Delays or failures in the completion of clinical trials for our product candidates could significantly raise our product development costs. We do not know whether current or planned trials will be completed on schedule, if at all. The commencement and completion of clinical development can be delayed or halted for a number of reasons, including:

- difficulties obtaining regulatory approval to commence a clinical trial or complying with conditions imposed by a regulatory authority regarding the scope or term of a clinical trial;
- delays in reaching or failure to reach agreement on acceptable terms with prospective clinical research organizations, or CROs, and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- insufficient or inadequate supply or quantity of a product candidate for use in trials;
- difficulties obtaining institutional review board approval to conduct a trial at a prospective site;
- challenges recruiting and enrolling patients to participate in clinical trials for a variety of reasons, including competition from other programs for the treatment of similar conditions;
- severe or unexpected drug-related side effects experienced by patients in a clinical trial; and
- difficulty retaining patients who have initiated a clinical trial but may be prone to withdraw due to side effects from the therapy, lack of efficacy or personal issues.

Clinical trials may also be delayed as a result of ambiguous or negative interim results. In addition, clinical trials may be suspended or terminated by us, an institutional review board overseeing the clinical trial at a trial site (with respect to that site), the FDA or other regulatory authorities due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or the trial protocols;
- observations during inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities that ultimately result in the imposition of a clinical hold;
- unforeseen safety issues; or
- lack of adequate funding to continue the trial.

In addition, failure to conduct the clinical trial in accordance with regulatory requirements or the trial protocols may also result in the inability to use the data to support product approval. Additionally, changes in regulatory requirements and guidance may occur, and we may need to amend clinical trial

protocols to reflect these changes. Amendments may require us to resubmit our clinical trial protocols to institutional review boards for reexamination, which may impact the costs, timing or successful completion of a clinical trial. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates. If we experience delays in completion of, or if we terminate any of our clinical trials, our ability to obtain regulatory approval for our product candidates may be materially harmed, and our commercial prospects and ability to generate product revenues will be diminished.

We expect intense competition and, if our competitors develop or market alternatives for treatments of our target indications, our commercial opportunities will be reduced or eliminated.

The pharmaceutical industry is characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary therapeutics. We face competition from a number of sources, some of which may target the same indications as our product candidates, including large pharmaceutical companies, smaller pharmaceutical companies, biotechnology companies, academic institutions, government agencies and private and public research institutions. The availability of competing products will limit the demand and the price we are able to charge for any of our product candidates that are commercialized unless we are able to differentiate them. We anticipate that we will face intense competition when and if our product candidates are approved by regulatory authorities and we begin the commercialization process. For instance, there are over 15 branded products, as well as their generic counterparts, on the U.S. market indicated to treat epilepsy. In addition, competition in the attention deficit hyperactivity disorder, or ADHD, market in the United States has increased with the launch of several products in recent years, including the launch of generic versions of branded drugs such as Adderall XR. As a result, we may not be able to recover expenses incurred in connection with the development of our product candidates or realize revenues from any commercialized product.

In addition to already marketed competing products, we believe certain companies are developing other products which could compete with our product candidates should they be approved by regulatory authorities. For example, according to Datamonitor, as of April 2010, there were 47 compounds in preclinical and clinical development for epilepsy across the United States, Japan, France, Germany, Italy, Spain and the United Kingdom. Of these, 15 are currently in late-stage (Phase II or later) clinical trials. We are also aware that Upsher-Smith announced the initiation of a Phase III clinical trial for USL255 (extended release topiramate) for the management of epilepsy in adults. If successful, such competing product could limit the potential success of SPN-538, and our growth prospects would be materially impaired. In addition, we are aware of companies who are marketing outside of the United States modified-release oxcarbazepine products, such as Apydan which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration. If companies with modified-release oxcarbazepine products outside of the United States obtain approval for their products within the United States prior to us, such competing products may obtain three years of marketing exclusivity, which would significantly delay our entry into the U.S. market and limit the potential success of Epliga. Further, new developments, including the development of other drug technologies, may render our product candidates obsolete or noncompetitive. As a result, our product candidates may become obsolete before we recover expenses incurred in connection with their development or realize revenues from any commercialized product.

Further, many competitors have substantially greater:

- capital resources;
- research and development resources and experience, including personnel and technology;
- drug development, clinical trial and regulatory resources and experience;
- sales and marketing resources and experience;
- manufacturing and distribution resources and experience;

- name recognition; and
- resources, experience and expertise in prosecution and enforcement of intellectual property rights.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit or block us from developing or commercializing our product candidates. Our competitors may also develop drugs that are more effective, more useful, better tolerated, subject to fewer or less severe side effects, more widely prescribed or accepted or less costly than ours and may also be more successful than us in manufacturing and marketing their products. If we are unable to compete effectively with the products of our competitors or if such competitors are successful in developing products that compete with any of our product candidates that are approved, our business, results of operations, financial condition and prospects may be materially adversely affected. Mergers and acquisitions in the pharmaceutical industry may result in even more resources being concentrated at competitors. Competition may increase further as a result of advances made in the commercial applicability of technologies and greater availability of capital for investment.

If the FDA or other applicable regulatory authorities approve generic products that compete with any of our product candidates, the sales of those product candidates would be adversely affected.

Once an NDA, including a Section 505(b)(2) application, is approved, the product covered thereby becomes a "listed drug" which can, in turn, be cited by potential competitors in support of approval of an abbreviated new drug application, or ANDA. The FDCA, FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create modified, non-infringing versions of a drug to facilitate the approval of an ANDA or other application for generic substitutes. These manufacturers might only be required to conduct a relatively inexpensive study to show that their product has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use, or labeling, as our product candidate and that the generic product is bioequivalent to ours, meaning it is absorbed in the body at the same rate and to the same extent as our product candidate. These generic equivalents, which must meet the same quality standards as branded pharmaceuticals, would be significantly less costly than ours to bring to market and companies that produce generic equivalents are generally able to offer their products at lower prices. Thus, after the introduction of a generic competitor, a significant percentage of the sales of any branded product is typically lost to the generic product. Accordingly, competition from generic equivalents to our product candidates would materially adversely impact our revenues, profitability and cash flows and substantially limit our ability to obtain a return on the investments we have made in our product candidates.

We have limited sales and marketing experience and resources, and we may not be able to effectively market and sell our product candidates in the United States, if approved.

We are preparing the build-out of our commercial infrastructure to launch our product candidates within the United States. We have limited sales or marketing experience. To develop internal sales and marketing capabilities, we will have to invest significant amounts of financial and management resources, some of which will be committed prior to any confirmation that SPN-538, Epliga or any other of our product candidates will be approved. If the commercial launch of SPN-538 or Epliga is delayed for a protracted period of time as a result of FDA requirements or other reasons, we would incur significant expenses prior to being able to realize any revenues. Further, we could face a number of additional risks in establishing internal sales and marketing capabilities, including:

- we may not be able to attract talented and qualified personnel to build an effective marketing or sales force;
- the cost of establishing a marketing or sales force may not be justifiable in light of the revenues generated by any of our product candidates, if approved; and

- our direct sales and marketing efforts may not be successful.

If we are unable to establish adequate sales and marketing capabilities, we may not be able to generate product revenues and may never become profitable.

We intend to rely on third party collaborators to market and commercialize our product candidates outside of the United States, who may fail to effectively commercialize our product candidates.

Outside of the United States we currently plan to utilize strategic partners or contract sales forces, where appropriate, to assist in the commercialization of our product candidates, if approved. We currently possess limited resources and may not be successful in establishing collaborations or co-promotion arrangements on acceptable terms, if at all. We also face competition in our search for collaborators and co-promoters. By entering into strategic collaborations or similar arrangements, we will rely on third parties for financial resources and for development, commercialization, sales and marketing and regulatory expertise. Any collaborators may fail to develop or effectively commercialize our product candidates because they cannot obtain the necessary regulatory approvals, they lack adequate financial or other resources or they decide to focus on other initiatives. Any failure of our third party collaborators to successfully market and commercialize our product candidates outside of the United States would diminish our revenues and harm our results of operations.

Limitations on our patent rights relating to our product candidates may limit our ability to prevent third parties from competing against us.

Our success will depend on our ability to obtain and maintain patent protection for our proprietary technologies and our product candidates, preserve our trade secrets, prevent third parties from infringing upon our proprietary rights and operate without infringing upon the proprietary rights of others. To that end, we seek patent protection in the United States and internationally for our product candidates. Our policy is to actively seek to protect our proprietary position by, among other things, filing patent applications in the United States and abroad (including Europe, Canada and certain other countries when appropriate) relating to proprietary technologies that are important to the development of our business.

The strength of patents in the pharmaceutical industry involves complex legal and scientific questions and can be uncertain. Patent applications in the United States and most other countries are confidential for a period of time until they are published, and publication of discoveries in scientific or patent literature typically lags actual discoveries by several months or more. As a result, we cannot be certain that we were the first to conceive inventions covered by our patents and pending patent applications or that we were the first to file patent applications for such inventions. In addition, we cannot be certain that our patent applications will be granted, that any issued patents will adequately protect our intellectual property or that such patents will not be challenged, narrowed, invalidated or circumvented.

We also rely upon unpatented trade secrets, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us. It is possible that technology relevant to our business will be independently developed by a person that is not a party to such an agreement. Furthermore, if the employees and consultants that are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or be independently discovered by our competitors. Any failure to adequately prevent disclosure of our trade secrets and other proprietary information could have a material adverse impact on our business.

In addition, the laws of certain foreign countries do not protect proprietary rights to the same extent or in the same manner as the United States, and therefore, we may encounter problems in protecting and defending our intellectual property in certain foreign jurisdictions.

If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business.

Our commercial success depends upon our ability and the ability of our collaborators to develop, manufacture, market and sell their approved products and our product candidates and use our proprietary technologies without infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we and our collaborators are developing product candidates. As the pharmaceutical industry expands and more patents are issued, the risk increases that our collaborators' approved products and our product candidates may give rise to claims of infringement of the patent rights of others. There may be issued patents of third parties of which we are currently unaware, that may be infringed by our collaborators' approved products or our product candidates including SPN-538 and Epliga, which could prevent us from being able to commercialize these product candidates. Because patent applications can take many years to issue, there may be currently pending applications which may later result in issued patents that our collaborators' approved products or our product candidates may infringe.

We may be exposed to, or threatened with, future litigation by third parties alleging that our collaborators' approved products and product candidates infringe their intellectual property rights. If one of our collaborators' approved products and product candidates is found to infringe the intellectual property rights of a third party, we or our collaborators could be enjoined by a court and required to pay damages and could be unable to commercialize the applicable approved products and product candidates unless we obtain a license to the patent. A license may not be available to us on acceptable terms, if at all. In addition, during litigation, the patent holder could obtain a preliminary injunction or other equitable relief which could prohibit us from making, using or selling our approved product candidates, pending a trial on the merits, which may not occur for several years.

There is a substantial amount of litigation involving patent and other intellectual property rights in the pharmaceutical industry generally. If a third party claims that we or our collaborators infringe its intellectual property rights, we may face a number of issues, including, but not limited to:

- infringement and other intellectual property claims which, regardless of merit, may be expensive and time-consuming to litigate and may divert our management's attention from our core business;
- substantial damages for infringement, which we may have to pay if a court decides that the product at issue infringes on or violates the third party's rights, and, if the court finds that the infringement was willful, we could be ordered to pay treble damages and the patent owner's attorneys' fees;
- a court prohibiting us from selling our approved product candidate, if any, unless the third party licenses its rights to us, which it is not required to do;
- if a license is available from a third party, we may have to pay substantial royalties, fees or grant cross-licenses to our intellectual property rights; and
- redesigning our product candidates so they do not infringe, which may not be possible or may require substantial monetary expenditures and time.

We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. For example, we are involved in the following matters related to Paragraph IV Certification Notice Letters that we have received in connection with our collaborators' products. In connection with an ANDA, a Paragraph IV Certification Notice Letter notifies the FDA that one or more patents listed in the FDA's Approved Drug Product List (Orange Book) is alleged invalid, unenforceable or will not be infringed by the ANDA product.

- *Sanctura XR Litigation.* We are involved in a patent infringement matter filed in response to three Paragraph IV Certification Notice Letters that we received in June 2009, November 2009 and April 2010 regarding an ANDA submitted to the FDA by each of Watson Laboratories, Inc., Sandoz Inc. and Paddock Laboratories, Inc., respectively, requesting approval to market and sell generic versions of Sanctura XR trospium chloride extended release capsules, a product that is manufactured and sold by Allergan, Inc., which is the marketing partner of Endo Pharmaceuticals Solutions Inc. The ANDA filers alleged in their respective original notice letters that the U.S. Patent Number 7,410,978 issued to us is invalid, unenforceable and/or will not be infringed by the respective company's manufacture, use or sale of the product described in its ANDA submission. Our patent covers extended-release formulations containing trospium chloride and expires on February 1, 2025, and is licensed to Endo Pharmaceuticals Solutions Inc. Each of the ANDA filers subsequently amended their respective notice letters to include other U.S. patents related to Sanctura XR trospium chloride (specifically, U.S. Patent Nos. 7,759,359; 7,763,635; 7,781,448; and 7,781,449). We intend to support Allergan, Inc. and Endo Pharmaceuticals Solutions Inc. in their efforts to contest this matters.

- *Oracea Litigation.* We are involved in a patent infringement action filed in response to a Paragraph IV Certification Notice Letter that we received in November 2010 regarding an ANDA, submitted to the FDA by Lupin Limited, requesting approval to market and sell generic versions of Oracea doxycycline, a product that is manufactured and sold by Galderma Laboratories, L.P. The ANDA filer, Lupin, alleged in the original notice letter that the U.S. Patent Number 7,749,532 issued to us is invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product described in its ANDA submission. In addition, we have received in October 2010, a complaint for Declaratory Judgment from Mylan alleging invalidity of the 7,749,532 patent. Our patent covers once-daily formulations of doxycycline, including methods of their use in treating rosacea and processes regarding their preparation, and expires on December 19, 2027, and is licensed to Galderma Laboratories, L.P. We also received a Paragraph IV Certification Notice Letter in January 2011 regarding an ANDA submitted to the FDA by Sandoz Inc., requesting approval to market and sell generic versions of Oracea doxycycline. In its notice letter, Sandoz Inc. alleged that the U.S. Patent Number 7,749,532 issued to us is invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product described in its ANDA submission. We intend to support Galderma Laboratories, L.P. in its efforts to contest these matters.

- *Intuniv Litigation.* We are involved in several patent infringement actions filed in response to Paragraph IV Certification Notice Letters that we received in March, April and October 2010 regarding ANDAs submitted to the FDA requesting approval to market and sell generic versions of Intuniv, a product that is manufactured and sold by Shire plc. The defendants in these cases are Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries, Ltd; Actavis Elizabeth LLC and Actavis Inc.; Anchen Pharmaceuticals, Inc. and Anchen, Inc.; Watson Pharmaceuticals, Inc., Watson Laboratories, Inc. - Florida Watson Pharma, Inc. and ANDA, Inc.; and Impax Laboratories, Inc. The ANDA filers allege that our U.S. Patent Numbers 6,287,599

and 6,811,794 are invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product described in its ANDA submissions. Our patents cover extended-release formulations containing guanfacine hydrochloride, with the latest patent expiration in 2022. Both of these patents are licensed to Shire plc. We intend to support Shire plc in its efforts to contest this matter.

Unless a court determines that our patents are invalid or unenforceable, we do not expect an adverse decision in any of the foregoing matters will have a material adverse effect on our business as we have monetized the future revenues associated with each of Sanctura XR, Oracea and Intuniv. However, in any infringement proceeding including the foregoing, a court may decide that a patent of ours is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent application at risk of not issuing.

Interference proceedings brought by the U.S. Patent and Trademark Office, or USPTO, may be necessary to determine the priority of inventions with respect to our patents and patent applications or those of our collaborators. An unfavorable outcome could require us to cease using the technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if a prevailing party does not offer us a license on terms that are acceptable to us. Litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distraction of our management and other employees. We may not be able to prevent, alone or with our collaborators, misappropriation of our proprietary rights, particularly in countries where the laws may not protect those rights as fully as in the United States.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, there could be public announcements of the results of hearings, motions or other interim proceeding or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. There can be no assurance that our product candidate will not be subject to same risks.

The commercial success of our product candidates, if approved, depends upon attaining market acceptance by physicians, patients, third party payors and the medical community.

Even if our product candidates are approved for sale by the appropriate regulatory authorities, physicians may not prescribe our approved product candidates, in which case we would not generate the revenues we anticipate. Market acceptance of any of our product candidates by physicians, patients, third party payors and the medical community depends on, among other things:

- our ability to provide acceptable evidence of safety and efficacy;
- acceptance by physicians and patients of each product candidate as a safe and effective treatment;
- perceived advantages of our product candidates over alternative treatments;
- relative convenience and ease of administration of our product candidates compared to existing treatments;
- any labeling restrictions placed upon each product candidate in connection with its approval;
- the prevalence and severity of the adverse side effects of each of our product candidates;

- the clinical indications for which each of our product candidates is approved, including any potential additional restrictions placed upon each product candidate in connection with its approval;
- prevalence of the disease or condition for which each product candidate is approved;
- the cost of treatment in relation to alternative treatments, including generic products;
- the extent to which each product is approved for inclusion on formularies of hospitals and managed care organizations;
- any negative publicity related to our or our competitors' products, including as a result of any related adverse side effects;
- the effectiveness of our or any current or future collaborators' sales, marketing and distribution strategies;
- pricing and cost effectiveness; and
- the availability of adequate reimbursement by third parties.

For example, new AEDs that were introduced in the market as new chemical entities, or NCEs, historically have not quickly gained significant market share against existing molecules in the epilepsy market, because physicians are often reluctant to change a stable patient's existing therapy (even for a NCE) and risk a breakthrough seizure in their patients. Although our epilepsy product candidates are not NCEs, if approved, they would be subject to the risk that they will not be able to gain significant market share against existing AEDs. If our product candidates do not achieve an adequate level of acceptance by physicians, third-party payors and patients, we may not generate sufficient revenues from these product candidates to become or remain profitable on a timely basis, if at all.

Even if our product candidates receive regulatory approval, they may be subject to restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements.

Even if U.S. regulatory approval is obtained, the FDA may still impose significant restrictions on a product's indicated uses or marketing or impose ongoing requirements for potentially costly post-approval studies. Our product candidates would also be, and our collaborators' approved products are, subject to ongoing FDA requirements governing the labeling, packaging, storage, advertising, promotion, recordkeeping and submission of safety and other post-market information. In addition, manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current good manufacturing practices, or GMP, regulations. If we, our collaborators or a regulatory authority discovers previously unknown problems with a product, such as side effects of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory authority may impose restrictions on that product or the manufacturer, including requiring withdrawal of the product from the market or suspension of manufacturing. If we, our collaborators, our collaborators' approved products or our product candidates, or the manufacturing facilities for our collaborators' approved products or our product candidates fail to comply with applicable regulatory requirements, a regulatory authority may:

- issue warning letters or untitled letters;
- impose civil or criminal penalties;
- suspend regulatory approval;
- suspend any ongoing bioequivalence and/or clinical trials;
- refuse to approve pending applications or supplements to applications filed by us;

- impose restrictions on operations, including costly new manufacturing requirements, or suspension of production; or
- seize or detain products or require us to initiate a product recall.

In addition, if any of our product candidates are approved, our product labeling, advertising and promotion would be subject to regulatory requirements and continuing regulatory review. The FDA strictly regulates the promotional claims that may be made about prescription products. In particular, a product may not be promoted for uses that are not approved by the FDA as reflected in the product's approved labeling. If we receive marketing approval for our product candidates, physicians may nevertheless prescribe our product candidates to their patients in a manner that is inconsistent with the approved label. The FDA and other authorities actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant sanctions. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. If we are found to have promoted off-label uses, we may be enjoined from such off-label promotion and become subject to significant liability, which would have an adverse effect on our reputation, business and revenues, if any.

If we fail to produce our product candidates in the volumes that we require on a timely basis, or fail to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the development and commercialization of our product candidates.

As we do not currently own or operate manufacturing facilities for the production of any of our product candidates beyond Phase II clinical trials, nor do we have plans to develop our own manufacturing operations for Phase III clinical materials or commercial products in the foreseeable future. We currently depend on third-party contract manufacturers for the supply of the active pharmaceutical ingredients for our product candidates, including drug substance for our preclinical research and clinical trials. For SPN-538 and Epliga, we currently rely on single suppliers for raw materials including drug substance and single manufacturers for the product candidates, and expect to rely on third party suppliers and manufacturers for the final commercial products. Any future curtailment in the availability of raw materials could result in production or other delays with consequent adverse effects on us. In addition, because regulatory authorities must generally approve raw material sources for pharmaceutical products, changes in raw material suppliers may result in production delays or higher raw material costs.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Pharmaceutical companies often encounter difficulties in production, particularly in scaling up production, of their products. These problems include manufacturing difficulties relating to production costs and yields, quality control, including stability of the product and quality assurance testing, shortages of qualified personnel, as well as compliance with federal, state and foreign regulations. If we are unable to demonstrate stability in accordance with commercial requirements, or if our manufacturers were to encounter difficulties or otherwise fail to comply with their obligations to us, our ability to obtain FDA approval and market our product candidates would be jeopardized. In addition, any delay or interruption in the supply of clinical trial supplies could delay or prohibit the completion of our bioequivalence and/or clinical trials, increase the costs associated with conducting our bioequivalence and/or clinical trials and, depending upon the period of delay, require us to commence new trials at significant additional expense or to terminate a trial.

Manufacturers of pharmaceutical products need to comply with GMP requirements enforced by the FDA through their facilities inspection programs. These requirements include, among other things, quality control, quality assurance and the maintenance of records and documentation. Manufacturers of our product candidates may be unable to comply with these GMP requirements and with other FDA

and foreign regulatory requirements. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of any of our product candidates is compromised due to failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for such product candidate or successfully commercialize such product candidate, and we may be held liable for any injuries sustained as a result. Any of these factors could cause a delay in clinical developments, regulatory submissions, approvals or commercialization of our product candidates, entail higher costs or result in our being unable to effectively commercialize our product candidates. Furthermore, for our two most advanced product candidates, SPN-538 and Epliga, we are presently negotiating agreements with leading contract manufacturing organizations, or CMOs, headquartered in North America for the manufacture of the final commercial products. If we fail to obtain the required commercial quantities on a timely basis and at commercially reasonable prices, we may be unable to meet demand for our approved product candidates, if any, and would lose potential revenues.

We depend on collaborators to work with us to develop, manufacture and commercialize their and our product candidates.

We have a license agreement with United Therapeutics to use one of our proprietary technologies for an oral formulation of treprostinil diethanolamine, or treprostinil, for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. This oral formulation is currently being evaluated by United Therapeutics in Phase III trials for PAH. If United Therapeutics receives approval to market and sell this product candidate, we are entitled to receive single digit gross royalties based on worldwide net sales. We are also entitled to receive milestones and royalties for use of this formulation in other indications. If we materially breach any of our obligations under the license agreement, however, we could lose the potential to receive any future royalty payments thereunder, which could be financially significant to us.

In addition, we may enter into additional collaborations in the future. Our future collaboration agreements may have the effect of limiting the areas of research and development that we may pursue, either alone or in collaboration with third parties. Much of the potential revenues from these future collaborations may consist of contingent payments, such as payments for achieving development milestones and royalties payable on sales of developed products. The milestone and royalty revenues that we may receive under these collaborations will depend upon our collaborators' ability to successfully develop, introduce, market and sell new products. Future collaboration partners may fail to develop or effectively commercialize products using our product candidates or technologies because they, among other things:

- may change the focus of their development and commercialization efforts or may have insufficient resources to effectively develop our product candidates. Pharmaceutical and biotechnology companies historically have re-evaluated their development and commercialization priorities following mergers and consolidations, which have been common in recent years in these industries. The ability of some of our product candidates to reach their potential could be limited if our future collaborators decrease or fail to increase development or commercialization efforts related to those product candidates;

- may decide not to devote the necessary resources due to internal constraints, such as limited personnel with the requisite scientific expertise or limited cash resources, or the belief that other drug development programs may have a higher likelihood of obtaining marketing approval or may potentially generate a greater return on investment;

- may develop and commercialize, either alone or with others, drugs that are similar to or competitive with the product candidates that are the subject of their collaborations with us;

- may not have sufficient resources necessary to carry the product candidate through clinical development, marketing approval and commercialization;
- may fail to comply with applicable regulatory requirements;
- may not be able to obtain the necessary marketing approvals; or
- may breach or terminate their arrangement with us.

If collaboration partners fail to develop or effectively commercialize our product candidates for any of these reasons, we may not be able to replace the collaboration partner with another partner to develop and commercialize the product candidate under the terms of the collaboration. Further, even if we are able to replace the collaboration partner, we may not be able to do so on commercially favorable terms. As a result, the development and commercialization of the affected product candidate could be delayed, curtailed or terminated because we may not have sufficient financial resources or capabilities to continue development and commercialization of the product candidate on our own, which could adversely affect our results of operations.

We rely and will continue to rely on outsourcing arrangements for certain of our activities, including clinical research of our product candidates and manufacturing of our compounds and product candidates beyond Phase II clinical trials.

We rely on outsourcing arrangements for some of our activities, including manufacturing, preclinical and clinical research, data collection and analysis. We may have limited control over these third parties and we cannot guarantee that they will perform their obligations in an effective and timely manner. Our reliance on third parties, including third-party CROs and CMOs entails risks including, but not limited to:

- non-compliance by third parties with regulatory and quality control standards;
- sanctions imposed by regulatory authorities if compounds supplied or manufactured by a third party supplier or manufacturer fail to comply with applicable regulatory standards;
- the possible breach of the agreements by the CROs or CMOs because of factors beyond our control or the insolvency of any of these third parties or other financial difficulties, labor unrest, natural disasters or other factors adversely affecting their ability to conduct their business; and
- termination or non-renewal of an agreement by the third parties, at a time that is costly or inconvenient for us, because of our breach of the manufacturing agreement or based on their own business priorities.

We do not own or operate manufacturing facilities for the production of any of our product candidates beyond Phase II clinical trials, nor do we have plans to develop our own manufacturing operations for Phase III clinical materials or commercial products in the foreseeable future. We currently depend on third-party CMOs for all of our required raw materials and drug substance for our preclinical research and clinical trials. For SPN-538 and Epliga, we currently rely on single suppliers for raw materials including drug substance and single manufacturers for the product candidates, and expect to rely on third party suppliers and manufacturers for the final commercial products. If any of these vendors is unable to perform its obligations to us, including due to violations of the FDA's requirements, our ability to meet regulatory requirements or projected timelines and necessary quality standards for successful manufacturing of the various required lots of material for our development and commercialization efforts would be adversely affected. Further, if we were required to change vendors, it could result in delays in our regulatory approval efforts and significantly increase our costs. Accordingly, the loss of any of our current or future third-party manufacturers or suppliers could have a material adverse effect on our business, results of operations, financial condition and prospects.

We do not have any current contractual relationships for the manufacture of commercial supplies of any of our product candidates. For our two most advanced product candidates, SPN-538 and Epliga, we are presently negotiating agreements with leading CMOs headquartered in North America for the manufacture of the final commercial products. The number of third-party manufacturers with the expertise, required regulatory approvals and facilities to manufacture drug substance and final drug product on a commercial scale is limited. Therefore, we may not be able to enter into such arrangements with third-party manufacturers in a timely manner, on acceptable terms or at all. Failure to secure such contractual arrangements would harm the commercial prospects for our product candidates, our costs could increase and our ability to generate revenues could be delayed.

We have in-licensed or acquired a portion of our intellectual property necessary to develop certain of our psychiatry product candidates, and if we fail to comply with our obligations under any of these arrangements, we could lose such intellectual property rights.

We are a party to and rely on several arrangements with third parties, such as those with Afecta Pharmaceuticals, Inc., or Afecta, and Rune Healthcare Limited, or Rune, which give us rights to intellectual property that is necessary for the development of certain of our product candidates including SPN-810 and SPN-809, respectively. In addition, we may enter into similar arrangements in the future. Our current arrangements impose various development, royalty and other obligations on us. If we materially breach these obligations or if Afecta or Rune fail to adequately perform their respective obligations, these exclusive arrangements could be terminated, which would result in our inability to develop, manufacture and sell products that are covered by such intellectual property.

Even if our product candidates receive regulatory approval in the United States, we or our collaborators may never receive approval to commercialize our product candidates outside of the United States.

In order to market any products outside of the United States, we must establish and comply with numerous and varying regulatory requirements of other jurisdictions regarding safety and efficacy. Approval procedures vary among jurisdictions and can involve product testing and administrative review periods different from, and greater than, those in the United States. The time required to obtain approval in other jurisdictions might differ from that required to obtain FDA approval. The regulatory approval process in other jurisdictions may include all of the risks detailed above regarding FDA approval in the United States as well as other risks. For example, legislation analogous to Section 505(b)(2) of the FDCA in the United States, which relates to the ability of an NDA applicant to use published data not developed by such applicant, may not exist in other countries. In territories where data is not freely available, we may not have the ability to commercialize our products without negotiating rights from third parties to refer to their clinical data in our regulatory applications, which could require the expenditure of significant additional funds.

In addition, regulatory approval in one jurisdiction does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory processes in others. Failure to obtain regulatory approvals in other jurisdictions or any delay or setback in obtaining such approvals could have the same adverse effects detailed above regarding FDA approval in the United States. As described above, such effects include the risks that any of our product candidates may not be approved for all indications requested, which could limit the uses of our product candidates and have an adverse effect on their commercial potential or require costly post-marketing studies.

Guidelines and recommendations published by various organizations can reduce the use of our product candidates.

Government agencies promulgate regulations and guidelines directly applicable to us and to our product candidates. In addition, professional societies, practice management groups, private health and science foundations and organizations involved in various diseases from time to time may also publish

guidelines or recommendations to the health care and patient communities. Recommendations of government agencies or these other groups or organizations may relate to such matters as usage, dosage, route of administration and use of concomitant therapies. Recommendations or guidelines suggesting the reduced use of our product candidates or the use of competitive or alternative products that are followed by patients and health care providers could result in decreased use of our product candidates.

We are subject to uncertainty relating to payment or reimbursement policies which, if not favorable for our product candidates, could hinder or prevent our commercial success.

Our ability or our collaborators' ability to commercialize our product candidates, including SPN-538 and Epliga, successfully will depend in part on the coverage and reimbursement levels set by governmental authorities, private health insurers, managed care organizations and other third-party payors. As a threshold for coverage and reimbursement, third-party payors generally require that drug products have been approved for marketing by the FDA. Third-party payors also are increasingly challenging the effectiveness of and prices charged for medical products and services. Government authorities and these third-party payors have attempted to control costs, in some instances, by limiting coverage and the amount of reimbursement for particular medications or encouraging the use of lower-cost generic AEDs. We cannot be sure that reimbursement will be available for any of the products that we develop and, if reimbursement is available, the level of reimbursement. Reduced or partial payment or reimbursement coverage could make our product candidates, including SPN-538 and Epliga, less attractive to patients and prescribing physicians. We also may be required to sell our product candidates at a discount, which would adversely affect our ability to realize an appropriate return on our investment in our product candidates or compete on price.

We expect that private insurers and managed care organizations will consider the efficacy, cost effectiveness and safety of our product candidates, including SPN-538 and Epliga, in determining whether to approve reimbursement for such product candidates and at what level. Because each third-party payor individually approves payment or reimbursement, obtaining these approvals can be a time consuming and expensive process that could require us to provide scientific or clinical support for the use of each of our product candidates separately to each third-party payor. In some cases it could take several months or years before a particular private insurer or managed care organization reviews a particular product, and we may ultimately be unsuccessful in obtaining coverage. Our competitors generally have larger organizations, as well as existing business relationships with third-party payors relating to their products. Our business would be materially adversely affected if we do not receive approval for reimbursement of our product candidates from private insurers on a timely or satisfactory basis. Our approved product candidates, if any, may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our product candidates on a profitable basis. Our business would also be adversely affected if private insurers, managed care organizations, the Medicare program or other reimbursing bodies or payors limit the indications for which our product candidates will be reimbursed to a smaller set than we believe they are effective in treating.

In some foreign countries, particularly Canada and the countries of Europe, the pricing of prescription pharmaceuticals is subject to strict governmental control. In these countries, pricing negotiations with governmental authorities can take six to 12 months or longer after the receipt of regulatory approval and product launch. To obtain favorable reimbursement for the indications sought or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidates to other available therapies. If reimbursement for our product candidates is unavailable in any country in which reimbursement is sought, limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be materially harmed.

In addition, many managed care organizations negotiate the price of products and develop formularies which establish pricing and reimbursement levels. Exclusion of a product from a formulary can lead to its sharply reduced usage in the managed care organization's patient population. If our product candidates are not included within an adequate number of formularies or adequate payment or reimbursement levels are not provided, or if those policies increasingly favor generic products, our market share and gross margins could be negatively affected, which would have a material adverse effect on our overall business and financial condition.

We expect to experience pricing pressures due to the potential healthcare reforms discussed elsewhere in this prospectus, as well as the trend toward programs aimed at reducing health care costs, the increasing influence of health maintenance organizations and additional legislative proposals.

We face potential product liability exposure, and, if successful claims are brought against us, we may incur substantial liabilities.

The use of our product candidates in clinical trials and the sale of any of our product candidates for which we may obtain marketing approval expose us to the risk of product liability claims. Product liability claims might be brought against us by consumers, healthcare providers or others selling or otherwise coming into contact with our product candidates. If we cannot successfully defend ourselves against product liability claims, we could incur substantial liabilities. In addition, product liability claims may result in:

- decreased demand for any product candidate that has received approval and is being commercialized;
- impairment of our business reputation and exposure to adverse publicity;
- withdrawal of bioequivalence and/or clinical trial participants;
- initiation of investigations by regulators;
- costs of related litigation;
- distraction of management's attention from our primary business;
- substantial monetary awards to patients or other claimants;
- loss of revenues; and
- the inability to commercialize any of our product candidates for which we obtain marketing approval.

Our product liability insurance coverage for our clinical trials is limited to $5 million per occurrence, and $10 million in the aggregate, and covers bodily injury and property damage arising from our clinical trials, subject to industry-standard terms, conditions and exclusions. Our insurance coverage may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses. If and when we obtain marketing approval for any of our product candidates, we intend to expand our insurance coverage to include the sale of commercial products; however, we may be unable to obtain this product liability insurance on commercially reasonable terms. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to decline and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

Our failure to successfully develop and market product candidates would impair our ability to grow.

As part of our growth strategy, we intend to develop and market additional product candidates. We are pursuing various therapeutic opportunities through our pipeline. We may spend several years

completing our development of any particular current or future internal product candidate, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. In addition, because our internal research capabilities are limited, we may be dependent upon pharmaceutical companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify, select, discover and acquire promising pharmaceutical product candidates and products.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate key employees of any acquired businesses.

Further, any product candidate that we acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities.

Healthcare reform measures could hinder or prevent our product candidates' commercial success.

The U.S. government and other governments have shown significant interest in pursuing healthcare reform. Any government-adopted reform measures could adversely impact the pricing of healthcare products and services in the United States or internationally and the amount of reimbursement available from governmental agencies or other third party payors. The continuing efforts of the U.S. and foreign governments, insurance companies, managed care organizations and other payors of health care services to contain or reduce healthcare costs may adversely affect our ability to set prices for any approved product candidate which we believe are fair, and our ability to generate revenues and achieve and maintain profitability.

In both the United States and some foreign jurisdictions, there have been a number of legislative and regulatory proposals and initiatives to change the health care system in ways that could affect our ability to sell any approved product candidate profitably. Some of these proposed and implemented reforms could result in reduced reimbursement rates for our potential products, which would adversely affect our business strategy, operations and financial results. For example, in March 2010, President Obama signed into law a legislative overhaul of the U.S. healthcare system, known as the Patient Protection and Affordable Care Act of 2010, as amended by the Healthcare and Education Affordability Reconciliation Act of 2010. This law, which we refer to as the PPACA, may have far reaching consequences for biopharmaceutical companies like us. As a result of this new legislation, substantial changes could be made to the current system for paying for healthcare in the United States, including changes made in order to extend medical benefits to those who currently lack insurance coverage. Extending coverage to a large population could substantially change the structure of the health insurance system and the methodology for reimbursing medical services and drugs. These structural changes could entail modifications to the existing system of private payors and government programs, such as Medicare and Medicaid, creation of a government-sponsored healthcare insurance source, or some combination of both, as well as other changes. Restructuring the coverage of medical care in the United States could impact the reimbursement for prescribed drugs, including our product candidates. If reimbursement for our approved product candidates, if any, is substantially less that we expect in the future, or rebate obligations associated with them are substantially increased, our business could be materially and adversely impacted.

In September 2007, the Food and Drug Administration Amendments Act of 2007 was enacted, giving the FDA enhanced post-marketing authority, including the authority to require post-marketing studies and clinical trials, labeling changes based on new safety information, and compliance with risk evaluations and mitigation strategies approved by the FDA. The FDA's exercise of this authority could result in delays or increased costs during product development, clinical trials and regulatory review, increased costs to assure compliance with post-approval regulatory requirements, and potential restrictions on the sale and/or distribution of any approved product candidates.

Future federal and state proposals and health care reforms could limit the prices that can be charged for the product candidates that we develop and may further limit our commercial opportunity. Our results of operations could be materially adversely affected by the PPACA by the possible effect of such current or future legislation on amounts that private insurers will pay and by other health care reforms that may be enacted or adopted in the future.

We will need to increase the size of our organization, and we may experience difficulties in managing growth.

We will need to manage our anticipated growth and increased operational activity. Our personnel, systems and facilities currently in place may not be adequate to support this future growth. Our need to effectively execute our growth strategy requires that we:

- manage our regulatory approval trials effectively;
- manage our internal development efforts effectively while complying with our contractual obligations to licensors, licensees, contractors, collaborators and other third parties;
- develop internal sales and marketing capabilities;
- commercialize our product candidates;
- improve our operational, financial and management controls, reporting systems and procedures; and
- attract and motivate sufficient numbers of talented employees.

This future growth could place a strain on our administrative and operational infrastructure and may require our management to divert a disproportionate amount of its attention away from our day-to-day activities. We may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel, which may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. We may not be able to make improvements to our management information and control systems in an efficient or timely manner and may discover deficiencies in existing systems and controls. If our management is unable to effectively manage our expected growth, our expenses may increase more than expected, our ability to generate or increase our revenues could be reduced and we may not be able to implement our business strategy. Our future financial performance and our ability to compete effectively will depend, in part, on our ability to effectively manage any future growth.

We may not be able to manage our business effectively if we are unable to attract and motivate key personnel or if we lose any of our current management team.

We may not be able to attract or motivate qualified management and scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses. Our industry has experienced a high rate of turnover of management personnel in recent years. If we are not able to attract and motivate necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our objectives.

We are highly dependent on the development, regulatory, commercial and financial expertise of our management, particularly Jack A. Khattar, our President and Chief Executive Officer. We do not have any employment agreements with any member of our senior management team except Mr. Khattar. Although no member of our management team has informed us to date that he or she intends to resign or retire, if we lose any members of our management team in the future, we may not be able to find suitable replacements in a timely fashion, if at all, which may serve to impede the achievement of our research, development and commercialization objectives. In addition to the competition for personnel, the greater Washington D.C. metropolitan area in particular is characterized by a high cost of living. As such, we could have difficulty attracting experienced personnel to our company and may be required to expend significant financial resources in our employee recruitment efforts.

We also have scientific and clinical advisors who assist us in formulating our product development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us, or may have arrangements with other companies to assist in the development of products that may compete with ours.

We will need to obtain FDA approval of any proposed product names, and any failure or delay associated with such approval may adversely impact our business.

Any name we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U.S. Patent and Trademark Office. The FDA typically conducts a review of proposed product names, including an evaluation of potential for confusion with other product names. The FDA may object to any product name we submit if it believes the name inappropriately implies medical claims. We have in the past been required to change a proposed product name. If the FDA objects to any of our proposed product names, we may be required to adopt an alternative name for our product candidates. If we adopt an alternative name, we would lose the benefit of our existing trademark applications for such product candidate, and may be required to expend significant additional resources in an effort to identify a

suitable product name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

If we fail to comply with healthcare regulations, we could face substantial penalties and our business, operations and financial condition could be adversely affected.

As a manufacturer of pharmaceuticals, certain federal and state healthcare laws and regulations pertaining to fraud and abuse and patients' rights are and will be applicable to our business. We could be subject to healthcare fraud and abuse and patient privacy regulation by both the federal government and the states in which we conduct our business. The regulations include:

- the federal healthcare program anti-kickback law, which prohibits, among other things, persons from soliciting, receiving or providing remuneration, directly or indirectly, to induce either the referral of an individual, for an item or service or the purchasing or ordering of a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;

- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent, and which may apply to entities like us which provide coding and billing advice to customers;

- the federal Health Insurance Portability and Accountability Act of 1996, which prohibits executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters and which also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information;

- the federal transparency requirements under the PPACA requires manufacturers of drugs, devices, biologics, and medical supplies to report to the Department of Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests;

- the FDCA, which among other things, strictly regulates drug product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by federal laws, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations could be costly. If our operations are found to be in violation of any of the laws described above or any governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security and fraud laws may prove costly.

Our business involves the use of hazardous materials, and we must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our activities and our third-party manufacturers' and suppliers' activities involve the controlled storage, use and disposal of hazardous materials owned by us. We and our manufacturers and suppliers are subject to federal, state, city and local laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. Although we believe that the safety procedures we use for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident, local, city, state or federal authorities may curtail the use of these materials and interrupt our business operations, including our commercialization and research and development efforts. Although we believe that the safety procedures utilized by our third-party manufacturers for handling and disposing of these materials generally comply with the standards prescribed by these laws and regulations, we cannot guarantee that this is the case or eliminate the risk of accidental contamination or injury from these materials. In such an event, we may be held liable for any resulting damages and such liability could exceed our resources. We do not currently maintain biological or hazardous materials insurance coverage.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

We employ individuals who were previously employed at other pharmaceutical companies, including our competitors or potential competitors and, as such, we may be subject to claims that we or these employees have used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

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

Despite the implementation of security measures, our internal computer systems and those of our contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Such an event could cause interruption of our operations. For example, the loss of trial data from completed or ongoing bioequivalence and/or clinical trials for our product candidates could result in delays in our regulatory approval efforts and significantly increase our costs. To the extent that any disruption or security breach were to result in a loss of or damage to our data, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of our product candidates could be delayed.

Provisions in our agreement with Shire impose restrictive covenants on us, which could limit our ability to operate effectively in the future.

In 2005, we purchased substantially all of the assets of Shire Laboratories Inc. Pursuant to this agreement, we agreed to perpetually refrain from engaging in any research, formulation development, analytical testing, manufacture, technology assessment or oral bioavailability screening that relate to five specific drug compounds (amphetamine, carbamazepine, guanfacine, lanthanum and mesalamine) and any derivative thereof. In addition, we have agreed not to provide any services to, license any intellectual property rights to, or otherwise perform any work for certain pharmaceutical companies primarily engaged in the development and marketing of generic products through 2012. Although these various restrictions and covenants on us do not currently impact our product candidates or business, they could in the future limit or delay our ability to take advantage of business opportunities that may relate to such compounds or such companies.

Risks Related to Our Finances and Capital Requirements

We have incurred significant operating losses since our inception and anticipate that we will incur continued losses for the foreseeable future.

In recent years, we have focused primarily on developing our current product candidates, with the goal of supporting regulatory approval for these product candidates. We have financed our operations primarily through private placements of convertible preferred stock, our collaboration and license arrangements, and non-recourse debt that is secured by our royalty rights related to sales of Oracea under our agreement with Galderma and our royalty rights related to sales of Sanctura XR under our agreement with Allergan. We have incurred significant operating losses since our inception in 2005. We incurred net losses of approximately $17.3 million and $33.5 million in the years ended December 31, 2007 and 2008, respectively, and approximately $29.9 million in the nine months ended September 30, 2010. We incurred net income of approximately $0.5 million in the year ended December 31, 2009. As of September 30, 2010, we had an accumulated deficit of approximately $85.2 million. Substantially all of our operating losses resulted from costs incurred in connection with our development programs and from general and administrative costs associated with our operations. For example, the expenses that we have incurred relating to the research and development of SPN-538 and Epliga from inception to September 30, 2010 are approximately $18.2 million and $35.4 million, respectively. We expect our research and development costs to continue to be substantial and to increase with respect to our product candidates as we advance those product candidates through preclinical studies, clinical trials, manufacturing scale-up and other pre-approval activities. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future.

Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders' equity and working capital. Furthermore, upon the closing of this offering, we expect to incur additional costs associated with operating as a public company. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the extent of any future losses or when, or if, we will become profitable.

We may need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.

Developing product candidates, conducting clinical trials, establishing manufacturing relationships and marketing drugs are expensive and uncertain processes. Although it is difficult to predict future liquidity requirements, we believe that the net proceeds from this offering, together with our existing unrestricted cash, cash equivalents and marketable securities, anticipated future product revenues and any additional borrowings available under our $25.0 million secured credit facility, will be sufficient to

fund our operations for at least the next months. We may need to obtain additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. If sufficient funds on acceptable terms are not available when needed, we could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of our development programs, which may have a material adverse effect on our business, results of operations and financial condition.

In addition, unforeseen circumstances may arise, or our strategic imperatives could change, causing us to consume capital significantly faster than we currently anticipate, requiring us to seek to raise additional funds sooner than expected. We have no committed external sources of funds.

The amount and timing of our future funding requirements will depend on many factors, including, but not limited to:

- the rate of progress and cost of our trials and other product development programs for our product candidates;
- the costs and timing of in-licensing additional product candidates or acquiring other complementary companies;
- the timing of any regulatory approvals of our product candidates;
- the costs of establishing sales, marketing and distribution capabilities; and
- the status, terms and timing of any collaborative, licensing, co-promotion or other arrangements.

Additional financing may not be available when we need it or may not be available on terms that are favorable to us. In addition, we may seek additional capital due to favorable market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans. If adequate funds are not available to us on a timely basis, or at all, we may be required to delay, reduce the scope of or eliminate one or more of our development programs or our commercialization efforts.

We have never generated any revenues from the sales of our own products, and we may never achieve or maintain profitability.

Our ability to become profitable depends upon our ability to generate revenues from sales of our product candidates. To date, we have not generated any revenues from sales of our own product candidates and have incurred significant operating losses. Our historical revenues have been generated through fees for development services and payment for the achievement of specified development, regulatory and sales milestones, as well as royalty, on product sales of Oracea, Sanctura XR and Intuniv licensed products. In April 2008, we raised approximately $63.3 million in net proceeds through a private placement to institutional investors of $75.0 million aggregate principal amount of 16% non-convertible, non-recourse, secured promissory notes due April 15, 2024 by our subsidiary, TCD Royalty Sub LLC, or Royalty Sub. As part of the transaction, we transferred to Royalty Sub our payment rights and other license rights related to two products that utilize our proprietary technologies: Oracea, which is marketed by Galderma as a treatment for rosacea; and Sanctura XR, which is marketed by Allergan as a treatment for overactive bladder. The non-recourse notes are secured by these payment and other license rights, as well as by the pledge of all our outstanding equity interest in Royalty Sub. While the non-recourse notes are outstanding, all royalty and milestone payments due from net sales of Oracea and Sanctura XR go to the payment of interest, and when available, to the principal on such non-recourse notes. Accordingly, unless and until the non-recourse notes are fully paid, future royalties and milestone payments due from net sales of Oracea and Sanctura XR will not be available to fund our operations. In May 2009, we received a one-time payment of approximately $36.9 million from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for

Intuniv. Accordingly, we will not receive any future royalties payments from Shire plc with respect to the net sales of Intuniv.

Our ability to generate product revenues is dependent on our ability to receive regulatory approval of our product candidates, including SPN-538 and Epliga, and to successfully commercialize these products. Our ability to successfully commercialize our product candidates depends on, among other things:

- our successful completion of ongoing and planned bioequivalence and clinical trials for our product candidates;
- our obtaining regulatory approvals for our product candidates, including SPN-538 and Epliga; and
- if regulatory approvals are received, our manufacturing of commercial quantities of our product candidates at acceptable cost levels.

Even if any of our product candidates are approved for commercial sale, we anticipate incurring significant costs associated with commercialization. It is possible that we will never have sufficient product sales revenues to achieve profitability.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Prior to commercializing any of our product candidates, we expect that any revenues we generate will fluctuate from quarter to quarter as a result of the timing and amount of development and milestones and royalty revenues received under our collaboration license agreements, as our revenues from these arrangements are principally based on the achievement of clinical and commercial milestones outside of our control. To date, we have monetized the future royalties due to us from our existing license agreements for Oracea, Sanctura XR and Intuniv.

Once we commercialize one or more of our product candidates, our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our development programs;
- the success of our bioequivalence and clinical trials through all phases of clinical development;
- any delays in regulatory review and approval of product candidates in clinical development;
- potential side effects of our future products that could delay or prevent commercialization or cause an approved drug to be taken off the market;
- any intellectual property infringement lawsuit in which we may become involved;
- our ability to establish an effective sales and marketing infrastructure;
- our dependency on third-party manufacturers to supply or manufacture our product candidates;
- competition from existing products or new products that may emerge;
- regulatory developments affecting our product candidates;
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements;
- the achievement and timing of milestone payments under our existing collaboration and license agreements; and
- the level of market acceptance for any approved product candidates and underlying demand for that product and wholesalers' buying patterns.

Due to the various factors mentioned above, and others, the results of any prior quarterly periods should not be relied upon as an indication of our future operating performance. If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially.

We have operated as a private company and have no experience attempting to comply with public company obligations. Attempting to comply with these requirements will increase our costs and require additional management resources, and we still may fail to comply.

We will face increased legal, accounting, administrative and other costs and expenses as a public company. Compliance with the Sarbanes-Oxley Act of 2002, the Dodd-Frank Act of 2010, as well as rules of the Securities and Exchange Commission and Nasdaq, for example, will result in significant initial cost to us as well as ongoing increases in our legal, audit and financial compliance costs. The Exchange Act will require, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain the same or similar coverage.

As a public company, we expect to become subject to Section 404 of the Sarbanes-Oxley Act relating to internal controls over financial reporting. We expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Implementing any appropriate changes to our internal controls may require specific compliance training for our directors, officers and employees, entail substantial costs to modify our existing accounting systems, and take a significant period of time to complete. Such changes may not, however, be effective in maintaining the adequacy of our internal controls, and any failure to maintain that adequacy, or consequent inability to produce accurate consolidated financial statements or other reports on a timely basis, could increase our operating costs and could materially impair our ability to operate our business. Although we have not identified any material weaknesses in our internal controls over financial reporting to date, we cannot assure you that our internal controls over financial reporting will prove to be effective.

If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404 of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our consolidated financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our common stock.

Our ability to use net operating loss and tax credit carryforwards and certain built-in losses to reduce future tax payments is limited by provisions of the Internal Revenue Code, and may be subject to further limitation as a result of the transactions contemplated by this offering.

Section 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, contain rules that limit the ability of a company that undergoes an ownership change, which is generally any change in ownership of more than 50% of its stock over a three-year period, to utilize its net operating loss and tax credit carryforwards and certain built-in losses recognized in years after the ownership change. These rules generally operate by focusing on ownership changes involving stockholders owning directly or indirectly 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company. Generally, if an ownership change occurs, the yearly taxable income limitation on the use of net operating loss and tax credit carryforwards and certain built-in losses is equal to the product of the applicable long term tax exempt rate and the value of the company's stock immediately before the ownership change. We may be unable to offset our taxable income with losses, or our tax liability with credits, before such losses and credits expire and therefore would incur larger federal income tax liability.

In addition, it is possible that the transactions described in this offering, either on a standalone basis or when combined with future transactions, including issuances of new shares of our common stock, will cause us to undergo one or more additional ownership changes. In that event, we generally would not be able to use our pre-change loss or credit carryovers or certain built-in losses prior to such ownership change to offset future taxable income in excess of the annual limitations imposed by Sections 382 and 383 and those attributes already subject to limitations as a result of our prior ownership changes may be subject to more stringent limitations. As of December 31, 2009, we had approximately $54.1 million of federal net operating loss carryforwards. We also had federal and state research and development tax credit carryforwards of approximately $3.1 million available to offset future taxable income. These federal and state net operating loss and federal and state tax credit carryforwards will begin to expire at various dates beginning in 2025, if not utilized. We have not completed a study to assess whether an ownership change has occurred, or whether there have been multiple ownership changes since our inception, due to the significant costs and complexities associated with such study. Accordingly, our ability to utilize the aforementioned carryforwards and tax credits may be limited. As a result, we may not be able to take full advantage of these carryforwards or tax credits for federal and state tax purposes.

Risks Related to Our Indebtedness

Our level of indebtedness and debt service obligations could adversely affect our financial condition, and may make it more difficult for us to fund our operations.

In January 2011, we entered into a secured credit facility pursuant to a loan and security agreement among Oxford Finance Corporation, as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender, and promissory notes issued in favor of each lender, providing for term loans of up to an aggregate of $25.0 million. On January 26, 2011, we drew down our first $15.0 million of term loans under our new secured credit facility. All obligations under our new secured credit facility are secured by substantially all of our existing property and assets (excluding our intellectual property) and by a pledge of the capital stock of, subject to certain exceptions, our U.K. subsidiary and any future subsidiary. This debt financing may create additional financial risk for us, particularly if our business or prevailing financial market conditions are not conducive to paying off or refinancing our outstanding debt obligations at maturity. This indebtedness could also have important negative consequences, including:

- we will need to repay our debt by making payments of interest and principal, which will reduce the amount of money available to finance our operations, our research and development efforts and other general corporate activities;

- we may have difficulty obtaining financing in the future for working capital, capital expenditures, acquisitions or other purposes; and
- our failure to comply with the restrictive covenants in our loan and security agreement could result in an event of default that, if not cured or waived, would accelerate our obligation to repay this indebtedness, and the lenders could seek to enforce their security interests in the assets securing such indebtedness.

As of the date of this prospectus, our new secured credit facility permits additional borrowings of up to $10.0 million under the same terms and conditions of our current term loans on or before April 30, 2011, provided that we are not in default under the terms of the loan and security agreement or other loan documents. To the extent additional debt is added to our current debt levels, the risks described above would increase.

We may not have cash available to us in an amount sufficient to enable us to make interest or principal payments on our indebtedness when due.

Since our inception in 2005, we have generated no revenue from product sales and have incurred significant operating losses. As of September 30, 2010, we had an accumulated deficit of $85.2 million. We expect to continue to incur net losses and have negative cash flow from operating activities for the foreseeable future as we continue to develop and seek marketing approval for our product candidates. As a result, we may not have sufficient funds, or may be unable to arrange for additional financing, to pay the amounts due on our outstanding indebtedness under our $25.0 million secured credit facility. Further, funds from external sources may not be available on economically acceptable terms, if at all. For example, if we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish potentially valuable rights to our product candidates or technologies, or to grant licenses on terms that are not favorable to us. If adequate funds are not available when and if needed, our ability to make interest or principal payments on our debt obligations would be significantly limited, and we may be required to delay, significantly curtail or eliminate one or more of our programs.

Failure to satisfy our current and future debt obligations under our new secured credit facility could result in an event of default and, as a result, our lenders could accelerate all of the amounts due. In the event of an acceleration of amounts due under our new secured credit facility as a result of an event of default, we may not have sufficient funds or may be unable to arrange for additional financing to repay our indebtedness. In addition, our lenders could seek to enforce their security interests in the collateral securing such indebtedness.

We are subject to a number of restrictive covenants which, if breached, could have a material adverse effect on our business and prospects.

Our new secured credit facility imposes operating and other restrictions on us. Such restrictions will affect, and in many respects limit or prohibit our ability and the ability of our subsidiaries to, among other things:

- dispose of certain assets;
- change our lines of business;
- engage in mergers or consolidations;
- incur additional indebtedness;
- create liens on assets, including our intellectual property;
- pay dividends and make distributions on or repurchase our capital stock; and
- engage in certain transactions with affiliates.

Our new secured credit facility also includes certain customary representations and warranties and affirmative covenants. Our failure to comply with the restrictions contained in our new secured credit facility, if not cured by us or waived by our lenders, could result in an event of default. All obligations under our new secured credit facility are secured by substantially all of our existing property and assets (excluding our intellectual property) and by a pledge of the capital stock of, subject to certain exceptions, our U.K. subsidiary and any future subsidiary. In the event of a default under our new secured credit facility, our lenders could take various actions, including the acceleration of all amounts due under our new secured credit facility and all actions permitted to be taken by a secured creditor, which could have a material adverse effect on our business or prospects.

Royalties under our agreement with Endo Pharmaceuticals and Galderma may not be sufficient for our subsidiary to meet its payment obligations under the non-recourse notes.

While Royalty Sub will be entitled to receive the royalties related to the sales of Sanctura XR under our agreement with Endo Pharmaceuticals as successor-in-interest to Indevus Pharmaceuticals, Inc. and its marketing partner, Allergan, Inc., and the royalties related to the sales of Oracea under our agreement with Galderma Pharma S.A., as successor-in-interest to CollaGenex Pharmaceuticals, Inc., such royalties may not be sufficient for it to meet its payment obligations under the non-recourse notes issued by Royalty Sub. As a result, Royalty Sub will be dependent on Allergan's and Galderma's respective sales and marketing efforts to receive royalties in sufficient amounts to meet its payment obligations. Any royalty modifications could result in Royalty Sub receiving significantly reduced or no royalties under the license agreements with Endo Pharmaceuticals and Galderma Pharma S.A., which would delay repayment of the non-recourse notes.

In certain circumstances we could be required to pay damages if we fail to perform our obligations in connection with the non-recourse notes issued by Royalty Sub and we may lose the potential to receive future royalty payments after the non-recourse notes are repaid in full.

In April 2008, Royalty Sub issued $75.0 million in aggregate principal amount of non-recourse notes to institutional investors, which are secured principally by royalty payments from future sales of Sanctura XR and Oracea, and by a pledge by us of all the outstanding equity interest in Royalty Sub. If the royalty payments from Sanctura XR and Oracea are insufficient to repay the non-recourse notes or if an event of default occurs under the indenture governing the non-recourse notes, in certain circumstances, the royalty payments and our equity interest in Royalty Sub may be foreclosed upon and we would lose the potential to receive any future royalty payments, which could be financially significant after the non-recourse notes are repaid in full.

In addition, if we fail to perform our obligations under the purchase and sale agreement with Royalty Sub we may be required to indemnify Royalty Sub for damages arising due to such failure. For example, pursuant to this agreement, we have an obligation to use commercially reasonable efforts to preserve, maintain, and maximize the commercial value of our licensed patents covering Sanctura XR and Oracea, which includes the obligation to pay patent office maintenance fees in order to keep these patents in force. If we fail to pay such patent office maintenance fees, these patents may expire and the royalty stream from such patents may terminate. In such a scenario, we may be called upon to pay damages to Royalty Sub due to the loss of patent licensing revenue that Royalty Sub would have received from the sale of Sanctura XR and Oracea.

Risks Related to Securities Markets and Investment in Our Stock

The concentration of our capital stock ownership with our founders, directors, executives, employees and current holders of our preferred stock (and their affiliates) will limit your ability to influence certain corporate matters.

Upon completion of this offering and after giving effect to the conversion of the Series A convertible preferred stock into common stock, the current holders of our preferred stock will, in the

aggregate, beneficially own % of our outstanding common stock (or approximately % if the underwriters exercise their over-allotment option in full). As a result, these stockholders will collectively be able to significantly influence and may be able to control all matters requiring approval of our stockholders, including the election of directors and approval of significant corporate transactions such as mergers, consolidations or the sale of all or substantially all of our assets. The concentration of ownership may delay, prevent or deter a change in control of our company even when such a change may be in the best interests of some stockholders, impede a merger, consolidation, takeover or other business combination involving us, or could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company or our assets and might adversely affect the prevailing market price of our common stock. Participation in this offering by existing holders of our Series A convertible preferred stock will further concentrate voting rights and may negatively impact liquidity for shares of our common stock.

Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control which could negatively impact the market price of our common stock.

Provisions in our certificate of incorporation and bylaws, as amended and restated upon the completion of this offering, may have the effect of delaying or preventing a change of control. These provisions include the following:

- Our board of directors is divided into three classes serving staggered three-year terms, such that not all members of the board will be elected at one time. This staggered board structure prevents stockholders from replacing the entire board at a single stockholders' meeting.

- Our board of directors has the right to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors.

- Our board of directors may issue, without stockholder approval, shares of preferred stock. The ability to authorize preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us.

- Stockholders must provide advance notice to nominate individuals for election to the board of directors or to propose matters that can be acted upon at a stockholders' meeting. Furthermore, stockholders may only remove a member of our board of directors for cause. These provisions may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect such acquiror's own slate of directors or otherwise attempting to obtain control of our company.

- Our stockholders may not act by written consent. As a result, a holder, or holders, controlling a majority of our capital stock would not be able to take certain actions outside of a stockholders' meeting.

- Special meetings of stockholders may be called only by the chairman of our board of directors, our chief executive officer, our president or a majority of our board of directors. As a result, a holder, or holders, controlling a majority of our capital stock would not be able to call a special meeting.

- A majority of the outstanding shares of common stock are required to amend our certificate of incorporation and a super majority (75%) of the outstanding shares of common stock are required to amend our by-laws, which make it more difficult to change the provisions described above.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our certificate of incorporation, our bylaws and in the Delaware General Corporation Law could make it more difficult for stockholders

or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors.

There may not be a viable public market for our common stock.

Prior to this offering, there has been no public market for our common stock, and a regular trading market may not develop and continue after this offering. Furthermore, the market price of our common stock may decline below the initial public offering price. The initial public offering price has been determined through negotiations between us and the representatives of the underwriters and may not be indicative of the market price of our common stock following this offering. Among the factors considered in such negotiations were prevailing market conditions, certain of our financial information, market valuations of other companies that we and the representatives of the underwriters believed were comparable to us, estimates of our business potential and the present state of our business. See "Underwriting" for additional information.

If you purchase shares of our common stock, you may not be able to resell those shares at or above the initial public offering price. We cannot predict the extent to which investor interest in our company will lead to the development of an active trading market on the Nasdaq Global Market or otherwise or how liquid that market might become. An active public market for our common stock may not develop or be sustained after the offering. If an active public market does not develop or is not sustained, it may be difficult for you to sell your shares of common stock at a price that is attractive to you, or at all. Further, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic partnerships or acquire companies or products, product candidates or technologies by using our shares of common stock as consideration.

As a new investor, you will experience immediate and substantial dilution in the net tangible book value of your shares.

The initial public offering price of our common stock in this offering is considerably more than the net tangible book value per share of our common stock. Investors purchasing shares of common stock in this offering will pay a price that substantially exceeds the value of our tangible assets after subtracting liabilities. As a result, investors will, as of September 30, 2010:

- incur immediate dilution of $ per share of common stock, based on the initial public offering price of $ per share of common stock; and
- contribute % of the total amount invested to date to fund our company based on the initial offering price of $ per share of common stock, but will own only % of the outstanding shares of common stock after the offering.

To the extent outstanding stock options and warrants are exercised, there will be further dilution to new investors.

As of September 30, 2010, we had options to purchase 1,729,458 shares of common stock outstanding, with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.48 per share. Upon the vesting of each of these options, the holder may exercise his or her options, which would result in further dilution to investors.

As of September 30, 2010, we had no outstanding warrants to purchase shares of Series A convertible preferred stock. In connection with our new secured credit facility, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. In connection with any drawdown of additional term loans under our new secured credit facility, we would be required to issue to the lenders additional warrants to purchase up to 250,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. Upon completion of this offering, each warrant will be exercisable for

one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share of $1.00. You may experience dilution if we issue additional shares of common stock under the warrants that we issued to our lenders.

The price of our common stock may fluctuate substantially.

Following this offering, the market price for our common stock is likely to be volatile, in part because our common stock has not been previously traded publicly. In addition, the market price of our common stock may fluctuate significantly in response to a number of factors, including:

- plans for, progress in and results from clinical trials of our product candidates generally;
- the results from our bioequivalence trials for SPN-538 and our bioequivalence and/or clinical trials, including our current and planned Phase III clinical trials for Epliga;
- FDA or international regulatory actions, including actions on regulatory applications for any of our product candidates;
- the commercial performance of any of our product candidates that receive marketing approval;
- announcements of new products, services or technologies, commercial relationships, acquisitions or other events by us or our competitors;
- market conditions in the pharmaceutical and biotechnology sectors;
- fluctuations in stock market prices and trading volumes of similar companies;
- variations in our quarterly operating results;
- changes in accounting principles;
- litigation or public concern about the safety of our potential products;
- actual and anticipated fluctuations in our quarterly operating results;
- deviations in our operating results from the estimates of securities analysts;
- additions or departures of key personnel;
- sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;
- any third-party coverage and reimbursement policies for our product candidates, and
- discussion of us or our stock price in the financial or scientific press or in online investor communities.

The realization of any of the risks described in these "Risk Factors" could have a dramatic and material adverse impact on the market price of our common stock. In addition, class action litigation has often been instituted against companies whose securities have experienced periods of volatility. Any such litigation brought against us could result in substantial costs and a diversion of management attention, which could hurt our business, operating results and financial condition.

Our management team may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a significant return, if any.

The net proceeds from this offering will be used to fund the continued development, commercialization and research and development of our product candidates and other general corporate purposes. Because of the number and variability of factors that will determine our use of the proceeds from the offering, their ultimate use may vary substantially from their currently intended use. You will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. The net proceeds may be used for corporate purposes that do not increase our operating results or market value. Until the net proceeds are used, they may be placed in

investments that do not produce significant income or investments that lose value. For a further description of our intended use of the proceeds of this offering, see "Use of Proceeds."

Future sales of our common stock may depress our stock price.

While we do not currently anticipate making additional offers of common stock, such sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock and impair out ability to raise adequate capital through the sale of additional equity securities. Immediately after this offering, we will have outstanding shares of common stock, based on the number of outstanding shares of common stock as of September 30, 2010 and after giving effect to the conversion of shares of our preferred stock outstanding as of September 30, 2010 into shares of our common stock at the completion of this offering. Of these outstanding shares, shares are being sold in this offering and will be freely tradable immediately after this offering, except for shares purchased by affiliates, and the remaining shares may be sold upon expiration of lock-up agreements 180 days after the date of this offering. In addition, as of September 30, 2010, we had outstanding options to purchase 1,729,458 shares of common stock that, if exercised, will result in these additional shares becoming available for sale upon expiration of the lock-up agreements. A large portion of these shares and options are held by a small number of persons and investment funds. Moreover, after this offering, the holders of shares of common stock will have rights, subject to some conditions, to require us to file registration statements covering the shares they currently hold, or to include these shares in registration statements that we may file for ourselves or other stockholders.

We also intend to register all common stock that we may issue under our 2005 Stock Plan. Effective upon the closing of this offering, an aggregate of shares of our common stock will be reserved for future issuance under this plan. Once we register these shares, which we plan to do shortly after the closing of this offering, they can be freely sold in the public market upon issuance, subject to the lock-up agreements referred to above. If a large number of these shares are sold in the public market, the sales could reduce the trading price of our common stock. See "Shares Eligible for Future Sale" for a more detailed description of sales that may occur in the future.

We have never paid dividends on our capital stock, and because we do not anticipate paying any cash dividends in the foreseeable future, capital appreciation, if any, of our common stock will be your sole source of gain on an investment in our common stock.

We have paid no cash dividends on any of our classes of capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

If securities or industry analysts do not publish research or reports or publish unfavorable research or reports about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us, our business, our market or our competitors. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our company, the trading price for our stock would be negatively impacted. In the event we obtain securities or industry analyst coverage, if one or more of the analysts who covers us downgrades our stock, our stock price would likely decline. If one or more of these analysts ceases to cover us or fails to regularly publish reports on us, interest in our stock could decrease, which could cause our stock price or trading volume to decline.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections titled "Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business," contains forward-looking statements. Forward-looking statements convey our current expectations or forecasts of future events. All statements contained in this prospectus other than statements of historical fact are forward-looking statements. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words "may," "continue," "estimate," "intend," "plan," "will," "believe," "project," "expect," "seek," "anticipate," "should," "could," "would," "potential," or the negative of those terms and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking. These forward-looking statements include, among other things, statements about:

- our ability to achieve profitability;
- the implementation of our corporate strategy;
- our future financial performance and projected expenditures;
- our ability to enter into future collaborations with pharmaceutical companies and academic institutions or to obtain funding from government agencies;
- our product research and development activities, including the timing and progress of our clinical trials, and projected expenditures;
- our ability to receive, and the timing of any receipt of, regulatory approvals to develop and commercialize our product candidates;
- our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;
- our expectations regarding federal, state and foreign regulatory requirements;
- the therapeutic benefits, effectiveness and safety of our product candidates;
- the accuracy of our estimates of the size and characteristics of the markets that may be addressed by our product candidates;
- our ability to increase our manufacturing capabilities for our product candidates;
- our projected markets and growth in markets;
- our product formulations and patient needs and potential funding sources;
- our staffing needs;
- our use of the proceeds from this offering; and
- our plans for sales and marketing.

Any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in "Risk Factors" and elsewhere in this prospectus. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur as contemplated, and actual results could differ materially from those anticipated or implied by the forward-looking statements.

You should not unduly rely on these forward-looking statements, which speak only as of the date of this prospectus. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise. You should, however, read this prospectus and the documents that we reference in this prospectus and have filed with the Securities and Exchange Commission as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from any future results expressed or implied by these forward-looking statements. You should also review the factors and risks we describe in the reports we will file from time to time with the Securities and Exchange Commission after the date of this prospectus. See "Where You Can Find Additional Information."

USE OF PROCEEDS

We estimate that we will receive net proceeds from the sale of shares of our common stock in this offering of approximately $, based upon an assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this preliminary prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds to us from this offering by $ million, assuming that the number of shares offered by us, as set forth on the cover page of this preliminary prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to fund our clinical trials, to fund operations, and to provide working capital. We intend to use the net proceeds of this offering for general corporate purposes including to fund the development and commercialization of SPN-538 and Epliga, as well as development of our other product candidates, general and administrative expenses, working capital, prosecution and maintenance of our intellectual property and the potential investment in or acquisition of technologies or products that complement our business. We have no current agreements or commitments with respect to such investment or acquisition.

As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds from this offering. The amounts and timing of our actual expenditures may vary significantly from our expectations depending upon numerous factors, including the progress of our research, development and commercialization efforts, the progress of our clinical trials, and our operating costs and capital expenditures. Accordingly, we will retain the discretion to allocate the net proceeds of this offering among the identified uses described above, and we reserve the right to change the allocation of the net proceeds among the uses described above as a result of contingencies such as the progress and results of our clinical trials and our research and development activities, the results of our commercialization efforts, competitive developments and our manufacturing requirements.

Pending use of proceeds from this offering, we intend to invest the proceeds in a variety of capital preservation investments, including short-term, investment-grade, interest-bearing instruments.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock and we do not currently anticipate declaring or paying cash dividends on our capital stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance operations. Additionally, our ability to pay dividends on our common stock is limited by restrictions on the ability of our subsidiaries and us to pay dividends or make distributions, including restrictions under the terms of the agreements governing our indebtedness. For additional information, see "Management's Discussion and Analysis of Financial Condition and Results of Operations." Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants and other factors that our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our cash and capitalization as of September 30, 2010:

- on an actual basis;
- on a pro forma basis, reflecting the conversion of all of our preferred stock into an aggregate of 49,000,000 shares of common stock upon the closing of this offering; and
- on a pro forma as adjusted basis to further reflect our receipt of the estimated net proceeds from our sale of shares of common stock offered hereby at an assumed initial public offering price of $ per share, the mid-point of the price range reflected on the cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table in conjunction with the sections of this prospectus entitled "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and with our consolidated financial statements and related notes appearing elsewhere in this prospectus.

	As of September 30, 2010		
	Actual	Pro Forma	Pro Forma as Adjusted(1)
	(unaudited)		
	(in thousands of dollars, except share data)		
Balance Sheet Data:			
Unrestricted cash and cash equivalents and marketable securities	$ 45,822	$ 45,822	$
Restricted cash and cash equivalents and marketable securities	1,680	1,680	
Non-recourse Notes	$ 75,000	$ 75,000	$
Redeemable Series A convertible preferred stock, $0.001 par value—49,000,000 shares authorized, issued and outstanding, actual; none, pro forma and pro forma as adjusted	49	—	—
Stockholders' deficit:			
Common stock, $0.001 par value—62,000,000 shares authorized, 6,371,061 shares issued and outstanding, actual;	6	55	
Additional paid-in capital	49,238	49,238	
Accumulated deficit	(85,210)	(85,210)	
Total stockholders' deficit	(35,917)	(35,917)	
Total capitalization	$ 39,083	$ 39,083	$

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the mid-point of the price range reflected on the cover page of this prospectus, would increase (decrease) each of additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) each of additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the assumed initial public offering price remains the same.

The table above does not include:

- 1,729,458 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2010 at a weighted average exercise price of $0.48 per share;
- 411,765 shares of common stock remaining to vest under a restricted stock award;

- 2,487,716 additional shares of common stock reserved for future issuance under our 2005 Stock Plan;
- 375,000 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price $1.00 per share; and
- our $25.0 million secured credit facility.

DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the public offering price per share you will pay in this offering and the pro forma net tangible book value per share of our common stock immediately after this offering.

Our net tangible book value as of , 2010 was approximately $, or $ per share of common stock. Net tangible book value per share is equal to our total tangible assets minus total liabilities, all divided by the number of shares of common stock outstanding as of September 30, 2010.

Our pro forma net tangible book value per share as of , 2010 was approximately $ per share. Pro forma net tangible book value per share gives effect to the conversion of all outstanding shares of our preferred stock as of into shares of our common stock, upon the closing of this offering.

After giving effect to the sale of the shares of common stock we are offering based on an assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this prospectus, less underwriting discounts and commissions and our estimated offering expenses, our pro forma as adjusted net tangible book value as of , 2010 would have been approximately $, or $ per share. This represents an immediate increase in pro forma net tangible book value of $ per share and an immediate dilution of $ per share to new investors. Dilution per share to new investors is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by a new investor. The following table illustrates this calculation on a per share basis (without giving effect to the over-allotment option granted to the underwriters):

Assumed initial public offering price per share[(1)]		$
Net tangible book value per share as of , 2010	$	
Pro forma increase in net tangible book value per share attributable to conversion of preferred stock outstanding at , 2010		
Pro forma net tangible book value per share of common stock as of , 2010	$	
Increase per share attributable to the offering		
Pro forma as adjusted net tangible book value per share of common stock after this offering		
Pro forma dilution per share to new investors		$

(1) The mid-point of the price range set forth on the cover of this prospectus.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after giving effect to this offering by $ per share and would increase (decrease) the dilution in pro forma net tangible book value per share to investors in this offering by $ per share. This calculation assumes that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and is after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their over-allotment option in full, pro forma as adjusted net tangible book value will increase to $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors.

The following table summarizes, on a pro forma as adjusted basis as of September 30, 2010, after giving effect to this offering and the pro forma adjustments referred to above, the total number of shares of our common stock purchased from us and the total consideration and average price per share paid by existing stockholders and by new investors:

	Total Shares		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
	(in thousands of dollars, except share and per share data)				
Existing stockholders		%	$	%	$
New Investors					
Total		%	$	%	

If the underwriters exercise their over-allotment option in full, the following will occur:

- the pro forma as adjusted percentage of shares of our common stock held by existing stockholders will decrease to approximately % of the total number of pro forma as adjusted shares of our common stock outstanding after this offering; and
- the pro forma as adjusted number of shares of our common stock held by new public investors will increase to or approximately % of the total pro forma as adjusted number of shares of our common stock outstanding after this offering.

The tables and calculations above are based on 6,371,061 shares of our common stock outstanding as of September 30, 2010 after giving effect to the conversion of 49,000,000 shares of our preferred stock outstanding as of September 30, 2010 into 49,000,000 shares of our common stock at the closing of this offering and exclude:

- shares of common stock issuable upon the exercise of options outstanding as of September 30, 2010 with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.48 per share (of which options to acquire 940,324 shares of common stock were vested as of September 30, 2010); and
- shares of our common stock available for future grants under our 2005 Stock Plan as of September 30, 2010.

If all of our outstanding options as of September 30, 2010 were exercised, the pro forma as adjusted net tangible book value per share after this offering would be $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors. In addition, we will need to obtain additional capital, and we may choose to raise such additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities would result in further dilution to our stockholders.

SELECTED CONSOLIDATED FINANCIAL DATA

The following table sets forth selected consolidated financial data that is qualified in its entirety by and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes thereto appearing elsewhere in this prospectus. The consolidated financial data as of December 31, 2009 and for the fiscal years ended December 31, 2007, 2008 and 2009 are derived from our audited consolidated financial statements appearing elsewhere in this prospectus. The consolidated financial data for the fiscal year ended December 31, 2006 are derived from our audited consolidated financial statements not included in this prospectus. The consolidated financial data for the nine month periods ended September 30, 2009 and 2010, is derived from our unaudited consolidated financial statements which are presented elsewhere in this prospectus, but has been prepared on the same basis as the audited consolidated financial statements and the notes thereto, which include, in the opinion of management, all adjustments (consisting of normal recurring adjustments) necessary for a fair presentation of the information for the unaudited interim periods. The operating results for the nine month period ended September 30, 2010 may not be indicative of the operating results for the full year.

	Year Ended December 31,				Nine Months Ended September 30,	
	2006	2007	2008	2009	2009	2010
					(unaudited)	
	(in thousands of dollars, except share and per share data)					
Consolidated Statement of Operations Data:						
Revenue:						
Development and milestone revenue	$ 5,616	$ 1,405	$ 2,697	$ 1,550	$ 1,181	$ 97
Royalty revenue	652	2,828	6,192	44,963	41,884	8,635
Total revenues	6,268	4,233	8,889	46,513	43,065	8,732
Operating Expenses:						
Research and development	8,958	19,269	30,463	29,260	21,804	26,080
General and administrative	3,945	4,011	4,287	4,649	3,503	3,388
Total operating expenses	12,903	23,280	34,750	33,909	25,307	29,468
Income (loss) from operations	(6,635)	(19,047)	(25,861)	12,604	17,758	(20,736)
Other income (expense):						
Interest income	1,712	1,773	1,057	514	101	623
Interest expense	—	—	(8,678)	(12,658)	(9,210)	(9,831)
Other	40	—	—	—	—	54
Total other income (expense)	1,752	1,773	(7,621)	(12,144)	(9,109)	(9,154)
Net income (loss)	$ (4,883)	$ (17,274)	$ (33,482)	$ 460	$ 8,649	$ (29,890)
Cumulative dividends on Series A convertible preferred stock	(3,316)	(3,430)	(3,430)	(3,430)	(2,573)	(2,573)
Net income (loss) attributable to common stockholders	$ (8,253)	$ (20,704)	$ (36,912)	$ (2,970)	$ 6,076	$ (32,463)
Basic net income (loss) per share	$ (2.39)	$ (4.21)	$ (6.61)	$ (0.53)	$ 1.08	$ (5.12)
Diluted net income (loss) per share	$ (2.39)	$ (4.21)	$ (6.61)	$ 0.01	$ 0.15	$ (5.12)
Weighted average number of common shares:						
Basic	3,455,762	4,921,376	5,587,467	5,653,506	5,610,047	6,345,420
Diluted	3,455,762	4,921,376	5,587,467	56,324,761	56,282,411	6,345,420
Net income (loss) used to compute pro forma net income (loss) per common share — basic and diluted (unaudited)(1)				$ 460		$ (29,890)
Weighted-average number of shares used in calculating pro forma net income (loss) per share — basic and diluted (unaudited):(1)				56,324,761		55,345,420
Pro forma net income (loss) per share — basic and diluted (unaudited)(1)				$ 0.01		$ (0.54)

(1) Pro forma net loss per share basic and diluted have been calculated assuming the conversion of all outstanding shares of the Company's Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of this offering, as if they had converted at the beginning of the period. Pro forma net loss per share basic and diluted do not give effect to the sale of shares of common stock that we are offering pursuant to this prospectus or any related estimated net proceeds therefrom. See Note 2 to our audited financial statements for an explanation of the method used to calculate the pro forma basic and diluted net income (loss) per common share and the number of the per share amounts.

	Year Ended December 31,				As of September 30, 2010
	2006	2007	2008	2009	(unaudited)
	(in thousands of dollars)				
Consolidated Balance Sheet Data:					
Unrestricted cash and cash equivalents and marketable securities	$ 40,655	$ 25,592	$ 60,380	$ 66,524	$ 45,822
Restricted cash and cash equivalents and marketable securities	256	281	6,281	2,076	1,680
Working capital	39,746	22,674	61,183	62,847	33,835
Total assets	46,426	31,907	77,134	79,899	57,502
Long-term debt	—	—	75,000	75,000	75,000
Series A convertible preferred stock	49	49	49	49	49
Accumulated deficit	(5,027)	(22,301)	(55,782)	(55,321)	(85,210)
Total stockholders' equity (deficit)	43,830	26,635	(6,747)	(6,155)	(35,917)

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. In addition to historical information, some of the information in this discussion and analysis contains forward-looking statements reflecting our current expectations and involves risk and uncertainties. For example, statements regarding our expectations as to our plans and strategy for our business, future financial performance, expense levels and liquidity sources are forward-looking statements. Our actual results and the timing of events could differ materially from those discussed in our forward-looking statements as a result of many factors, including those set forth under the "Risk Factors" section and elsewhere in this prospectus.

Overview

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories, Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we have filed a new drug application, or NDA, in January 2011, and Epliga (extended release oxcarbazepine), which is in Phase III clinical trials. Our ADHD product candidates include SPN-810 (molindone hydrochloride), a novel treatment for impulsive aggression in patients with ADHD, and SPN-812, a novel non-stimulant treatment for ADHD. Both of these programs are in Phase II. In addition to these four lead product candidates, we have several additional product candidates in various stages of development. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists. We believe our broad and diversified portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

We use our proprietary technologies to enhance the therapeutic benefits of approved anti-epileptic drugs, or AEDs through advanced extended release formulations. Our most advanced product candidates, SPN-538 and Epliga, are novel oral once-daily extended release formulations of topiramate and oxcarbazepine, respectively, for the treatment of epilepsy. Immediate release formulations of topiramate and oxcarbazepine, are available in generic form and are marketed under the brand names of Topamax and Trileptal, respectively. According to IMS Health, peak sales of Topamax and Trileptal represented an estimated 25.8% and 8.1% of the total seizure disorder market in 2008 and 2006, respectively. We are pursuing a Section 505(b)(2) regulatory strategy for SPN-538 and Epliga, which would allow us to rely on the existing data from the NDAs of Topamax and Trileptal, respectively. The once-per-day dosing of each of SPN-538 and Epliga is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release AEDs that are taken multiple times per day to maintain therapeutic drug concentrations over the dosing interval. We believe there is a significant unmet need for extended release products, such as SPN-538 and Epliga, for the treatment of epilepsy. Extended release products have been shown to improve compliance, increase seizure control,[(1)] reduce side effects and improve tolerability as compared to immediate release products.[(2)]

(1) Balzac, F., *Medication Noncompliance in Epilepsy*, published March 2006 in *Neurology Reviews.*

(2) Miller, A.D., *Improved CNS tolerability following conversion from immediate- to extended-release carbamazepine*, published June 2004 in *Acta Neurologica Scandinavia.*

We are also developing treatments for new indications in diseases such as ADHD and its coexisting disorders. We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the U.S. Food and Drug Administration, or FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. In addition, SPN-812, which is currently in Phase II, is being developed as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. In addition, because the active ingredient of SPN-812 has demonstrated efficacy as an antidepressant in Europe, this product candidate may provide increased benefit to an estimated 40% of ADHD patients who suffer from depression.(3) In addition to these four lead product candidates, we have a number of other product candidates in various stages of development such as SPN-809, which would represent a novel mechanism of action for the U.S. antidepressant market.

(3) Biederman, J., *New Insights Into the Comorbidity Between ADHD and Major Depression in Adolescent and Young Adult Females*, published in April 2008 in *Journal of the American Academy of Child and Adolescent Psychiatry* and Report of CME Institute of Physicians Postgraduate Press, Inc., published in August 2008 in *Journal of Clinical Psychiatry.*

Historically, our revenues have been generated through research and development agreements, which included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, as well as royalties on product sales of licensed products, Oracea, Sanctura XR, and Intuniv. Since our inception in 2005, we have generated $0 in revenue from product sales and have incurred significant operating losses. As of September 30, 2010, we had an accumulated deficit of $85.2 million. We expect to continue to incur net losses and negative cash flow from operating activities for the foreseeable future as we continue to develop our product candidates and seek marketing approval and, subject to obtaining such approval, the eventual commercialization of SPN-538 and Epliga, as well as our other product candidates.

History of our Company

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and to enable the treatment of new indications. We have a broad portfolio of drug development technologies consisting of six platforms that include the following: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). Our proprietary technologies have been used in the following approved products: Carbatrol (carbamazepine), Adderall XR (mixed amphetamine salts), and Intuniv (guanfacine), marketed by Shire; Equetro (carbamazepine), marketed by Validus Pharmaceuticals Inc.; Sanctura XR (trospium chloride), marketed by Allergan; and Oracea (doxycycline), marketed by Galderma. Throughout our 20 year history, we have continued our commitment to innovation with a focus for the past five years on developing our own product candidates in neurology and psychiatry.

We have historically raised capital through private equity and the monetization of certain future royalty streams under our existing licenses for Oracea, Sanctura XR and Intuniv. In connection with the commencement of our operations, in December 2005 and February 2006, we raised approximately $45.0 million through the sale of 45 million shares of Series A convertible preferred stock. We raised approximately $63.3 million in net proceeds in April 2008 through the monetization of future royalty payment rights and other license rights for both Oracea and Sanctura XR. In that deal, we transferred the license rights to both Oracea and Sanctura XR to TCD Royalty Sub LLC, our wholly-owned subsidiary ("Royalty Sub"), which issued $75.0 million in non-recourse notes in a private placement to institutional investors. All milestone and royalty revenues due from net sales of Oracea and Sanctura XR are required to be used to satisfy the payment of principal and interest on the non-recourse notes. The non-recourse notes are non-recourse to us and are secured by our Royalty Sub's assets, which include the royalty payment rights and other rights related to net sales of Oracea and Sanctura XR. In

addition, we entered into an agreement with an affiliate of Shire plc in May 2009, whereby the Shire affiliate paid us a one-time, lump-sum payment of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv.

We also have a license agreement with United Therapeutics Corporation, or United Therapeutics, to use one of our proprietary technologies for an oral formulation of treprostinil for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. This oral formulation is currently being evaluated by United Therapeutics in Phase III trials for PAH. Remaining milestone payments to us could total up to approximately $6.8 million, which includes milestone payments of up to approximately $2.8 million for the satisfaction of development milestones relating to the product candidate for the treatment of PAH. If United Therapeutics receives approval to market and sell this product candidate, we are entitled to receive single digit royalties based on worldwide net sales. We are also entitled to receive milestones and royalties for use of this formulation in other indications.

In January 2011, we entered into a secured credit facility pursuant to a loan and security agreement among Oxford Finance Corporation, as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender, and promissory notes issued in favor of each lender, providing for term loans of up to an aggregate of $25.0 million. On January 26, 2011, we drew down our first $15.0 million of term loans under our new secured credit facility. The term loans bear interest at a fixed rate per annum of 11.0% and will mature in 42-months from the date of each term loan, subject to a three-month extension under certain circumstances. We intend to use the proceeds of the term loans under our new secured credit facility for working capital and general corporate purposes. In addition, we have the right to obtain additional term loans of up to $10.0 million under the same terms and conditions of our current term loans under our new secured credit facility on or before April 30, 2011, provided that we are not in default under the terms of the loan and security agreement or other loan documents.

See "Liquidity and Capital Resources—Financing History and Future Capital Requirements" for additional details regarding the foregoing transactions.

Financial Overview

Revenue

Our historical revenues have been generated through research and development agreements. These agreements included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, which comprise our development and milestone revenues, as well as royalties on product sales of licensed products, Oracea, Sanctura XR, and Intuniv, which comprise our royalty revenues. Until such time that we begin generating revenues from the sales of our own approved product candidates, we expect that development and milestone revenues and royalty revenues will continue to represent our primary sources of revenues.

We recognize development and milestone revenues related to research and development agreements pursuant to which various third parties have accessed our proprietary technologies. These arrangements generally provided for fees for research and development services rendered, including milestone payments at the conclusion of the research period upon achieving specified events. Over time, we do not expect these historical revenues relating to development and milestone revenues to be significant as we continue to focus on the development and potential commercialization of our own product candidates.

We recognize royalty revenues from our collaboration agreements. Royalty revenues consist of payments received from our various collaborative partners related to the sales of products that utilize our proprietary technologies under these collaboration agreements.

The table below summarizes the revenues that we received from our collaboration arrangements.

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars)				
Development and milestone revenues					
Oracea & Sanctura XR	$ 400	$ 1,500	$ 500	$ 500	$ —
Other collaboration arrangements	1,005	1,197	1,050	681	97
Total development and milestone revenues	1,405	2,697	1,550	1,181	97
Royalty revenues:					
Oracea & Sanctura XR	2,828	6,192	8,088	5,009	8,635
Intuniv	—	—	36,875	36,875	—
Total royalty revenues	2,828	6,192	44,963	41,884	8,635
Total revenues	$ 4,233	$ 8,889	$ 46,513	$ 43,065	$ 8,732

From and after April 15, 2008, all development and milestone revenues and royalty revenues due from net sales of Oracea and Sanctura XR are required to be used to satisfy the payment of principal and interest on the non-recourse notes of Royalty Sub. We also received in May 2009 a one-time payment of approximately $36.9 million from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv and, as a result, we will not receive any future royalty payments with respect to the net sales of Intuniv.

If we obtain regulatory approval for SPN-538, Epliga or any of our other product candidates, we would expect to begin to generate revenues from product sales and, over time, we expect that our future revenues would begin to be principally derived from product sales as compared to development and milestone revenues and royalty revenues.

Prior to commercializing any of our product candidates, we expect that any revenues we generate will fluctuate from quarter to quarter as a result of the timing and amount of development and milestone revenues and royalty revenues received under our collaboration license agreements, as our revenues from these arrangements are principally based on the achievement of clinical and commercial milestones outside of our control. If we fail to complete the development of our product candidates in a timely manner or obtain regulatory approval for them, our ability to generate future revenues, and our results of operations and financial position, would be materially adversely affected.

Research and Development Expense

Research and development expenses consist of costs incurred in connection with the development of our and our collaborators' product candidates. These expenses consist primarily of:

- employee-related expenses, which include salaries and benefits;
- expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials and a substantial portion of our preclinical studies;
- the cost of acquiring and manufacturing clinical trial materials;
- costs related to facilities, depreciation and other allocated expenses;
- license fees for and milestone payments related to in-licensed products and technology;
- stock-based compensation expense to employees and consultants; and
- costs associated with non-clinical activities and regulatory approvals.

We expense research and development costs as incurred. Non-refundable advance payments for goods and services that will be used in future research and development activities are initially recorded as prepaid expenses and expensed as the activity is performed or when the goods have been received.

Since our founding, we have developed and evaluated a series of CNS product candidates through Phase I pharmacokinetic trials. In 2008, we conducted a review of our portfolio of product candidates and rationalized the programs based on clinical profiles, expected required resources to complete development, intellectual property, existing treatment options and commercial opportunity. As a result of that review, we elected to concentrate on our two epilepsy product candidates and the product candidates that comprise our psychiatry portfolio. We intend to continue to strategically invest in our pipeline, and the commitment of funding for each subsequent stage of our development programs is dependent upon, among other things, the receipt of clear, positive data.

The majority of our external costs relate to later-stage product candidates, as costs associated with later-stage clinical trials are, in most cases, more significant than those incurred in earlier stages of our pipeline. For example, the external costs related to our Epliga program have been higher than our other programs in recent years because Epliga is undergoing a Phase III clinical trial that began in late 2008.

We track external development expenses and direct personnel expense on a program-by-program basis. Costs related to facilities, depreciation, employee benefits and bonuses, stock-based compensation, research and development management and research and development support services and supplies are not charged to specific programs, because the number of clinical and preclinical product candidates or development projects tends to vary from period to period and internal resources are utilized across and benefit multiple programs over any given period of time. The following table is a summary of our research and development expenses for the years ended December 31, 2007, 2008 and 2009, and the nine months ended September 30, 2009 and 2010.

	Year Ended December 31,			Nine Months Ended September 30,		From Inception to September 30,
	2007	2008	2009	2009	2010	2010
				(unaudited)		
			(in thousands of dollars)			
SPN-538	$ 1,044	$ 4,098	$ 6,464	$ 5,013	$ 5,923	$ 18,232
Epliga	3,845	10,834	10,027	7,352	10,190	35,360
SPN-810	2,192	2,199	3,333	2,265	1,705	9,429
SPN-812 and SPN-809	2,392	2,923	680	370	1,684	7,721
Other research and development programs	2,796	1,822	426	312	538	7,564
Development expenses—general	7,000	8,587	8,331	6,492	6,041	35,821
Total research and development expenses	$ 19,269	$ 30,463	$ 29,261	$ 21,804	$ 26,081	$ 114,127

The successful development of our product candidates is highly uncertain and subject to a number of risks including, but not limited to:

- The duration of clinical trials varies substantially according to the type, complexity and novelty of the product candidate;
- The FDA and comparable agencies in foreign countries impose substantial requirements on the introduction of therapeutic pharmaceutical products, typically requiring lengthy and detailed laboratory and clinical testing procedures, sampling activities and other costly and time-consuming procedures;

- Data obtained from nonclinical and clinical activities at any step in the testing process may be adverse and lead to discontinuation or redirection of development activity. Data obtained from these activities also are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval;

- The duration and cost of nonclinical studies and clinical trials may vary significantly over the life of a product candidate and are difficult to predict;

- The costs, timing and outcome of regulatory review of a product candidate are uncertain; and

- The emergence of competing technologies and products and other adverse market developments could impede our commercial efforts.

Development timelines, probability of success and development costs vary widely. As a result of the uncertainties discussed above, we anticipate that we will make determinations as to which additional programs to pursue and how much funding to direct to each program on an ongoing basis in response to the scientific and clinical data of each product candidate, as well as ongoing assessments of such product candidate's commercial potential. Accordingly, we cannot currently estimate with any degree of certainty the amount of time or money that we will be required to expend in the future on SPN-538, Epliga or other product candidates to complete current or future clinical stages prior to their regulatory approval, if such approval is ever granted. As a result of these uncertainties surrounding the timing and outcome of any approvals, we are currently unable to estimate precisely when, if ever, SPN-538, Epliga or any of our other product candidates will generate revenues and cash flows.

We expect our research and development costs to continue to be substantial for the foreseeable future and to increase with respect to our product candidates as we advance those product candidates through preclinical studies, clinical trials, manufacturing scale-up and other pre-approval activities. We may elect to expand existing collaborative relationships or to seek new partnerships in order to provide us with a diversified revenue stream and to help facilitate the development and commercialization of our product candidate pipeline.

General and Administrative Expenses

General and administrative expenses consist principally of salaries and related costs for personnel in executive, finance, business development, marketing, information technology, legal and human resources functions. Other general and administrative expenses include facility costs not otherwise included in research and development expenses, patent filing, prosecution and defense costs, professional fees for legal, consulting, auditing and tax services, and stock compensation expense.

We expect that our general and administrative expenses in 2011 will be higher than in 2010 as a result of greater expenses relating to our operations as a public company, including increased payroll and increased consulting, legal and compliance, accounting, insurance and investor relations costs. Additionally, we plan to increase spending related to the build-out of our commercial infrastructure for the anticipated launch of both SPN-538 and Epliga in the United States in 2012. Upon approval of SPN-538, we would hire a small specialty sales force, initially consisting of a limited number of field sales representatives to support the launch of the product. We would then seek to expand our sales force in connection with an approval and commercial launch of Epliga. Having two epilepsy products that can be promoted to the same physician audience would allow us to leverage our commercial infrastructure with these prescribers.

Other Income and Expense

Other income and expense is comprised of interest income, gain on sales of equipment and interest expense. Interest income consists of interest earned on our cash and cash equivalents and marketable securities. The primary objective of our investment policy is capital preservation.

Interest expense consists primarily of interest on the $75.0 million non-recourse notes of Royalty Sub and the amortization of the related deferred financing costs. The non-recourse notes have a final stated maturity date of April 15, 2024. Until any portion of the principal on the non-recourse notes is paid down, the annual interest expense is $12.0 million, or $3.0 million per quarter. We will also begin paying interest on the $15.0 million outstanding principal amount of our term loans after January 2011. As a result of the borrowings under our new secured credit facility, we expect that our future interest expense will increase over the levels incurred through September 30, 2010.

Net Operating Losses and Tax Carryforwards

As of December 31, 2009, we had approximately $54.1 million of federal net operating loss carryforwards. We also had federal and state research and development tax credit carryforwards of approximately $3.1 million available to offset future taxable income. These federal and state net operating loss and federal and state tax credit carryforwards will begin to expire at various dates beginning in 2025, if not utilized. The Tax Reform Act of 1986 provides for a limitation on the annual use of net operating loss and research and development tax credit carryforwards following certain ownership changes that could limit our ability to utilize these carryforwards. We have not completed a study to assess whether an ownership change has occurred, or whether there have been multiple ownership changes since our inception, due to the significant costs and complexities associated with such study. Accordingly, our ability to utilize the aforementioned carryforwards may be limited. Additionally, U.S. tax laws limit the time during which these carryforwards may be utilized against future taxes. As a result, we may not be able to take full advantage of these carryforwards for federal and state tax purposes.

Net Income and Loss

We have incurred significant net losses since our inception in 2005, with the exception of 2009 when we generated net income of $0.5 million principally because of the one-time payment of $36.9 million that we received from Shire plc as consideration for a royalty-free, fully-paid-up license to Shire plc for Intuniv. We expect to continue to incur net losses for the foreseeable future as we continue to develop our product portfolio, seek regulatory approval, and, if such approval is obtained, commercialize SPN-538 and Epliga as well as our other product candidates.

Results of Operations

Comparison of Nine Months Ended September 30, 2010 and Nine Months Ended September 30, 2009

	Nine Months Ended September 30,		Increase/ (decrease)
	2009	2010	
	(unaudited) (in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 1,181	$ 97	$ (1,084)
Royalty revenues	41,884	8,635	(33,249)
Total revenues	43,065	8,732	
Operations Expenses:			
Research and development	21,804	26,080	4,276
General and administrative	3,503	3,388	(115)
Total operating expenses	25,307	29,468	
Income (loss) from operations	17,758	(20,736)	
Interest income	101	623	522
Interest expense	(9,210)	(9,831)	621
Net income (loss)	$ 8,649	$ (29,890)	

Revenues. Our revenues were $8.7 million for the nine months ended September 30, 2010 compared to $43.1 million for the same period in 2009, representing a decrease of $34.3 million or approximately 80%. This decrease was principally attributable to the one-time, lump-sum payment of approximately $36.9 million that we received in May 2009 from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv. We also generated lower development and milestone revenues for the nine months ended September 30, 2010 period as compared to same period in 2009 due to our focus on the development of our own product candidates as opposed to developing product candidates for third parties.

Research and Development. Our research and development expenses were $26.1 million for the nine months ended September 30, 2010 compared to $21.8 million for the same period in 2009, representing an increase of $4.3 million or approximately 20%. The $4.3 million increase in research and development expense is primarily attributable to an increase in clinical trial costs of approximately $3.2 million, the largest portion of which was due to the continuing costs for our Phase III clinical trial for Epliga and higher manufacturing costs of approximately $0.8 million principally associated with pre-validation work done at our commercial manufacturers for both SPN-538 and Epliga.

General and Administrative. Our general and administrative expenses were $3.4 million for the nine months ended September 30, 2010 compared to $3.5 million for the same period in 2009, representing a decrease of $0.1 million or approximately 3%. The $0.1 million decrease in general and administrative expense is primarily the result of lower patent and outside consulting fees incurred during the nine months ended September 30, 2010.

Interest and Other Income. Interest income was $0.6 million for the nine months ended September 30, 2010 compared to $0.1 million for the same period in 2009, representing an increase of $0.5 million. The $0.5 million increase is primarily because we invested a larger portion of our cash in marketable securities during the nine months ended September 30, 2010, which yielded higher returns than in the prior period. For the nine months ended September 30, 2010, we also had a one-time net gain of approximately $54,000 on the sale of certain laboratory equipment.

Interest Expense. Interest expense was $9.8 million for the nine months ended September 30, 2010 compared to $9.2 million for the same period in 2009, representing an increase of $0.6 million or approximately 7%. Interest expense is comprised primarily of interest payable on the non-recourse notes of Royalty Sub at $3.0 million per quarter, or approximately $9.0 million for both nine month periods reported here, together with amortization of the related deferred financing costs related to the non-recourse notes. The $0.6 million increase in interest expense in the nine months ended September 30, 2010 is largely because of amortization expense associated with marketable securities purchased at a premium.

Net Income (Loss). Net loss was $29.9 million for the nine months ended September 30, 2010 compared to net income of $8.6 million for the same period in 2009, representing a decrease of $38.6 million. The $38.6 million decrease is principally a result of the higher royalty revenues recognized in the nine months ended September 30, 2009, including in connection with our sale to Shire plc of a fully paid-up license for Intuniv and also due to the higher research and development costs incurred for the same period in 2010.

Comparison of Year Ended December 31, 2009 and Year Ended December 31, 2008

	Year Ended December 31,		Increase/ (decrease)
	2008	2009	
	(in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 2,697	$ 1,550	$ (1,147)
Royalty revenues	6,192	44,963	38,771
Total revenues	8,889	46,513	
Operations Expenses:			
Research and development	30,463	29,260	(1,203)
General and administrative	4,287	4,649	362
Total operating expenses	34,750	33,909	
Income (loss) from operations	(25,861)	12,604	
Interest income	1,057	514	(543)
Interest expense	(8,678)	(12,658)	3,980
Net income (loss)	$ (33,482)	$ 460	

Revenues. Our revenues were $46.5 million for the year ended December 31, 2009 compared to $8.9 million for the same period in 2008, representing an increase of $37.6 million. This increase was principally due to the one-time, lump-sum payment from Shire plc of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv. We also received increased royalty revenues of approximately $1.9 million from Oracea and Sanctura XR. These gains were offset by a decrease in development and milestone revenues of approximately $1.1 million as we continue to increase our focus on the development of our own product candidates, as opposed to earning revenues from developing collaborators' product candidates.

Research and Development. Our research and development expenses were $29.3 million for the year ended December 31, 2009 compared to $30.5 million for the same period in 2008, representing a decrease of $1.2 million or approximately 4%. The decrease was primarily attributable to an approximately $0.9 million decrease in salaries, benefits and laboratory supplies associated with a reduction in the average number of research and development employees from 69 for the year ended December 31, 2008 as compared to 56 for the year ended December 31, 2009 as part of our business strategy to improve our operating efficiencies and reduce our operating costs.

General and Administrative. Our general and administrative expenses were $4.7 million for the year ended December 31, 2009 compared to $4.3 million for the same period in 2008, representing an increase of $0.4 million or approximately 8%. This increase in general and administrative expense was primarily a result of increases in consulting expenses associated with market research and partnering opportunities as well as higher patent and legal costs.

Interest Income. Interest income was $0.5 million for the year ended December 31, 2009 compared to $1.1 million for the same period in 2008, representing a decrease of $0.5 million or approximately 51%. Although average cash balances were higher for the year ended December 31, 2009, the decrease in interest income was principally a result of lower prevailing interest rates during the period.

Interest Expense. Interest expense was $12.7 million for the year ended December 31, 2009 compared to $8.7 million for the same period in 2008, representing an increase of $4.0 million or approximately 46%. The increase in interest expense was primarily due to interest payments on the non-recourse notes of Royalty Sub, together with amortization of related deferred financing costs, for the year ended December 31, 2009 compared with the eight and one-half months that the non-recourse notes were outstanding in 2008.

Net Income (Loss). Net income was $0.5 million for the year ended December 31, 2009 compared to a net loss of $33.5 million for the same period in 2008, representing a decrease of $34.0 million. The $34.0 million change between the net loss of $33.5 million for the year ended December 31, 2008 and the net income of $0.5 million for the same period in 2009 is primarily due to higher royalty revenues recognized in the year ended December 31, 2009, offset by the higher interest expense related to the non-recourse notes in 2009 because the non-recourse notes were outstanding for the full year.

Comparison of Year Ended December 31, 2008 and Year Ended December 31, 2007

	Year Ended December 31,		Increase/ (decrease)
	2007	2008	
	(in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 1,405	$ 2,697	$ 1,292
Royalty revenues	2,828	6,192	3,364
Total revenues	4,233	8,889	
Operations Expenses:			
Research and development	19,269	30,463	11,194
General and administrative	4,011	4,287	276
Total operating expenses	23,280	34,750	
Income (loss) from operations	(19,047)	(25,861)	
Interest income	1,773	1,057	(716)
Interest expense	—	(8,678)	8,678
Net income (loss)	$ (17,274)	$ (33,482)	

Revenues. Our revenues were $8.9 million for the year ended December 31, 2008 compared to $4.2 million for the same period in 2007, representing an increase of $4.7 million. The increase in revenues relates primarily to an increase in royalties received from Oracea and the receipt of royalty revenues related to the product launch of Sanctura XR in the second half of 2008. The increase in development and milestone revenues was due to a $1.3 million milestone payment related to the FDA approval of Sanctura XR that we received.

Research and Development. Our research and development expenses were $30.5 million for the year ended December 31, 2008 compared to $19.3 million for the same period in 2007, representing an increase of $11.2 million or approximately 58%. The increase in research and development expense is primarily attributable to an increase in clinical trial expenses of approximately $9.4 million, principally due to outside costs associated with the Phase III clinical trial for Epliga that began in second half of 2008, as well as an increase in compensation costs of approximately $1.7 million, primarily related to an increase in clinical and regulatory personnel hired to run and support the Phase III program for Epliga.

General and Administrative. Our general and administrative expenses were $4.3 million for the year ended December 31, 2008 compared to $4.0 million for the same period in 2007, representing an increase of $0.3 million or approximately 7%. The increase in general and administrative expense was primarily a result of an increase in salaries and benefits costs of $0.2 million due to an increase in personnel to support our expanded clinical operations.

Interest Income. Interest income was $1.1 million for the year ended December 31, 2008 compared to $1.8 million for the same period in 2007, representing a decrease of $0.7 million or approximately 40%. The decrease in interest income for the year ended December 31, 2008 was principally the result of significantly lower prevailing interest rates during the period, notwithstanding higher average cash balances.

Interest Expense. Interest expense was $8.7 million for the year ended December 31, 2008 compared to $0 for the same period in 2007, representing an increase of $8.7 million. The increase in interest expense was due to interest on the non-recourse notes of Royalty Sub, which were issued by it in April 2008, together with amortization of the related deferred financing costs.

Net Income (Loss). Net loss was $33.5 million for the year ended December 31, 2008 compared to $17.3 million for the same period in 2007, representing an increase of $16.2 million or approximately 94%. This change was principally the result of the higher research and development expenses associated with initiating the Phase III program for Epliga, and the higher interest expense for the year ended December 31, 2008 associated with the issuance of the non-recourse notes of Royalty Sub. These expenses were slightly offset by higher royalty revenues from product sales of Oracea and Sanctura XR.

Liquidity and Capital Resources

In December 2005, we acquired substantially all of the assets of Shire Laboratories, Inc. from Shire plc in exchange for a cash payment of approximately $0.8 million and the issuance of 4 million shares of our Series A convertible preferred stock at a value of $1.00 per share. In connection with the commencement of our operations, in December 2005 and February 2006, we raised approximately $45.0 million through the sale of 45 million shares of Series A convertible preferred stock. To date, we have not generated any revenues from the product sales. Since our inception in 2005, we have funded our operations largely through venture capital equity and other financings, such as the monetization of future royalties due to us from existing license agreements with Endo Pharmaceuticals Solutions Inc., Galderma Laboratories, L.P. and Shire plc pursuant to which we have received net proceeds of approximately $100.2 million through September 30, 2010. As of September 30, 2010, we had unrestricted cash, cash equivalents and marketable securities of approximately $45.8 million.

Financing History and Future Capital Requirements

Non-recourse Notes. In April 2008, we raised approximately $63.3 million in net proceeds through a private placement to institutional investors of $75.0 million aggregate principal amount of 16% non-convertible, non-recourse, secured promissory notes due April 15, 2024 (the "Non-recourse Notes") by Royalty Sub. As part of the transaction, we transferred to Royalty Sub our payment rights and other license rights related to two products that utilize our proprietary technologies: Oracea, which is marketed by Galderma as a treatment for rosacea; and Sanctura XR, which is marketed by Allergan as a treatment for overactive bladder. The Non-recourse Notes are secured by these payment and other license rights, as well as by the pledge of all our outstanding equity interest in Royalty Sub. While the Non-recourse Notes are outstanding, all royalty and milestone payments due from net sales of Oracea and Sanctura XR go to the payment of interest, and when available, to the principal on such Non-recourse Notes. Accordingly, unless and until the Non-recourse Notes are fully paid, future royalties and milestone payments due from net sales of Oracea and Sanctura XR will not be available to fund our operations. Annual interest expense related to the Non-recourse Notes is $12.0 million.

Royalty Sub began making quarterly debt service payments on the Non-recourse Notes on July 15, 2008. Applicable royalties received by Royalty Sub on net sales of Oracea and Sanctura XR for any quarter that exceed the interest payments and expenses due for that quarter are applied to the repayment of principal on the Non-recourse Notes. Any portion of the principal amount of the Non-recourse Notes not repaid on or before the legal final maturity date of April 15, 2024, will be payable on that date. As of September 30, 2010, no principal payments have been made. Upon payment of the Non-recourse Notes in full, any residual rights to the royalty payments will revert to us. In addition, the Non-recourse Notes may be redeemed at our option on any quarterly payment date, subject to the payment of a redemption premium if repaid on or before April 15, 2012. After April 15, 2012, the Non-recourse Notes may be redeemed without premium.

In connection with the Non-recourse Note transaction, an $8.0 million interest reserve was established to fund potential interest shortfalls or, if none, for repayment of principal due under the Non-recourse Notes. These funds came out of the debt proceeds and are restricted. Deferred financing costs of approximately $4.4 million were paid by Royalty Sub to complete the transaction. These costs were funded from the debt proceeds and will be amortized to interest expense over 16.2 years, which is the expected term of Non-recourse Notes.

In the first quarter of 2010, the $8.0 million interest reserve was exhausted. As of September 30, 2010, the Royalty Sub had approximately $1.4 million available for the quarterly interest payment of $3.0 million due on October 15, 2010. As of December 1, 2010, the Royalty Sub paid the interest shortfall of $1.6 million and had $0.8 million available for future interest payments. Under the terms of the Non-recourse Notes, the Royalty Sub is not in default for payment of interest unless it fails to make payment in full on the interest payment by the next succeeding payment date. To date, the Royalty Sub has been able to make payment in full of all interest payments before the next succeeding payment date. In the event of a default for failure to pay interest timely, the noteholders do not have recourse to us as the Non-recourse Notes are non-recourse beyond Royalty Sub and non-convertible into any other of our securities, and have not been guaranteed by us. However, we have pledged all of our equity interests in Royalty Sub to secure the Non-recourse Notes and, upon an event of default, the noteholders could elect to exercise their rights to acquire those equity interests in the Royalty Sub.

Sale of Intuniv Royalties. In May 2009, we entered into an agreement with an affiliate of Shire plc, whereby a Shire affiliate paid us a one-time, lump-sum payment of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv, which is a novel ADHD product marketed by Shire plc and utilizes one of our proprietary technologies. As a result, we will not receive any future royalty payments from Shire plc with respect to Intuniv.

United Therapeutics License

We have a license agreement with United Therapeutics to use one of our proprietary technologies for an oral formulation of Remodulin for the treatment of PAH, and potentially for additional indications. This oral formulation of treprostinil diethanolamine, or treprostinil, is currently being evaluated by United Therapeutics in Phase III trials for PAH. Through September 30, 2010, we have received approximately $750,000 in pre-commercial milestone payments under the agreement. Remaining milestone payments to us could total up to approximately $2.8 million based on satisfaction of development milestones of oral treprostinil and up to approximately $4.0 million for the development of each additional product that combines a form of oral treprostinil that utilizes our technologies with another drug compound. If United Therapeutics receives approval to market and sell oral treprostinil for additional indications and/or any additional combination products that utilizes our technologies, we will receive royalties in the single digits based on net sales worldwide. Any revenues received under this license will fluctuate as a result of the timing and amount of milestone and other payments received under this license, and the amount and timing of payments that we receive upon the sale of covered products, to the extent any are successfully commercialized by United Therapeutics or its sublicensees. Our license agreement with United Therapeutics will expire, on a country-by-country and product-by-product basis, 12.5 years from the first commercial sale of each product in such country. United Therapeutics may terminate, at its option, the agreement for a technical, strategic or market-related cause after giving us a reasonable opportunity to cure. We may terminate the agreement if, after having launched a product in a country, United Therapeutics or its sublicensee discontinues the sale of such product for a prolonged period of time for reasons unrelated to force majeure, regulatory or safety issues. In addition, either party may terminate the agreement for the material, uncured breach by the other party and in certain events of bankruptcy or insolvency of the other party.

Secured Credit Facility

In January 2011, we entered into a secured credit facility pursuant to a loan and security agreement among Oxford Finance Corporation, as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender, and promissory notes issued in favor of each lender, providing for term loans of up to an aggregate of $25.0 million. In connection with our first drawdown of $15.0 million under our new secured credit facility on January 26, 2011, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. Upon completion of this offering, each warrant will be exercisable for one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share of $1.00. We intend to use the proceeds of the term loans under our new secured credit facility for working capital and general corporate purposes. The term loans bear interest at a fixed rate per annum of 11.0% and will mature in 42-months from the date of each term loan, subject to a three-month extension under certain circumstances. In February 2011, we will make the first of twelve monthly interest-only payments on the outstanding term loans. Thereafter, beginning in March 2012, which is the amortization date for our outstanding term loans, we will make principal and interest payments to fully amortize the balance over the term of the loans, except that the date of such amortization is subject to a three-month extension under certain circumstances. In addition, we have the right to obtain additional term loans of up to $10.0 million under the same terms and conditions of our current term loans under our new secured credit facility on or before April 30, 2011, provided that we are not in default under the terms of the loan and security agreement or other loan documents. In connection with any drawdown of additional term loans, we would be required to issue additional warrants to purchase up to 250,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share.

We may voluntarily prepay all, but not less than all, outstanding term loans under our new secured credit facility at any time, subject to the payment of a premium. With respect to any prepayment, the

premium is 5.0% if such prepayment is made before the amortization date, 2.0% if such prepayment is made during the 15-month period after the amortization date and 1.0% if such prepayment is made thereafter. Upon the maturity of any outstanding term loans or the acceleration or prepayment thereof, we will also be required to make a final payment equal to 2.5% of the aggregate principal amount of the term loans borrowed under our new secured credit facility.

All obligations under our new secured credit facility are secured by substantially all of our existing property and assets (excluding our intellectual property) and by a pledge of the capital stock of, subject to certain exceptions, our U.K. subsidiary and any future subsidiary. Our new secured credit facility includes negative covenants that, subject to certain exceptions, limit our ability and the ability of our subsidiaries to, among other things, dispose of certain assets, change our lines of business, engage in mergers or consolidations, incur additional indebtedness, create liens on assets (including our intellectual property), pay dividends and make distributions on or repurchase our capital stock or engage in certain transactions with affiliates. Our new secured credit facility also includes certain customary representations and warranties, affirmative covenants and events of default, which, among other things, include payment defaults, covenant defaults, a material adverse change in our business, certain events of bankruptcy, cross-defaults to certain indebtedness, material judgments, breach of representations and warranties and the revocation, rescission, suspension or other adverse modification of a governmental approval. Upon the occurrence of an event of default, the lenders under our new secured credit facility will be entitled to take various actions, including the acceleration of all amounts due under our new secured credit facility and all actions permitted to be taken by a secured creditor.

We incurred debt financing costs of approximately $, which included the payment of an upfront fee and the reimbursement of certain of the lenders' related expenses. We expect that the issuance of the warrants and the payment of the upfront fee will be recognized as a discount on the loan issuance. We also expect that the legal and related expenses that we incurred will be recorded as deferred financing costs in our consolidated balance sheet, which, together with the estimated fair value of the warrants, the upfront fee, the final payment, and the fixed interest rate of the term loans, will be amortized to interest expense over the term of the loans using the effective interest rate.

Funding Requirements

As of September 30, 2010, we had unrestricted cash, cash equivalents and marketable securities of $45.8 million, and $1.4 million in restricted cash and cash equivalents reserved for interest payments by the Royalty Sub. Although it is difficult to predict future liquidity requirements, we believe that the net proceeds from this offering, together with our existing unrestricted cash, cash equivalents and marketable securities, anticipated future product revenues and any additional borrowings under our new secured credit facility, will be sufficient to fund our operations for at least the next months. However, successful transition to profitability is dependent upon achieving a level of revenues adequate to support our cost structure, which we do not expect in the near term, if at all. We cannot assure you that we will ever be profitable or generate positive cash flow from operating activities.

We expect to continue to incur substantial additional operating losses for at least the foreseeable future as we continue to develop our product candidates and seek marketing approval and, subject to obtaining such approval, the eventual commercialization of SPN-538, Epliga and our other product candidates. If we obtain marketing approval for SPN-538 or Epliga, we will incur significant sales, marketing and outsourced manufacturing expenses. In addition, we expect to incur additional expenses to add operational, financial and information systems and personnel, including personnel to support our planned product commercialization efforts. We also expect to incur significant costs to comply with corporate governance, internal controls and similar requirements applicable to us as a public company following the closing of this offering.

Our future use of operating cash and capital requirements will depend on many forward-looking factors, including the following:

- The timing of our submission to the FDA, and outcome of the FDA's review, of the NDA for SPN-538;
- The timing and outcome of Phase III data for Epliga, along with the timing of our submission to the FDA, and the outcome of the FDA's review, of the NDA for Epliga;
- The extent to which the FDA may require us to perform additional clinical trials for SPN-538 or Epliga;
- The timing and success of this offering;
- The costs of our commercialization activities for SPN-538 and/or Epliga, if either is approved by the FDA;
- The cost of purchasing manufacturing and other capital equipment for our potential products;
- The scope, progress, results and costs of development for our other product candidates;
- The cost, timing and outcome of regulatory review of our other product candidates;
- The extent to which we acquire or invest in products, businesses and technologies;
- The extent to which we choose to establish collaboration, co-promotion, distribution or other similar agreements for product candidates; and
- The costs of preparing, submitting and prosecuting patent applications and maintaining, enforcing and defending intellectual property claims.

We may need to obtain additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. We expect that our progress in the development of our product candidates may provide sufficient value inflection milestones, based on which we will be able to seek additional funding. The type, timing, and terms of financing, if required, will depend upon our cash needs, the availability of financing sources and the prevailing conditions in the financial markets. There can be no assurance that such financing will be available to us at any given time or available on favorable terms, if at all. If sufficient funds on acceptable terms are not available when needed, we could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of our development programs, which may have a material adverse effect on our business, results of operations and financial condition. In addition, additional debt financing, if available, would result in increased fixed payment obligations and may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. Any debt financing or additional equity that we raise may contain terms, such as liquidation and other preferences, that are not favorable to us or our stockholders. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish valuable rights to our technologies, future revenue streams or product candidates or to grant licenses on terms that may not be favorable to us.

Cash Flows

The following table sets forth the major sources and uses of cash for the periods set forth below:

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars)				
Net cash provided by (used in):					
Operating activities	$ (13,980)	$ (29,652)	$ 2,634	$ 11,994	$ (20,840)
Investing activities	14,854	15,481	(28,385)	(19,618)	14,278
Financing activities	5	64,462	4,280	2,546	412
Net increase (decrease) in cash and cash equivalents	$ 879	$ 50,291	$ (21,471)	$ (5,078)	$ (6,150)

Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2010 compared to net cash provided by operations for the same period in 2009 decreased by $32.8 million. This decrease in cash was primarily the result of a $38.5 million increase in the difference between the net loss for the nine months ended September 30, 2010 compared to the net income for the same period in 2009. This difference was principally driven by the recognition of royalty revenues in 2009 of approximately $36.9 million related to a license agreement with Shire plc for Intuniv. In addition, we incurred higher research and development costs of approximately $4.3 million for the nine months ended September 30, 2010 compared to the same period in 2009 to support our clinical programs relating to SPN-538 and Epliga. This decrease in cash flow from operating activities was offset by an increase of $5.6 million between the two periods related to net changes in working capital. The largest portion of the increase in working capital related to a $5.8 million increase in account payables and accrued expenses, principally relating to the increased clinical trial and pre-validation manufacturing expenses for SPN-538 and Epliga incurred during the 2010 period.

Net cash provided by operating activities for the year ended December 31, 2009 compared to net cash used in operations for the same period in 2008 increased by $32.3 million. This increase was primarily the result of a $33.8 million increase in the difference between the net income for the year ended December 31, 2009 compared to the net loss for the same period in 2008. This difference between the net income in 2009 relative to the net loss in 2008 was principally related to the recognition in 2009 of $38.8 million of additional royalty revenues, including approximately $36.9 million in royalty revenues related to the license agreement with Shire plc for Intuniv and higher year-over-year royalty revenues of approximately $1.9 million attributable to Sanctura XR and Oracea. The higher royalty revenues in 2009 were offset by, among other things, higher interest expense in 2009 of approximately $4.0 million related to interest payments on the non-recourse notes of Royalty Sub, together with amortization of related deferred financing costs for the full twelve months of 2009, as compared with the eight and one-half months that the Non-recourse Notes were outstanding in 2008. This was further offset by a $1.7 million decrease in working capital, principally due to the increase in interest payable of approximately $2.5 million due under the Non-recourse Notes in 2008.

Net cash used in operations for the year ended December 31, 2008 compared to the same period in 2007 increased by $15.7 million. This increase was primarily the result of a $16.2 million increase in the net loss for the year ended December 31, 2008 compared to the same period in 2007. The increase in the net loss was a result of approximately $11.0 million in higher research and development expenses, primarily attributable to an increase in clinical trial expenses to support our Phase III clinical trial for Epliga that began in the second half of 2008, and an increase in interest expense of

approximately $8.7 million due to interest on the Non-recourse Notes of Royalty Sub, which were issued by it in April 2008. These uses of cash in operations were offset by, among other things, a $0.4 million increase in non-cash items, such as depreciation, stock-based compensation expense and amortization of deferred financing expenses associated with the Non-recourse Notes of Royalty Sub.

We expect cash used in operating activities to increase for the year ending December 31, 2010 as compared to same period in 2009 due to the anticipated increase in our operating losses associated with the clinical trials, particularly the Phase III trials for Epliga, costs associated with the preparation of the NDA for SPN-538, which we filed in January 2011, and the expected acceleration of our development programs.

Investing Activities

Our investing activities are principally driven by cash generated by operations, if any, and the cash provided by our financing activities. We invest excess cash in accordance with our investment policy. Marketable securities consist of investments in U.S. Treasuries and various government agency debt securities, which generally mature in one year or less. Fluctuations in investing activities between periods relates exclusively to the timing of marketable security purchases and the related sale and maturities of these securities.

The increase of $33.9 million in net cash provided by investing activities for the nine months ended September 30, 2010 compared to the same period in 2009 was primarily the result of a $37.8 million increase in the cash received from the sales and maturities of marketable securities, offset by a $4.1 million increase in the cash used to purchase marketable securities. This increase in cash provided by financing activities was augmented by a $0.2 million decrease in cash used for the purchase of property and equipment for the nine months ended September 30, 2010 compared to the same period in 2009.

Net cash used in investing activities for the year ended December 31, 2009 compared to net cash provided by investing activities for the same period in 2008 decreased by $43.9 million. This decrease was primarily a result of a $76.5 million decrease in cash received from the sales and maturities of marketable securities and a $33.2 million increase in the cash used for the purchase of marketable securities, together with a $0.6 million increase in purchases of property and equipment primarily related to the leasehold improvements for our facility and the purchase of laboratory equipment.

Net cash used in investing activities increased by $0.6 million for the year ended December 31, 2008 compared to the same period in 2007. This increase in cash used for investing activities was primarily a result of a $40.8 million increase in the cash received from the sales and maturities of marketable securities and a $0.9 million decrease in purchases of property and equipment, offset by $41.1 million decrease in purchases of marketable securities.

Financing Activities

Net cash provided by financing activities decreased by $2.1 million for the nine months ended September 30, 2010 compared to the same period in 2009. This decrease was primarily due to the drawdown in full by January 2010 of the remaining balance in the interest reserve account that was established to fund potential shortfalls in interest payments for the Non-recourse Notes.

Net cash provided by financing activities decreased by $60.2 million for the year ended December 31, 2009 compared to the same period in 2008 and increased by $64.5 million for the year ended December 31, 2008 compared to the same period in 2007. The increase for the year ended December 31, 2008 and the decrease for the year ended December 31, 2009 were primarily due to the issuance of the $75 million in Non-recourse Notes in April 2008, offset by issuance costs of $4.4 million, and the establishment of, and subsequent interest payments from, the interest reserve

account required by the indenture governing the Non-recourse Notes and the deferred financing costs associated with the Non-recourse Notes.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations and commitments as of September 30, 2010 (except as noted below):

Contractual Obligations	Less than 1 Year	1 – 3 Years	3 – 5 Years	Greater than 5 Years	Total
	(in thousands of dollars)				
Non-recourse Notes[1]	$ —	$ —	$ —	$ 75,000	$ 75,000
Interest on Non-recourse Notes[1]	12,000	24,000	24,000	102,500	162,500
Operating leases[2]	983	1,610	—	—	2,593
Purchase obligations[3]	9,988	190	—	—	10,178
Total[4]	$ 22,971	$ 25,800	$ 24,000	$ 177,500	$ 250,271

(1) Annual interest expense is $12.0 million, based on a principal amount outstanding of $75.0 million as of September 30, 2010. For purposes of this table, we have assumed that the repayment of principal will not be repaid before the legal final maturity date of April 15, 2024. The Non-recourse Notes and related interest payments are non-recourse beyond Royalty Sub and non-convertible into any other of our securities.

(2) Our commitments for operating leases relate to our lease of office and laboratory space as of September 30, 2010.

(3) Relates primarily to agreements and purchase orders with contractors for the conduct of clinical trials and other research and development and marketing activities.

(4) This table does not include (a) any milestone payments which may become payable to third parties under license agreements as the timing and likelihood of such payments are not known, (b) any royalty payments to third parties as the amounts, timing and likelihood of such payments are not known and (c) contracts that are entered into in the ordinary course of business which are not material in the aggregate in any period presented above.

In November 2010, we amended the lease for our principal office and laboratory space. Under terms of the amended lease, we extended the term for an additional five years to April 2018, obtained six months' rent abatement beginning in November 2010, with no future rent increase until November 2013 and thereafter only 2% annual rent increase per year, as well as additional funds and reimbursements for certain tenant improvements.

In January 2011, we entered into a secured credit facility pursuant to a loan and security agreement among Oxford Finance Corporation, as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender, and promissory notes issued in favor of each lender, providing for term loans of up to an aggregate of $25.0 million. On January 26, 2011, we drew down our first $15.0 million of term loans under our new secured credit facility. The term loans bear interest at a fixed rate per annum of 11.0% and will mature in 42-months from the date of each term loan, subject to a three-month extension under certain circumstances. We intend to use the proceeds of the term loans under our new secured credit facility for working capital and general corporate purposes. In addition, we have the right to obtain additional term loans of up to $10.0 million under the same terms and conditions of our current term loans under our new secured credit facility on or before April 30, 2011, provided that we are not in default under the terms of the loan and security agreement or other loan documents.

We have obtained exclusive licenses from third parties for proprietary rights to support the product candidates in our psychiatry portfolio. Under license agreements with Afecta, we have an exclusive

option to evaluate Afecta's CNS pipeline and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810. We do not owe any future milestone payments for SPN-810. We will also be obligated to pay royalties to Afecta based on net sales worldwide of our product candidates in the low-single digits. We have also entered into a purchase and sale agreement with Rune, where we obtained the exclusive worldwide rights to a product concept from Rune. There are no future milestone payments owing to Rune under this agreement. If we receive approval to market and sell any products based on the Rune product concept for SPN-809, we will be obligated to pay royalties to Rune based on net sales worldwide in the low single digits.

Off-Balance Sheet Arrangements

We do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate these estimates and judgments, including those described below. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. These estimates and assumptions form the basis for making judgments about the carrying values of assets and liabilities and amounts recorded as revenues and expenses that are not readily apparent from other sources. Actual results and experiences may differ materially from these estimates.

While a summary of significant accounting policies are more fully described in Note 2 to our consolidated financial statements appearing at the end of this prospectus, we believe that the following accounting policies are the most critical to aid you in fully understanding and evaluating our reported financial results and affect the more significant judgments and estimates that we use in the preparation of our consolidated financial statements.

Revenue Recognition

Our revenues have been generated through research and development agreements, which included fees for development services provided to customers, payments for achievement of specified development, regulatory and sales milestones and royalties on product sales of licensed products. For multiple element arrangements, we evaluate the components of each arrangement as separate elements based on certain criteria. Accordingly, revenues from collaboration agreements are recognized based on the performance requirements of the agreements. We recognize revenues when persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the fee is fixed and determinable; and collection is reasonably assured.

Our development revenues have been earned under contracts which were less than one year in duration. Development contracts generally take the form of fee-for-service arrangements based on an annual contractual full time equivalent billing rate. In cases where performance spanned multiple accounting periods, we recognized revenue as services were performed, measured on a proportional-performance basis. We used output measures, specifically labor hours, to measure performance as they reflect our pattern of performance over the contractual term. Milestone payments are recognized as

revenues when the collaborative partner acknowledges completion of the milestone and substantive effort was necessary to achieve the milestone.

We generally record royalty revenues based on estimates of the sales that occurred during the relevant period. The relevant period estimates of sales are based on interim data provided by licensees and analysis of historical royalties received (adjusted for any changes in facts and circumstances, as appropriate). We maintain regular communication with our licensees in order to obtain information to develop reasonable estimates. Differences between actual royalty revenues and estimated royalty revenues are reconciled and adjusted for in the period which they become known, typically the following quarter. Historically, adjustments have not been material based on actual amounts received from licensees. To the extent we do not have sufficient ability to accurately estimate revenues; we record revenues on a cash basis.

In 2009, we recognized approximately $36.9 million in royalty revenues related to an amendment to a license agreement with Shire plc for Intuniv, which is a novel ADHD product marketed by Shire plc and utilizes one of the Company's proprietary technologies. Under the terms of the license amendment, the parties agreed to delete all provisions regarding milestone and royalty payments and replaced those provisions with, among other things, (1) a commitment by Shire plc to make a one-time payment of approximately $36.9 million within 15 days of signing the amendment, (2) an acknowledgement by us that no other sums would be payable to us, then or in the future, under the amended license; and (3) a statement that the amended license was permanent, irrevocable and paid-up. We determined to recognize this revenue immediately because (1) the executed contracted constituted persuasive evidence of an arrangement, (2) the delivery of the license amendment had occurred and Shire plc had assumed all risks and rewards regarding Intuniv, and we had no current or future performance obligations, (3) the total consideration for the license amendment was fixed and known at the time of its execution and there were not any extended payment terms or rights of return, and (4) collection was reasonably assured as we determined that Shire plc was creditworthy and had the financial ability to make the payment in accordance with the terms of the license amendment.

Accrued Expenses

As part of the process of preparing the consolidated financial statements, we may be required to estimate accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with applicable personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of actual cost. The majority of our service providers invoice us monthly in arrears for services performed. We make estimates of our accrued expenses as of each consolidated balance sheet date in our consolidated financial statements based on facts and circumstances known to us. We confirm the accuracy of our estimates with the service providers and make adjustments if necessary. Examples of estimated accrued expenses include:

- fees paid to contract research organizations, or CROs, in connection with clinical trials;
- fees paid to investigative sites in connection with clinical trials;
- fees paid to contract manufacturers in connection with the production of clinical trial materials; and
- professional service fees.

We base our expenses related to clinical trials on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and CROs that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. Payments under some of these contracts depend on factors such as the successful enrollment of patients and the completion of clinical

trial milestones. In accruing the related service fees, we estimate the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we will adjust the accrual accordingly. If we do not identify costs that we have begun to incur or if we underestimate or overestimate the level of services performed or the costs of these services, our actual expenses could differ from our estimates. We do not anticipate the future settlement of existing accruals to differ materially from our estimates.

Stock-Based Compensation

We recognize as compensation expense the estimated fair value of stock options and non-vested stock awards issued to employees over the requisite service periods, which are typically the vesting periods. Equity instruments issued to non-employees are recorded at their estimated fair value and are remeasured each reporting period as the equity instruments vest and the related expense is recognized ratably over the related service period.

Stock-based compensation expense includes stock options and non-vested stock granted to employees and non-employees and has been reported in our statements of operations as follows:

	Years Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars)				
Research and development	$ 9	$ 28	$ 28	$ 21	$ 32
General and administrative	65	71	83	62	92
Total	$ 74	$ 99	$ 111	$ 83	$ 124

Historically, stock-based compensation has not been material to our results of operations or financial position. Because the determination of the estimated fair value of share-based payments inherently includes the use of subjective assumptions and the potential that the related expense may be material in the future, we have included stock-based compensation as a significant accounting policy.

We calculate the fair value of stock-based compensation awards using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires the input of subjective assumptions, including stock price volatility, assumed dividend yield, the expected life of stock options and a risk-free interest rate. We calculate expected volatility based on reported data for selected reasonably similar publicly traded companies, or guideline peer group, for which the historical information is available. We will continue to use the guideline peer group volatility information until the historical volatility of our common stock is relevant to measure expected volatility for future option grants. The assumed dividend yield is based on our expectation of not paying dividends in the foreseeable future. We determine the average expected life of stock options according to the "simplified method" as described in Staff Accounting Bulletin 110, which is the mid-point between the vesting date and the end of the contractual term. We determine the risk-free interest rate by reference to implied yields available from U.S. Treasury securities with a remaining term equal to the expected life assumed at the date of grant. The assumptions used in the Black-Scholes option-pricing model for the years ended December 31, 2007, 2008 and 2009 and the nine months ended September 30, 2009 and 2010 are set forth in our consolidated financial statements appearing at the end of this prospectus.

Forfeitures are not an assumption that impacts the Black-Scholes option-pricing model, however, it is an estimate that impacts the amount of stock compensation expense recognized. We estimate forfeiture rates based on our historical analysis of actual stock option forfeitures.

There is a high degree of subjectivity involved when using option-pricing models to estimate stock-based compensation. There currently is no market-based mechanism or other practical application to verify the reliability and accuracy of the estimates stemming from these valuation models, nor is there a means to compare and adjust the estimates to actual values. Although the estimated fair value of employee stock-based awards is determined using an option-pricing model, that value may not be indicative of the fair value observed in a market transaction between a willing buyer and willing seller. If factors change and we employ different assumptions when valuing our options, the compensation expense that we record in the future may differ significantly from what we have historically reported.

Our board of directors estimated the fair value for our common stock, with input from management. Given the absence of an active market for our common stock, our board of directors contemporaneously estimated the fair value of our common stock with the assistance of a third-party valuation firm on the dates of grant. These contemporaneous valuations were performed in accordance with applicable methodologies, approaches and assumptions of the technical practice aid issued by the American Institute of Certified Public Accountants Practice Aid entitled *Valuation of Privately-Held Company Equity Securities Issued as Compensation,* considering numerous objective and subjective factors to determine common stock fair market value at each option grant date, including but not limited to the following factors:

- our stage of development and business strategy;
- our financial condition, operating results and book value;
- economic and competitive elements affecting us, our industry and our target markets;
- our projected operating results;
- a comparative analysis of our financial condition and operating results with those of publicly-owned companies engaged in similar lines of business;
- the current and historical relationship between the reported stock prices and revenues and earning levels of selected publicly traded companies engaged in similar lines of business;
- important developments relating to the results of our clinical trials;
- the likelihood of achieving a liquidity event for our outstanding shares of stock; and
- the price per share at which our Series A convertible preferred stock was issued to investors including the rights, preferences and privileges of the preferred stock relative to the common stock. In considering the rights and preferences of our Series A convertible preferred stock relative to our common stock, we considered the following rights and preferences:

    - The holders of our Series A convertible preferred stock are entitled to receive a cumulative annual dividend of $0.07 per share, when and if declared by the board of directors; and,
    - The holders of our Series A convertible preferred stock are entitled to a liquidation preference. The aggregate amount of liquidation preferences, excluding any dividends, has increased from $6.8 million as of December 31, 2007 to $16.2 million as of September 30, 2010. In the event of liquidation, dissolution or winding up of our company, the liquidation preference for each Series A convertible preferred share equals the original purchase price of $1.00 per share, plus accumulated unpaid dividends.

The following table represents stock option grant information from January 1, 2009 through the date of this prospectus, including the estimated fair value of the option grant as determined by the Black-Scholes option-pricing model.

Grant Date	Number of Options	Exercise Price	Estimated Fair Value	Intrinsic Value
January 19, 2009	225,000	$ 0.40	$ 0.23	$ —
December 15, 2009(1)	257,200	$ 1.76(1)	$ 1.03	$ —
February 10, 2010	52,500	$ 0.84	$ 0.49	$ —
April 16, 2010	32,750	$ 0.84	$ 0.49	$ —
July 20, 2010	38,500	$ 0.84	$ 0.48	$ —
October 15, 2010	15,000	$ 0.64	$ 0.37	$ —
November 2, 2010	880,000	$ 0.64	$ 0.41	$ —
November 16, 2010	35,000	$ 0.64	$ 0.41	$ —
Total	1,535,950			

(1) On November 2, 2010, 255,000 of these options were repriced from $1.76 to $0.64 per share.

The intrinsic value of all outstanding vested and unvested options as of September 30, 2010 based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and the exercise price of the outstanding options are as follows:

	Number of Options	Intrinsic Value
Unvested	789,134	$
Vested	940,324	$

Our board of directors has made only one grant of non-vested stock. This grant was made in December 2005 for 3,500,000 shares of common stock. The estimated fair value of those shares as of the date of grant was $0.10 per share.

On November 2, 2010, our board of directors repriced 255,000 of the options granted on December 15, 2009 from a per share exercise price of $1.76 to $0.64. In addition, our board approved the modification of the performance vesting requirements related to 157,697 employee stock options and 411,765 shares of non-vested stock awarded to our chief executive officer. The vesting of these share-based awards were contingent upon the filing of our first NDA on or before December 22, 2010, and our board extended the deadline for the achievement of this performance condition to March 31, 2011. As a result of these actions, there is no immediate charge related to the repriced and modified options, and we will recognize additional stock based compensation of approximately $50,000 over the remaining vesting periods for these options.

All contemporaneous valuations were prepared consistent with the AICPA Practice Aid. At each valuation date, we considered the use of market, income and asset valuation approaches. We lacked relevant financial metrics to utilize the market approach and the asset approach was not utilized because the majority of our assets are intangible, accordingly we used an income approach for each valuation. The income approach values a business based upon the future benefits that will accrue to it with the value of the future economic benefits discounted back to a present value at some appropriate discount rate. Implicit in the market price of all publicly traded securities is a consensus forecast of earnings and financial condition. The consensus forecast results from the information made available to the investing public by us and from the numerous forecasts prepared by financial analysts. We have replicated this approach through the preparation of an operating forecast and the use of discounted cash flow analysis. The discount rate reflects all the risk of ownership and the associated risks of

realizing the prospective economic income stream. Given that we have Series A convertible preferred stock outstanding, it was also necessary to allocate our company's value to the various classes of stock. As provided in the AICPA Practice Guide, there are several approaches for allocating equity value of a privately-held company among the securities in a complex capital structure, including the current value method, the probability weighted expected return method and the option pricing method. The current value method was not employed because a liquidity event, in the form of an acquisition or dissolution, was not imminent. The probability weighted expected return method was not utilized because of the nature of drug development and our stage of development estimating the probability and value of various liquidity events is highly speculative. We used the option-pricing method to allocate the estimated value of our equity to the classes of securities. The value of our common stock was then discounted for lack of marketability, or the inability to readily sell shares, which increases the owner's exposure to changing market conditions and increases the risk of ownership. The discount for lack of marketability was derived using a protective put calculation using the Black-Scholes option pricing model.

Stock Option Grants on January 19, 2009

Our board of directors granted stock options on January 19, 2009, with each having an exercise price of $0.40 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of December 31, 2007 provided by management in determining the fair value of our common stock on January 19, 2009. We considered this valuation relevant in our determination of the estimated fair value of the common stock primarily because the deterioration of the overall financial markets in the second half of 2008 overshadowed progress on our clinical pipeline and the financing from the Non-recourse Notes. Our board of directors considered that in the face of the credit and liquidity crisis and the resulting uncertainties, the prospects for a liquidity event in the foreseeable future were significantly lower.

In the December 31, 2007 valuation, we used the income approach, specifically a discounted cash flow analysis, to estimate our company's equity value. The first step in that process was to calculate the present value of our discrete net cash flows for the periods projected. Next, the present value of our terminal net cash flow was calculated. The sum of these two present values, utilizing a cost of capital discount rate of 21.2%, determined the total market value capitalization on a minority basis to approximate $59.5 million. We added free cash (cash remaining after all investments and commitments that could potentially be available for debt service or shareholders dividends without impairing operations) in the amount of $25.9 million to estimate the market value of the total equity on a minority interest basis to approximate $85.4 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using the option-pricing method. A discount of 25.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at December 31, 2007 of $0.40 per share. Our board determined this valuation analysis to be reasonable and, on the basis of the factors described above, that the estimated fair value of our common stock on January 19, 2009 was $0.40 per share.

Stock Option Grants on December 15, 2009

Our board of directors granted stock options on December 15, 2009, with each having an exercise price of $1.76 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of July 16, 2009 provided by management in determining the fair value of our common stock on December 15, 2009. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. In addition, to the a non-risk adjusted forecast we also considered a risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on the products clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 25.0% and 18.9%, respectively. These

discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine the total market value of capitalization for us on a minority interest basis of approximately $122.9 million. We added free cash in the amount of $80.6 million to estimate the market value of the total equity, on a minority interest basis, of to be approximately $203.5 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using option-pricing method. A discount of 30.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at July 16, 2009 of $1.76 per share. Based on the foregoing, we concluded the fair value of our common stock as of December 15, 2009 was $1.76 per share. No significant changes had come to our attention between July 16, 2009 and the December 15, 2009 grant date to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The increase in the estimated fair value of the common stock relative to the December 31, 2007 valuation relates to several items. First, we had an additional $55.0 million of free cash on hand as a result of the monetization of certain future royalty streams under our licenses for Oracea, Sanctura XR and Intuniv. In addition, we had completed in-depth market research in mid-2009 that indicated a substantially greater commercial potential for our two epilepsy product candidates.

Stock Option Grants on February 10, April 16 and July 20, 2010

Our board of directors granted stock options on February 10, April 16 and July 20, 2010, with each having an exercise price of $0.84 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of December 31, 2009 provided by management in determining the fair value of our common stock on each of February 10, April 16 and July 20, 2010. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. We considered a non-risk adjusted forecast and risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on our products clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 25.0% and 15.7%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine the total market value of capitalization for us, on a minority interest basis, of approximately $53.0 million. We added free cash in the amount of $66.7 million to estimate the market value of the total equity on a minority interest basis to be approximately $119.7 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using option-pricing method. A discount of 30.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at December 31, 2007 of $0.84 per share. Based on the foregoing, we concluded the fair value of our common stock as of February 10, 2010 was $0.84 per share. We further determined the fair value of the common stock as of April 16 and July 20, 2010 to be $0.84 per share. No significant changes had come to our attention between December 31, 2009 and each of the foregoing grants date to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The decrease in the estimated fair value of the common stock as compared to the July 16, 2009 valuation principally relates to information regarding the announcement in December 2009 by a competitor of the initiation of a Phase III clinical trial for a once-a-day, extended-release topiramate product to treat epilepsy that could compete head-to-head with SPN-538, and, if approved before SPN-538, would have three years of market exclusivity.

Stock Option Grants on October 15, November 2 and November 16, 2010

Our board of directors granted stock options on October 15, November 2 and November 16, 2010, with each having an exercise price of $0.64 per share. In addition to considering the objective and

subjective factors listed above, our board of directors considered the valuation as of October 1, 2010 provided by management in determining the fair value of our common stock on each of October 15, November 2 and November 16, 2010. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. We utilized a non-risk adjusted forecast and a risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on our product candidates' clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 22.0% and 14.2%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine our total market value of capitalization on a minority interest basis of approximately $64.4 million. We added free cash in the amount of $45.8 million to estimate the market value of the total equity on a minority interest basis to be approximately $110.2 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using option-pricing method. A discount of 20.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at October 1, 2010 of $0.64 per share. Based on the foregoing, we concluded the fair value of our common stock as of October 15, November 2 and November 16, 2010 was $0.64 per share. No significant changes had come to our attention between October 1, 2010 and each of the foregoing grants date to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The decrease in the estimated fair value of the common stock as compared to the December 31, 2009 valuation principally relates to a reduction of $20.8 million of free cash and a further refinement in the market estimates for our two epilepsy products based on additional market research on the dynamics of the market for epilepsy products and our expected product profiles upon approval.

Lender Warrants

In connection with our new secured credit facility, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. We determined the fair value of these warrants to be $, under the Black-Scholes valuation model using the following assumptions: risk-free interest rate of %; dividend yield of 0.0%; expected volatility of %; and a contractual term of years. We expect that the value of the warrants will be recorded as a discount to the note payable, and will be amortized to interest expense over the expected term of the loans.

Recent Accounting Pronouncements

In August 2009, the FASB issued ASU No. 2009-05, *Fair Value Measurements and Disclosures (Topic 820)—Measuring Liabilities at Fair Value* ("ASU 2009-05"). ASU 2009-05 provides guidance in measuring the fair value of a liability when a quoted price in an active market does not exist for an identical liability or when a liability is subject to restrictions on its transfer. ASU 2009-15 was effective for us beginning with the quarter ended December 31, 2009. The adoption of ASU 2009-05 had no impact on the fair value measurements of our liabilities.

In October 2009, the FASB issued ASU No. 2009-13, *Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements: a consensus of the FASB Emerging Issues Task Force* ("ASU 2009-13"). ASU 2009-13 establishes a selling-price hierarchy for determining the selling price of each element within a multiple-deliverable arrangement. Specifically, the selling price assigned to each deliverable is to be based on vendor-specific objective evidence (VSOE) if available, third-party evidence, if VSOE is unavailable, and estimated selling prices if neither VSOE or third-party evidence is available. In addition, ASU 2009-13 eliminates the residual method of allocating arrangement consideration and instead requires allocation using the relative selling price method. ASU 2009-13 will be effective prospectively for multiple-deliverable revenue arrangements entered into, or materially modified, in

fiscal years beginning on or after June 15, 2010. Presently, we are assessing what impact, if any, the adoption of ASU 2009-13 may have on our consolidated financial statements.

In January 2010, the FASB issued Accounting Standards Update (ASU) No. 2010-06, *Fair Value Measurements and Disclosures (Topic 820)—Improving Disclosures about Fair Value Measurements* ("ASU No. 2010-06"). ASU No. 2010-06 requires: (1) fair value disclosures of assets and liabilities by class; (2) disclosures about significant transfers in and out of Levels 1 and 2 on the fair value hierarchy, in addition to Level 3; (3) purchases, sales, issuances, and settlements be disclosed on gross basis on the reconciliation of beginning and ending balances of Level 3 assets and liabilities; and (4) disclosures about valuation methods and inputs used to measure the fair value of Level 2 assets and liabilities. ASU No. 2010-06 becomes effective for the first financial reporting period beginning after December 15, 2009, except for disclosures about purchases, sales, issuances, and settlements of Level 3 assets and liabilities which will be effective for fiscal years beginning after December 15, 2010. We are currently assessing what impact, if any, ASU No. 2010-06 will have on our fair value disclosures; however, we do not expect the adoption of the guidance provided in this codification update to have any material impact on our consolidated financial statements.

In February 2010, the FASB issued amended guidance on subsequent events. Under this amended guidance, SEC filers are no longer required to disclose the date through which subsequent events have been evaluated in originally issued and revised financial statements. This guidance was effective immediately and we adopted these new requirements upon issuance of this guidance.

In April 2010, the FASB issued ASU No. 2010-17, *Revenue Recognition—Milestone Method* (ASU 2010-017). ASU 2010-017 provides guidance in applying the milestone method of revenue recognition to research or development arrangements. This guidance concludes that the milestone method is a valid application of the proportional performance model when applied to research or development arrangements. Accordingly, an entity can make an accounting policy election to recognize a payment that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved. The guidance is effective for fiscal years, and interim periods within those years, beginning on or after June 15, 2010. The adoption of this accounting standard is not expected to impact our financial position or results of operations.

Quantitative and Qualitative Disclosure About Market Risk

The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to maximize income from our investments without assuming significant risk. Our exposure to market risk is confined to our cash and cash equivalents. As of September 30, 2010, we had unrestricted cash, cash equivalents and marketable securities of $45.8 million. We do not engage in any hedging activities against changes in interest rates. Because of the short-term maturities of our cash and cash equivalents, we do not believe that an increase in market rates would have any significant impact on the realized value of our investments. We do not have any foreign currency or other derivative financial instruments.

We contract with contract research organizations and investigational sites globally. We may be subject to fluctuations in foreign currency rates in connection with these agreements, primarily with respect to Euro denominated currencies. We do not hedge our foreign currency exchange rate risk. A hypothetical 10% appreciation in Euro exchange rates against the U.S. dollar from prevailing market rates would have decreased our net income by approximately $139,000 for the year ended December 31, 2009. Conversely, a hypothetical 10% depreciation in Euro exchange rates against the U.S. dollar from prevailing market rates would have increased our net income by approximately $139,000 for the year ended December 31, 2009.

We do not believe that inflation and changing prices over the years ended December 31, 2008 and 2009 and the nine months ended September 30, 2010 had a significant impact on our results of operations.

BUSINESS

Overview

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we filed a new drug application, or NDA, in January 2011, and Epliga (extended release oxcarbazepine), which is in Phase III clinical trials. Our ADHD product candidates include SPN-810 (molindone hydrochloride), a novel treatment for impulsive aggression in patients with ADHD and SPN-812, a novel non-stimulant treatment of ADHD. Both of these programs are in Phase II. In addition to these four lead product candidates, we have several additional product candidates in various stages of development. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists. We believe our diversified and broad portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

We use our proprietary technologies to enhance the therapeutic benefits of approved anti-epileptic drugs, or AEDs through advanced extended release formulations. Our most advanced product candidates, SPN-538 and Epliga, are novel oral once-daily extended release formulations of topiramate and oxcarbazepine, respectively; for the treatment of epilepsy. Immediate release formulations of topiramate and oxcarbazepine, are available in generic form and are marketed by Johnson & Johnson and Novartis under the brand names of Topamax and Trileptal, respectively. According to IMS Health, peak sales of Topamax and Trileptal represented an estimated 25.8% and 8.1% of the total seizure disorder market in 2008 and 2006, respectively. We are pursuing a Section 505(b)(2) regulatory strategy for SPN-538 and Epliga, which would allow us to rely on the existing data from the NDAs of Topamax and Trileptal, respectively. The once-per-day dosing of each of SPN-538 and Epliga is designed to improve patient compliance and to provide a better tolerability profile compared to the current immediate release AEDs that are taken multiple times per day to maintain therapeutic drug concentrations over the dosing interval. We believe there is a significant unmet need for extended release products, such as SPN-538 and Epliga, for the treatment of epilepsy. Extended release products have been shown to improve compliance, increase seizure control, reduce side effects and improve tolerability as compared to immediate release products, which can lead to fewer side effects, better tolerability,[1] increased seizure control and greater patient compliance.[2]

(1) Miller, A.D., *Improved CNS tolerability following conversion from immediate- to extended-release carbamazepine*, published June 2004 in *Acta Neurologica Scandinavia*.

(2) Balzac, F., *Medication Noncompliance in Epilepsy*, published March 2006 in *Neurology Reviews*.

We are also developing treatments for new indications in diseases such as ADHD and its coexisting disorders. We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the U.S. Food and Drug Administration, or FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. In addition, SPN-812, which is currently in Phase II, is being developed as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. In addition, because the active ingredient of SPN-812 has demonstrated efficacy as an antidepressant in Europe, this product candidate may provide increased benefit to an estimated 40% of ADHD patients who suffer from depression.(3)

(3) Biederman, J., *New Insights Into the Comorbidity Between ADHD and Major Depression in Adolescent and Young Adult Females*, published in April 2008 in *Journal of the American Academy of Child and Adolescent Psychiatry* and Report of CME Institute of Physicians Postgraduate Press, Inc., published in August 2008 in *Journal of Clinical Psychiatry*.

In addition to these four lead product candidates, we have a number of other product candidates in various stages of development such as SPN-809, for which we filed an investigational new drug application, or IND, in 2008 and which would represent a novel mechanism of action for the U.S. antidepressant market.

The table below summarizes our current pipeline of novel product candidates.

Product	Indication	Status
SPN-538	Epilepsy	NDA filed
Epliga	Epilepsy	Phase III
SPN-810	Impulsive Aggression in ADHD	Phase II
SPN-812	ADHD	Phase II
SPN-809	Depression	IND filed

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and enable the treatment of new indications. We have a broad portfolio of drug development technologies consisting of six platforms that include the following: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). Our proprietary technologies have been used in the following approved products: Carbatrol (carbamazepine), Adderall XR (mixed amphetamine salts), and Intuniv (guanfacine), marketed by Shire; Equetro (carbamazepine), marketed by Validus Pharmaceuticals Inc.; Sanctura XR (trospium chloride), marketed by Allergan; and Oracea (doxycycline), marketed by Galderma. We are continuing to expand our intellectual property portfolio to provide additional protection for our technologies and our product candidates. Throughout our 20 year history, we have continued our commitment to innovation with a focus for the past five years on successfully developing our own product candidates in neurology and psychiatry.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry. Key elements of our strategy to achieve this goal are to:

- *Build in-house sales and marketing capabilities, focused on specialty markets in the United States, to promote SPN-538 and Epliga*. We are currently focused on attaining regulatory approval for, and bringing our two late-stage epilepsy products, SPN-538 and Epliga, to market. As SPN-538 and Epliga progress towards U.S. regulatory approval, we intend to build our own targeted, specialty

sales force to promote, if approved, SPN-538 and Epliga in the United States. We intend to direct our marketing efforts to high potential prescribers of both products.

- *Continue to advance our product candidates in our psychiatry portfolio, including SPN-810 and SPN-812*. As part of our longer term strategy, we intend to further develop our product candidates in our psychiatry portfolio to enable further diversification of our pipeline and future growth. For example, we are currently preparing to initiate a Phase IIb trial for SPN-810.

- *Develop differentiated products by applying our technologies to known drug compounds*. We intend to continue to focus our development activities on known drug compounds and compounds with established mechanisms of action and thereby reduce the risks, costs and time typically associated with pharmaceutical product development. We intend to leverage our proprietary and in-licensed technologies and expand our patent portfolio to further develop and protect our diverse pipeline of product candidates.

- *Establish strategic partnerships to accelerate and maximize the potential of our product candidates worldwide*. We intend to continue to seek strategic collaborations with other pharmaceutical companies to commercialize our product candidates outside the United States. We believe that we are an attractive collaborator for pharmaceutical companies due to our broad portfolio of proprietary technologies and our product development track record.

- *Leverage our management team's expertise to develop and commercialize our broad portfolio of product candidates.* We intend to leverage the expertise of our executive management team in developing and commercializing innovative therapeutic products. We plan to continue to evaluate and develop additional CNS product candidates that we believe have significant commercial potential through our internal research and development efforts or, if appropriate, external collaborations.

Epilepsy

Overview

Epilepsy is a complex neurological disorder characterized by spontaneous recurrence of unprovoked seizures, which are sudden surges of electrical activity in the brain that impair a person's mental or physical abilities. Epilepsy, which is typically diagnosed by a neurologist, is estimated to affect 50 million people worldwide[4] and 2 million people in the United States.[5] According to IMS Health, U.S. sales of AEDs were approximately $5.3 billion in 2009. The annual cost of epilepsy is estimated to be $12.5 billion.[6]

(4) Bialer, M., *Key factors in the discovery and development of new antiepileptic drugs*, published January 2010 in *Nature.*

(5) U.S. Centers for Disease Control and Prevention, *Epilepsy Self-Management Tools* (citing DiIorio, C., *The Prevention Research Centers' Managing Epilepsy Well Network*, published September 2010 in *Epilepsy & Behavior*).

(6) Epilepsy Foundation, *Cost Study Shows Divide in Treatment Effects*, published April 2000.

Epileptic seizures can cause a person to experience severe muscle jerking, to lose consciousness and fall, or to suffer from distorted vision, all potentially leading to physical injuries or hospitalization. Until reliable seizure control has been achieved, patients are forced to adjust their lifestyles to avoid activities that a seizure can significantly disrupt or render life threatening. A breakthrough seizure is a sudden, unexpected seizure experienced by a patient who previously had achieved reliable seizure control. Even when no physical injury occurs, breakthrough seizures often result in significant social, legal and developmental consequences for patients such as loss of driver's license, loss of employment, disruption of school attendance, academic underachievement, and disruption of social networks. In addition, a single breakthrough seizure can lead to permanent loss or reduction in overall seizure control. Data suggest that a significant proportion of patients who experience a breakthrough seizure have a lower chance of achieving reliable seizure control.(7) In certain cases, a single breakthrough seizure can develop into *status epilepticus*, a prolonged seizure or series of repeated seizures, and eventually result in brain damage or death. Data indicate that the risk of sudden unexpected death in epilepsy was 23 times higher in patients who had at least one breakthrough seizure compared to patients who had achieved seizure control.(8)

(7) Citizen Petition of UCB, Inc. to U.S. Food and Drug Administration, submitted October 3, 2006 (citing Schmidt, D., *Uncontrolled epilepsy following discontinuation of antiepileptic drugs in seizure-free patients: a review of current clinical experience*, published December 2005 in *Epilepsia*).

(8) Citizen Petition of UCB, Inc. to U.S. Food and Drug Administration, submitted October 3, 2006 (citing Tomson, T., *Sudden unexpected death in epilepsy: a review of incidence and risk factors*, published May 2005 in *Acta Neurologica Scandinavia*).

Current Treatment Options

Once a patient is diagnosed with epilepsy, the goal of the neurologist is to find the particular drug or combination of drugs, and appropriate dosing, that will lead the patient to reliable seizure control while minimizing side effects. There are currently over 15 approved AEDs marketed in the United States. Side effects play a major role in altering treatment in epilepsy as they can limit the usefulness of AEDs. AEDs are generally associated with the incidence of numerous side effects that can adversely impact the quality of life for epileptic patients. Such side effects may include dizziness, paresthesia, headaches, cognitive deficiencies such as memory loss and speech impediment, digestive problems, somnolence, double vision, gingival enlargement, nausea, weight gain, and fatigue. To address these side effects and help patients tolerate their AEDs, neurologists typically initiate treatment with a single AED as monotherapy at a low dose then increase the dose to a higher level until the patient reaches the most efficacious dose with an acceptable tolerance of side effects.

Many patients develop refractory epilepsy, which refers to inadequate control of seizures despite treatment, thereby requiring treatment with multiple AEDs. Patients taking more than one AED at a time are susceptible to side effects associated with each of the multiple drugs and with drug interactions. Despite the introduction of new AEDs in the past few years, drug therapy remains ineffective for seizure control in up to 30% of patients with epilepsy.(9) Many patients fail drug therapy either because the drugs do not control their seizures or because they cannot tolerate the side effects.

(9) World Health Organization, *Epilepsy: aetiogy, epidemiology and prognosis*, Fact Sheet No. 165, revised February 2001.

Dynamics of the Epilepsy Market

There are several important dynamics that play a major role in the treatment of epilepsy and that differentiate epilepsy from many other diseases:

- ***Compliance is Critical to the Reduction in Breakthrough Seizures***

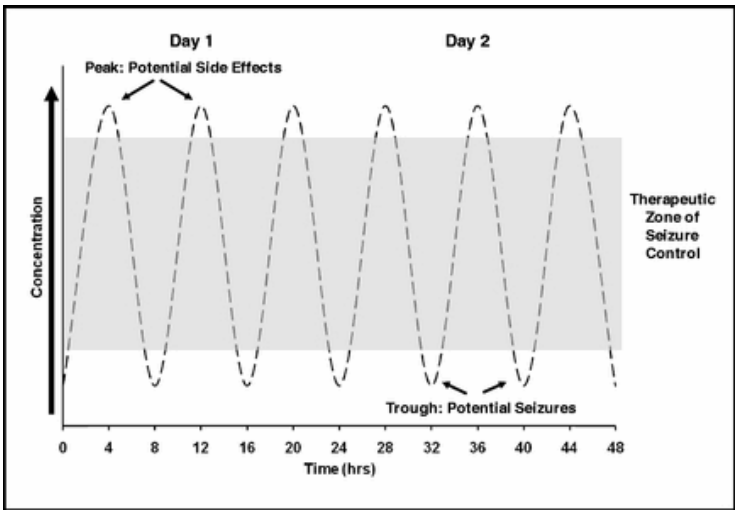
Compliance with drug treatment regimens is critically important to achieving effective therapy for patients with epilepsy where the consequences of non-compliance can be life threatening. Patient non-compliance with AED therapy is a serious issue and remains one of the most common causes of breakthrough seizures. Not only is taking all prescribed doses critical for epileptic patients, but the timing of when patients take their prescribed doses is also important. Typically, non-compliance is caused by frequent or multiple dosing, serious side effects, or a lack of tolerability. A 2002 survey undertaken by neurologists in the United States found that, at least once per month, 71% of patients with epilepsy forgot to take their AED, and it was evident that the chances of a patient missing a dose increased with the number of tablets prescribed.[(10)] Of patients that missed a dose, 45% reported a breakthrough seizure. Patients taking a larger number of tablets/capsules further increased their odds of having a breakthrough seizure after a missed dose by 43%. In addition, other studies have shown reduced rates in breakthrough seizures as a result of improved compliance with AED treatment regimens.

(10) Cramer, J.A., *The relationship between poor medication compliance and seizures*, published August 2002 in *Epilepsy & Behavior*.

- ***Immediate Release Products Have Serious Side Effects and Lack of Tolerability***

The FDA has recognized AEDs as being "critical dose drugs," drugs in which a comparatively small difference in dose or concentration may lead to serious therapeutic failures and/or serious side effects. Immediate release formulations of AEDs necessitate frequent administration to maintain appropriate drug concentrations. However, these immediate release formulations cause wide fluctuations of blood levels of the active drug during the day, with peak concentrations when the drug is released and potentially sub-therapeutic concentrations thereafter. At least one study has shown that complaints of side effects typically occur when blood levels exceed certain concentrations, particularly at high doses, and the risk of breakthrough seizures can occur when blood levels are below certain minimum effective levels, as indicated in the chart below.

Simulated Plasma Concentration-Time Curve at Steady State of Immediate Release Anti-Epileptic Drug Administered Over Two Days



Source: Pellock, JM et al, Epilepsy & Behavior 5 (2004), 302

- ***Generic Substitution Can Cause an Increase in Breakthrough Seizures***

Patients today are most typically switched from branded drugs to generics, or from one generic drug to another, mainly to reduce cost. In most states, unless a physician explicitly writes "dispense as written" or "no substitution," pharmacists can switch a patient to a lower-cost generic drug without the consent of either the patient or the physician. Epilepsy patients are particularly vulnerable to changes in their drugs. Slight variations in the blood concentrations of these drugs could lead to the occurrence of breakthrough seizures. Accordingly, despite existing regulatory criteria to ensure the bioequivalence of generic drugs, the "switch-back" rates of AEDs (that is, the frequency of an individual being returned to his or her previous branded product under a physician's guidance) is much higher than for many other drug products. For example, the rates of patients switching back from generics to branded drugs because of adverse events were found to be 20.8% to 44.1% for AEDs compared to 7.7% to 9.1% for non-AEDs.[(11)]

(11) J. LeLorier, *Clinical consequences of generic substitution of lamotrigine for patients with epilepsy*, published October 2008 in *Neurology*.

A number of epilepsy advocacy groups such as the Epilepsy Foundation, the American Academy of Neurology, the Centers for Medicare and Medicaid Services and several regulatory agencies around the world, including the UK National Institute for Health and Clinical Excellence (NICE), Sweden's Medical Products Agency (MPA) and other European agencies, have all acknowledged that AED generic substitutions for non-therapeutic reasons can be harmful and should either be limited or not permitted, and have issued guidelines, recommendations or taken affirmative steps to limit such substitutions. While we are not aware of any well-controlled studies conducted to establish unequivocal scientific evidence that generic substitutions cause increased incidence of breakthrough seizures, the FDA is currently considering stricter standards of bioequivalence for generics and its Pharmaceutical Science and Clinical Pharmacology Advisory Committee voted 11-2 that the current bioequivalence standards are insufficient for critical dose drugs such as AEDs.

- ***Physicians are Reluctant to Switch to New Chemical Entities***

In the epilepsy market, new chemical entities, or NCEs, generally lack the same appeal that would typically be associated with a new drug for other indications. Based on IMS Health prescription data from 1994 to 2005 for NCE launches for seizure disorders, such NCEs, on average, experienced slow market penetration characterized by a 0.58 to 1.1 market share point gain on an annual basis. We believe this is because physicians are often reluctant to change a stable patient's existing therapy and risk a breakthrough seizure in the patient. Despite the introduction of several NCEs over the past decade, a significant number of epileptic patients continue to lack reliable seizure control. Many NCEs continue to be associated with several side effects. Therefore, many older and existing drugs continue to be prescribed and their prescription levels have either been maintained since their peak or declined very slowly.

Benefits of Extended Release Products in the Epilepsy Market

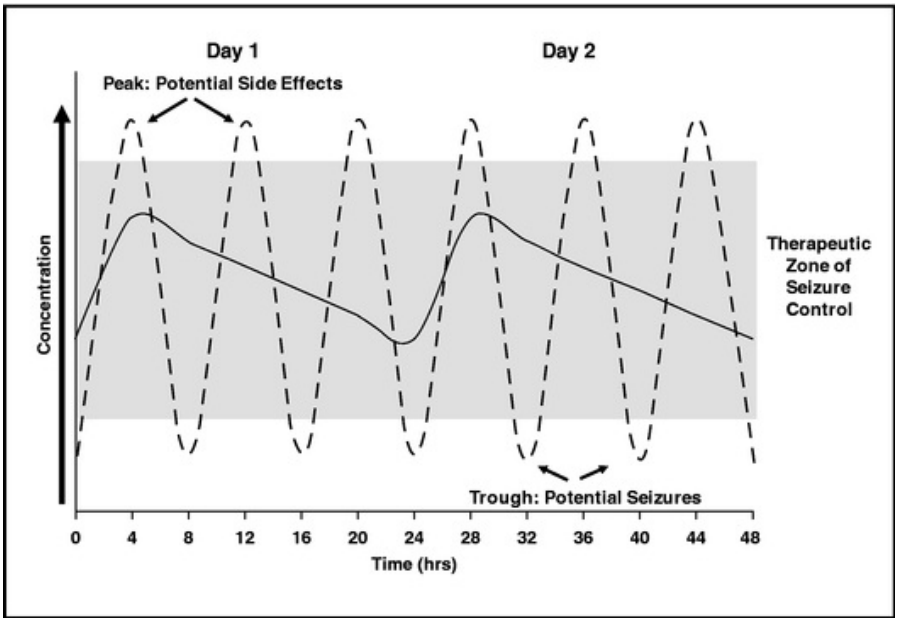
- ***Extended Release Products Improve Compliance and Reduce Breakthrough Seizures***

Achieving reliable seizure control for patients and avoiding the serious health and life dangers that can be associated with breakthrough seizures depends on patients being compliant and diligent in taking their medications. Frequent and multiple dosing, side effects and lack of tolerability of the immediate release products can significantly contribute to patients forgetting doses or skipping them. Even taking a second or third dose later than the scheduled time may place a patient at an increased risk of a breakthrough seizure because the drug level in the patient's blood could drop below the minimum effective therapeutic level that prevents such seizures. We believe increased patient compliance can be achieved with extended release products that offer once-daily dosing, reduced side effects and improved tolerability. We believe physicians understand that the release profiles of extended release products can produce more consistent and steadier blood levels as compared to immediate release products, resulting in fewer side effects and better tolerability that further help patients to be compliant, have fewer breakthrough seizures and, correspondingly, enjoy a better quality of life.

- ***Extended Release Products Reduce Side Effects and Improve Tolerability***

When extended release formulations are used appropriately, drug levels remain within the patient's therapeutic zone, thereby reducing patient exposure to fluctuating drug levels, which may exacerbate side effects or induce breakthrough seizures. Because extended release formulations can reduce peak concentrations, it may also be possible to adjust doses upward to a more efficacious level without exacerbating side effects associated with peak concentrations. Extended release formulations can also reduce the frequency and the extent of the troughs, or lower concentrations of the drug in the blood, thereby avoiding concentrations below the minimum effective concentrations that can increase the risk of breakthrough seizures.

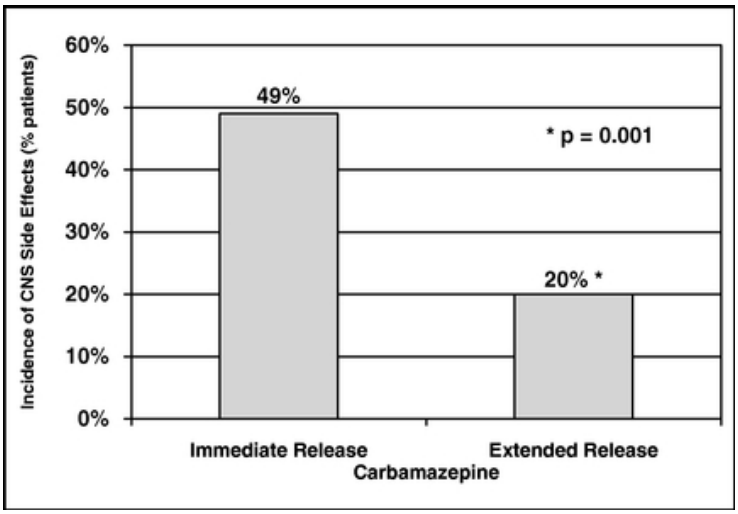
Simulated Plasma Concentration-Time Curve at Steady State of Immediate Release and Extended Release Anti-Epileptic Drug Administered Over Two Days



Source: Pellock, JM et al, Epilepsy & Behavior 5 (2004), 302

The enhanced safety profile of extended release products as compared to similar immediate release products has been supported by several studies. For example, in a 2004 published trial conducted by physicians at Johns Hopkins, Carbatrol, an anti-epileptic extended release carbamazepine product that uses our Microtrol technology, and Tegretol XR, another extended release carbamazepine product, demonstrated better tolerability and side effect profiles than comparable immediate release products. The trial reported that 49% of patients had side effects during treatment with immediate release carbamazepine such as sedation, double-vision, confusion, ataxia, dizziness or poor coordination, whereas with extended release carbamazepine treatments, only 20% of patients reported these side effects.

Reduction in CNS Side Effects Following Conversion to Carbamazepine Extended Release from Immediate Release Preparation



Source: Miller AD et al., Acta Neurol. Scand 2004: 109: 374-377

Equally as important, the patients in the trial tolerated high doses of extended release carbamazepine significantly better than high doses of immediate release carbamazepine. Specifically, 63% of patients treated with 1200 mg or more per day of immediate release carbamazepine developed side effects, yet only 12% of patients experienced side effects while taking similar doses of extended release carbamazepine. The investigators surmised that the improved tolerability of extended release carbamazepine at high doses may provide a treatment option for patients previously discontinuing immediate release carbamazepine because of dose-limiting side effects.

Other products where reductions in side effects were reported by patients when switching from immediate release to extended release formulations include Depakote ER (divalproex sodium extended release) and Keppra XR (levetiracetam extended release).

- ***Managed Care Does Not Limit Success of Extended Release Products***

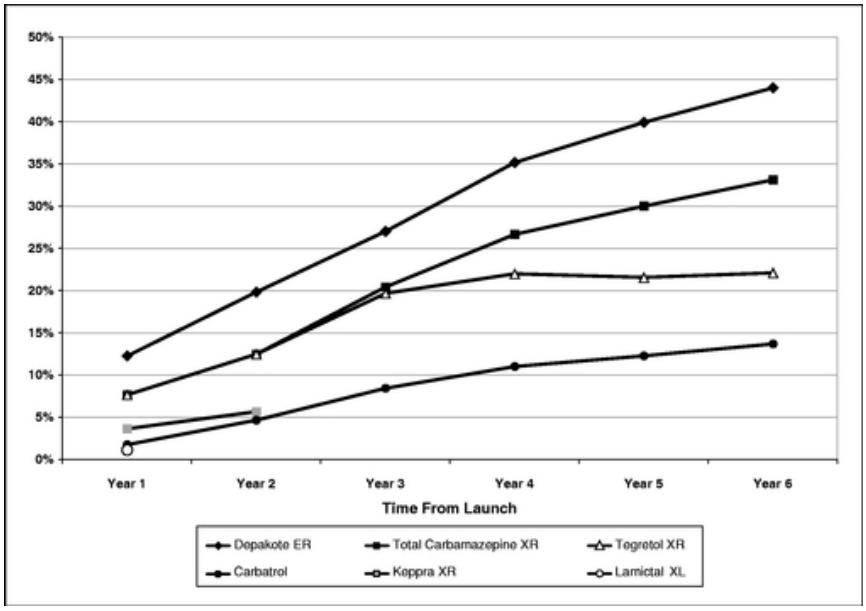
Given the serious nature of epilepsy and the key dynamics in the epilepsy market, we believe managed care plans acknowledge the important benefits of extended release AED products and, therefore, have not limited the success of such products even when lower cost generic immediate release products are available. For example, according to industry data, the recent launches of extended release products Keppra XR and Lamictal XL have enjoyed acceptance rates by managed care plans that are similar to those of the corresponding immediate release products. Most managed care plans also acknowledge the position of several patient advocacy groups and the American Academy of Neurology regarding the risks of generic substitution of AEDs, including potential for breakthrough seizures. Although switching to a low-cost generic AED may initially offer some cost savings, we believe they also recognize that the risk and cost of one breakthrough seizure outweighs the potential savings from generics. For example, the healthcare costs associated with the treatment of patients who experience breakthrough seizures, which may run in excess of $26,000 per patient on an annual basis, is significantly greater than any cost savings per patient that may be achieved through switching to a low-cost generic AED. According to a 2009 survey, the total healthcare costs for patients using branded topiramate products were approximately 20% lower than for patients using multiple generic topiramate products.[12]

(12) Duh, M.S., *The risks and costs of multiple-generic substitution of topiramate*, published June 2009 in *Neurology*.

- ***Extended Release Products Perform Well in the Market***

Extended release products have performed well in the epilepsy market, even in the face of immediate release generic products. Moreover, IMS Health prescription data for seizure disorder drugs from 1994 to 2005 shows that extended release products perform better than NCEs during the first five years of their launch. Currently, there are five extended release AEDs on the market (Tegretol XR, Carbatrol, Depakote ER, Lamictal XL, Keppra XR), and each of these products has gained significant market penetration as measured by the total prescriptions written for each specific molecule. For example, as reflected in the chart below, Depakote ER gained almost 40% of all divalproex prescriptions, including immediate release versions of Depakote and generic divalproex, in its fifth year after launch.

Comparison of Molecule Conversion of Extended Release Anti-Epilepsy Drugs
(measured as percentage of total prescriptions for each individual molecule)



Source: IMS Health

Our Late-Stage Neurology Portfolio

We are developing a promising epilepsy product portfolio consisting of SPN-538 and Epliga that utilize our proprietary technologies, Microtrol and Solutrol, respectively, each of which has been proven and validated through use in products that are currently on the market. Among them is Carbatrol, an AED that has been shown to reduce side effects compared to immediate release carbamazepine products. We believe that our 20 years of history and portfolio of technologies have enabled us to develop highly-customized product candidates that overcome challenges with the molecules' pharmacokinetic profiles. Our differentiated approach to product development and the strength of our technologies have allowed us to develop SPN-538 with what we believe to be a unique pharmacokinetic profile and to develop a once-daily formulation of oxcarbazepine with Epliga where others have failed.

SPN-538 and Epliga are novel extended release formulations of two well known and approved AEDs, topiramate and oxcarbazepine, respectively. Both product candidates are designed to offer epilepsy patients effective therapy, reduced side effects and improved compliance with once-per-day dosing. We believe that by delivering more consistent and steady maintenance of blood level

concentrations of topiramate and oxcarbazepine, our product candidates can reduce adverse side effects and improve tolerability of the drugs, which can improve compliance and enable patients to benefit from better seizure control and fewer breakthrough seizures as compared to similar immediate release products. Given that SPN-538 and Epliga are based on different drug compounds and different mechanisms of action, they would target different market segments and patient populations within the epilepsy market.

We filed the NDA for SPN-538 in January 2011 and currently expect to file the NDA for Epliga in the second half of 2011. The development and regulatory strategy for both products follows a Section 505(b)(2) pathway, which allows us to rely upon FDA's previous findings of safety and efficacy for two known and approved products, Topamax and Trileptal. Therefore, our NDAs are not required to have the same amount of safety or efficacy data as would be required in the case of an NCE, and each NDA could contain different types of clinical trials and clinical data.

SPN-538 (extended release topiramate)

Our most advanced product candidate is SPN-538, a novel oral once-daily extended release topiramate product for the treatment of epilepsy. We filed the NDA for this product candidate in January 2011. We have completed ten clinical trials in support of our NDA. SPN-538 delivers topiramate, one of the most effective AEDs, which is marketed by Johnson & Johnson under the brand name Topamax and is also available in a generic form. Topiramate is currently available only in immediate release form and is indicated for monotherapy and adjunctive therapy of epilepsy and for the treatment of migraine. Topamax reached peak worldwide sales of $2.7 billion in 2008, before generic products entered the U.S. market in March 2009.[13] With approximately 9.1 million total topiramate prescriptions in 2009, topiramate continues to represent a significant portion of prescriptions with approximately 8.7% of total prescriptions, according to data from IMS Health. Topiramate is believed to work in epilepsy through various mechanisms. It enhances the inhibitory effect of the GABA (Gamma-Aminobutyric Acid) neurotransmitter that regulates neuronal excitability throughout the nervous system, blocks the excitatory effect of the glutamate neurotransmitter, blocks the sodium channel and inhibits the carbonic anhydrase enzyme. The side effects associated with taking topiramate, which have tended to limit its use, include, among others, dizziness, fatigue, somnolence and slowing of certain cognitive functions. We believe that this creates an opportunity for us to offer patients SPN-538 as an alternative therapy to immediate release topiramate with an improved once-per-day profile.

(13) Based on sales data as reported in Johnson & Johnson's Annual Report on Form 10-K for the fiscal year ended January 3, 2010.

SPN-538 is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release products that are taken multiple times per day. SPN-538's pharmacokinetic profile delivers lower peak plasma concentrations and lower input rate over an extended time period resulting in smoother and more consistent blood levels of topiramate during the day compared to immediate release Topamax. We believe such a profile avoids blood level fluctuations that are typically associated with many of the side effects or breakthrough seizures that patients can suffer when taking immediate release products. These side effects can lead patients to skipping doses, and such non-compliance, which could place them at higher risk for breakthrough seizures.

SPN-538 Development Program

We have completed ten clinical trials, including bioequivalence trials, in support of our NDA for SPN-538, which we filed in January 2011. We are pursuing a Section 505(b)(2) regulatory strategy, which would allow us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Topamax. The various clinical trials conducted on SPN-538 were designed to select the best extended release once-per-day formulation that delivers equivalent levels of topiramate compared to

the immediate release twice-per-day Topamax product, as well as to test the robustness and consistency of our technology in delivering the once-per-day formulation across a full range of product strengths. We also have scaled up production of the product candidate at our commercial contract manufacturing facility and have conducted studies that confirm that the commercial scale product is bio-equivalent to the clinical product that was initially developed at our research laboratories.

Commercialization Strategy

If we are successful in obtaining regulatory approval, we believe that SPN-538 will be the first once-daily topiramate product approved for the monotherapy and adjunct therapy of epilepsy. We believe that SPN-538 could, over time, capture a significant share of the topiramate prescriptions, consistent with the performance of similar extended release products that have been introduced in the U.S. epilepsy market over the past 15 years. Upon the launch of SPN-538, we plan to build a small specialty sales force primarily targeting neurologists to promote the use of SPN-538 in epilepsy in the United States. This physician group is responsible for a substantial portion of the prescriptions for the treatment of epilepsy and, accordingly, provides an attractive, focused market opportunity for us.

Epliga (extended release oxcarbazepine)

Our second late-stage product candidate, Epliga, is a novel oral once-daily extended release formulation of oxcarbazepine and is currently in a Phase III clinical trial for the treatment of epilepsy. We currently anticipate having data from the Phase III trial available early in 2011, and expect to file an NDA in the second half of 2011. To date, we have conducted eight clinical trials to support the filing of an NDA.

Epliga delivers oxcarbazepine, another effective AED, which is marketed by Novartis under the brand name Trileptal and is available in a generic form. Trileptal was initially developed and approved in the United States in 2000. Trileptal is indicated for monotherapy and adjunctive therapy of epilepsy. It reached peak worldwide sales of $721 million in 2006, before generic products entered the U.S. market in October 2007.[(14)] With approximately 3.3 million total oxcarbazepine prescriptions in 2009, oxcarbazepine represents a portion of prescription of prescriptions with approximately 3.2% of total prescriptions, according to data from IMS Health. Oxcarbazepine is an active voltage-dependent sodium channel blocker that, despite its effectiveness in treating epilepsy, is associated with many side effects that tend to limit its use. The side effects associated with taking oxcarbazepine include, among others, dizziness, double vision, somnolence, nausea and vomiting. Epliga has been designed to reduce side effects, resulting in improved patient compliance and tolerability.

(14) Based on sales data as reported in Novartis AG's Annual Report on Form 20-F for the fiscal year ended December 31, 2006 and in a media release issued by Novartis International AG on January 21, 2008.

With its novel pharmacokinetic profile that delivers lower peak plasma concentrations, slower rate of input and smoother and more consistent blood levels compared to immediate release products such as Trileptal, we believe Epliga has the potential of improving the tolerability of oxcarbazepine by reducing the side effects experienced by patients. This could enable more patients to effectively tolerate higher doses of oxcarbazepine, which would permit them to benefit from the resulting efficacy and greater seizure control that have been previously reported in patients at higher doses. In addition, Epliga's once-per-day dosing is designed to improve patient compliance compared to the current immediate release products that are taken multiple times per day.

Epliga Development Program

We have completed eight clinical trials, including bioequivalence trials, to support filing the NDA in the second half of 2011. We are pursuing a Section 505(b)(2) regulatory strategy, which would allow us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Trileptal. The various clinical trials conducted on Epliga were designed to select the best extended release

once-per-day formulation that delivers equivalent levels of oxcarbazepine compared to immediate release twice-per-day Trileptal, as well as to test the robustness and consistency of our technology in delivering the once-per-day formulation across a full range of product strengths. We also have scaled up our production of the product candidate at our commercial contract manufacturing facility, which has produced clinical supplies to conduct our Phase III trial.

In our pilot clinical trial in 32 healthy subjects, Epliga demonstrated a superior adverse event profile when compared to the immediate release oxcarbazepine therapy Trileptal. In this trial, a single center, open-label, randomized, two-way crossover, two-sequence trial, we compared multiple dose administration of Epliga tablets and Trileptal tablets in 32 healthy adult volunteers under fasting conditions. While the steady-state crossover comparison trial was designed to evaluate the steady-state bioavailability of the different formulations of oral oxcarbazepine at 1200 mg doses, the trial also assessed the safety and tolerability of repeat oral dosing of Epliga tablets in healthy subjects at 1200 mg in comparison to Trileptal.

In this trial, the adverse events in the trial were observed in 30 healthy subjects using a total daily dose of 1200 mg of each of Trileptal and Epliga. There were 190 total adverse events reported for Trileptal, while Epliga generated a total of only 120 adverse events, a reduction of 37%. Of these, a total of 197 adverse events were considered by the principal investigator to be possibly drug related: 131 for Trileptal and 66 for Epliga. More specifically, Trileptal demonstrated a 36.7% occurrence rate of dizziness as compared to Epliga which demonstrated a 0.0% occurrence rate in our trial. In other trials, Epliga demonstrated higher occurrence rates of dizziness. The results from these trials and the pilot clinical trial are preliminary and based on small populations, and may not be predictive of the results in the pivotal Phase III trial.

In the pivotal Phase III trial for Trileptal, refractory patients had increasing reductions in seizures as dose levels increased, including 50% median reduction in seizures at the highest dose of 2400 mg. Of those subjects at 2400 mg, 22% of the subjects were seizure free at the highest dose of 2400 mg. However, Trileptal is not without a host of side effects at the highest doses, which result in many subjects discontinuing treatment. Accordingly, while 22% of subjects were seizure-free during the pivotal trial for Trileptal at the highest dose of 2400 mg, approximately three-quarters of subjects at the highest dose discontinued their participation in the trial, largely because of the adverse events associated with the drug.

We have discussed our Phase III trial for Epliga with the FDA in the form of a Special Protocol Assessment, or SPA. The Phase III protocol will assess the safety and effectiveness of Epliga as an adjunctive therapy in patients with a diagnosis of simple partial seizures and complex partial seizures with or without secondarily generalized seizures as confirmed by the 1981 and 1989 International League Against Epilepsy Classifications. We met with the FDA in July 2008 regarding the Phase III protocol. We revised the clinical protocol to address the FDA's comments and submitted a protocol amendment to the FDA in October 2008. We have not had any further discussions with the FDA relating to trial design after we submitted the amended protocol. Epilepsy can be broadly characterized into partial and generalized seizures. Partial seizures occur in a specific location of the brain, affecting the physical or mental activity controlled by that particular area of the brain, whereas generalized seizures occur throughout both hemispheres of the brain at once. Partial seizures may be further subdivided into both simple and complex seizures. This refers to the effect of such a seizure on consciousness; simple seizures cause no interruption to consciousness (although they may cause sensory distortions or other sensations), whereas complex seizures interrupt consciousness to varying degrees.

The Phase III trial is a multi-center, multiple-dose, randomized (1:1:1 ratio), double-blind, placebo-controlled, three-arm, parallel group trial in male and female subjects (18 to 65 years of age, inclusive) with refractory partial epilepsy on at least one and up to three concomitant AEDs. Enrollment in the trial has been completed with a total of 369 patients enrolled across 95 sites and 8 different countries

in North America and Europe. Patients will be randomized to one of three treatment groups and will take Epliga (1200 mg/day or 2400 mg/day) or placebo.

The primary objective of the trial is to evaluate the efficacy of Epliga as an adjunctive therapy in the treatment of seizures of partial origin in adults with refractory epilepsy on at least one and up to three other AEDs. The secondary objectives are:

- To assess the safety and tolerability of adjunctive Epliga in the treatment of seizures of partial origin in subjects with refractory epilepsy on at least one and up to three other AEDs;
- To assess the effect of Epliga on the subject's global impression of change in his/her epilepsy status;
- To assess the effect of Epliga on quality of life as assessed by the Quality of Life in Epilepsy Inventory-31, which is a measurement tool of the overall impact of an AED on a patient; and
- To assess secondarily generalized seizures for each treatment group.

We expect top-line data from this trial to be available in the first quarter of 2011 and, based on such data, to file the NDA in the second half of 2011.

Commercialization Strategy

If we are successful in obtaining regulatory approval, we expect Epliga to be the only once-daily oxcarbazepine product indicated for the treatment of epilepsy and to compete against the existing immediate release oxcarbazepine products on the market. We believe that Epliga could, over time, capture a significant share of the oxcarbazepine prescription market, consistent with the performance of similar extended release products that have been introduced in the U.S. epilepsy market over the past 15 years. To support the commercial launch of Epliga, we plan to further expand our U.S. specialty sales force in epilepsy to promote both SPN-538 and Epliga.

ADHD

Overview

ADHD is a common CNS disorder characterized by developmentally inappropriate levels of inattention, hyperactivity, and impulsivity. ADHD affects an estimated 6% to 9% of all school-age children and 3% to 5% of adults in the United States.[15] An estimated 60% to 80% of children with ADHD continue to meet criteria for ADHD into adolescence.[16] In 2008, the U.S. market for ADHD prescription drugs was more than $4 billion, according to data from IMS Health.

Diagnosis of ADHD requires a comprehensive clinical evaluation based on identifying patients who exhibit the core symptoms of inattention, hyperactivity, and impulsivity. Generally, behavior is sufficiently severe and persistent to cause functional impairment. Although many children may be inattentive, hyperactive or impulsive, the level of severity and degree of functional impairment, as well as considerations of what may be behind the underlying symptoms, determine which children meet the diagnosis and are treated for ADHD. It is estimated that the annual societal cost of illness for ADHD is more than $36 billion.[17]

(15) Dopheide, J.A., *Attention-Deficit-Hyperactivity Disorder: An Update*, published June 2009 in *Pharmacotherapy*.

(16) Floet, A.M.W., *Attention-Deficit/Hyperactivity Disorder*, published February 2010 in *Pediatrics in Review*.

(17) Pelham, W.E., *The Economic Impact of Attention-Deficit/Hyperactivity Disorder in Children and Adolescents*, published July 2007 in *Journal of Pediatric Psychology*.

Current Treatment Options

Since Ritalin was introduced, stimulant therapies have grown to become the most common form of treatment for ADHD. Studies indicate that approximately 80% of ADHD patients respond to stimulants.(18) A key difference between older and newer oral stimulants is the duration of action. Most of the older stimulants, representing approximately 35% of total oral stimulant prescriptions based on IMS Health data, are immediate release products that last approximately four hours, requiring multiple administrations throughout the day. In contrast, most of the recently launched products, representing approximately 65% of total oral stimulant prescriptions based on IMS Health data, are extended release formulations that last up to twelve hours or more.

(18) Swanson, J.M., *Attention-deficit hyperactivity disorder and hyperkinetic disorder*, published February 1998 in *The Lancet* and Budur, K., *Non-Stimulant Treatment for Attention Deficit Hyperactivity Disorder*, published July 2005 in *Psychiatry*.

While stimulant treatments calm and improve the concentration of ADHD patients, these drugs have been shown to have various side effects including loss of appetite, insomnia and, to a lesser degree, cardiovascular effects. Stimulant treatments are controlled substances and can be associated with social stigma and the potential for abuse. Approximately 30% of patients with ADHD are non-responsive to or non-tolerant of treatment with stimulants.(19) Non-stimulants offer physicians an alternative ADHD therapy, including for patients who have coexisting conditions, such as conduct disorder, major depressive disorder, or bipolar disorder, that are contraindicated for stimulant use based on the risk for stimulant abuse.

(19) Wigal, S.B., *Efficacy and Safety Limitations of Attention-Deficit Hyperactivity Disorder Pharmacotherapy in Children and Adults*, published August 2009 in *CNS Drugs* and Budur, K., *Non-Stimulant Treatment for Attention Deficit Hyperactivity Disorder*, published July 2005 in *Psychiatry*.

Coexisting Conditions

Studies show that as many as 67% of children who have ADHD may have coexisting conditions such as oppositional defiant disorder, conduct disorder, anxiety disorder and depression.(20) In addition, it has been estimated that approximately 25% of children with ADHD also exhibit persistent conduct problems, such as impulsive aggression.(21) Untreated, these serious conduct problems can place patients at risk of persistent aggressive and anti-social behavior, such as knowingly destroying property, physically attacking people and bullying. These patients also face an increased risk of suicidal behavior, and are at high risk of entering the juvenile justice system and developing substance abuse problems later in adulthood.

(20) Floet, A.M.W., *Attention-Deficit/Hyperactivity Disorder*, published February 2010 in *Pediatrics in Review*.

(21) Jensen, P.S., *Consensus Report on Impulsive Aggression as a Symptom Across Diagnostic Categories in Child Psychiatry: Implications for Medication Studies*, published March 2007 in *Journal of the American Academy of Child and Adolescent Psychiatry*.

Aggression is usually divided into two subtypes: predatory (i.e., "cold") aggression, which can be described as goal-oriented, controlled and/or planned, and impulsive or affective ("hot") aggression, which can be described as reactive, unplanned and/or uncontrolled. Patients with ADHD who exhibit aggression commonly demonstrate the "hot," or impulsive, type of aggression. For these patients, this "hot" aggression is generally recurrent, occurs outside of a justifiable social context, has intensity, frequency, duration or severity that is disproportionate to its triggers and causes distress and impairment to the patient. Impulsive aggression represents a broad category of maladaptive, aggressive behaviors that can complicate the management of ADHD, autism, bipolar disorder, post-traumatic stress disorder and other psychiatric disorders.

Current Treatments for Impulsive Aggression in Patients with ADHD

Currently, there are no approved medications for treating impulsive aggression in patients with ADHD. The current treatment options for impulsive aggression in patients with ADHD include psychosocial interventions, such as school- or family-based behavioral therapies, which are usually not wholly effective. In the large, multisite Multimodal Treatment Study of Children with ADHD,[22] a seminal clinical trial designed by experts from key stakeholder communities such as the National Institute of Mental Health, researchers observed that after 14 months of either ADHD medication-only or a regimen that combined ADHD medication with behavioral interventions, 44% of those children with ADHD (or 26% of the total sample size in the trial) who exhibited initial aggression still had what can be described as impulsive aggression at the end of the trial, demonstrating that psychosocial interventions may not work for a large percentage of children with ADHD who exhibit aggressive behaviors.

(22) The MTA Cooperative Group, *A 14-month randomized clinical trial of treatment strategies for attention-deficit/hyperactivity disorder*, published December 1999 in *Archives of General Psychiatry.*

In response, doctors have also tried to address this group with off-label use of prescription medicines, such as mood stabilizers, stimulants and anti-psychotic drugs. Results have varied, but anti-psychotic drugs appear to have the best therapeutic potential. Unfortunately, many of these agents are associated with adverse effects including obesity, lipid abnormalities, and diabetes, which is of particular concern when treating pediatric populations.

Our Psychiatry Portfolio

Our psychiatry portfolio includes three product candidates for the treatment of ADHD or its coexisting conditions and one product candidate for depression, each of which is designed to bring important advancements in therapy.

SPN-810 (molindone hydrochloride)

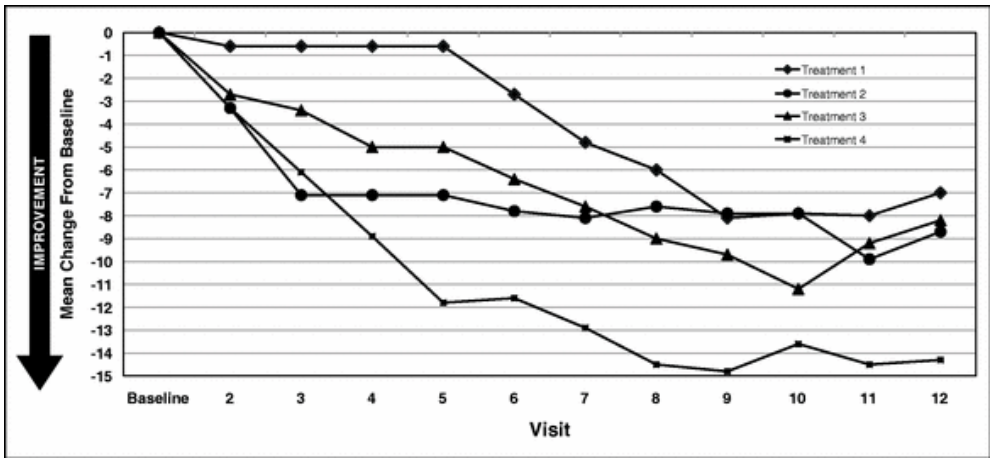
We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need.

We are studying SPN-810, which contains molindone hydrochloride, as a treatment of impulsive aggression in patients with ADHD. Molindone hydrochloride was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. Molindone hydrochloride is unusual among anti-psychotics in that it is not associated with weight gain. In addition, we believe the lower doses tested for the proposed indication of impulsive aggression should be more easily tolerated than the higher doses approved to treat schizophrenia. SPN-810's low potential to cause weight gain leads us to believe that SPN-810 could be an attractive candidate among the anti-psychotic drugs for the effective treatment of impulsive aggression in patients with ADHD. Although initially we are developing SPN-810 as a treatment of impulsive aggression, if we are successful in demonstrating the effectiveness of SPN-810 for the treatment of impulsive aggresion in patients with ADHD, we may then look to develop the product candidate for the treatment of other patient populations that have impulsive aggression, such as autism and bipolar disorder.

SPN-810 Development Program

We have completed four clinical trials for SPN-810, including a Phase IIa trial in which we tested the safety and tolerability of SPN-810, immediate release molindone hydrochloride, in patients with ADHD who suffer from serious persistent conduct problems. This open-label, dose-ranging trial randomized 78 children, 6-12 years of age, into one of four treatment groups, which were given four different doses of immediate release molindone hydrochloride, between 10 mg and 40 mg per day, depending on weight, three times a day over a six-week treatment period, after 2-5 weeks of titration. SPN-810 was well tolerated in the trial, with no clinically meaningful changes in standard hematology, clinical chemistry values, vital signs or electrocardiogram (ECG) results.

Besides safety and tolerability assessments, the primary outcome measure was the change in the Nisonger Child Behavior Rating Form-Typical Intelligence Quotient (NCBRF-TIQ) conduct problem subscale scores from baseline to endpoint in the intent-to-treat (ITT) population. NCBRF-TIQ is a known instrument that has been used for assessing child and adolescent behavior. Scores improved after baseline in all treatment groups. By visit 12, after 6 weeks of treatment, the mean reduction from baseline for each treatment group was 7.0, 8.7, 8.2 and 14.3, in groups 1, 2, 3, and 4, respectively, representing decreases of 34%, 34%, 32% and 55%, respectively. In addition, the difference between group 1 and group 4 was statistically significant ($p \leq 0.041$) at all time points except visit 2 and the greatest improvement in scores on the NCBRF-TIQ conduct problem subscale was seen in group 4, which was the highest-dose group (14.8 mean reduction). The below chart summarizes the mean change in NCBRF-TIQ conduct problem subscale observed in our Phase IIa trial.



NCBRF-TIQ Conduct Problem Subscale:
Mean Change from Baseline in ITT Population

Secondary outcomes included changes in other ADHD and conduct problem scales, as described in the table below. SPN-810 demonstrated improved scores over time in all treatment groups, with more marked improvements in higher-dose groups than in lower-dose groups as set out in greater detail in the table below.

% Improvement from Baseline to Last Visit,
Secondary Outcome Measures (ITT Population)

	Treatment Groups			
Outcome Measure	Group 1 n=20	Group 2 n=19	Group 3 n=19	Group 4 n=20
CGI-S				
% Improvement	23%	21%	27%	36%
SNAP-IV Subscales				
ADHD Inattention				
% Improvement	24%	31%	34%	39%
ADHD Hyperactivity/Impulsivity				
% Improvement	28%	27%	28%	41%
ADHD-Combined				
% Improvement	26%	29%	31%	40%
ODD				
% Improvement	34%	33%	28%	51%

CGI-S=Clinical Global Impression-Severity Scale, an assessment tool to rate the severity of the condition; ODD=Oppositional Defiant Disorder, a coexisting condition of ADHD; SNAP-IV=Swanson, Nolan and Pelham Questionnaire, a commonly used scale to measure ADHD.

We expect to test SPN-810 in another Phase II trial in 2011. The design and protocol of the trial have not been finalized but we expect to conduct a multicenter, randomized, double-blind, placebo-controlled trial in pediatric subjects 6 to 12 years of age with impulsive aggression in ADHD. The primary objective will be to assess the effectiveness of SPN-810 in reducing impulsive aggression after at least three weeks of treatment. Secondary objectives are likely to include measurement of the effectiveness of SPN-810 on Clinical Global Impression and ADHD scales as well as evaluation of the safety and tolerability of the drug. In addition, we will be exploring the potential added advantages of an extended-release formulation, such as greater compliance and, therefore, effectiveness in school-age children and lower unwanted side effects or interpatient variability.

SPN-812

We are developing SPN-812, which is currently in Phase II, as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. The active ingredient in SPN-812 has an extensive safety record in Europe, where it was previously marketed for many years as an antidepressant. SPN-812 has not been developed and marketed in the United States and, therefore, it would be considered and reviewed by the FDA as a new chemical entity.

SPN-812 would provide an additional option to the few non-stimulant therapies currently available. We believe that SPN-812 could be more effective than other non-stimulant therapies due to its

different pharmacological profile. Due to its demonstrated efficacy as an antidepressant, SPN-812 may exhibit increased benefit in up to an estimated 40% of ADHD patients who also suffer from major depression.[23] We are developing an intellectual property position around the novel synthesis process for this product candidate, its novel use in ADHD and its novel delivery with extended release.

(23) Biederman, J., *New Insights Into the Comorbidity Between ADHD and Major Depression in Adolescent and Young Adult Females*, published in April 2008 in *Journal of the American Academy of Child and Adolescent Psychiatry* and Report of CME Institute of Physicians Postgraduate Press, Inc., published in August 2008 in *Journal of Clinical Psychiatry*.

SPN-812 Development Program

We initiated a proof-of-concept Phase IIa trial in mid-2010, and we expect to get the results of this trial in the first quarter of 2011. The trial is a randomized, double-blind, placebo-controlled trial in approximately 50 adults with a current diagnosis of ADHD (approximately 25 subjects per treatment group). The subjects in the active arm will be administered SPN-812 at a single dose level three times a day over five weeks, after a one-week titration phase. The primary endpoint is the safety of SPN-812 and the secondary endpoints include, among others, the efficacy of SPN-812 as measured by Total ADHD Symptom Score on the Conners' Adult ADHD Rating Scale, a commonly-used measurement for ADHD in adults, as rated by each of the investigators and the subjects, and the effectiveness of SPN-812 when compared to placebo as determined by changes in the Clinical Global Impressions—Improvement score. Depending on the results of this Phase IIa trial, we expect to focus on potentially developing an extended release formulation and to commence a Phase IIb trial.

SPN-809

We are developing SPN-809 as a novel once-daily product candidate for the treatment of depression. SPN-809 is based on the same active ingredient as our SPN-812 product candidate. We currently have an open IND for SPN-809 as a treatment of depression, the indication for which the active ingredient in SPN-809 was approved and marketed in Europe for many years. Depression is a serious and common disease affecting approximately 121 million people worldwide.[24] Based on IMS Health data, the worldwide market for antidepressants is approximately $12 billion.

(24) World Health Organization, *Epilepsy: aetiogy, epidemiology and prognosis*, Fact Sheet No. 165, revised February 2001.

SPN-809 is a norepinepherine reuptake inhibitor that represents an opportunity to offer a differentiated treatment option for patients suffering from depression in the United States. Initial market research suggests that psychiatrists would like to have such a once-daily option at their disposal to treat various patients. Because SPN-809 contains the same active ingredient as SPN-812, we expect that many of our activities related to the development of SPN-812 will also benefit the development of SPN-809.

Other Product Candidates

We have additional product candidates in various stages of early development that cover a range of CNS disorders.

Our Proprietary Technology Platforms

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and enable the treatment of new indications. Our key proprietary technology platforms include: Microtrol, Solutrol and EnSoTrol. These technologies create customized product profiles designed to meet efficacy needs, more convenient and less frequent dosing, enhanced patient compliance, and improved tolerability in certain specific applications. Our broad portfolio of technologies and extensive expertise in this area, which have been built over the past 20 years, enable us to develop products that are technically difficult to formulate or by design are made

harder to be copied by others. We have employed our technologies in the development of our legacy products, as well as our current product portfolio.

Microtrol (multiparticulate delivery platform)

Microtrol is based on the use of coated and uncoated multi-particulates that can be filled into capsules, administered as a sprinkle, or compressed into tablets as varying ratios to achieve customized release profiles. The following approved and marketed products incorporate our Microtrol technology:

- Sanctura XR (trospium chloride), a treatment for overactive bladder;
- Oracea (doxycycline), a treatment for inflammatory lesions of rosacea;
- Carbatrol (carbamazepine), an anti-epilepsy treatment;
- Equetro (carbamazepine), a treatment for bipolar disorder; and
- Adderall XR (mixed amphetamine salts), a stimulant ADHD treatment.

We do not expect the above products to contribute to our future cash. Carbatrol, Equetro and Adderall XR are legacy products that were developed by us when we were formerly Shire Laboratories. In addition, in April 2008, we monetized the revenues underlying the future royalty streams relating to Sanctura XR and Oracea by transferring certain of our royalty payment rights and other license rights for such products to TCD Royalty Sub LLC, our wholly-owned subsidiary, in exchange for $63 million. We primarily reinvested the proceeds from this transaction into our research and development activities.

Solutrol (matrix delivery platform)

Solutrol is a matrix delivery system that can deliver poorly soluble, highly soluble, and pH dependent compounds in a reproducible and complete manner. Solutrol has been incorporated into Intuniv (guanfacine), a nonstimulant ADHD treatment, which is currently licensed to and marketed by Shire plc. In April 2009, this license became fully paid up when we sold to Shire the right to receive royalties and milestone payments owed to us for $36.9 million, which we primarily reinvested into our research and development activities.

EnSoTrol (osmotic delivery system)

EnSoTrol is comprised of a solubility enabled core and other agents surrounded by a semi-permeable membrane with a laser-drilled hole. When EnSoTrol is introduced to the contents of the gastrointestinal tract, it will induce solubilization of the core contents via fluid intake across the membrane coating. The solubilized core contents are then released through the laser-drilled hole along the osmotic gradient, thus yielding a surface-area controlled constant release profile. EnSoTrol has been tested in several clinical trials, including a Phase III trial currently being conducted by United Therapeutics Corporation, or United Therapeutics for an oral formulation of treprostinil diethanolamine, or treprostinil.

In June 2006, we entered into a license agreement with United Therapeutics for the worldwide development and commercialization of an oral formulation of treprostinil, which utilizes EnSoTrol for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. Under the terms of the license agreement, we have received pre-commercial milestone payments of $750,000. Remaining milestone payments to us could total up to $6.8 million, which includes pre-commercial milestone payments of up to approximately $2.8 million for the satisfaction of development milestones relating to the treatment of PAH and up to $4.0 million for the development of each additional product that combines a form of oral treprostinil that utilizes our technologies with another drug compound. If United Therapeutics receives approval to market and sell an oral formulation of treprostinil, we will be

entitled to receive royalties in the single digits based on net sales worldwide. Our license agreement with United Therapeutics will expire, on a country-by-country and product-by-product basis, 12.5 years from the first commercial sale of each product in such country. United Therapeutics may terminate, at its option, the agreement for a technical, strategic or market-related cause after giving us a reasonable opportunity to cure. We may terminate the agreement if, after having launched a product in a country, United Therapeutics or its sublicensee discontinues the sale of such product for a prolonged period of time for reasons unrelated to force majeure, regulatory or safety issues. In addition, either party may terminate the agreement for the material, uncured breach by the other party and in certain events of bankruptcy or insolvency of the other party.

Other Technologies

We also have proprietary techniques for identifying lead molecules and optimizing their oral delivery consisting of ProScreen, ProPhile and OptiScreen technologies. ProScreen is a predictive screen for lead candidates that warrant oral delivery. ProPhile is a suite of in silico modeling tools that enables multivariate analysis and pharmacokinetic prediction. OptiScreen is a technology for formulation optimization including solubility or permeability enhancement leading to oral bioavailability improvement. We believe that this suite of technologies enables us to optimize the delivery and the development of existing chemical entities and marketed products.

Sales and Marketing

We are preparing the build-out of our commercial infrastructure to launch both SPN-538 and Epliga in the United States. Upon approval of SPN-538, we would hire a small specialty sales force, initially consisting of a limited number of field sales representatives to support the launch of the product. We would then seek to expand our sales force in connection with an approval and commercial launch of Epliga. Having two epilepsy products that can be promoted to the same physician audience would allow us to leverage our commercial infrastructure with these prescribers. Once we have obtained approval for any of our product candidates in our psychiatry portfolio, we anticipate adding additional sales force members who will be dedicated towards marketing our psychiatry products.

Manufacturing

We do not own or operate manufacturing facilities for the production of any of our product candidates beyond Phase II clinical trials, nor do we have plans to develop our own manufacturing operations for Phase III clinical materials or commercial products in the foreseeable future. We currently depend on third-party contract manufacturing organizations, or CMOs, for all of our required raw materials and drug substance for our preclinical research and clinical trials. We do not have any current contractual relationships for the commercial manufacture of any of our product candidates. For SPN-538 and Epliga, we currently rely on single suppliers for raw materials including drug substance and single manufacturers for the product candidates, and expect to rely on third-party suppliers and manufacturers for the final commercial products. We currently employ internal resources and as needed third-party consultants to manage our manufacturing contractors.

For our two most advanced product candidates, SPN-538 and Epliga, we are presently negotiating agreements with leading CMOs headquartered in North America for the manufacture of the final commercial products. These CMOs offer a comprehensive range of contract manufacturing and packaging services and have successfully handled the scale up of the two product candidates to a commercial production scale in preparation for the commercialization of both product candidates.

Competition

The biotechnology and pharmaceutical industries are highly competitive. A number of multinational pharmaceutical companies as well as large biotechnology companies are pursuing the development or are currently marketing pharmaceutical products in the anti-epilepsy and ADHD markets on which we are focusing.

Epilepsy

There are currently over 15 branded products, as well as their generic counterparts, on the U.S. market indicated to treat some form of epilepsy. Several NCEs are expected to enter the epilepsy market in the next few years. Based on IMS Health prescription data from 1994 to 2005 for NCE launches for seizure disorders, such NCEs, on average, experienced slow market penetration characterized by a 0.58 to 1.1 market share point gain on an annual basis. We believe this is because physicians are often reluctant to change a stable patient's existing therapy and risk a breakthrough seizure in their patients. If approved, SPN-538 (extended release topiramate) will compete with all immediate release topiramate products including Topamax and related generic products. We are aware that Upsher-Smith Laboratories announced the initiation of a Phase III clinical trial for an extended release topiramate product, which it has described as an internally developed program for the management of epilepsy in adults using its proprietary formulation technology. If this product candidate is approved by the FDA before SPN-538, then Upsher-Smith could obtain three years of marketing exclusivity, which would significantly delay our entry into the U.S. market. If approved, Epliga (extended release oxcarbazepine) will compete with all immediate release oxcarbazepine products including Trileptal and related generic products. We are not aware of any other company that is currently developing an extended release oxcarbazepine product in the United States. In addition, we believe that Epliga's once-daily formulation solves a drug delivery challenge specific to oxcarbazepine that must be overcome by all potential competitors. We are aware of companies who have modified-release oxcarbazepine products that are marketed outside of the United States but, to our knowledge, such products are not being pursued for the U.S. market. These modified-release oxcarbazepine products include Apydan, which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration.

ADHD

Competition in the U.S. ADHD market has increased with the launch of several products in recent years, including the launch of generic versions of branded drugs, such as Adderall XR. Shire plc is one of the leaders in the U.S. ADHD market with three products: Adderall XR, an extended release stimulant treatment designed to provide once-daily dosing; Vyvanse, a stimulant prodrug product launched in 2007; and Intuniv, a non-stimulant treatment launched in November 2009. Other stimulant products for the treatment of ADHD in the U.S. market include the following once-daily formulations: Concerta; Metadate CD; Ritalin LA; Focalin XR; and Daytrana. Other non-stimulants are Strattera and Clonicel. We are also aware of clinical development efforts by several large pharmaceutical companies including Shire plc, GlaxoSmithKline plc, Eisai Inc., AstraZeneca plc and Abbott Laboratories to develop additional treatment options for ADHD.

Intellectual Property and Exclusivity

Overview

We have been building and continue to build our intellectual property portfolio relating to our product candidates, including SPN-538 and Epliga. We seek patent protection, where appropriate, in the United States and internationally for our product candidates. Our policy is to actively seek to protect our proprietary position by, among other things, filing patent applications in the United States and abroad (including Europe, Canada and certain other countries when appropriate) relating to proprietary technologies that are important to the development of our business. We also rely on trade secrets, know-how, continuing technological innovation and in-licensing opportunities to develop and maintain our proprietary position. We cannot be sure that patents will be granted with respect to any of our pending patent applications or with respect to any patent applications filed by us in the future, nor can we be sure that any of our existing patents or any patents that may be granted to us in the future will be commercially useful in protecting our technology.

Our success will depend significantly on our ability to obtain and maintain patent and other proprietary protection for the technologies and products we consider important to our business, defend our patents, preserve the confidentiality of our trade secrets and operate our business without infringing the patents and proprietary rights of third parties.

We have established and continue to build proprietary positions for Epliga, SPN-538, our pipeline product candidates and technologies in the United States and abroad.

Patent Portfolio

Our Epliga patent portfolio currently includes one issued U.S. Patent, two pending U.S. continuation patent applications, and certain pending foreign patent applications that relate to the issued U.S. patent or pending U.S. non-provisional patent applications. The issued U.S. patent will expire in 2027. We own the issued patent and all of the pending applications.

In addition to the patents and patent applications relating to Epliga, we currently have one pending U.S. non-provisional patent application, two pending U.S. continuation patent applications and certain pending foreign counterpart patent applications in Europe, Canada and other countries, which are directed to SPN-538. The U.S. patent applications, if issued, could expire in 2027. We own all of these pending applications.

Our patent portfolio also contains patent applications relating to our other pipeline products. We have a pending U.S. non-provisional patent application and a pending international patent application relating to our SPN-810 product candidate. Patents, if issued, from the applications could have terms expiring in 2029. With regard to our SPN-812 product candidate we have a pending U.S. non-provisional patent application and a pending international patent application. The U.S. patent application, if issued as a patent, would expire in 2029.

The U.S. patent system permits the filing of provisional and non-provisional patent applications. A non-provisional patent application is examined by the U.S. Patent and Trademark Office, or USPTO, and can mature into a patent once the USPTO determines that the claimed invention meets the standards for patentability. A provisional patent application is not examined for patentability, and automatically expires 12 months after its filing date. As a result, a provisional patent application cannot mature into a patent. The requirements for filing a provisional patent application are not as strict as those for filing a non-provisional patent application. Provisional applications are often used, among other things, to establish an early filing date for a subsequent non-provisional patent application. The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. In most countries in which we file, the patent term is 20 years from the earliest date of filing a non-provisional patent application. In the United States, a patent's term may be lengthened by

patent term adjustment, or PTA, which compensates a patentee for administrative delays by the USPTO in granting a patent. In view of a recent court decision, the USPTO is under greater scrutiny regarding its calculations where the USPTO erred in calculating the patent term adjustment for the patents in question denying the patentee a portion of the patent term to which it was entitled. Alternatively, a patent's term may be shortened if a patent is terminally disclaimed over another patent.

The filing date of a non-provisional patent application is used by the USPTO to determine what information is prior art when it considers the patentability of a claimed invention. If certain requirements are satisfied, a non-provisional patent application can claim the benefit of the filing date of an earlier filed provisional patent application. As a result, the filing date accorded by the provisional patent application may supersede information that otherwise could preclude the patentability of an invention.

The term of a patent that covers an FDA-approved drug may also be eligible for patent term extension, or PTE, which permits patent term restoration as compensation for the patent term lost during the FDA regulatory review process. The Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, permits a PTE of up to five years beyond the expiration of the patent. The length of the PTE is related to the length of time the drug is under regulatory review. Patent extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval and only one patent applicable to an approved drug may be extended. Similar provisions are available in Europe and other foreign jurisdictions to extend the term of a patent that covers an approved drug. In the future, if and when our pharmaceutical products receive FDA or other regulatory approval, we may be able to apply for PTEs on patents covering those products. Depending upon the timing, duration and specifics of FDA approval of Epliga, SPN-538 and our other product candidates, one or more of our U.S. patents may be eligible for limited patent term restoration.

Other Intellectual Property Rights

We seek trademark protection in the United States and internationally where available and when appropriate. We have filed for trademark protection for several marks, which we use in connection with our pharmaceutical research and development collaborations as well as products. We are the owner of various U.S. federal trademark registrations (®) and registration applications (TM), including the following marks referred to in this prospectus pursuant to applicable U.S. intellectual property laws: "Supernus®," "Epliga®," "Microtrol®," "Solutrol®," "ProScreen®," "OptiScreen®," "ProPhile®" and the registered Supernus Pharmaceuticals logo.

From time to time, we may find it necessary or prudent to obtain licenses from third party intellectual property holders. Where licenses are readily available at reasonable cost, such licenses are considered a normal cost of doing business. In other instances, however, we may use the results of freedom-to-operate inquiries and internal analyses to guide our early-stage research away from areas where we are likely to encounter obstacles in the form of third party intellectual property. For example, where a third party holds relevant intellectual property and is a direct competitor, a license might not be available on commercially reasonable terms or available at all. We strive to identify potential third party intellectual property issues in the early stages of research of our research programs, in order to minimize the cost and disruption of resolving such issues.

To protect our competitive position, it may be necessary to enforce our patent rights through litigation against infringing third parties. Litigation to enforce our own patent rights is subject to uncertainties that cannot be quantified in advance. In the case of an adverse outcome in litigation, we could be prevented from commercializing a product or using certain aspects of our technology platforms as a result of patent infringement claims asserted against us. This could have a material adverse effect on our business. In addition, litigation involving our patents carries the risk that one or

more of our patents will be held invalid (in whole or in part, on a claim-by-claim basis) or held unenforceable. Such an adverse court ruling could allow third parties to commercialize products or use technologies that are similar to ours, and then compete directly with us, without payment to us. See "Risk Factors—If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business."

In-Licensing Arrangements

Afecta Pharmaceuticals, Inc.

We have entered into two license agreements with Afecta Pharmaceuticals, Inc., or Afecta, pursuant to which we obtained an exclusive option to evaluate Afecta's CNS pipeline and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810. Under the terms of the license agreements, we have paid Afecta $400,000 in license fees and milestone payments. If a product candidate is successfully developed and commercialized, we will be obligated to pay royalties to Afecta based on net sales worldwide in the low-single digits. Unless terminated by us or Afecta for material breach or bankruptcy, by Afecta for our discontinuation of development and commercialization activities, or by us for convenience, the license agreements will continue in full force and effect on a country-by-country basis until six months from the discontinuation of the commercial sale and collection of revenues for the Afecta product.

Rune Healthcare Limited

In June 2006, we entered into a purchase and sale agreement with Rune Healthcare Limited, or Rune, where we obtained the exclusive worldwide rights to a product concept from Rune for SPN-809. Under the terms of the agreement, we have paid Rune a £25,000 up-front fee. If we receive approval to market and sell any products based on the Rune product concept, we will be obligated to pay royalties to Rune based on net sales worldwide in the low-single digits. Unless terminated by us or Rune for material breach, by Rune for our discontinuation of development or commercialization activities relating to a product based on the Rune product concept, we will be obligated to pay royalties to Rune on a country-by-country basis until the earlier of (a) ten years from the date of first commercial sale of a product based on the Rune product concept or (b) the market entry in such country of any product utilizing the Rune product by any entity other than us, our affiliates or our licensees.

Confidential Information and Inventions Assignment Agreements

We require our employees, temporary employees and consultants to execute confidentiality agreements upon the commencement of employment, consulting or collaborative relationships with us. These agreements provide that all confidential information developed or made known during the course of the relationship with us be kept confidential and not disclosed to third parties except in specific circumstances. The agreements provide that all inventions resulting from work performed for us or relating to our business and conceived or completed by the individual during employment or assignment, as applicable, shall be our exclusive property to the extent permitted by applicable law.

We seek to protect our product candidates and our technologies through a combination of patents, trade secrets, proprietary know-how, FDA exclusivity and contractual restrictions on disclosure.

Government Regulation

Product Approval

Government authorities in the United States at the federal, state and local level, and other countries, extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, marketing, export and import of products such as those we are developing. Our product candidates, including SPN-538 and Epliga, must be approved by the FDA before they may legally be marketed in the United States.

U.S. Drug Development Process

In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, or FDCA, and implementing regulations. The process of obtaining regulatory approvals and ensuring compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process, or after approval, may subject an applicant to administrative or judicial sanctions. These sanctions could include the FDA's refusal to approve pending applications, withdrawal of an approval, a clinical hold, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties. The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of preclinical laboratory tests, animal studies and formulation studies according to Good Laboratory Practices regulations;
- submission to the FDA of an IND, which must become effective before human clinical trials may begin;
- performance of adequate and well-controlled human clinical trials according to Good Clinical Practices, or GCP, to establish the safety and efficacy of the proposed drug for its intended use;
- submission to the FDA of an NDA for a new drug;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current Good Manufacturing Practices, or cGMP; and
- FDA review and approval of the NDA.

The testing and approval process require substantial time, effort and financial resources and we cannot be certain that any approvals for our product candidates will be granted on a timely basis, if at all.

Once a pharmaceutical product candidate is identified for development, it enters the preclinical testing stage. Preclinical tests include laboratory evaluations of product chemistry, toxicity, formulation and stability, as well as animal studies. An IND sponsor must submit the results of the preclinical tests, together with manufacturing information, analytical data and any available clinical data or literature, to the FDA as part of the IND. The sponsor must also include a protocol detailing, among other things, the objectives of the initial clinical trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated if the initial clinical trial lends itself to an efficacy evaluation. Some preclinical testing may continue even after the IND is submitted. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA places the clinical trial on a clinical hold within that 30-day time period. In such a case, the IND sponsor and the FDA must resolve

any outstanding concerns before the clinical trial can begin. Clinical holds also may be imposed by the FDA at any time before or during trials due to safety concerns or non-compliance.

All clinical trials must be conducted under the supervision of one or more qualified investigators in accordance with GCP regulations. These regulations include the requirement that all research subjects provide informed consent. Further, an institutional review board, or IRB, must review and approve the plan for any clinical trial before it commences at any institution. An IRB considers, among other things, whether the risks to individuals participating in the trials are minimized and are reasonable in relation to anticipated benefits. The IRB also approves the information regarding the clinical trial and the consent form that must be provided to each clinical trial subject or his or her legal representative and must monitor the clinical trial until completed.

Once an IND is in effect, each new clinical protocol and any amendments to the protocol must be submitted to the IND for FDA review, and to the IRBs for approval. Protocols detail, among other things, the objectives of the clinical trial, dosing procedures, subject selection and exclusion criteria, and the parameters to be used to monitor subject safety.

Human clinical trials are typically conducted in three sequential phases that may overlap or be combined:

- *Phase I.* The product is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion. In the case of some products for severe or life-threatening diseases, especially when the product may be too inherently toxic to ethically administer to healthy volunteers, the initial human testing may be conducted in patients.

- *Phase II.* Phase II trials involve investigations in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage and schedule.

- *Phase III.* Clinical trials are undertaken to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical trial sites. These trials are intended to establish the overall risk/benefit ratio of the product and provide an adequate basis for regulatory approval and product labeling.

Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and safety reports must be submitted to the FDA and the investigators for serious and unexpected side effects. Phase I, Phase II and Phase III testing may not be completed successfully within any specified period, if at all. The FDA or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients.

Concurrent with clinical trials, companies usually complete additional animal studies and must also develop additional information about the chemistry and physical characteristics of the product and finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other things, the manufacturer must develop methods for testing the identity, strength, quality and purity of the final product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the product candidate does not undergo unacceptable deterioration over its shelf life.

U.S. Review and Approval Processes

The results of product development, preclinical studies and clinical trials, along with descriptions of the manufacturing process, analytical tests conducted on the drug, proposed labeling and other relevant information, are submitted to the FDA as part of an NDA for a new drug, requesting approval to market the product.

As an alternate path to FDA approval, particularly for modifications to drug products previously approved by the FDA, an applicant may submit an NDA under Section 505(b)(2) of the FDCA. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and effectiveness for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant, including bioavailability or bioequivalence studies, or clinical trials demonstrating safety and effectiveness. The FDA may then approve the new product candidate for all or some of the label indications for which the referenced product has been approved, as well as for any new indication sought by the Section 505(b)(2) applicant.

The submission of an NDA is subject to the payment of a substantial user fee; a waiver of such fee may be obtained under certain limited circumstances. For example, the agency will waive the application fee for the first human drug application that a small business or its affiliate submits for review.

In addition, under the Pediatric Research Equity Act of 2003, or PREA, which was reauthorized under the Food and Drug Administration Amendments Act of 2007, an NDA or supplement to an NDA must contain data to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers. Unless otherwise required by regulation, PREA does not apply to any drug for an indication for which orphan designation has been granted.

Section 505(b)(2) New Drug Applications. To the extent that a Section 505(b)(2) NDA relies on clinical trials conducted for a previously approved drug product or the FDA's prior findings of safety and effectiveness for a previously approved drug product, the Section 505(b)(2) applicant must submit patent certifications in its 505(b)(2) application with respect to any patents for the approved product on which the application relies that are listed in the FDA's publication, Approved Drug Products with Therapeutic Equivalence Evaluations, commonly referred to as the Orange Book. Specifically, the applicant must certify for each listed patent that (1) the required patent information has not been filed; (2) the listed patent has expired; (3) the listed patent has not expired, but will expire on a particular date and approval is not sought until after patent expiration; or (4) the listed patent is invalid, unenforceable or will not be infringed by the proposed new product. A certification that the new product will not infringe the previously approved product's listed patent or that such patent is invalid or unenforceable is known as a Paragraph IV certification. If the applicant does not challenge one or more listed patents through a Paragraph IV certification, the FDA will not approve the Section 505(b)(2) NDA application until all the listed patents claiming the referenced product have expired. Further, the FDA will also not approve, as applicable, a Section 505(b)(2) NDA application until any non-patent exclusivity, such as, for example, five-year exclusivity for obtaining approval of a new chemical entity, three year exclusivity for an approval based on new clinical trials, or pediatric exclusivity, listed in the Orange Book for the referenced product, has expired.

If the Section 505(b)(2) NDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the owner of the referenced NDA for the previously approved product and relevant patent holders within 20 days after the Section 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a patent infringement suit against the Section 505(b)(2) applicant. Under the FDCA, the filing of a patent infringement lawsuit within 45 days of receipt of the notification regarding a Paragraph IV certification automatically prevents the FDA from approving the Section 505(b)(2) NDA for 30 months beginning on the date the patent holder receives notice, or until a court deems the patent unenforceable, invalid or not infringed, whichever is earlier. Moreover, in cases where a Section 505(b)(2) application containing a Paragraph IV certification is submitted after the fourth year of a previously approved drug's five year exclusivity period and the patent holder brings suit within 45 days of notice of certification, the 30-month period is automatically extended to prevent approval of the Section 505(b)(2) application until the date that is seven and one-half years after approval of the previously approved reference product. The court also has the ability to shorten or lengthen either the 30 month or the seven and one-half year period if either party is found not to be reasonably cooperating in expediting the litigation. Thus, the Section 505(b)(2) applicant may invest a significant amount of time and expense in the development of its product only to be subject to significant delay and patent litigation before its product may be commercialized. Alternatively, if the NDA applicant or relevant patent holder does not file a patent infringement lawsuit within the specified 45 day period, the FDA may approve the Section 505(b)(2) application at any time.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, some pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA changes its interpretation of Section 505(b)(2), or if the FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) NDA that we submit.

In the NDA submissions for our product candidates, we intend to follow the development and approval pathway permitted under the FDCA that we believe will maximize the commercial opportunities for these product candidates.

FDA Review of New Drug Applications. The FDA reviews all NDAs submitted to ensure that they are sufficiently complete for substantive review before it accepts them for filing. The FDA may request additional information rather than accept an NDA for filing. In this event, the NDA must be re-submitted with the additional information. The re-submitted application also is subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. The FDA reviews an NDA to determine, among other things, whether a product is safe and effective for its intended use and whether its manufacturing is cGMP-compliant to assure and preserve the product's identity, strength, quality and purity. Before approving an NDA, the FDA will inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. The FDA may refer the NDA to an advisory committee for review, evaluation and recommendation as to whether the application should be approved and under what conditions. An advisory committee is a panel of independent experts who provide advice and recommendations when requested by the FDA on matters of importance that come before the agency. The FDA is not bound by the recommendation of an advisory committee.

The approval process is lengthy and difficult and the FDA may refuse to approve an NDA if the applicable regulatory criteria are not satisfied or may require additional clinical data or other data and information. Even if such data and information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data obtained from clinical trials are not always conclusive and the FDA may interpret data differently than we interpret the same data. The FDA will

issue a complete response letter if the agency decides not to approve the NDA in its present form. The complete response letter usually describes all of the specific deficiencies that the FDA identified in the NDA. The deficiencies identified may be minor, for example, requiring labeling changes, or major, for example, requiring additional clinical trials. Additionally, the complete response letter may include recommended actions that the applicant might take to place the application in a condition for approval. If a complete response letter is issued, the applicant may either resubmit the NDA, addressing all of the deficiencies identified in the letter, withdraw the application, or request an opportunity for a hearing.

If a product receives regulatory approval, the approval may be significantly limited to specific diseases and dosages or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications, warnings or precautions be included in the product labeling. In addition, the FDA may require Phase 4 testing which involves clinical trials designed to further assess a drug's safety and effectiveness after NDA approval and may require testing and surveillance programs to monitor the safety of approved products that have been commercialized.

Patent Term Restoration and Marketing Exclusivity

Depending upon the timing, duration and specifics of FDA marketing approval of our product candidates, some of our U.S. patents may be eligible for limited patent term extension under the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND and the submission date of an NDA plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved drug is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent and within sixty days of approval of the drug. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In the future, we intend to apply for restorations of patent term for some of our currently owned or licensed patents to add patent life beyond their current expiration dates, depending on the expected length of the clinical trials and other factors involved in the filing of the relevant NDA.

Market exclusivity provisions under the FDCA can also delay the submission or the approval of certain applications. The FDCA provides a five-year period of non-patent marketing exclusivity within the United States to the first applicant to gain approval of an NDA for a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active pharmaceutical ingredient, or active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an abbreviated new drug application, or ANDA, or a Section 505(b)(2) NDA submitted by another company for another version of such drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, the FDCA will not prevent the submission or approval of another full Section 505(b)(1) NDA, but such an NDA applicant would be required to conduct its own preclinical and adequate, well-controlled clinical trials to demonstrate safety and effectiveness. Further, a Section 505(b)(2) application may be submitted after four years if it contains a Paragraph IV certification. The FDCA also provides three years of marketing exclusivity for an NDA, Section 505(b)(2) NDA or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application. Such clinical trials may, for example, support new indications, dosages, routes of administration or strengths of an existing drug, or for a new use, if new

clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application. This exclusivity, which is sometimes referred to as clinical investigation exclusivity, prevents the FDA from approving an application under Section 505(b)(2) for the same conditions of use associated with the new clinical investigations before the expiration of three years from the date of approval. Such three-year exclusivity, however, would not prevent the approval of another application if the applicant submits a Section 505(b)(1) NDA and has conducted its own adequate, well-controlled clinical trials demonstrating safety and efficacy, nor would it prevent approval of a generic product or Section 505(b)(2) product that did not incorporate the exclusivity-protected changes of the approved drug product. The FDCA, FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create modified, non-infringing versions of a drug to facilitate the approval of an ANDA or other application for generic substitutes.

Pediatric exclusivity is another type of exclusivity in the United States. Pediatric exclusivity, if granted, provides an additional six months of exclusivity to be attached to any existing exclusivity (e.g., three or five year exclusivity) or patent protection for a drug. This six month exclusivity, which runs from the end of other exclusivity protection or patent delay, may be granted based on the voluntary completion of a pediatric trial in accordance with an FDA-issued "Written Request" for such a trial. The current pediatric exclusivity provision was reauthorized in September 2007.

Post-Approval Requirements

Any drugs for which we receive FDA approval are subject to continuing regulation by the FDA, including, among other things, record-keeping requirements, reporting of adverse experiences with the product, providing the FDA with updated safety and efficacy information, product sampling and distribution requirements, complying with certain electronic records and signature requirements and complying with FDA promotion and advertising requirements. In September 2007, the Food and Drug Administration Amendments Act of 2007 was enacted, giving the FDA enhanced post-marketing authority, including the authority to require post-marketing studies and clinical trials, labeling changes based on new safety information, and compliance with risk evaluations and mitigation strategies approved by the FDA. The FDA strictly regulates labeling, advertising, promotion and other types of information on products that are placed on the market. Drugs may be promoted only for the approved indications and in accordance with the provisions of the approved label. Further, manufacturers of drugs must continue to comply with cGMP requirements, which are extensive and require considerable time, resources and ongoing investment to ensure compliance. In addition, changes to the manufacturing process generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

Drug manufacturers and other entities involved in the manufacturing and distribution of approved drugs are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP and other laws. The cGMP requirements apply to all stages of the manufacturing process, including the production, processing, sterilization, packaging, labeling, storage and shipment of the drug. Manufacturers must establish validated systems to ensure that products meet specifications and regulatory standards, and test each product batch or lot prior to its release. We rely, and expect to continue to rely, on third parties for the production of clinical quantities of our product candidates. Future FDA and state inspections may identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution or may require substantial resources to correct.

The FDA may withdraw a product approval if compliance with regulatory standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously

unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market. Further, the failure to maintain compliance with regulatory requirements may result in administrative or judicial actions, such as fines, warning letters, holds on clinical trials, product recalls or seizures, product detention or refusal to permit the import or export of products, refusal to approve pending applications or supplements, restrictions on marketing or manufacturing, injunctions or civil or criminal penalties.

From time to time, legislation is drafted, introduced and passed in Congress that could significantly change the statutory provisions governing the approval, manufacturing and marketing of products regulated by the FDA. In addition to new legislation, the FDA regulations and policies are often revised or reinterpreted by the agency in ways that may significantly affect our business and our product candidates. It is impossible to predict whether further legislative or FDA regulation or policy changes will be enacted or implemented and what the impact of such changes, if any, may be.

Foreign Regulation

In addition to regulations in the United States, we will be subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our product candidates to the extent we choose to clinically evaluate or sell any products outside of the United States. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country. As in the United States, post-approval regulatory requirements, such as those regarding product manufacture, marketing, or distribution would apply to any product that is approved outside the Untied States.

Third Party Payor Coverage and Reimbursement

In both the United States and foreign markets, our ability to commercialize our product candidates successfully, and to attract commercialization partners for our product candidates, depends in significant part on the availability of adequate financial coverage and reimbursement from third party payors, including, in the United States, governmental payors such as the Medicare and Medicaid programs, managed care organizations, and private health insurers. Medicare is a federally funded program managed by the Centers for Medicare and Medicaid Services, or CMS, through local fiscal intermediaries and carriers that administer coverage and reimbursement for certain healthcare items and services furnished to the elderly and disabled. Medicaid is an insurance program for certain categories of patients whose income and assets fall below state defined levels and who are otherwise uninsured that is both federally and state funded and managed by each state. The federal government sets general guidelines for Medicaid and each state creates specific regulations that govern its individual program. Each payor has its own process and standards for determining whether it will cover and reimburse a procedure or particular product. Private payors often rely on the lead of the governmental payors in rendering coverage and reimbursement determinations. Therefore, achieving favorable CMS coverage and reimbursement is usually a significant gating issue for successful introduction of a new product. The competitive position of some of our products will depend, in part, upon the extent of coverage and adequate reimbursement for such products and for the procedures in which such products are used. Prices at which we or our customers seek reimbursement for our product candidates can be subject to challenge, reduction or denial by the government and other payors.

The United States Congress and state legislatures may, from time to time, propose and adopt initiatives aimed at cost containment, which could impact our ability to sell our product candidates profitably. For example, in March 2010, President Obama signed into law the Patient Protection and Affordable Care Act and the associated reconciliation bill, which we refer to collectively as the Health

Care Reform Law, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. Effective October 1, 2010, the Health Care Reform Law revises the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states once the provision is effective. Further, beginning in 2011, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. Substantial new provisions affecting compliance have also been enacted, which may require us to modify our business practices with healthcare practitioners. We will not know the full effects of the Health Care Reform Law until applicable federal and state agencies issue regulations or guidance under the new law. Although it is too early to determine the effect of the Health Care Reform Law, the new law appears likely to continue the pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs. Moreover, in the coming years, additional changes could be made to governmental healthcare programs that could significantly impact the success of our product candidates.

The cost of pharmaceuticals continues to generate substantial governmental and third party payor interest. We expect that the pharmaceutical industry will experience pricing pressures due to the trend toward managed healthcare, the increasing influence of managed care organizations and additional legislative proposals. Our results of operations could be adversely affected by current and future healthcare reforms.

Some third party payors also require pre-approval of coverage for new or innovative devices or drug therapies before they will reimburse healthcare providers that use such therapies. While we cannot predict whether any proposed cost-containment measures will be adopted or otherwise implemented in the future, the announcement or adoption of these proposals could have a material adverse effect on our ability to obtain adequate prices for our product candidates and operate profitably.

Other Healthcare Laws and Compliance Requirements

In the United States, our activities are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services, other divisions of the U.S. Department of Health and Human Services (e.g., the Office of Inspector General), the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, and state and local governments. These regulations include:

- the federal healthcare program anti-kickback law, which prohibits, among other things, persons from soliciting, receiving or providing remuneration, directly or indirectly, to induce either the referral of an individual, for an item or service or the purchasing or ordering of a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;

- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent, and which may apply to entities like us which provide coding and billing advice to customers;

- the federal Health Insurance Portability and Accountability Act of 1996, which prohibits executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters and which also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information;

- the federal transparency requirements under the Health Care Reform Law requires manufacturers of drugs, devices, biologics, and medical supplies to report to the Department of

Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests;

- the FDCA, which among other things, strictly regulates drug product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by federal laws, thus complicating compliance efforts.

Legal Proceedings

From time to time and in the ordinary course of business, we are subject to various claims, charges and litigation. For example, we may be required to file infringement claims against third parties for the infringement of our patents. For additional information regarding the patent litigation matters in which we are involved, please see "Risk Factors—We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful." Although the outcome of litigation cannot be predicted with certainty and some lawsuits, claims or proceedings may be disposed of unfavorably to us, we do not believe the outcome of any such litigation, individually or in the aggregate, will have a material adverse effect on our financial condition, results of operations or cash flows.

Employees

As of September 30, 2010, we employed 70 full-time employees, of which 57 were engaged in research and development, clinical trials and quality assurance and 13 were engaged in administration, finance, marketing and business development. None of our employees are represented by a labor union.

Facilities

Our principal executive offices are located at 1550 East Gude Drive, Rockville, Maryland 20850, where we occupy approximately 44,500 square feet of laboratory and office space. Our lease term expires in April 30, 2018 with an option for a five year extension. We believe that our existing facilities are sufficient for our present and future operations, and we currently have no plans to lease additional space.

MANAGEMENT

Executive Officers, Directors And Key Employees

The following table sets forth the names and ages of our executive officers, directors and key employees as of the date of this prospectus.

Name	Age	Position(s)
Jack A. Khattar	49	President & Chief Executive Officer, Director
Russell P. Wilson	51	Vice President, Chief Financial Officer
Jones W. Bryan, Ph.D.	46	Vice President of Business Development
Padmanabh P. Bhatt, Ph.D.	53	Vice President of Pharmaceutical Sciences
Paolo Baroldi, M.D., Ph.D.	59	Senior Vice President of Clinical Development & Chief Medical Officer
Tami T. Martin, R.N., Esq.	55	Vice President of Regulatory Affairs
M. James Barrett, Ph.D.	68	Director and Chairman of the Board
Michael Bigham	53	Director
Frederick M. Hudson	65	Director
Charles W. Newhall, III	66	Director
William A. Nuerge	58	Director
Michael B. Sheffery, Ph.D.	60	Director
John M. Siebert, Ph.D.	70	Director

Jack A. Khattar is the founder of our company and has served as our President and Chief Executive Officer and Director since 2005. From 1999 to 2005, Mr. Khattar served in various positions during that time as a Board member, President and CEO of Shire Laboratories Inc., the drug delivery subsidiary of Shire plc. From 1999 to 2004, he also served as a member of Shire plc's Executive Committee. Prior to that, Mr. Khattar served as an Executive Officer and the Chairman of the Management Committee at CIMA, a drug delivery company that is currently a division of Cephalon. At CIMA, he was also responsible for business development, including the licensing of CIMA's technologies, corporate alliances and strategic planning. Prior to joining CIMA in 1995, Mr. Khattar held several marketing and business development positions at Merck & Co., Novartis, Playtex and Kodak in various locations, including the United States, Europe and the Middle East. Mr. Khattar earned his degrees in Marketing with a BBA from American University of Beirut and an MBA from the Wharton School of the University of Pennsylvania. He is currently a director of Rockville Economic Development Inc. Mr. Khattar's leadership, executive, managerial, business and pharmaceutical company experience, along with his more than 20 years of industry experience in the development and commercialization of pharmaceutical products and drug delivery technologies, qualify him to be a director.

Russell P. Wilson has served as our Vice President, Chief Financial Officer since 2009. From 2000 to 2008, Mr. Wilson served at Iomai Corporation, which was sold to Intercell AG in August 2008, in various positions. While at Iomai Corporation, Mr. Wilson was responsible at different times for finance, legal, business development, regulatory affairs and quality systems, and served as Senior Vice President (from May 2005 to 2008), Chief Financial Officer (from June 2002 to 2008), General Counsel (from March 2000 to 2008) and Secretary (from May 2000 to 2008), and Vice President, Business Development (from March 2000 to June 2002). Mr. Wilson earned his B.A. from Princeton University and holds a joint M.B.A./ J.D. degree from the University of Virginia.

Jones W. Bryan, Ph.D., has served as our Vice President of Business Development since 2005. From 2000 to 2005, he served as Vice President Business Development for Shire Laboratories Inc. Prior to that, Dr. Bryan was Director of Business Development for Pharmaceutics and Clinical Supply Manufacturing for AAI. He began his career with Schering Plough in Pharmaceutics and Formulation

Development. Dr. Bryan earned his B.S. degree in Zoology from Clemson University, Ph.D. degree in Pharmaceutics from the Medical University of South Carolina and Executive Management Certificate from the University of North Carolina Kenan-Flagler Business School. He is a member of the Licensing Executives Society and serves on Clemson University's Spiro Institute Entrepreneurship Advisory Board.

Padmanabh P. Bhatt, Ph.D., has served as our Vice President of Pharmaceutical Sciences since 2005. From 2003 to 2005, Dr. Bhatt was Vice President of Advanced Drug Delivery at Shire Laboratories Inc. From 2001 to 2003, Dr. Bhatt served as Vice President of Research and Development and Chief Technology Officer at Point Biomedical Corporation. From 1996 to 2001, he served at ALZA Corporation (now a Johnson & Johnson company) in various positions from Product Development Manager to Director of Technical Development. Prior to that time, Dr. Bhatt has held positions as Research Specialist and Group Leader of Novel Drug Delivery at Dow Corning Corporation (from 1992 to 1996) and Senior Scientist at Hercon Laboratories (from 1989 to 1992). Dr. Bhatt earned his B.Pharm. and M.Pharm. degrees from the University of Bombay, India. He also holds M.S. and Ph.D. degrees in Pharmaceutical Chemistry from the University of Kansas.

Paolo Baroldi, M.D., Ph.D., has served as our Senior Vice President of Clinical Development & Chief Medical Officer since 2009. From 2006 to 2009, he served as a Senior Vice President and Chief Medical Officer at Vanda. From 2003 to 2006, Dr. Baroldi served as Vice President-Corporate Drug Development and Chairman of the R&D Board at Chiesi Farmaceutici SpA, where he led a research and development organization of 350 people across 3 sites in the United States, Italy and France. From 1998 to 2002, Dr. Baroldi was the Global Head of Clinical Pharmacology at Novartis AG, responsible for a staff of 140 people across five different sites, including France, the United Kingdom, Japan and the United States. Dr. Baroldi holds degrees in Medicine and Surgery and a Ph.D. in Clinical Pharmacology from the University of Milan and an Executive MBA from Harvard University.

Tami T. Martin, R.N., Esq., has served as our Vice President of Regulatory Affairs since 2008. She has previously held positions as Vice President of Regulatory Affairs at Shire Pharmaceuticals (6 years), and Manager to Sr. Director of Regulatory Affairs at Otsuka America Pharmaceuticals (7 years). Ms. Martin has also consulted privately for domestic and international clients as President and CEO of Pyramid Regulatory Consulting. Earlier in her career, Ms. Martin held legal positions at Hogan & Hartson as a member of the Food and Drug Practice Group, and with the Department of Health and Human Services as a staff attorney. Ms. Martin previously served as an instructor for the Johns Hopkins University Masters of Biotechnology and Regulatory Affairs Graduate Degree program, and teaches a portion of the United States Regulatory Module for TOPRA (The Organization for Professionals in Regulatory Affairs) leading to a MSc in Regulatory Affairs through the University of Wales. Ms. Martin earned her Bachelor of Science in Nursing from Albright College and a Juris Doctorate degree from Suffolk University. Ms. Martin is a member of the Pennsylvania Bar.

M. James Barrett, Ph.D., has served as the Chairman of our Board since 2005. Since September 2001, Dr. Barrett has been a general partner of New Enterprise Associates, or NEA, which is a venture capital firm that focuses on the medical and life sciences and information technology industries. He is currently a member of the board of directors of each of the publicly-traded companies Amicus Therapeutics, Inc., Inhibitex, Inc. and Targacept, Inc., within the past five years, he served on the board of directors of each of the publicly-traded companies Iomai Corporation (acquired by Intercell AG), MedImmune, LLC (acquired by AstraZeneca), Pharmion Corporation (acquired by Celgene Corporation) and YM Biosciences, Inc. As a result of Dr. Barrett's tenure as a general partner of New Enterprise Associates, he has served on numerous boards of directors of both public and private companies in the healthcare sector and brings to the Board significant first-hand experience in shaping strategic direction as a pharmaceutical company matures from a private venture-backed company to a development-stage public company and then to a product revenue-generating company. Dr. Barrett's

substantial experience with public and private companies in the healthcare sector and his venture capital, financial and business experience qualify him to serve as a director.

Michael Bigham has served as a member of our Board since 2006. Since 2002, Mr. Bigham has been a general partner of Abingworth, a leading international venture capital firm concentrating in life sciences. From December 2002 to March 2004, he served as Vice Chairman of Corixa Corporation, and was President and Chief Executive of Coulter Pharmaceuticals from July 1996 until it merged into Corixa in December 2000. Previously, he was an early employee at Gilead Sciences where he spent eight years serving in various capacities, including Executive Vice President of Operations and Chief Financial Officer. Before joining Gilead, Mr. Bigham was a partner at Hambrecht & Quist where he became Co-Head of Healthcare Investment Banking. He chairs the compensation committee of the board of directors of Avila Therapeutics, Inc. and the audit committee of the board of directors of Valeritas, Inc. He is also a director of Magellan, Inc. and Secure EDI Holdings, Inc. He has previously served as a director of Hydra Biosciences, Inc., PrimeraDx, Inc., Xenogen Corporation and SED, Inc. Prior to February 23, 2009, Mr. Bigham was also a non-executive director of Dynogen Pharmaceuticals Inc., a private clinical stage pharmaceutical company that, on that date, filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts. Mr. Bigham earned his B.S. Degree with distinction from the University of Virginia and holds an MBA from Stanford University Graduate School of Business. Mr. Bigham is also a Certified Public Accountant. Mr. Bigham's significant operational and investment banking experience in life science companies qualify him to serve as a director.

Frederick M. Hudson has served as a member of our Board since 2010. Mr. Hudson retired as a partner in charge of the health care audit practice for the Washington—Baltimore business unit of the accounting firm of KPMG, LLP on January 1, 2006 after a 37-year career with the firm. He is a graduate of Loyola University Maryland and currently serves in a board capacity with the Board of Financial Administration of the Catholic Archdiocese of Baltimore and the Board of Trustees of the Maryland Historical Society. He chairs the audit committees of each of the boards of directors of Paradigm Management Services LLC (a provider of catastrophic care services), Woodhaven Holding Corporation, d/b/a Remedi Senior Care (an institutional pharmacy service provider), GBMC Healthcare, Inc. and its affiliate, the Greater Baltimore Medical Center, and Vicor Technologies, Inc. He is also a director of Maxim Health Care Services, Inc. Mr. Hudson's extensive accounting and health care audit experience qualify him to serve as a director.

Charles W. Newhall, III has served as a member of our Board since 2005. In 1977, Mr. Newhall co-founded NEA, a venture capital firm that focuses on the medical and life sciences and information technology industries. To date, Mr. Newhall has served as a director of over 40 venture-backed companies. He also started several healthcare information technology companies like PatientKeeper, TargetRx and LifeMetrix. Some of his current board memberships include Vitae Pharmaceuticals, TargetRx, Sensors for Medicine and Science, and BrainCells Inc. In 1986, he founded the Mid-Atlantic Venture Capital Association, or MAVA, which now has over 80 venture capital firms that are members, and is one of the most active regional venture associations in the country. He is Chairman Emeritus of MAVA. Before NEA, Mr. Newhall was a Vice President of T. Rowe Price. He served in Vietnam commanding an independent platoon including an initial reconnaissance of Hamburger Hill. His decorations include the Silver Star and Bronze Star V (1st OLC). He earned an Honors Degree in English from the University of Pennsylvania and an MBA from Harvard Business School. Mr. Newhall's substantial experience with companies in the healthcare sector and his venture capital, financial and business experience qualify him to serve as a director.

William A. Nuerge has served as a member of our Board since 2006. Since 2007, Mr. Nuerge has been a managing partner of Fortress Pharms Advisors, LLC. From 2004 to 2007, Mr. Nuerge served as a director and President and CEO of Xanodyne Pharmaceuticals. From 1997 to 2004, he served as

President and CEO of Shire US, Inc. Prior to that, Mr. Nuerge served as Chief Operating Officer of Richwood Pharmaceuticals Company, Inc., which subsequently merged with Shire plc in 1997. Mr. Nuerge earned his Bachelor of Science degree from Purdue University and his MBA from Wesleyan University. He has also previously served as a director of Cutanogen Corporation. Mr. Nuerge's significant operational and business experience with life science companies qualify him to serve as a director.

Michael B. Sheffery, Ph.D., has served as a member of our Board since 2005. Dr. Sheffery is a founding General Partner of OrbiMed Advisors, LLC, a healthcare investment firm, and Co-Head of Private Equity at Orbimed. Dr. Sheffery was formerly Head of the Laboratory of Gene Structure and Expression at Memorial Sloan-Kettering Cancer Center. Dr. Sheffery joined Mehta and Isaly, an investment firm, in 1996 as a Senior Analyst covering the biotechnology industry. He earned both his Ph.D. in Molecular Biology and his B.A. in Biology from Princeton University. He is currently a Director of Affimed Therapeutics AG and Pieris AG. Dr. Sheffery's background and expertise in private equity and investment banking, combined with his scientific experience, qualify him to serve as a director.

John M. Siebert, Ph.D., has served as a member of our board since 2011. Dr. Siebert has over 30 years experience in the pharmaceutical industry. Since 2009, Dr. Siebert has been Chairman and CEO of Compan Pharmaceuticals, LLC, a veterinary specialty pharmaceutical company. From 2004 to 2009, Dr. Siebert served as Chairman and CEO at CyDex Pharmaceuticals Inc., a specialty pharmaceutical company. From 1995 through 2003, Dr. Siebert served as President and CEO Of CIMA LABS, Inc., an innovative oral drug delivery company. Dr. Siebert started his career at Procter & Gamble. He currently chairs the audit committees of each of the boards of directors of Primus Pharmaceutical Company and Aradigm, Inc. Dr. Siebert's substantial operational and business experience with companies in the healthcare sector, combined with his scientific experience, qualify him to serve as a director.

Composition of Our Board of Directors

Our board of directors currently consists of seven members. All of our directors were elected pursuant to the board composition provisions of our stockholders voting agreement. Our nominating and corporate governance committee and board of directors may consider a broad range of factors relating to the qualifications and background of nominees, which may include diversity, which is not limited to race, gender or national origin. We have no formal policy regarding board diversity. Our nominating and corporate governance committee's and board of directors' priority in selecting board members is identification of persons who will further the interests of our stockholders through their established records of professional accomplishment, the ability to contribute positively to the collaborative culture among board members, and professional and personal experiences and expertise relevant to our growth strategy.

Director Independence

We have applied to have our common stock listed on the Nasdaq Global Market. Under Rules 5605 and 5615 of the Nasdaq Marketplace Rules, a majority of a listed company's board of directors must be comprised of independent directors within one year of listing. In addition, the Nasdaq Marketplace Rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and corporate governance committees be independent and that audit committee members also satisfy independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act. Under Rule 5605(a)(2) of the Nasdaq Marketplace Rules, a director will only qualify as an "independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Upon the

completion of this offering, we expect that the composition and functioning of our board of directors and each of our board committees will comply with all applicable rules and regulations of the Securities and Exchange Commission, or the SEC, and the Nasdaq Global Market. There are no family relationships among any of our directors or executive officers.

Board Leadership Structure and Board's Role in Risk Oversight

Our board of directors has elected to separate the roles of Chief Executive Officer and Chairman of the board. Mr. Khattar serves as President and Chief Executive Officer and Dr. Barrett serves as Chairman of the board. The Chief Executive Officer and Chairman work closely together to execute the strategic plan of the Company.

We believe the combination of Mr. Khattar as President and Chief Executive Officer and Dr. Barrett as Chairman is an effective leadership structure for Supernus. The division of duties allows our Chief Executive Officer to focus on our day-to-day business, while allowing our Chairman of the board to lead the board of directors in its fundamental role of providing advice to, and independent oversight of, management. Our board of directors recognizes the time, effort and energy that the Chief Executive Officer is required to devote to his position in the current business environment, as well as the commitment required to serve as our Chairman, particularly as the board of directors' oversight responsibilities continue to grow. Our board of directors also believes that this structure ensures a greater role for the independent directors in the oversight of our company and active participation of the independent directors in setting agendas and establishing priorities and procedures for the work of our board of directors.

Management is responsible for the day-to-day management of risks that we face, while our board of directors, as a whole and through its committees, has responsibility for the oversight of risk management. In its risk oversight role, our board of directors has the responsibility to satisfy itself that the risk management processes designed and implemented by management are adequate and functioning as designed. Our board of directors is actively involved in oversight of risks that could affect us. This oversight is conducted primarily through the full board of directors who has generally retained responsibility for general oversight of risks. Our board of directors satisfies this responsibility through reports directly from officers responsible for oversight of particular risks within our company as our board of directors believes that full and open communication between management and the board of directors is essential for effective risk management and oversight.

Committees Of Our Board Of Directors

Our board of directors has established a compensation committee, audit committee and governance committee. Our board of directors recently approved our audit committee charter, and we expect that the compensation committee and governance committee will also operate under charters approved by our board of directors, all of which will be effective upon the closing of this offering.

Compensation Committee

The current members of our compensation committee are , who is the chair of the committee, and . We expect that upon completion of this offering, each of the members of our compensation committee will be independent under the applicable rules and regulations of the SEC, the Nasdaq Global Market and the Internal Revenue Service. Our compensation committee reviews and recommends policies relating to compensation and benefits of our officers and employees. The compensation committee's responsibilities will include:

- reviewing and approving corporate goals and objectives relevant to the compensation of our chief executive officer and other executive officers;

- evaluating the performance of these officers in light of those goals and objectives;
- setting the compensation of these officers based on such evaluations;
- reviewing and approving the terms of any employment agreements with our chief executive officer and other executive officers;
- administering the issuance of stock options and other awards under our stock plans; and
- reviewing and evaluating, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter.

Audit Committee

The current members of our audit committee are , who is the chair of the committee and . We expect that upon completion of this offering, all members of our audit committee will meet the requirements for financial literacy under the applicable rules and regulations of the SEC and the Nasdaq Global Market. Our board has determined that is an audit committee financial expert as defined under the applicable rules of the SEC and has the requisite financial sophistication as defined under the applicable rules and regulations of the Nasdaq Global Market. , and are independent directors as defined under the applicable rules and regulations of the SEC and the Nasdaq Global Market. The audit committee will operate under a written charter that satisfies the applicable standards of the SEC and the Nasdaq Global Market. Our audit committee's responsibilities will include:

- overseeing our corporate accounting and financial reporting process;
- evaluating the independent auditors' qualifications, independence and performance;
- determining the engagement of the independent auditors;
- reviewing and approving the scope of the annual audit and the audit fee;
- discussing with management and the independent auditors the results of the annual audit and the review of our quarterly financial statements;
- approving the retention of the independent auditors to perform any proposed permissible non-audit services;
- monitoring the rotation of partners of the independent auditors on our engagement team as required by law;
- reviewing our critical accounting policies and estimates;
- overseeing our internal audit function; and
- annually reviewing the audit committee charter and the audit committee's performance.

Governance Committee

The current members of our governance committee are , who is the chair of the committee, and . We expect that upon completion of this offering, each of the members of our governance committee will be independent under the applicable rules and regulations of the SEC and the Nasdaq Global Market. The governance committee's responsibilities will include:

- making recommendations to our board of directors regarding candidates for directorships and the size and composition of our board;
- overseeing our corporate governance guidelines; and
- reporting and making recommendations to our board concerning governance matters.

Other Committees

Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has at any time been one of our officers or employees. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees, officers and directors, including those officers responsible for financial reporting.

Executive Compensation

Compensation Discussion and Analysis

Introduction. *This section discusses our executive compensation policies and arrangements as they relate to our named executive officers who are listed in the compensation tables set forth below. The following discussion should be read together with the compensation tables and related disclosure set forth below.*

Our named executive officers, or NEOs, for the year ended December 31, 2009 are listed in the table below.

Name	Title
Jack A. Khattar	Chief Executive Officer, President
Russell P. Wilson	Vice President, Chief Financial Officer
Paolo Baroldi, M.D, Ph.D.	Senior Vice President, Chief Medical Officer
Padmanabh Bhatt, Ph.D.	Vice President, Pharmaceutical Sciences
Jones W. Bryan, Ph.D.	Vice President, Business Development

With respect to these NEOs, our board of directors determined initial compensation for these persons based primarily on negotiations between our board and our NEOs prior to their being hired and our board's past practices and experiences with companies such as ours.

We expect that following the completion of this offering, our Compensation Committee will undertake a substantial review of our existing compensation programs, objectives and philosophy and determine whether such programs, objectives, and philosophy are appropriate after we have become a public company. In addition, as we gain experience as a public company, we expect that the specific direction, emphasis and components of our executive compensation program will continue to evolve.

Executive Compensation Objectives and Philosophy

The key objectives of our executive compensation programs are (1) to attract, motivate, reward and retain superior executive officers with the skills necessary to successfully lead and manage our business; (2) to achieve accountability for performance by linking annual cash incentive compensation to the achievement of measurable performance objectives; and (3) to align the interests of our executive officers and our equity holders through short- and long-term incentive compensation programs. For our NEOs, these short- and long-term compensation are designed to accomplish these objectives by providing a significant correlation between our results of operations and total compensation.

We expect to provide our NEOs with a significant portion of their compensation through cash incentive compensation contingent upon the achievement of operational and personal performance metrics, as well as through equity compensation. These two elements of executive compensation are aligned with the interests of our stockholders because the amount of compensation ultimately received will vary with our company's financial and operational performance. Equity compensation derives its value from our equity value, which in the future is likely to fluctuate based on our financial and operational performance.

We seek to apply a consistent philosophy to compensation for all executive officers. Our compensation philosophy is based on the following core principles.

To Pay for Performance

Individuals in leadership roles are compensated based on a combination of total company and individual performance factors. Total company performance is evaluated primarily on the degree to which pre-established operational objectives are met. Individual performance is evaluated based upon several individualized leadership factors, including:

- individual contribution to attaining specific operational objectives;
- building and developing individual skills and a strong leadership team; and
- developing an effective infrastructure to support business development and growth.

To Pay Competitively

We are committed to providing a total compensation program designed to retain our highest performing employees and attract strong leaders to our company. We have established compensation levels that we believe are competitive based on our board's experience with pay practices and compensation levels for companies such as ours.

To Pay Equitably

We believe that it is important to apply generally consistent guidelines for all executive officer compensation programs. In order to deliver equitable pay levels, our board considers depth and scope of accountability, complexity of responsibility, qualifications and executive performance, both individually and collectively as a team.

In addition to short- and long-term compensation, we have found it important to provide certain of our executive officers with competitive post-employment compensation. Post-employment compensation consists primarily of severance pay and benefits continuation. We believe that these benefits are important considerations for our executive officer compensation package, as they afford a measure of financial security in the event of certain terminations of their employment and also enable us to secure their cooperation following termination. We have sought to ensure that each combined compensation package is competitive at the time the package is negotiated with the executive officer. We elect to provide post-employment compensation to our executive officers on a case-by-case basis as the employment market, the qualifications of potential employees and our hiring needs dictate.

Compensation Committee Review of Compensation

We expect that following this offering, our Compensation Committee will review compensation elements and amounts for NEOs on an annual basis and at the time of a promotion or other change in level of responsibilities, as well as when competitive circumstances or business needs may require. We may, but do not currently, use a third party consultant to assist us with determining compensation levels. We expect that each year our management will compile a report of benchmark data for

executive positions for similar companies, including summaries of base salary, annual cash incentive plan opportunities and awards and long-term incentive award values. We have not yet determined the companies that we will benchmark our compensation packages against, but we expect that the Compensation Committee will determine this list after completion of this offering and that it will compare our pay practices and overall pay levels with other leading industry organizations and, where appropriate, with non-industry organizations when establishing our pay guidelines.

We expect that the CEO will provide compensation recommendations to the Compensation Committee for executives other than himself based on this data and the other considerations mentioned in this Compensation Discussion and Analysis. We expect that the Compensation Committee will recommend a compensation package that is consistent with our compensation philosophy, strategically positioned at the median of the peer group and competitive with other organizations similar to ours. The Compensation Committee will then discuss these recommendations with the CEO and will make a recommendation to the board, which the board will consider and approve, if appropriate.

We expect that the Compensation Committee will consider input from our CEO and CFO when setting performance objectives for our incentive plans. We also expect that the Compensation Committee will consider input from our CEO and CFO, regarding benchmarking and recommendations for base salary, annual incentive targets and other compensation awards. The Compensation Committee will likely give significant weight to our CEO's and CFO's judgment when assessing performance and determining appropriate compensation levels and incentive awards for our other NEOs.

Elements of Compensation

As discussed throughout this Compensation Discussion and Analysis, the compensation policies applicable to our NEOs are reflective of our pay-for-performance philosophy and encourage executive officers to enhance equity holder value over the long term.

The elements of our compensation program are:

- base salary;
- performance-based cash incentives;
- equity incentives; and
- certain additional employee benefits.

Base salary, performance-based cash incentives and long-term equity-based incentives are the most significant elements of our executive compensation program and, on an aggregate basis, they are intended to substantially satisfy our program's overall objectives. Historically, our board of directors has, and following the offering, the Compensation Committee will seek to, set each of these elements of compensation at the same time to enable it to simultaneously consider all of these elements collectively and their impact on compensation as a whole. Taking this comprehensive view of all compensation components allows us also to make compensation determinations that will reflect the principles of our compensation philosophy with respect to allocation of compensation among certain of these elements and total compensation. We strive to achieve an appropriate mix between the various elements of our compensation program to meet our compensation objectives and philosophy; however, we do not apply any rigid allocation formula in setting our executive compensation, and we may make adjustments to this approach for various positions after giving due consideration to prevailing circumstances, the individuals involved and their responsibilities and performance.

Base Salary

We provide a base salary to our executive officers to compensate them for their services during the year and to provide them with a stable source of income. The base salaries for our NEOs in 2009 were established by our board of directors, based in large part on the recommendation of our management and our board's review of other factors, including:

- the individual's performance, results, qualifications and tenure;
- the responsibilities associated with the position;
- pay mix (base salary, annual cash incentives, equity incentives and employee benefits);
- prevailing market conditions; and
- our financial position.

The annual base salaries in effect for each of our NEOs employed by us as of December 31, 2009 and December 31, 2010, are as follows.

	Base Salary ($)	
Name	2009	2010
Jack A. Khattar	396,060	407,942
Russell P. Wilson (1)	260,000	265,172
Paolo Baroldi, M.D., Ph.D. (2)	285,000	293,292
Padmanabh Bhatt, Ph.D.	258,448	266,200
Jones W. Bryan, Ph.D.	204,410	210,542

(1) Mr. Wilson joined us as our Vice President, Chief Financial Officer on May 4, 2009, and, as a result, his raise in 2010 has been prorated.

(2) Dr. Baroldi joined us as our Senior Vice President, Chief Medical Officer on January 12, 2009, and, as a result, his raise in 2010 has been prorated.

In setting base salaries for 2009, our board considered the prevailing market conditions and our financial position, including our need to raise additional funds, and decided to increase the base salary of our then-current NEOs by only 2.0% over their 2008 base salaries. In early 2010, in connection with setting the 2010 base salaries for our NEOs, our board considered the prevailing market conditions and our financial position, including our need to raise additional funds, and decided to increase the base salary of each of our NEOs by 3.0% over their 2009 base salaries.

In the future, we expect that salaries for executive officers will be reviewed annually, as well as at the time of a promotion or other change in level of responsibilities, or when competitive circumstances or business needs may require. As noted above, we expect that following completion of the offering, our Compensation Committee will recommend a compensation package that is consistent with our compensation philosophy, strategically positioned at market median of our to-be-determined peer group.

Performance-Based Cash Incentives

We pay annual performance-based cash incentives or bonuses in order to align the compensation of our NEOs with our short-term operational and performance goals and to provide near-term rewards for our NEOs to meet these goals. From time to time, our board has exercised its discretion in determining cash incentive amounts and making individual awards, but generally our performance-based cash incentives are made under our annual cash incentive plan. Our annual cash incentive plan for our CEO is based on the attainment by our company of objective operational goals and for all

other NEOs is based on two components: the attainment by our company of non-financial operational goals and the achievement by each NEO of personal and often subjective performance goals. The final evaluation made by our board combines often subjective assessments of each of our company's operational goals and each NEO's personal goals and does not necessarily involve a mathematical analysis or pre-established weighting of each goal. Each of these components allows us to establish appropriately aggressive performance expectations and incentives that align business performance expectations to the prevailing market and economic conditions.

Currently, our board has determined that the target bonus for our CEO under our annual cash incentive plan is based 100% on the achievement of our company objectives. The annual performance bonuses for the other NEOs are currently based 60% on the achievement of company objectives and 40% on the achievement of individual performance objectives. Our board establishes our company objectives for each fiscal year prior to the end of the first quarter of the year and determines a separate weighting for each of our company objectives.

We do not disclose our company operational goals component of our annual cash incentive plan. We believe that such disclosure would result in serious competitive harm and be detrimental to our operating performance because the components of our performance goals for 2009 contain highly sensitive data, such as regulatory, strategic partnering and other non-financial operational goals. These goals are intended to be realistic and reasonable, but challenging, in order to drive performance by our NEOs.

The personal performance goals vary for each NEO whose bonus is based in part on personal performance goals and are based on specific priorities in the NEO's area of responsibility, which may include, among others, regulatory and operating performance measures, as well as more subjective goals such as achievement of operational goals or implementation of specific plans, publications or projects in each NEO's area of management. Each year, our CEO and each NEO jointly determine what the NEO's performance priorities will be for the year, and our CEO makes a recommendation to our Compensation Committee. Our Compensation Committee reviews these recommendations, may have further discussions with our CEO or the NEO and then makes a final determination as to the personal performance goals.

After our fiscal year 2009 ended, our board reviewed the company goals that were attained and were not attained and determined that the company performance component of our annual cash incentive plan was 100% achieved. This decision was primarily due to the continued progress of SPN-538 and Epliga in the clinic and the non-dilutive financing achieved through payment of $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv. Concurrently, each of our NEOs prepared an assessment of his or her performance against his or her personal performance goals and discussed them with our CEO, who then made a recommendation to our board. Our board reviewed these recommendations, undertook a similar process with our CEO regarding his personal performance goals and made a determination of overall performance against these goals for each NEO. Taking into account the relative weighting of the corporate and personal performance objectives, with

60% for corporate objectives and 40% for individual performance objectives for each NEO, other than our CEO, we paid each NEO the following 2009 annual performance bonus in 2010:

	2009 Annual Performance Bonus		
Name	Target Bonus Percent	Target Bonus Amount ($)	Actual Bonus Payout ($)
Jack A. Khattar	40%	$ 158,424	$ 158,424
Russell P. Wilson(1)	25	65,000	41,600
Paolo Baroldi, M.D., Ph.D.(2)	25	71,250	69,825
Padmanabh Bhatt, Ph.D.	25	64,612	64,353
Jones W. Bryan, Ph.D.	25	51,103	49,876

(1) The bonus payment for Mr. Wilson, who joined us as our Vice President, Chief Financial Officer on May 4, 2009, was prorated for time worked.

(2) The bonus payment for Dr. Baroldi, who joined us as our Senior Vice President, Chief Medical Officer on January 12, 2009, was prorated for time worked.

For 2010, our board has set the following target annual performance bonus amounts:

	2010 Annual Performance Bonus	
Name	Target Bonus Percent	Target Bonus Amount ($)
Jack A. Khattar	40%	$ 163,177
Russell P. Wilson	25	66,293
Paolo Baroldi, M.D., Ph.D.	25	73,323
Padmanabh Bhatt, Ph.D.	25	66,550
Jones W. Bryan, Ph.D.	25	52,636

We expect that following this offering, our Compensation Committee will more directly assess the performance of our NEOs. Many of the personal performance goals either are qualitative in nature or have a single value or accomplishment as the determinant. Accordingly, the final evaluation made by our board often combines subjective assessments of each of the NEO's goals and does not necessarily involve a mathematical analysis or pre-established weighting of each goal. Our board ultimately determines a single percentage representing overall performance against each NEO's personal goals in the aggregate.

The target bonus percentages for our NEOs under our annual cash incentive plan for 2010 are the same as under the annual cash incentive plan for 2009. Because the components of our performance goals for 2010 contain highly sensitive data, such as regulatory, strategic partnering and other non-financial operational goals, we believe that such disclosure would result in serious competitive harm and be detrimental to our operating performance. Our performance goals are intended to be realistic and reasonable, but challenging, in order to drive performance by our NEOs.

Equity Incentives

All of our NEOs have received equity incentive grants under our 2005 Stock Plan, which is described below, in the form of restricted stock and stock options. To date, we have used restricted stock and/or stock option grants as our principal form of equity incentives because we believe they are an effective means to align the long-term interests of our executive officers with those of our stockholders. The offer of restricted stock and/or options attempts to achieve this alignment by

providing our NEOs with equity incentives that vest over time or upon the occurrence of certain events. The restricted stock and options serve also to reward our NEOs for performance.

In connection with the hiring of Dr. Baroldi and Mr. Wilson in 2009, the board approved the award of stock options to each of these NEOs under our 2005 Stock Plan. In determining the amounts for such new hire equity incentive grants, the board primarily considered their prominent positions and significant responsibilities with our company.

Prior to this offering, we have used stock options and, to a very limited degree, restricted stock, as the primary long-term equity incentive vehicle. In 2005, we made our only grant of restricted stock when the fair value of our stock was lower and the awards had less income tax consequence to the executive upon vesting. Since then, we have made option grants to executive officers who are newly hired, and generally made stock option grants to existing executives at times when the board deemed appropriate in accordance with the compensation principles outlined above.

The value of an option is at risk for the NEO and is entirely dependent on the value of a share of our stock above the option's strike price. The value of our stock is dependent in many ways on management's success in achieving our goals. If the price of our common stock drops, for any reason, over the option's vesting period, the value of the option to the executive will drop and could become worthless if the price of the underlying stock remains below the option's strike price. In determining the number of stock options to be granted to executives, we take into account the individual's position, scope of responsibility, ability to affect profits and shareholder value, the individual's historic and recent performance and the value of stock options in relation to other elements of the individual executive's total compensation.

We may in the future grant other forms of equity incentives, such as restricted stock or performance shares (shares that vest only upon achievement of performance goals established at the time of grant), subject to the Compensation Committee's discretion, to ensure that our executives are focused on long-term stockholder value. We expect that following completion of the offering, the Compensation Committee will periodically review the equity awards previously awarded to management, the performance of our business and the performance of our stock. We expect that the Compensation Committee will establish levels of equity incentive holdings for our NEOs such that the portion of overall compensation that is variable is consistent with our pay-for-performance philosophy and competitive within our industry. The Compensation Committee is expected to determine appropriate levels of equity awards based on these factors and may make additional grants.

Stock options granted by us to date have an exercise price equal to or greater than the fair market value of our common stock on the date of grant and generally expire ten years after the date of grant. Stock options are subject to vesting, and most of our options vest over time at a rate of 25% of the total grant on the each of the first four anniversaries of the vesting start date, although we have granted some performance options that vest upon attaining certain predetermined company objectives.

The amount of each of these awards was designed to establish a desired percentage ownership level for each of our NEOs that our board believed was commensurate with their respective roles and responsibilities and based on similarly situated employees of other companies that members of our board had experience with.

Additional Employee Benefits

We provide our executive officers with employee benefits that the board believes are reasonable and in the best interests of the company and its stockholders, which consist of the following benefits:

- health insurance;
- vacation and sick days;

- long-term disability; and
- a 401(k) plan.

We have no structured perquisite benefits, such as club memberships or company vehicles, for any executive officer, including our NEOs. We believe the benefits we provide are generally equivalent to the benefits provided by comparable companies.

Accounting and Tax Considerations

In determining which elements of compensation are to be paid, and how they are weighted, we will take into account whether a particular form of compensation will be deductible under Section 162(m) of the Code. Section 162(m) generally limits the deductibility of compensation paid to our NEOs to $1 million during any fiscal year unless such compensation is "performance-based" under Section 162(m). However, under a Section 162(m) transition rule for compensation plans or agreements of corporations which are privately held and which become publicly held in an initial public offering, compensation paid under a plan or agreement that existed prior to the initial public offering will not be subject to Section 162(m) until the earliest of (1) the expiration of the plan or agreement; (2) a material modification of the plan or agreement; (3) the issuance of all employer stock and other compensation that has been allocated under the plan; or (4) the first meeting of stockholders at which directors are to be elected that occurs after the close of the third calendar year following the year of the initial public offering. We refer to the earliest of these events to occur as the "Transition Date." After the Transition Date, rights or awards granted under the plan will not qualify as "performance-based compensation" for purposes of Section 162(m) unless such rights or awards are granted or vest upon pre-established objective performance goals, the material terms of which are disclosed to and approved by our stockholders.

Our compensation program is intended to maximize the deductibility of the compensation paid to our NEOs to the extent that we determine it is in our best interests. Consequently, we may rely on the exemption from Section 162(m) afforded to us by the transition rule described above for compensation paid pursuant to our pre-existing plans.

Many other Code provisions, SEC regulations and accounting rules affect the payment of executive compensation and are generally taken into consideration as we develop our compensation programs. Our goal is to create and maintain plans that are efficient, effective and in full compliance with these requirements.

When determining our compensation policies and practices, our board considered various matters relative to the development of a reasonable and prudent compensation program, including whether the policies and practices were reasonably likely to have a material adverse effect on us. We believe that the mix and design of our executive compensation plans and policies do not encourage management to assume excessive risks and are not reasonably likely to have a material adverse effect on us for the following reasons: we offer an appropriate balance of short and long-term incentives and fixed and variable amounts; our variable compensation is based on a balanced mix of criteria; and our Compensation Committee has the authority to adjust variable compensation as appropriate.

Compensation Tables

The following tables provide information regarding the compensation earned during our most recently completed fiscal year by our NEOs.

Summary compensation table

The following table shows the compensation earned by our NEOs during the fiscal year ended December 31, 2009.

Name and Principal Position	Year	Base Salary ($)	Non-Equity Incentive Plan Compensation Bonus ($)(3)	Option Awards ($)(4)	All Other Compensation ($)(5)	Total ($)
Jack A. Khattar *Chief Executive Officer, President*	2009	$ 395,737	$ 158,424	—	$ 11,931	$ 566,092
Russell P. Wilson(1) *Vice President, Chief Financial Officer*	2009	161,667	41,600	262,650	7,225	473,142
Paolo Baroldi, M.D., Ph.D.(2) *Senior Vice President, Chief Medical Officer*	2009	265,635	69,825	51,750	15,001	402,211
Padmanabh Bhatt, Ph.D. *Vice President, Pharmaceutical Sciences*	2009	258,237	64,353	—	13,334	335,924
Jones W. Bryan, Ph.D. *Vice President, Business Development*	2009	204,243	49,876	—	11,195	265,314

(1) The compensation for Mr. Wilson, who joined us on May 4, 2009, has been prorated for time worked.

(2) The compensation for Dr. Baroldi, who joined us on January 12, 2009, has been prorated for time worked.

(3) Amounts represent annual performance bonus compensation earned for the year ended December 31, 2009 based on pre-established performance objectives. Annual performance bonus compensation for 2009 was paid in 2010. Our annual performance bonus program is described in more detail under "—Compensation Discussion and Analysis—Performance-Based Cash Incentives."

(4) In accordance with ASC Topic 718, or ASC 718, formerly Statement of Financial Accounting Standards No. 123R, our NEOs will only realize compensation to the extent the market price of our common stock is greater than the exercise price of such stock options. For information regarding assumptions underlying the valuation of equity awards, see note 8 to our financial statements appearing at the end of this prospectus.

(5) Amounts include the premium amounts paid by us for life insurance and long-term disability insurance coverage for each NEO, plus the employer matching contributions made on behalf of each NEO to our 401(k) plan.

Grants of Plan-Based Awards

During fiscal year ended December 31, 2009, each of our NEOs participated in our performance-based cash incentive plan in which each officer was eligible for the awards set forth in the following table. For a detailed discussion of our performance-based cash incentive plan, refer to "—Compensation Discussion and Analysis—Performance-Based Cash Incentives." The following table also sets forth information regarding equity awards granted to our NEOs during the year ended December 31, 2009. Equity awards made to our NEOs are described in more detail under "—Compensation Discussion and Analysis—Equity Incentives" and non-equity incentive plan awards

made to our NEOs are described in more detail under "—Compensation Discussion and Analysis—Performance-Based Cash Incentives."

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards		All Other Options Awards: Number of Securities Underlying Options(#)	Exercise or Base Price of Option Awards(1) ($/sh)	Grant Date Fair Value of Stock and Options Awards(2) ($)
		Target ($)	Maximum ($)			
Jack A. Khattar	—	$ 158,424	$ 158,424	—	—	—
Russell P. Wilson	12/15/2009	—	—	230,000	$ 1.76(3)	$ 236,900
	12/15/2009	—	—	25,000	1.76(3)	25,750
	—	65,000	65,000	—	—	—
Paolo Baroldi, M.D., Ph.D.	1/20/2009	—	—	200,000	0.40	46,000
	1/20/2009	—	—	25,000	0.40	5,750
	—	71,250	71,250	—	—	—
Padmanabh Bhatt, Ph.D.	—	64,612	64,612	—	—	—
Jones W. Bryan, Ph.D.	—	51,103	51,103	—	—	—

(1) Amounts represent the fair value of our common stock as determined in good faith by our board on the date of the grant.

(2) Amounts reflect the aggregate grant date fair value of the awards calculated in accordance with ASC 718.

(3) Stock option was repriced by our board on November 2, 2010. The new exercise price is $0.64 per share.

Outstanding Equity Awards at Fiscal Year-End

The table below sets forth certain information regarding the outstanding equity awards held by our NEOs as of December 31, 2009.

		Option Awards					Stock Awards	
Name		Number of Securities Underlying the Unexercised Options (#) Exercisable	Number of Securities Underlying the Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Security Underlying Unexercisable Unearned Options (#)	Option Exercise Price ($)(6)	Option Expiration Date	Equity Incentive Plan Awards: Number of Unearned Shares That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares That Have Not Vested (#)
Jack A. Khattar	(1)(7)	—	—	—	—	—	411,765	
Russell P. Wilson	(2)(3)	—	230,000		$ 1.76	12/15/2019	—	—
	(1)(3)	—	—	25,000	$ 1.76	12/15/2019	—	—
Paolo Baroldi, M.D., Ph.D.	(2)	—	200,000	—	$ 0.40	1/19/2019	—	—
	(1)	—		25,000	$ 0.40	1/19/2019	—	—
Padmanabh Bhatt, Ph.D.	(2)	200,000	—	—	$ 0.10	1/17/2016	—	—
	(4)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(1)	—	—	25,000	$ 0.10	1/17/2016	—	—
	(5)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(2)	6,000	6,000	—	$ 0.10	2/13/2017	—	—
Jones W. Bryan, Ph.D.	(2)	200,000	—	—	$ 0.10	1/17/2016	—	—
	(4)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(1)	—	—	25,000	$ 0.10	1/17/2016	—	—
	(5)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(2)	6,000	6,000	—	$ 0.10	2/13/2017	—	—

(1) All of these vested equity awards originally vested based on the achievement of our filing our first NDA prior to December 22, 2010. On November 2, 2010, the performance condition for vesting of these non-vested awards was modified by our board to extend the performance date from December 22, 2010 to March 31, 2011.

(2) These stock options vest over four years in four equal installments of 25% each on the first four anniversaries from the date of grant.

(3) On November 2, 2010, this option was repriced from $1.76 to $0.64 per share.

(4) These stock options vested upon the completion of our first clinical trial in humans and was satisfied in 2006.

(5) These stock options vested upon the launch of a partnered product and was satisfied in 2006.

(6) The market value of each equity award is based on the fair value of per share of our common stock as of the date of grant, as determined in good faith by our board.

(7) There was no public market for our common stock at December 31, 2009. Accordingly, the value of unvested equity awards has been estimated based on an assumed initial public offering price of $ per share, the midpoint of the range set forth on the cover page of this prospectus.

Option Exercises and Stock Vested

There were no option awards exercised by any of our NEOs during fiscal year ended December 31, 2009. Our CEO had 617,647 shares of restricted stock vest during fiscal year ended December 31, 2009.

Pension Benefits

Our NEOs did not participate in or have account balances in any qualified or nonqualified defined benefit plans sponsored by us. Our board of directors or Compensation Committee may elect to adopt qualified or nonqualified benefit plans in the future if it determines that doing so is in our best interest.

Deferred Compensation

We do not currently provide any deferred compensation program or benefits but may elect to do so in the future.

Employment Agreement and Severance Benefits

Jack A. Khattar

On December 22, 2005, we entered into an Employment Agreement with Mr. Khattar, our President and Chief Executive Officer, providing for his continued employment, effective as of the signing date. This employment agreement provides that Mr. Khattar's employment is at-will and may be terminated by either us or him at any time for any or no reason. Mr. Khattar's base salary was originally set at $359,000 per year, subject to review and increases from time to time by our board based on Mr. Khattar's and the company's performance. Mr. Khattar is also eligible to receive an annual bonus payment of up to 40% of his annual base salary, based on achievement of certain performance milestones identified by our board in consultation with Mr. Khattar. Furthermore, he is eligible to participate in our group benefits programs, including but not limited to, medical insurance, vacation and retirement plans, and will be provided with life insurance and the ability to participate in a 401(k) plan.

In the event Mr. Khattar is terminated by us without cause, as defined in the employment agreement, or he resigns with good reason, as defined in the employment agreement to include, among other things, any material reduction in base compensation or material diminution in title, duties or responsibilities as President and Chief Executive Officer, Mr. Khattar will be entitled to receive (i) continued payment of his base salary for 18 months, (ii) the most recent annual bonus paid to him, and (iii) continuation of his taxable and non-taxable benefits for 18 months, subject to the limits under applicable law. In the event that Mr. Khattar is terminated for cause or he terminates his employment without good reason, Mr. Khattar will not be entitled to the payments and benefits described above unless mutually agreed upon in writing. Mr. Khattar's employment agreement also includes a non-solicitation covenant and a non-compete covenant for at least one year following the termination of Mr. Khattar's employment.

In addition, the grant agreements for Mr. Khattar's restricted stock provided for 100% acceleration of unvested restricted stock in connection with a change in control because our board of directors believes that this accelerated vesting provides Mr. Khattar with additional incentive to assist in the successful completion of a change of control transaction.

Other NEOs

Pursuant to the terms of the offer letters with Dr. Bryan and Dr. Bhatt, they are each entitled to receive six months of severance pay in connection with a restructuring of Supernus that results in the elimination of their respective positions.

Potential Payments Upon Termination and Change in Control

Assuming Mr. Khattar's employment is terminated without cause or he resigns for good reason, or he resigns for good reason after a change of control, each such term as defined in Mr. Khattar's

employment agreement, on December 31, 2009, the estimated values of payments and benefits to Mr. Khattar are set forth in the following table. See "—Employment Agreement and Severance Benefits." In addition, the following table also sets forth (i) the amounts payable upon a change of control in connection with the acceleration of vesting of Mr. Khattar's restricted stock assuming the change of control occurred on December 31, 2009, and (ii) the amounts payable upon a restructuring of Supernus that results in the elimination of Dr. Bryan's or Dr. Bhatt's respective positions assuming the restructuring occurred on December 31, 2009.

	Benefit	Termination Upon a Restructuring	Termination Without Cause or Resignation for Good Reason	Resignation for Good Reason After a Change of Control	Acceleration Upon a Change of Control
Jack A. Khattar	Base salary continuation		$ 594,090	$ 594,090	—
	Bonus(1)		158,424	158,424	—
	Continuation of benefits(2)		16,947	16,947	—
	Vesting of restricted stock(3)		—		$
	Total		$ 769,461	$	$
Padmanabh Bhatt, Ph.D.	Severance	$ 129,224	—	—	—
Jones W. Bryan, Ph.D.	Severance	$ 102,205	—	—	—

(1) Amount shown for bonus in connection with a change in control represents the bonus payment Mr. Khattar would have earned based on the assumption that his employment terminated as of the last day of fiscal 2009, in accordance with his employment agreement. The amount set forth in the table reflects the most recent bonus paid to Mr. Khattar (which was the 2009 bonus paid in early 2010) because this table assumes that he was terminated as of the last day of the fiscal year and we had not yet determined the amount of the bonuses payable to him under our annual cash incentive plan for fiscal 2010.

(2) Amounts shown for continuation of benefits represent estimates for the continuation of health, medical, life and group life insurance benefits afforded to Mr. Khattar and eligible family members in accordance with his employment agreement.

(3) There was no public market for our common stock at December 31, 2009. Accordingly, the value of accelerated equity awards has been estimated based on an assumed initial public offering price of $ per share, the midpoint of the range set forth on the cover page of this prospectus.

Director Compensation

Upon election to our board, each of our non-employee directors who are not affiliated with any 5% or greater stockholder was granted options to purchase shares of our common stock, subject to an annual vesting over a four-year period from the date of grant. The exercise price of the options was greater than or equal to the fair market value of a share of our common stock at the time of grant. In addition, our non-employee directors who are not affiliated with any 5% or greater stockholder receive $20,000 annually. All directors have received and will continue to receive reimbursement for reasonable out-of-pocket expenses incurred in connection with attendance at meetings of the board.

The following table sets forth a summary of the compensation we paid to Mr. Nuerge in 2009. None of the other members of our board received any compensation from us for their service on our board, other than reimbursement for reasonable out-of-pocket expenses as described above.

Name	Fees Earned or Paid in Cash ($)	Total ($)
William A. Nuerge	20,000	20,000

Benefit Plans

Our officers, employees, non-employee directors and other key persons (including consultants and prospective employees) are entitled to participate in various benefit plans as described below, subject to the discretion of the administrators of the plans. Our equity awards are granted under our 2005 Stock Plan. There are an aggregate of 8,000,000 shares of common stock authorized under this plan. This number is subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization. Generally, shares that are forfeited or canceled from awards under the 2005 Stock Plan also will be available for future awards.

2005 Stock Plan

Introduction. Our 2005 Stock Plan was adopted by our board and approved by our stockholders on December 21, 2005. The 2005 Stock Plan permits us to make grants of stock options (both incentive stock options and non-qualified stock options), purchase rights of common stock and awards of common stock to our executives, employees, directors, consultants and advisors.

Share Reserve. 8,000,000 shares of common stock are reserved for the issuance of awards under our 2005 Stock Plan. This number is subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization. Generally, shares that expire or terminate for any reason without having been exercised in full shall be available for subsequent grants under our 2005 Stock Plan.

Administration. Our 2005 Stock Plan is administered by either our board or a committee of our board. The administrator has full power and authority to select the participants to whom awards will be granted, to make any combination of awards to participants, to accelerate the exercisability or vesting of any award and to determine the specific terms and conditions of each award, subject to the provisions of the 2005 Stock Plan.

Eligibility. All officers, employees, directors and other key persons (including consultants and advisors) are eligible to participate in the 2005 Stock Plan, subject to the discretion of the administrator.

Types of Awards. The types of awards that are available for grant under the 2005 Stock Plan are:

- incentive stock options;
- non-qualified stock options;
- purchase rights; and
- common stock awards.

The exercise price of stock options awarded under the 2005 Stock Plan may not be less than either (i) 100% of the fair market value of our common stock on the date of the option grant, with the term of each option not exceeding ten years from the date of grant, or (ii) for any employee who is the owner, at the time of the grant of such options, of more than 10% of the total combined voting power of all classes of stock of the Company (after taking into account the attribution of stock ownership rules of Section 424(d) of the Code), 110% of fair market value of our common stock on the date of the option grant, with the term of each option not exceeding five years from the date of grant. The administrator will determine at what time or times each option may be exercised and, subject to the provisions of the 2005 Stock Plan, the period of time, if any, after retirement, death, disability or other termination of employment during which options may be exercised. To qualify as incentive stock options, stock options must meet additional federal tax requirements, including a $100,000 limit on the value of shares subject to incentive options which first become exercisable in any one calendar year, and a shorter term and higher minimum exercise price in the case of certain large stockholders.

Purchase rights allow the recipient the opportunity to make direct purchases of the Company's common stock in accordance with terms and conditions established by the administrator. Awards of common stock are awards entitling the grantee to receive shares of the Company's common stock in accordance with terms and conditions established by the administrator.

Transferability. Our 2005 Stock Plan does not allow for the transfer of incentive stock options and all other options granted to Reporting Persons, and may be exercisable only by the grant holder during his or her lifetime, except that non-qualified options may be transferred pursuant to a qualified domestic relations order (as defined in the Code).

Change in Control. Except as otherwise provided by the administrator and evidenced in a particular award, in the event of a consolidation or merger or sale of all or substantially all of the assets of the Company in which outstanding shares of common stock are exchanged for securities, cash or other property of any other corporation or business entity, or in the event of a liquidation of the Company, the administrator may, in its discretion, terminate all stock options granted under the 2005 Stock Plan unless the successor entity agrees to assume the awards. In the event the awards are to be terminated, the administrator may provide for payment in exchange for the termination of the awards. Furthermore, at any time the administrator may provide for the acceleration of exercisability and/or vesting of an award.

Term. Unless earlier terminated by our board of directors, the 2005 Stock Plan will terminate, with respect to incentive stock options only, upon the earlier of (A) the close of business on the day next preceding the tenth anniversary of the date the Board of Directors approved the 2005 Stock Plan, or (B) the date on which all shares available for issuance under the 2005 Stock Plan shall have been issued. Unless sooner terminated, the 2005 Stock Plan will terminate with respect to options, purchase rights and awards of common stock which are not incentive stock options on the date specified in (B) above.

Amendment or Termination. Our board of directors may amend, suspend, or terminate the 2005 Stock Plan in any respect at any time, subject to stockholder approval where such approval is required by applicable law or stock exchange rules. Further, any material amendments to the 2005 Stock Plan will be subject to approval by our stockholders, including any amendment that increases the number of shares available for issuance under the 2005 Stock Plan or expands the types of awards available under, the eligibility to participate in, or the duration of, the plan. No amendment to the 2005 Stock Plan may materially impair any of the rights of a participant under any awards previously granted without his or her consent.

Limitation of Liability and Indemnification Arrangements

As permitted by the Delaware General Corporation Law, we intend to adopt provisions in our amended and restated certificate of incorporation and amended and restated bylaws, which will be effective upon the completion of this offering, that limit or eliminate the personal liability of our directors. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any unlawful payments related to dividends or unlawful stock repurchases, redemptions or other distributions; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

In addition, our amended and restated bylaws, which will be effective upon the completion of this offering, provide that:

- we will indemnify our directors, officers and, at the discretion of our board, certain employees to the fullest extent permitted by the Delaware General Corporation Law; and
- advance expenses, including attorneys' fees, to our directors and, at the discretion of our board, to our officers and certain employees, in connection with legal proceedings, subject to limited exceptions.

We also intend to enter into indemnification agreements with each of our executive officers and directors. These agreements will provide that we will indemnify each of our directors to the fullest extent permitted by the Delaware General Corporation Law and advance expenses to each indemnitee in connection with any proceeding in which indemnification is available.

We also maintain management liability insurance to provide insurance coverage to our directors and officers for losses arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the Securities Act of 1933, as amended, or the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling the registrant pursuant to the foregoing provisions, we have been informed 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.

These provisions may discourage stockholders from bringing a lawsuit against our directors in the future for any breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors, officers and certain employees pursuant to these indemnification provisions. We believe that these provisions, the indemnification agreements and the insurance are necessary to attract and retain talented and experienced directors and officers.

At present, there is no pending litigation or proceeding involving any of our directors, officers or employees in which indemnification will be required or permitted. We are not aware of any threatened litigation or proceeding that might result in a claim for such indemnification.

Rule 10b5-1 Sales Plans

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or officer when entering into the plan, without further direction from them. The director or officer may amend or terminate the plan in some circumstances. Our directors and executive officers may also buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material, nonpublic information. However, pursuant to the terms of the lock-up agreements described under "Underwriting," no Rule 10b5-1 plan may provide for the transfer of common stock during the restricted period ending 180 days after the date of this prospectus (as such period may be extended under certain circumstances).

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than the compensation agreements and other arrangements described under "Compensation Discussion and Analysis" in this prospectus and the transaction set forth below, since January 1, 2007, there has not been any transaction or series of transactions to which we were or are a party in which the amount involved exceeded or exceeds $120,000 and in which any director, executive officer, holder of more than 5% of any class of our voting securities or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest. We believe the transaction set forth below was executed on terms no less favorable to us than we could have obtained from unaffiliated third parties.

In May 2009, we entered into an amendment to a license agreement with Shire LLC, a holder of Series A convertible preferred stock, whereby Shire LLC and its affiliates paid us a one-time, lump-sum payment of $36.9 million in return for a fully paid-up license for one of its products that utilizes our proprietary technologies. All four criteria necessary to recognize revenue in accordance with ASC 605-10-S25, *Revenue Recognition—Overall—Recognition*, were met during 2009 related to this transaction. Accordingly, the entire amount was recorded as royalty revenue in the consolidated statement of operations.

Transactions with Our Executive Officers, Directors and 5% Stockholders

Indemnification Agreements

We intend to enter into indemnification agreements with each of our directors and certain of our executive officers. These agreements will require us to indemnify these individuals and, in certain cases, affiliates of such individuals, to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), certain of our directors and 5% stockholders are party to an investor rights agreement providing for rights to register under the Securities Act certain shares of our capital stock. For more information regarding the registration rights granted pursuant to this agreement, see the section entitled "Description of Capital Stock—Registration Rights."

Employment Agreement and Offer Letters

We have entered into an employment agreement with our chief executive officer and offer letters with certain of our named executive officers, or NEOs, each of which provides for certain severance benefits, among other things. For more information regarding this agreement and the offer letters with certain of our NEOs, see the section entitled "Executive Compensation—Employment Agreement and Severance Benefits."

Stock Option Awards

Our 2005 Stock Plan permits us to make grants of stock options, purchase rights of common stock and awards of common stock to our executives, employees, directors, consultants and advisors. For more information regarding stock option awards and restricted stock granted to our named executive officers and directors, see the sections entitled "Executive Compensation—Outstanding Equity Awards at Fiscal Year End" and "Director Compensation."

Procedures for Related Party Transactions

Upon the closing of this offering, our audit committee will be responsible for reviewing and approving all material transactions with any related party on a continuing basis. Related parties can include any of our directors or officers, holders of 5% or more of our voting securities and their immediate family members. This obligation is set forth in writing in our Audit Committee Charter. We may not enter into a related person transaction unless our audit committee has reviewed and approved such transaction. Currently, such transactions are reviewed by management on a case-by-case basis.

PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of September 30, 2010, before and after the completion of this offering, and gives effect to the automatic conversion of all outstanding shares of our preferred stock into 49,000,000 shares of common stock upon the closing of this offering, by: (i) our named executive officers and our directors individually, (ii) all of our executive officers and directors, as a group, and (iii) any person who, to our knowledge, owns 5% or more of the common stock on an as-converted basis. Unless otherwise indicated, the address for each of the stockholders listed in the table below is c/o Supernus Pharmaceuticals, Inc., 1550 East Gude Drive, Rockville, Maryland 20850.

Beneficial ownership is determined in accordance with the rules and regulations of the United States Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or exercisable within sixty (60) days of September 30, 2010 are deemed outstanding. These shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Except as indicated in the footnotes to this table and pursuant to applicable community property laws, we believe each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite that stockholders' name.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
5% Stockholders:			
New Enterprise Associates 11, Limited Partnership and its affiliates(1) c/o New Enterprise Associates 1954 Greenspring Drive Suite 600 Timonium, MD 21093	25,000,000	45.1%	
OrbiMed Private Investments II, LP and its affiliates(2) c/o OrbiMed Advisors LLC 767 Third Avenue, 30th Floor New York, NY 10017	10,000,000	18.1%	
Abingworth Bioventures IV LP and its affiliates(3) c/o Abingworth Management Inc 890 Winter Street, Suite 150 Waltham, MA 02451	10,000,000	18.1%	
Shire LLC(4) 9200 Brookfield Court Suites 105 & 108 Florence, KY 41042	4,000,000	7.2%	

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
Executive Officers and Directors:			
Jack A. Khattar(5)	6,088,235	10.9%	
Russell P. Wilson	—	*	
Paolo Baroldi, M.D., Ph.D(6)	50,000	*	
Padmanabh P. Bhatt, Ph.D.(7)	259,000	*	
Jones W. Bryan, Ph.D.(8)	259,000	*	
M. James Barrett, Ph.D.(9)	25,000,000	45.1%	
Michael Bigham(10)	10,000,000	18.1%	
Frederick M. Hudson(11)	—	*	
Charles W. Newhall, III(12)	25,000,000	45.1%	
William A. Nuerge	35,000	*	
Michael B. Sheffery, Ph.D.(13)	10,000,000	18.1%	
All executive officers and directors as a group (12 persons)(14)	51,766,235	92.4%	

* Less than one percent.

(1) Consists of (a) 24,965,000 shares of common stock issuable upon the automatic conversion of 24,965,000 shares of Series A convertible preferred stock held by New Enterprise Associates 11, Limited Partnership, or NEA 11; and (b) 35,000 shares of common stock issuable upon the automatic conversion of 35,000 shares of Series A convertible preferred stock held by NEA Ventures 2005, L.P., or Ven 2005. The shares directly held by NEA 11 are indirectly held by NEA Partners 11, Limited Partnership, or NEA Partners 11, the sole general partner of NEA 11, NEA 11 GP, LLC, or NEA 11 LLC, the sole general partner of NEA Partners 11, and each of the individual Managers of NEA 11 LLC. The individual Managers (collectively, the "Managers") of NEA 11 LLC are M. James Barrett, Peter J. Barris, Forest Baskett, Ryan D. Drant, Krishna "Kittu" Kolluri, C. Richard Kramlich, Charles W. Newhall III, Mark W. Perry and Scott D. Sandell. NEA Partners 11, NEA 11 LLC and the Managers share voting and dispositive power over the shares directly held by NEA 11. The shares directly held by Ven 2005 are indirectly held by J. Daniel Moore, the general partner of Ven 2005, who holds voting and dispositive power over the shares directly held by Ven 2005. All indirect holders of the above referenced shares disclaim beneficial ownership of all applicable shares except to the extent of their actual pecuniary interest therein, if any.

(2) Consists of 6,673,891 shares of common stock issuable upon the automatic conversion of 6,673,891 shares of Series A convertible preferred stock held by OrbiMed Private Investments II, LP; 2,498,842 shares of common stock issuable upon the automatic conversion of 2,498,842 shares of Series A convertible preferred stock held by OrbiMed Private Investments II (QP), LP; and 827,267 shares of common stock issuable upon the automatic conversion of 827,267 shares of Series A convertible preferred stock held by UBS Juniper Crossover Fund, L.L.C. OrbiMed Advisors LLC, or OrbiMed, a registered investment adviser under the Investment Advisers Act of 1940, as amended, is the managing member of OrbiMed Capital GP II LLC, which is the general partner of OrbiMed Private Investments II, LP and OrbiMed Private Investments II (QP), LP. Investment professionals employed by OrbiMed manage UBS Juniper Crossover Fund, L.L.C.'s investment portfolio on behalf of UBS Juniper Management, L.L.C. under the oversight of UBS Fund Advisor, L.L.C. Mr. Samuel D. Isaly is the managing member of and owner of a controlling interest in OrbiMed. Accordingly, OrbiMed and Mr. Isaly may be deemed to have voting and investment power over the shares held by OrbiMed Private Investments II, LP, OrbiMed Private

Investments II (QP), LP, and UBS Juniper Crossover Fund, L.L.C. noted above. OrbiMed and Mr. Isaly disclaim beneficial ownership with respect to such shares, except to the extent of their pecuniary interest therein, if any.

(3) Consists of 9,915,000 shares of common stock issuable upon the automatic conversion of 9,915,000 shares of Series A convertible preferred stock held by Abingworth Bioventures IV LP, or ABV IV; and 85,000 shares of common stock issuable upon the automatic conversion of 85,000 shares of Series A convertible preferred stock held by Abingworth Bioventures IV Executives LP, or ABV IV Executives. Abingworth Management Limited, or AML, serves as investment manager of each of ABV IV and ABV IV Executives and may be deemed to share voting and dispositive power with respect to the securities owned by ABV IV and ABV IV Executives.

(4) Consists of 4,000,000 shares of common stock issuable upon the automatic conversion of 4,000,000 shares of Series A convertible preferred stock held by Shire LLC. Shire LLC is an indirect, wholly-owned subsidiary of Shire plc. The directors of Shire plc are Mr. Matthew Emmens, Mr. Angus Russell, Mr. Graham Hetherington, Mr. David Kappler, Dr. Jeffrey Leiden, Mr. Bill Burns, Dr. David Ginsberg, Ms. Anne Minto, Mr. Patrick Langlois and Mr. David Stout. The board of directors of Shire plc may be deemed to have voting and investment control over the shares held by Shire LLC. The individuals noted above disclaim beneficial ownership of such shares.

(5) Excludes 411,765 shares of non-vested restricted stock held by Mr. Khattar, which are subject to vesting based on the achievement of certain performance measures.

(6) Consists of 50,000 shares of common stock issuable to Dr. Baroldi upon the exercise of options within 60 days of September 30, 2010.

(7) Consists of 259,000 shares of common stock issuable to Dr. Bhatt upon the exercise of options within 60 days of September 30, 2010.

(8) Consists of 259,000 shares of common stock issuable to Dr. Bryan upon the exercise of options within 60 days of September 30, 2010.

(9) Consists of 25,000,000 shares of common stock issuable as described in note (1) above. Dr. Barrett, a member of our board, is a Manager of NEA 11 LLC, and disclaims beneficial ownership of the shares of capital stock held by NEA 11, except to the extent of his pecuniary interest therein, if any.

(10) Consists of 10,000,000 shares of common stock issuable as described in note (3) above. Michael Bigham is a director of AML, and in such capacity may be deemed to beneficially own the securities owned of record by ABV IV and ABV IV Executives, but disclaims beneficial ownership of such securities, except to the extent of his pecuniary interest therein, if any.

(11) Mr. Hudson was appointed to our board on November 16, 2010.

(12) Consists of 25,000,000 shares of common stock issuable as described in note (1) above. Mr. Newhall, a member of our board, is a Manager of NEA 11 LLC and disclaims beneficial ownership of the shares of capital stock held by NEA 11, except to the extent of his pecuniary interest therein, if any.

(13) Consists of 10,000,000 shares of common stock issuable as described in note (2) above. Dr. Sheffery, a member of our board, is a member of OrbiMed, and disclaims beneficial ownership of such securities, except to the extent of his pecuniary interest therein, if any.

(14) Consists of 49,000,000 shares of common stock issuable upon the automatic conversion of 49,000,000 shares of Series A convertible preferred stock, and includes 643,000 shares of common stock issuance to our of directors and executive officers upon the exercise of options within 60 days of September 30, 2010.

DESCRIPTION OF CAPITAL STOCK

General

Our Amended and Restated Certificate of Incorporation, which will become effective upon the closing of this offering, authorizes the issuance of up to shares of common stock, par value $0.001 per share, and shares of preferred stock, par value $0.001 per share. As of September 30, 2010, there were shares of common stock outstanding (after giving effect to the automatic conversion of all outstanding shares of preferred stock into shares of common stock and the for reverse stock split). As of September 30, 2010, we had approximately record holders of our capital stock. All of our outstanding shares of preferred stock will automatically convert into shares of common stock upon the closing of this offering. After the closing of this offering and after giving effect to the conversion of our preferred stock and the for reverse stock split, we will have shares of common stock and no shares of preferred stock outstanding. In addition, as of September 30, 2010, shares of our common stock were reserved for future grants under our 2005 Stock Plans, and options to purchase shares of our common stock were outstanding.

The description below gives effect to the adoption of our Amended and Restated Bylaws and is qualified in its entirety by reference to these documents, copies of which are filed as exhibits to the registration statement of which this prospectus is a part.

Common Stock

Upon the completion of this offering, we will be authorized to issue one class of common stock. Holders of our common stock are entitled to one vote for each share of common stock held of record for the election of directors and on all matters submitted to a vote of stockholders. Holders of our common stock are entitled to receive dividends ratably, if any, as may be declared by our board of directors out of legally available funds, subject to any preferential dividend rights of any preferred stock then outstanding. Upon our dissolution, liquidation or winding up, holders of our common stock are entitled to share ratably in our net assets legally available after the payment of all our debts and other liabilities, subject to the preferential rights of any preferred stock then outstanding. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future. Except as described under "—Antitakeover Effects of Delaware Law and Provisions of Our Certificate of Incorporation and Bylaws" below, a majority vote of the holders of common stock is generally required to take action under our amended and restated certificate of incorporation and amended and restated bylaws.

Preferred Stock

Upon the completion of this offering, our board of directors will be authorized, without action by the stockholders, to designate and issue up to an aggregate of shares of preferred stock in one or more series. Our board of directors can designate the rights, preferences and privileges of the shares of each series and any of its qualifications, limitations or restrictions. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of common stock. The issuance of preferred stock, while providing flexibility in connection with possible future financings and acquisitions and other corporate purposes, could, under certain circumstances, have the effect of restricting dividends on our common stock, diluting the voting power of our common stock, impairing the liquidation rights of our common stock, or delaying, deferring or preventing a change in control of our company, which might harm the market price of our common stock.

Our board of directors will make any determination to issue such shares based on its judgment as to our company's best interests and the best interests of our stockholders. Any shares of our Series A

convertible preferred stock outstanding immediately prior to this offering will automatically convert into shares of our common stock on a one-for-one basis in connection with this offering. Upon the completion of this offering, we will have no shares of preferred stock outstanding and we have no current plans to issue any shares of preferred stock.

Warrants

In connection with our new secured credit facility, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. These warrants will expire on January 26, 2021. In connection with any drawdown of additional term loans under our new secured credit facility, we would be required to issue to the lenders additional warrants to purchase up to 250,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. Upon completion of this offering, each warrant will be exercisable for one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share of $1.00. All of our warrant holders are subject to lock-up agreements with the underwriters that restrict the sale of our securities for 180 days. See "Underwriting" for a description of these lock-up agreements.

Registration Rights

Demand Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), the holders of approximately shares of our common stock will be entitled to certain demand registration rights. If holders of registrable securities then outstanding request a registration having a reasonably anticipated aggregate offering price to the public of at least $, we may be required to register their shares. After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), certain holders have the right to make two requests that we register all or a portion of their shares of our common stock.

Piggyback Registration Rights

After expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), in the event that we propose to register any of our securities under the Securities Act, either for our own account or for the account of other stockholders, the holders of approximately shares of our common stock will be entitled to certain "piggyback" registration rights allowing the holders to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to a registration related to the shares issuable upon conversion of debt securities or employee benefit plans, the holders of these shares of our common stock are entitled to notice of the registration and have the right, subject to limitations that the underwriters may impose on the number of shares included in the registration, to include their shares in the registration.

Form S-3 Registration Rights

After the expiration of a 180-day period following the completion of this offering (as may be extended under certain circumstances), the holders of approximately shares will be entitled to certain Form S-3 registration rights if we are eligible to file a registration statement on Form S-3. As a result, these holders will have the right to demand that we file a registration statement on Form S-3 so long as the aggregate value of the securities to be sold under the registration statement on Form S-3 is at least $500,000, subject to specified exceptions.

Antitakeover Effects Of Delaware Law And Provisions Of Our Certificate Of Incorporation And Bylaws

Delaware Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law. This statute regulating corporate takeovers prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for three years following the date that the stockholder became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least $66^2/3\%$ of the outstanding voting stock which is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is any person who, together with such person's affiliates and associates (i) owns 15% or more of a corporation's voting securities or (ii) is an affiliate or associate of a corporation and was the owner of 15% or more of the corporation's voting securities at any time within the three year period immediately preceding a business combination of the corporation governed by Section 203. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board does not approve in advance. We also anticipate that Section 203 may discourage takeover attempts that might result in a premium over the market price for the shares of common stock held by our stockholders.

Certificate Of Incorporation And Bylaw Provisions

Provisions of our certificate of incorporation and bylaws, which will be effective upon the closing of this offering, may have the effect of making it more difficult for a third party to acquire, or discourage a third party from attempting to acquire, control of our company by means of a tender offer, a proxy contest or otherwise. These provisions may also make the removal of incumbent officers and directors more difficult. These provisions are intended to discourage certain types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of our company to first negotiate with us. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock. These provisions may make it more difficult for stockholders to take specific corporate actions and could have the effect of delaying or preventing a change in control.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is .

Listing

We have applied to list our shares of common stock for quotation on The NASDAQ Global Market under the symbol "SUPN."

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and there can be no assurance that a significant public market for our common stock will develop or be sustained after this offering. Future sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding options or warrants, in the public market following this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities.

Upon completion of this offering, we will have shares of common stock outstanding, assuming (1) the conversion of all outstanding shares of preferred stock, (2) no exercise of any options outstanding as of September 30, 2010, (3) no exercise of any warrants to purchase shares outstanding as of the date of this prospectus and (4) no exercise of the underwriters' option to purchase additional shares from us. All shares sold in this offering, plus any shares issued upon exercise of the underwriters' option to purchase additional shares from us, will be freely tradable without restriction under the Securities Act, unless purchased by our "affiliates" as that term is defined in Rule 144 under the Securities Act. The remaining shares of common stock outstanding are "restricted securities" within the meaning of Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 701 or meet the safe harbor qualifications under Rule 144 under the Securities Act as summarized below.

The holders of shares of outstanding common stock as of the closing of this offering and the holders of shares of common stock underlying options or warrants as of the closing of this offering, including all of our officers and directors, have entered into lock-up agreements with the underwriters pursuant to which they have generally agreed, subject to certain exceptions, not to offer or sell any shares of common stock or securities convertible into or exchangeable or exercisable for shares of common stock for a period of 180 days from the date of this prospectus without the prior written consent of Citigroup Global Markets Inc. and Barclays Capital Inc. At any time and without public notice, Citigroup Global Markets Inc. and Barclays Capital Inc. may, in their sole discretion, release some or all of the securities from these lock-up agreements. In general, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. See "Underwriting."

Rule 144

In general, under Rule 144 under the Securities Act, as in effect on the date of this prospectus, a person who is one of our affiliates and has beneficially owned shares of our common stock for at least six months would be entitled to sell within any three month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of common stock then outstanding, which will equal approximately shares immediately after the completion of this offering; or
- the average weekly trading volume of our common stock on the NASDAQ Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

In general, under Rule 144 under the Securities Act, as in effect on the date of this prospectus, 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 six months, including the holding period of any prior owner other than an affiliate, is entitled to sell the shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, and will be subject only to the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

Shares of our common stock will qualify for resale under Rule 144 within 180 days of the date of this prospectus, subject to the lock-up agreements as described herein and under "Underwriting" in this prospectus, and to the extent such shares have been released from any repurchase option that we may hold.

Rule 701

Any of our employees, officers, directors or consultants who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701. Rule 701 permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. Rule 701 further provides that non-affiliates may sell such shares in reliance on Rule 144 without having to comply with the holding period, public information, volume limitation or notice provisions of Rule 144.

Neither Rule 144 nor Rule 701 supersedes the contractual obligations of our security holders set forth in the lock-up agreements described above.

Lock-up Agreements

We, our officers and directors, and our other stockholders have agreed, subject to certain exceptions, that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of Citigroup Global Markets Inc. and Barclays Capital Inc., dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock. Citigroup Global Markets Inc. and Barclays Capital Inc. in their sole discretion may release any of the securities subject to these lock-up agreements at any time without notice. Notwithstanding the foregoing, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), holders of our preferred stock convertible into 49,000,000 shares of our common stock have demand and piggyback registration rights with respect to the shares of common stock to be issued upon conversion of their preferred stock. By exercising their registration rights and causing a large number of shares to be registered and sold in the public market, these holders could cause the price of our common stock to fall. In addition, any demand to include such shares in our registration statements could have a material adverse effect on our ability to raise needed capital. For more information about these registration rights, see "Description of Capital Stock—Registration Rights."

Stock Options

As of September 30, 2010, under our 2005 Stock Plan, we had outstanding options to purchase shares of common stock.

As soon as practicable after completion of this offering, we intend to register the shares of our common stock subject to the options outstanding or reserved for issuance under this plan on a registration statement on Form S-8 under the Securities Act. Subject to the lock-up agreements and the restrictions imposed under the 2005 Stock Plan, shares of common stock issued pursuant to this plan after the effective date of the registration statement on Form S-8 will be available for sale in the public market without restriction to the extent that they are held by persons who are not our affiliates.

Warrants

As of September 30, 2010, we had no outstanding warrants to purchase shares of Series A convertible preferred stock. In connection with our new secured credit facility, the lenders received from us ten-year warrants to purchase an aggregate of 375,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. In connection with any drawdown of additional term loans under our new secured credit facility, we would be required to issue to the lenders additional warrants to purchase up to 250,000 shares of our Series A convertible preferred stock at an exercise price of $1.00 per share. Upon completion of this offering, each warrant will be exercisable for one share of our common stock for each share of our Series A convertible preferred stock into which it was convertible at a price per share of $1.00.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of our common stock by Non-U.S. Holders, but does not purport to be a complete analysis of all the potential tax considerations. For purposes of this summary, a "Non-U.S. Holder" means a beneficial owner of common stock that for U.S. federal income tax purposes is:

- a non-resident alien individual;
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized under the laws of a jurisdiction other than the U.S., any state thereof, or the District of Columbia;
- an estate, other than an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust, other than a trust (a) the administration of which is subject to the primary supervision of a court within the United States and which has one or more U.S. persons have the authority to control all substantial decisions of the trust, or (b) that has a valid election to be treated as a U.S. person.

If a partnership (or an entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner will generally depend upon the status of the partners and the activities of the partnership. Accordingly, we urge partnerships that hold our common stock and partners in such partnerships to consult their tax advisors.

This summary assumes that a Non-U.S. Holder will hold our common stock issued by this offering as a capital asset. This summary is general in nature and thus does not purport to deal with all aspects of U.S. federal income taxation that might be relevant to a particular Non-U.S. Holder in light of their particular investment circumstances or status, nor does it address specific tax considerations that may be relevant to particular persons (including, for example, financial institutions, broker-dealers, insurance companies, partnerships or other pass-through entities, regulated investment companies, real estate investment trusts, grantor trusts, certain U.S. expatriates, pension plans, tax-exempt organizations, "controlled foreign corporations," "passive foreign investment companies," corporations that accumulate earnings to avoid U.S. federal income tax, persons that receive shares of our common stock in connection with services provided, or persons in special situations, such as those who have elected to mark securities to market or those who hold common stock as part of a straddle, hedge, conversion transaction or other integrated investment). In addition, this summary does not address U.S. federal alternative minimum, estate and gift tax considerations (except to the extent discussed below) or considerations under the tax laws of any state, local or non-U.S. jurisdiction.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury regulations promulgated or proposed thereunder and administrative and judicial interpretations thereof, all as of the date hereof and all of which are subject to change at any time, possibly on a retroactive basis. Any change could alter the tax consequences to Non-U.S. Holders described in this prospectus. In addition, the Internal Revenue Service, or the IRS, could challenge one or more of the tax consequences described in this prospectus.

This summary is for general information only. Non-U.S. Holders are urged to consult their tax advisors concerning the U.S. federal, state, local and non-U.S. taxation and other tax consequences to them of the purchase, ownership and disposition of our common stock, as well as the application of U.S. federal, state, local and non-U.S. income and other tax laws.

Distributions

In the event that we do make a distribution of cash or property with respect to our common stock, any such distributions will be treated as a dividend for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Any distribution not treated as a dividend will be treated first as a tax-free return of capital to the extent of the Non-U.S. Holder's tax basis in our common stock and thereafter as capital gain from the sale or exchange of such stock as described in the next section. Dividends paid to a Non-U.S. Holder generally will be subject to a 30% U.S. federal withholding tax unless such Non-U.S. Holder provides us, or our agent, as the case may be, with a properly executed:

1. IRS Form W-8BEN (or successor form) claiming, under penalties of perjury, a reduction in withholding under an applicable income tax treaty, or

2. IRS Form W-8ECI (or successor form) stating that a dividend paid on common stock is not subject to withholding tax because it is effectively connected with a U.S. trade or business of the Non-U.S. Holder (in which case such dividend generally will be subject to regular graduated U.S. tax rates as described below).

The certification requirement described above also may require a Non-U.S. Holder to obtain a U.S. taxpayer identification number. If a Non-U.S. Holder holds stock through a financial institution or other agent acting on the Non-U.S. Holder's behalf, the Non-U.S. Holder will be required to provide appropriate documentation to such agent. The agent will then be required to provide certification to us, or our paying agent, as the case may be, either directly or through other intermediaries.

Each Non-U.S. Holder is urged to consult its own tax advisor about the specific methods for satisfying these requirements. A claim for exemption will not be valid if the person receiving the applicable form has actual knowledge or reason to know that the statements on the form are false.

If a Non-U.S. Holder is eligible for a reduced rate of U.S. federal withholding tax pursuant to an income tax treaty, such holder may obtain a refund or credit of any excess amount withheld by timely filing an appropriate claim for refund with the IRS.

If dividends are effectively connected with a U.S. trade or business of the Non-U.S. Holder (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment), the Non-U.S. Holder, although exempt from the withholding tax described above (provided that the certifications described above are satisfied), will be subject to U.S. federal income tax on such dividends on a net income basis in the same manner as if it were a resident of the United States. In addition, if such Non-U.S. Holder is a non-U.S. corporation and dividends are effectively connected with its U.S. trade or business (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment), such Non-U.S. Holder may be subject to an additional "branch profits tax" equal to 30% (unless reduced by an applicable income treaty) in respect of such effectively-connected income.

Taxable Disposition of Our Common Stock

A Non-U.S. Holder generally will not be subject to U.S. federal income tax on gain recognized on a sale, exchange or other taxable disposition of a share of our common stock, unless:

- the gain is effectively connected with a trade or business of the Non-U.S. Holder in the United States (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment);

- the Non-U.S. Holder is a nonresident alien who is present in the United States for 183 days or more in the taxable year of the disposition and meets certain other conditions; or

- we are or have been a "United States real property holding corporation," as defined in the Code (a "USRPHC"), at any time within the shorter of the five-year period preceding the disposition and the Non-U.S. Holder's holding period the share our common stock.

If a Non-U.S. Holder is engaged in a trade or business in the U.S. and gain recognized by the Non-U.S. Holder on a sale or other disposition of our common stock is effectively connected with the conduct of such trade or business, the Non-U.S. Holder will generally be subject to regular U.S. income tax as if the Non-U.S. Holder were a U.S. person, subject to an applicable income tax treaty providing otherwise. Additionally, a non-U.S. corporation may also, under certain circumstances, be subject to an additional "branch profits tax" imposed at a rate of 30% (or, if applicable, a lower income tax treaty rate). Non-U.S. Holders whose gain from dispositions of our common stock may be effectively connected with the conduct of a trade or business in the United States are urged to consult their own tax advisors with respect to the U.S. tax consequences of the purchase, ownership and disposition of our common stock.

A nonresident alien who is subject to U.S. federal income tax because such individual was present in the United States for 183 days or more in the taxable year of the taxable disposition of our common stock will be subject to a flat 30% tax on the gain derived from such disposition, which may be offset by U.S. source capital loss.

We believe that we are not, and do not anticipate becoming, a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property relative to the fair market value of other business assets, there can be no assurance that we will not become a USRPHC in the future. Even if we become a USRPHC, a Non-U.S. Holder would not be subject to U.S. federal income tax on a sale, exchange or other taxable disposition of our common stock so long as our common stock continues to be regularly traded on an established securities market and such Non-U.S. Holder does not own and is not deemed to own (directly, indirectly or constructively) more than 5% of our common stock at any time during the shorter of the five year period ending on the date of disposition and the holder's holding period. There can be no assurance that our common stock will qualify as regularly traded on an established market.

Information Reporting and Backup Withholding

Generally, we must report annually to the IRS and to each Non-U.S. Holder certain information including the Non-U.S. Holder's name, address and taxpayer identification number, the aggregate amount of distributions on our common stock paid to that Non-U.S. Holder during the calendar year and the amount of tax withheld, if any. Pursuant to tax treaties and certain other agreements, the IRS may make its reports available to tax authorities in the recipient's country of residence.

Backup withholding tax is imposed on dividends and certain other types of payments to certain U.S. persons. Backup withholding tax will not apply to payments of dividends on common stock or proceeds from the sale of common stock payable to a Non-U.S. Holder if the certification described above in "Distributions" is duly provided by such Non-U.S. Holder or the Non-U.S. Holder otherwise establishes an exemption, provided that the payor does not have actual knowledge or reason to know that the Holder is a U.S. person or that the conditions of any claimed exemption are not satisfied. Certain information reporting may still apply to distributions even if an exemption from backup withholding is established.

Backup withholding is not an additional tax and any amounts withheld under the backup withholding tax rules from a payment to a Non-U.S. Holder will be allowed as a refund or a credit against such Non-U.S. Holder's U.S. federal income tax liability, provided that the requisite procedures are followed.

Non-U.S. Holders are urged to consult their own tax advisors regarding their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding.

Recently enacted legislation affecting taxation of our common stock held by or through foreign entities

Recently enacted legislation generally will impose a U.S. federal withholding tax of 30% on dividends and the gross proceeds of a disposition of our common stock paid after December 31, 2012 to (a) a foreign financial institution unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners), or (b) a non-financial foreign entity unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding direct and indirect U.S. owners of the entity. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes. Holders are encouraged to consult with their own tax advisors regarding the possible implications of the legislation on their investment in our common stock.

U.S. Federal Estate Tax

Common stock owned or treated as owned by an individual who is a Non-U.S. Holder at the time of death generally will be included in the individual's gross estate for U.S. federal estate tax purposes and may be subject to U.S. federal estate tax unless an applicable estate tax treaty provides otherwise.

THE PRECEDING DISCUSSION OF U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAW.

UNDERWRITING

Citigroup Global Markets Inc. and Barclays Capital Inc. are acting as joint book-running managers of the offering and as representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement dated the date of this prospectus, each underwriter named below has severally agreed to purchase, and we have agreed to sell to that underwriter, the number of shares set forth opposite the underwriter's name.

Underwriter	Number of Shares
Citigroup Global Markets Inc.	
Barclays Capital Inc.	
Cowen and Company, LLC	
Stifel, Nicolaus & Company, Incorporated	
Total	

The underwriting agreement provides that the obligations of the underwriters to purchase the shares included in this offering are subject to approval of legal matters by counsel and to other conditions. The underwriters are obligated to purchase all the shares (other than those covered by the over-allotment option described below) if they purchase any of the shares.

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount from the initial public offering price not to exceed $ per share. If all the shares are not sold at the initial offering price, the underwriters may change the offering price and the other selling terms. The representatives have advised us that the underwriters do not intend to make sales to discretionary accounts.

If the underwriters sell more shares than the total number set forth in the table above, we have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares at the public offering price less the underwriting discount. The underwriters may exercise the option solely for the purpose of covering over-allotments, if any, in connection with this offering. To the extent the option is exercised, each underwriter must purchase a number of additional shares approximately proportionate to that underwriter's initial purchase commitment. Any shares issued or sold under the option will be issued and sold on the same terms and conditions as the other shares that are the subject of this offering.

We, our officers and directors, and our other stockholders have agreed, subject to certain exceptions, that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of Citigroup Global Markets Inc. and Barclays Capital Inc., dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock. Citigroup Global Markets Inc. and Barclays Capital Inc. in their sole discretion may release any of the securities subject to these lock-up agreements at any time without notice. Notwithstanding the foregoing, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Prior to this offering, there has been no public market for our shares. Consequently, the initial public offering price for the shares will be determined by negotiations between us and the representatives. Among the factors considered in determining the initial public offering price will be our results of operations, our current financial condition, our future prospects, our markets, the

economic conditions in and future prospects for the industry in which we compete, our management, and currently prevailing general conditions in the equity securities markets, including current market valuations of publicly traded companies considered comparable to our company. We cannot assure you, however, that the price at which the shares will sell in the public market after this offering will not be lower than the initial public offering price or that an active trading market in our shares will develop and continue after this offering.

We have applied to have our shares listed on the Nasdaq Global Market under the symbol "SUPN."

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' over-allotment option.

	Paid by Supernus Pharmaceuticals, Inc.	
	No Exercise	Full Exercise
Per share	$	$
Total	$	$

In connection with the offering, the underwriters may purchase and sell shares in the open market. Purchases and sales in the open market may include short sales, purchases to cover short positions, which may include purchases pursuant to the over-allotment option, and stabilizing purchases.

- Short sales involve secondary market sales by the underwriters of a greater number of shares than they are required to purchase in the offering.
    - "Covered" short sales are sales of shares in an amount up to the number of shares represented by the underwriters' over-allotment option.
    - "Naked" short sales are sales of shares in an amount in excess of the number of shares represented by the underwriters' over-allotment option.
- Covering transactions involve purchases of shares either pursuant to the over-allotment option or in the open market after the distribution has been completed in order to cover short positions.
    - To close a naked short position, the underwriters must purchase shares in the open market after the distribution has been completed. 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 shares in the open market after pricing that could adversely affect investors who purchase in the offering.
    - To close a covered short position, the underwriters must purchase shares in the open market after the distribution has been completed or must exercise the over-allotment option. In determining the source of shares to close the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.
- Stabilizing transactions involve bids to purchase shares so long as the stabilizing bids do not exceed a specified maximum.

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of the shares. They may also cause the price of the shares to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriters may

conduct these transactions on the Nasdaq Global Market, in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

Certain of the underwriters have performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses. The underwriters may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. Cowen Healthcare Royalty Partners (CHRP), an affiliate of Cowen and Company, LLC, holds certain of the Non-recourse Notes issued by our subsidiary, TCD Royalty Sub LLC.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

Notice to Prospective Investors in the European Economic Area

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of shares described in this prospectus may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to the shares that has been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

- to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- to fewer than 100 natural or legal persons (other than qualified investors as defined below) subject to obtaining the prior consent of the representatives for any such offer; or
- in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of shares described in this prospectus located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of Article 2(1)(e) of the Prospectus Directive.

For purposes of this provision, the expression an "offer to the public" in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

The sellers of the shares have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the shares as contemplated in this prospectus. Accordingly, no

purchaser of the shares, other than the underwriters, is authorized to make any further offer of the shares on behalf of the sellers or the underwriters.

Notice to Prospective Investors in the United Kingdom

This prospectus is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a "relevant person"). This prospectus and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Notice to Prospective Investors in France

Neither this prospectus nor any other offering material relating to the shares described in this prospectus has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers.* The shares have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus nor any other offering material relating to the shares has been or will be:

- released, issued, distributed or caused to be released, issued or distributed to the public in France; or
- used in connection with any offer for subscription or sale of the shares to the public in France.

Such offers, sales and distributions will be made in France only:

- to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*;
- to investment services providers authorized to engage in portfolio management on behalf of third parties; or
- in a transaction that, in accordance with article L.411-2-II-1°-or-2°-or 3° of the French *Code monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the *Autorité des Marchés Financiers*, does not constitute a public offer (*appel public à l'épargne*).

The shares may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French *Code monétaire et financier*.

Notice to Prospective Investors in Hong Kong

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the

contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Notice to Prospective Investors in Japan

The shares offered in this prospectus have not been registered under the Securities and Exchange Law of Japan. The shares have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

- a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

- to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares, debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;

- where no consideration is or will be given for the transfer; or

- where the transfer is by operation of law.

LEGAL MATTERS

Our counsel, Ropes & Gray LLP, Boston, Massachusetts, will pass on the validity of the shares of common stock offered by this prospectus. Goodwin Procter LLP, Boston, Massachusetts, has acted as counsel for the underwriters in connection with certain legal matters related to this offering.

EXPERTS

The consolidated financial statements of Supernus Pharmaceuticals, Inc. at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009, appearing in this prospectus and Registration Statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

MARKET AND INDUSTRY DATA

Market data and certain industry data and forecasts included in this prospectus were obtained from internal company surveys, market research, consultant surveys, publicly available information and industry publications and surveys. While we believe that each of these studies and publications is reliable, we have not independently verified market and industry data from third-party sources. While we believe our internal company research is reliable and the market definitions we use are appropriate, neither such research nor these definitions have been verified by any independent source. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors."

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the Securities and Exchange Commission, or SEC, a registration statement on Form S-1 under the Securities Act that registers the shares of our common stock to be sold in this offering. This prospectus does not contain all of the information set forth in the registration statement and the exhibits filed as part of the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement and the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The reports and other information we file with the SEC can be read and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington D.C. 20549. Copies of these materials can be obtained at prescribed rates from the SEC's Public Reference Room at such address. You may obtain information regarding the operation of the public reference room by calling 1-800-SEC-0330. The SEC also maintains a web site (http://www.sec.gov) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

Upon completion of this offering, we will become subject to the reporting and information requirements of the Exchange Act and, as a result, will file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference room and the web site of the SEC referred to above.

Supernus Pharmaceuticals, Inc.

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Report of Independent Registered Public Accounting Firm

The Board of Directors
Supernus Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Supernus Pharmaceuticals, Inc. as of December 31, 2008 and 2009, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2009. 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. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management and 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 Supernus Pharmaceuticals, Inc. and subsidiaries as of December 31, 2008 and 2009, and the consolidated results of their operations and their cash flows for the three years in the period ended December 31, 2009, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

McLean, Virginia
April 28, 2010

Supernus Pharmaceuticals, Inc.

Consolidated Balance Sheets

	December 31, 2008	December 31, 2009	September 30, 2010 (unaudited)	Pro Forma Stockholders' Deficit at September 30, 2010 (unaudited)
Assets				
Current assets:				
Cash and cash equivalents	$ 52,876,864	$ 31,405,680	$ 25,255,918	
Cash and cash equivalents—restricted	6,110,718	1,850,912	1,442,101	
Marketable securities	7,502,636	35,118,047	20,566,385	
Marketable securities—restricted	169,621	224,861	237,656	
Accounts receivable	2,276,420	3,407,770	3,033,067	
Interest receivable	—	334,417	85,802	
Prepaid expenses	252,511	266,924	351,086	
Deferred financing costs	268,560	270,934	270,934	
Total current assets	69,457,330	72,879,545	51,242,949	
Property and equipment, net	1,987,578	1,859,186	1,469,005	
Purchased patents, net	1,599,950	1,370,725	1,198,806	
Other assets	108,822	82,150	63,845	
Deferred financing costs, long-term	3,980,073	3,707,375	3,527,616	
Total assets	$ 77,133,753	$ 79,898,981	$ 57,502,221	
Liabilities and stockholders' deficit				
Current liabilities:				
Accounts payable and accrued expenses	$ 4,468,426	$ 6,244,516	$ 14,092,113	
Accrued compensation	1,305,572	1,287,620	815,598	
Interest payable	2,500,000	2,500,000	2,500,000	
Total current liabilities	8,273,998	10,032,136	17,407,711	
Deferred rent	437,439	797,145	773,664	
Supplemental executive retirement plan	169,621	224,861	237,656	
Non-recourse notes payable	75,000,000	75,000,000	75,000,000	
Total liabilities	83,881,058	86,054,142	93,419,031	
Stockholders' deficit:				
Series A convertible preferred stock, $0.001 par value—49,000,000 shares authorized, issued and outstanding at December 31, 2008 and 2009 and September 30, 2010; aggregate liquidation preference of $59,230,260, $62,660,260 and $65,232,760 at December 31, 2008, 2009, and September 30, 2010, respectively	49,000	49,000	49,000	—
Common stock, $0.001 par value—62,000,000 shares authorized, 5,520,591 and 6,336,061 shares issued and outstanding at December 31, 2008 and 2009, respecively and 6,371,061 shares issued and outstanding at September 30, 2010	5,521	6,337	6,372	55,372
Additional paid-in capital	48,980,411	49,110,087	49,237,544	49,237,544
Accumulated deficit	(55,782,237)	(55,320,585)	(85,209,726)	(85,209,726)
Total stockholders' deficit	(6,747,305)	(6,155,161)	(35,916,810)	(35,916,810)
Total liabilities and stockholders' deficit	$ 77,133,753	$ 79,898,981	$ 57,502,221	

See accompanying notes.

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Operations

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
Revenues:					
Development and milestone revenue	$ 1,405,098	$ 2,697,048	$ 1,549,886	$ 1,181,058	$ 97,174
Royalty revenue	2,828,313	6,191,616	44,963,260	41,883,532	8,634,848
Total revenues	4,233,411	8,888,664	46,513,146	43,064,590	8,732,022
Costs and expenses:					
Research and development	19,268,757	30,462,808	29,260,067	21,804,118	26,079,702
General and administrative	4,011,693	4,286,501	4,648,906	3,502,539	3,388,768
Total costs and expenses	23,280,450	34,749,309	33,908,973	25,306,657	29,468,470
Income (loss) from operations	(19,047,039)	(25,860,645)	12,604,173	17,757,933	(20,736,448)
Other income (expense):					
Interest income	1,772,999	1,057,462	514,327	100,640	622,854
Interest expense	—	(8,678,508)	(12,658,262)	(9,209,699)	(9,830,537)
Other	—	—	—	—	53,576
Total other income (expense)	1,772,999	(7,621,046)	(12,143,935)	(9,109,059)	(9,154,107)
Net income (loss)	$(17,274,040)	$(33,481,691)	$ 460,238	$ 8,648,874	$(29,890,555)
Cumulative dividends on preferred Series A convertible preferred stock	$ (3,430,000)	$ (3,430,000)	$ (3,430,000)	$ (2,572,500)	$ (2,572,500)
Net income (loss) attributable to common stockholders	$(20,704,040)	$(36,911,691)	$ (2,969,762)	$ 6,076,374	$(32,463,055)
Net income (loss) per common share:					
Basic	$ (4.21)	$ (6.61)	$ (0.53)	$ 1.08	$ (5.12)
Diluted	$ (4.21)	$ (6.61)	$ 0.01	$ 0.15	$ (5.12)
Weighted average number of common shares:					
Basic	4,921,376	5,587,467	5,653,506	5,610,047	6,345,420
Diluted	4,921,376	5,587,467	56,324,761	56,282,411	6,345,420
Net income (loss) used to compute pro forma net income (loss) per common share — basic and diluted (unaudited)(Note 2)			$ 460,238		$(29,890,555)
Weighted-average number of shares used in calculating pro forma net income (loss) per share basic and diluted (unaudited)(Note 2)			56,324,761		55,345,420
Pro forma net income (loss) per share—basic and diluted (unaudited)(Note 2)			$ 0.01		$ (0.54)

See accompanying notes.

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Changes in Stockholders' Equity (Deficit)

	Series A Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount			
Balance, December 31, 2006	49,000,000	$ 49,000	4,235,303	$ 4,235	$48,803,670	$ (5,026,506)	$ 43,830,399
Vesting of unvested stock issued to officer	—	—	617,644	618	61,146	—	61,764
Exercise of stock options	—	—	50,000	50	4,950	—	5,000
Stock-based compensation	—	—	—	—	12,336	—	12,336
Net loss	—	—	—	—	—	(17,274,040)	(17,274,040)
Balance, December 31, 2007	49,000,000	49,000	4,902,947	4,903	48,882,102	(22,300,546)	26,635,459
Vesting of unvested stock issued to officer	—	—	617,644	618	61,146	—	61,764
Stock-based compensation	—	—	—	—	37,163	—	37,163
Net loss	—	—	—	—	—	(33,481,691)	(33,481,691)
Balance, December 31, 2008	49,000,000	49,000	5,520,591	5,521	48,980,411	(55,782,237)	(6,747,305)
Vesting of unvested stock issued to officer	—	—	617,644	618	61,146	—	61,764
Exercise of stock options	—	—	197,826	198	19,585	—	19,783
Stock-based compensation	—	—	—	—	48,945	—	48,945
Net income	—	—	—	—	—	460,238	460,238
Other comprehensive income	—	—	—	—	—	1,414	1,414
Balance, December 31, 2009	49,000,000	49,000	6,336,061	6,337	49,110,087	(55,320,585)	(6,155,161)
Exercise of stock options (unaudited)	—	—	35,000	35	3,465	—	3,500
Stock-based compensation (unaudited)	—	—	—	—	123,992	—	123,992
Net loss (unaudited)	—	—	—	—	—	(29,890,555)	(29,890,555)
Other comprehensive income (unaudited)	—	—	—	—	—	1,414	1,414
Balance, September 30, 2010 (unaudited)	49,000,000	$ 49,000	6,371,061	$ 6,372	$49,237,544	$(85,209,726)	$(35,916,810)

See accompanying notes

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Cash Flows

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
Operating activities					
Net income (loss)	$(17,274,040)	$ (33,481,691)	$ 460,238	$ 8,648,874	$(29,890,555)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:					
Other	—	—	—	—	(53,576)
Unrealized gain (loss) on marketable securities	—	—	1,414	(2,778)	1,414
Depreciation and amortization	932,211	1,115,853	1,072,102	789,597	889,648
Amortization of deferred financing costs	—	178,508	270,324	202,742	179,759
Stock-based compensation expense	74,100	98,927	110,709	83,031	123,992
Changes in operating assets and liabilities:					
Accounts receivable	(413,853)	(1,163,482)	(1,131,350)	857,110	374,703
Interest receivable	—	—	(334,417)	(314,296)	248,615
Notes receivable from employee	(63,250)	63,250	—	—	—
Prepaid expenses and other assets	88,602	(72,217)	12,259	(183,741)	(65,858)
Accounts payable, accrued expenses, and supplemental executive retirement plan	2,448,174	1,088,129	1,813,378	1,505,631	7,375,575
Interest payable	—	2,500,000	—	—	—
Deferred rent	227,638	21,157	359,706	408,054	(23,481)
Net cash provided by (used in) operating activities	(13,980,418)	(29,651,566)	2,634,363	11,994,224	(20,839,764)
Cash flows from investing activities					
Purchases of marketable securities	(48,380,712)	(89,513,351)	(56,288,673)	(26,616,159)	(30,746,029)
Sales and maturities of marketable securities	64,297,060	105,128,173	28,618,022	7,510,559	45,297,692
Other	—	—	—	—	55,000
Purchases of property and equipment	(1,062,374)	(134,381)	(714,485)	(512,441)	(328,972)
Net cash provided by (used in) investing activities	14,853,974	15,480,441	(28,385,136)	(19,618,041)	14,277,691
Cash flows from financing activities					
Change in restricted cash and cash equivalents	—	(6,110,718)	4,259,806	2,526,002	408,811
Proceeds from issuance of common stock	5,000	—	19,783	19,383	3,500
Proceeds from issuance of note payable	—	75,000,000	—	—	—
Deferred financing costs	—	(4,427,141)	—	—	—
Net cash provided by financing activities	5,000	64,462,141	4,279,589	2,545,385	412,311
Net change in cash and cash equivalents	878,556	50,291,016	(21,471,184)	(5,078,432)	(6,149,762)
Cash and cash equivalents at beginning of period	1,707,292	2,585,848	52,876,864	52,876,864	31,405,680
Cash and cash equivalents at end of period	$ 2,585,848	$ 52,876,864	$ 31,405,680	$ 47,798,431	$ 25,255,918
Supplemental cash flow information:					
Cash paid for interest	$ —	$ 6,000,000	$ 12,000,000	$ 9,000,000	$ 9,090,378

See accompanying notes.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

1. Organization and Nature of Operations

Supernus Pharmaceuticals, Inc. (the Company) was incorporated in Delaware on March 30, 2005, and commenced operations on December 22, 2005. The Company is a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system diseases, including neurological and psychiatric disorders. The Company has several proprietary product candidates in clinical development that address large market opportunities in epilepsy and attention deficit hyperactivity disorder.

The Company is currently focused on attaining regulatory approval and bringing its two late-stage epilepsy product candidates, SPN-538 and Epliga, to market. Except for a one time profit in 2009, the Company has incurred net losses from operations since its inception. The Company had net income of approximately $0.5 million during the year ended December 31, 2009 and a net loss of $29.9 million during the nine months ended September 30, 2010. The Company has financed its operations primarily through the sale of equity securities, non-recourse debt arrangements, and payments received under its royalty and development agreements. To date, none of the Company's product candidates have been approved for sale and therefore the Company has not generated any revenues from product sales. Management expects operating losses to continue for the foreseeable future. The Company may need to obtain additional capital through equity offerings, debt financings and/or payments under new or existing licensing and research and development collaboration agreements. The Company expects its progress in the development of its pipeline to provide sufficient value inflection milestones, based on which the Company can continue to seek additional funding. The type, timing, and terms of financing, if required, selected by the Company will be dependent upon the Company's cash needs, the availability of financing sources, and the prevailing conditions in the financial markets. There can be no assurance that such financing will be available to the Company at any given time or available on favorable terms. If sufficient funds on acceptable terms are not available when needed, the Company could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of its development programs, which may have a material adverse effect on the Company's business, results of operations and financial condition.

The Company's operations are subject to certain risks and uncertainties. The risks include negative outcome of clinical trials, inability or delay in completing clinical trials or obtaining regulatory approvals, changing market conditions for products being developed by the Company, more stringent regulatory environment, the need to retain key personnel and protect intellectual property, product liability, and the availability of additional capital financing on terms acceptable to the Company.

2. Summary of Significant Accounting Policies

Basis of Presentation

The Company's consolidated financial statements include the accounts of Supernus Pharmaceuticals, Inc. and its wholly-owned subsidiary, TCD Royalty Sub LLC, collectively referred to herein as "Supernus" or "the Company". All significant intercompany transactions and balances have been eliminated in consolidation. The Company's consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States. The Company currently operates in one business segment.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

Use of Estimates

The preparation of the financial statements in accordance with U.S. generally accepted accounting principles requires the Company to make estimates and judgments in certain circumstances that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. In preparing these consolidated financial statements, management has made its best estimates and judgments of certain amounts included in the financial statements, giving due consideration to materiality. On an ongoing basis, the Company evaluates its estimates, including those related to revenue recognition, fair values of assets, convertible preferred stock and common stock, income taxes, preclinical study and clinical trial accruals and other contingencies. Management bases its estimates on historical experience or on various other assumptions that it believes to be reasonable under the circumstances. Actual results could differ from these estimates.

Unaudited Interim Financial Information

The accompanying unaudited interim consolidated balance sheet as of September 30, 2010, the consolidated statements of operations and cash flows for the nine months ended September 30, 2010 and 2009, the consolidated statement of changes in stockholders' equity (deficit) for the nine months ended September 30, 2010, and the related interim information contained within the notes to the consolidated financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission (SEC) for interim financial information. Accordingly, they do not include all of the information and the notes required by U.S. generally accepted accounting principles for complete financial statements. In the opinion of management, the unaudited interim consolidated financial statements reflect all adjustments, consisting of normal and recurring adjustments, necessary for the fair presentation of the Company's financial position at September 30, 2010 and results of its operations and its cash flows for the nine months ended September 30, 2010 and 2009. The results for the nine months ended September 30, 2010 are not necessarily indicative of future results. All references to September 30, 2010 or to the nine months ended September 30, 2010 and 2009 in the notes to the consolidated financial statements are unaudited.

Unaudited Pro Forma Balance Sheet Presentation

The unaudited pro forma balance sheet as of September 30, 2010, reflects the expected automatic conversion of the outstanding shares of Series A convertible preferred stock into 49,000,000 shares of common stock as though the completion of the Company's initial public offering (IPO) had occurred on September 30, 2010. The shares of common stock issued in the IPO and any related estimated net proceeds are excluded from such pro forma information.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary, TCD Royalty Sub LLC (TCD). TCD was formed for the purpose of issuing non-recourse notes payable secured by certain royalty payment and license rights (see Note 6). All intercompany balances and transactions have been eliminated in consolidation.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

Cash and Cash Equivalents and Restricted Cash

The Company considers all investments in highly liquid financial instruments with an original maturity of three months or less to be cash equivalents.

Under the terms of a non-recourse note agreement, TCD is required to maintain a cash account to cover interest payments (see Note 6). These cash and cash equivalents are restricted as to their withdrawal or use and, therefore, are segregated and presented as restricted cash and cash equivalents.

Marketable Securities

Marketable securities consist of investments in U.S. Treasuries and various government agency debt securities, which mature in one year or less. At December 31, 2008, the Company held approximately $7.5 million of auction rate securities which were sold at par value on January 2, 2009. Management classifies the Company's short-term investments as available-for-sale. Such securities are carried at estimated fair value, with any material unrealized holding gains or losses reported, net of any tax effects, as accumulated other comprehensive income (loss), which is a separate component of stockholders' equity (deficit). Realized gains and losses and declines in value judged to be other-than-temporary, if any, are included in results of operations. A decline in the market value of any available-for-sale security below cost that is deemed to be other-than-temporary results in a reduction in fair value, which is charged to earnings in that period, and a new cost basis for the security is established. Dividend and interest income is recognized as interest income when earned. The cost of securities sold is calculated using the specific identification method. The Company places all investments with highly rated financial institutions.

Marketable Securities—Restricted

On January 21, 2006, the Company established the Supernus Supplemental Executive Retirement Plan (SERP) for the sole purpose of receiving funds for two executives from the Shire Laboratories, Inc. SERP and providing a continuing deferral program under the Supernus SERP. As of December 31, 2008 and 2009, the estimated fair value of the mutual fund investment securities within the SERP have been recorded as restricted marketable securities. A corresponding non-current liability is also included in the consolidated balance sheet to reflect the Company's obligation for the SERP. The Company has not made, and has no plans to make, contributions to the SERP. The securities can only be used for purposes of paying benefits under the SERP.

Accounts Receivable

Accounts receivable are reported in the balance sheets at outstanding amounts, less an allowance for doubtful accounts. The Company extends credit without requiring collateral. The Company writes off uncollectible receivables when the likelihood of collection is remote. The Company evaluates the collectability of accounts receivable on a regular basis. An allowance, when needed, is based upon various factors including the financial condition and payment history of customers, an overall review of

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

collections experience on other accounts, and economic factors or events expected to affect future collections experience. No allowance was recorded as of December 31, 2008 and 2009.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash, accounts receivable and marketable securities. The counterparties are various corporations and financial institutions of high credit standing.

Substantially all of the Company's cash and cash equivalents are maintained with major financial institutions in the United States. Deposits held with banks may exceed the amount of insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and, therefore, management believes they bear minimal risk. The Company has not experienced any losses on its deposits of cash, cash equivalents, short-term investments and restricted investments and management believes that its guidelines for investment of its excess cash maintain safety and liquidity through diversification and investment maturity.

Fair Value of Financial Instruments

The carrying amounts of financial instruments, including cash and cash equivalents, accounts receivable, and accounts payable and accrued expenses approximate fair value due to their short-term maturities. The carrying value and the estimated fair value of the non-recourse notes payable, was approximately $75.0 million and $66.0 million, respectively, at December 31 2008, December 31, 2009, and September 30, 2010. The fair value was estimated based on actual trade information as well as quoted prices provided by bond traders.

The fair value of an asset or liability should represent the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Such transactions to sell an asset or transfer a liability are assumed to occur in the principal or most advantageous market for the asset or liability. Accordingly, fair value is determined based on a hypothetical transaction at the measurement date, considered from the perspective of a market participant rather than from a reporting entity's perspective.

The Company defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. The Company reports assets and liabilities that are measured at fair value using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and minimizes the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

- Level 1—Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

- Level 2—Inputs are quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (interest rates, yield curves, etc.) and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

- Level 3—Unobservable inputs that reflect the Company's own assumptions, based on the best information available, including the Company's own data.

In accordance with the fair value hierarchy described above, the following tables show the fair value of the Company's financial assets and liabilities that are required to be measured at fair value:

		Fair Value Measurements at December 31, 2008		
	Total Carrying Value at December 31, 2008	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and cash equivalents	$ 52,876,864	$ 52,876,864	$ —	$ —
Cash equivalents—restricted	6,110,718	6,110,718	—	—
Marketable securities	7,502,636		7,502,636	
Marketable securities—restricted	169,621	—	169,621	—
Total assets at fair value	$ 66,659,839	$ 58,987,582	$ 7,672,257	$ —

		Fair Value Measurements at December 31, 2009		
	Total Carrying Value at December 31, 2009	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and cash equivalents	$ 31,405,680	$ 31,405,680	$ —	$ —
Cash equivalents—restricted	1,850,912	1,850,912	—	—
Marketable securities	35,118,047	35,118,047	—	—
Marketable securities—restricted	224,861	—	224,861	—
Total assets at fair value	$ 68,599,500	$ 68,374,639	$ 224,861	$ —

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

		Fair Value Measurements at September 30, 2010		
	Total Carrying Value at September 30, 2010	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and cash equivalents	$ 25,255,918	$ 25,255,918	$ —	$ —
Cash equivalents—restricted	1,442,101	1,442,101	—	—
Marketable securities	20,566,385	20,566,385	—	—
Marketable securities—restricted	237,656	—	237,656	—
Total assets at fair value	$ 47,502,060	$ 47,264,404	$ 237,656	$ —

The Company's Level 1 assets include money market funds and U.S. Treasuries and government agency debt securities with quoted prices in active markets. At December 31, 2008, Level 2 assets include auction rate securities and mutual funds the SERP assets are invested in. At December 31, 2009 and September 30, 2010, Level 2 assets include mutual funds the SERP assets are invested in. Mutual funds and auction rate securities are valued using third-party pricing sources that apply applicable inputs and other relevant data into their models to estimate fair value.

Property and Equipment

Property and equipment are stated at cost. Upon retirement or sale, the cost of assets disposed of and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is credited or charged to operations. Repairs and maintenance costs are expensed as incurred. Depreciation and amortization are computed using the straight-line method over the following average useful lives:

Computer equipment	3 years
Software	3 years
Furniture	7 years
Lab and office equipment	5 years
Leasehold improvements	Shorter of lease term or useful life

Intangible Assets

Intangible assets consist primarily of patents. Patents are carried at cost less accumulated amortization which is calculated on a straight-line basis over the estimated useful lives of the patents, estimated to be 10 years. The carrying value of the patents is assessed for impairment annually during the fourth quarter of each year, or more frequently if impairment indicators exist.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

Impairment of Long-Lived Assets

Long-lived assets consist primarily of patents and property and equipment. The Company assesses the recoverability of its long-lived assets whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If indications of impairment exist, projected future undiscounted cash flows associated with the asset are compared to the carrying amount to determine whether the asset's value is recoverable. Evaluating for impairment requires judgment, including the estimation of future cash flows, future growth rates and profitability and the expected life over which cash flows will occur. Changes in the Company's business strategy or adverse changes in market conditions could impact impairment analyses and require the recognition of an impairment charge equal to the excess of the carrying value of the intangible asset over its estimated fair value. For the years ended December 31, 2007, 2008 and 2009, the Company determined that there was no impairment of the Company's intangible assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value, less costs to sell. As of December 31, 2008 and 2009, and September 30, 2010, the Company determined that there were no impaired assets and had no assets intended for disposal.

Preclinical Study and Clinical Trial Accruals and Deferred Advance Payments

The Company estimates preclinical study and clinical trial expenses based on the services performed pursuant to contracts with research institutions and clinical research organizations that conduct these activities on its behalf. In recording service fees, the Company estimates the time period over which the related services will be performed and compares the level of effort expended through the end of each period to the cumulative expenses recorded and payments made for such services and, as appropriate, accrues additional service fees or defers any non-refundable advance payments until the related services are performed. If the actual timing of the performance of services or the level of effort varies from the estimate, the Company will adjust its accrual or deferred advance payment accordingly. If the Company later determines that it no longer expects the services associated with a deferred non-refundable advance payment to be rendered, the deferred advance payment will be charged to expense in the period that such determination is made.

Income Taxes

The Company utilizes the 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 reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The Company accounts for uncertain tax positions in the financial statements when it is more likely than not that the position will be sustained upon examination by the tax authorities. Such tax positions must initially and subsequently be measured as the largest amount of tax benefit that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority assuming full knowledge of the position and relevant facts. The adoption had no impact on the Company's

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

results of operations, financial position or cash flows. The Company's policy is to recognize any interest and penalties related to income taxes in income tax expense.

Revenues

The Company's revenues have been generated through research and development agreements. These agreements included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, which comprise our development and milestone revenues, as well as royalties on product sales of licensed products, Oracea®, SancturaXR®, and Intuniv®, which comprise our royalty revenues. For multiple element arrangements, the Company evaluates the components of each arrangement as separate elements based on certain criteria. Accordingly, revenues from collaboration agreements are recognized based on the performance requirements of the agreements. The Company recognizes revenue when persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the fee is fixed and determinable; and collection is reasonably assured.

The Company's development revenues have been earned under contracts which were less than one year in duration. Development contracts generally take the form of fee-for-service arrangements based on an annual contractual full time equivalent billing rate. In cases where performance spanned multiple accounting periods, the Company has recognized revenue as services were performed, measured on a proportional-performance basis. Output measures, specifically labor hours, were used to measure performance as they reflect the Company's pattern of performance over the contractual term. Milestone payments are recognized as revenue when the collaborative partner acknowledges completion of the milestone and substantive effort was necessary to achieve the milestone.

Except as noted below the Company records royalty revenues based on estimates of the sales that occurred during the relevant period. The relevant period estimates of sales are based on interim data provided by licensees and analysis of historical royalties received (adjusted for any changes in facts and circumstances, as appropriate). Supernus maintains regular communication with licensees in order to obtain information to develop reasonable estimates. Differences between actual royalty revenues and estimated royalty revenues are reconciled and adjusted for in the period which they are collected, typically the following quarter. Historically, adjustments have not been material based on actual amounts received from licensees. To the extent the Company does not have sufficient ability to accurately estimate revenue, it records revenue on a cash basis.

In 2009, the Company recognized approximately $36.9 million in royalty revenues related to an amendment to a license agreement with Shire plc for Intuniv, which is a novel ADHD product marketed by Shire plc and utilizes one of the Company's proprietary technologies. Under the terms of the license amendment, the parties agreed to delete all provisions regarding milestone and royalty payments and replaced those provisions with, among other things, (1) a commitment by Shire plc to make a one-time payment of $36,875,000 within 15 days of signing the amendment, (2) an acknowledgement by the Company that no other sums would be payable to the Company, then or in the future, under the amended license; and (3) a statement that the amended license was permanent, irrevocable and paid-up. The Company determined to recognize this revenue immediately because

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

(1) the executed contracted constituted persuasive evidence of an arrangement, (2) the delivery of the license amendment had occurred and Shire plc had assumed all risks and rewards regarding Intuniv, and the Company had no current or future performance obligations, (3) the total consideration for the license amendment was fixed and known at the time of its execution and there were not any extended payment terms or rights of return, and (4) collection was reasonably assured as the Company determined that Shire plc was creditworthy and had the financial ability to make the payment in accordance with the terms of the license amendment.

Research and Development Costs

Research and development expenditures are expensed as incurred. Research and development costs primarily consist of employee related expenses, including salaries and benefits, expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct the Company's clinical trials, the cost of acquiring and manufacturing clinical trial materials, facilities that do not have an alternative future use, related depreciation and other allocated expenses, license fees for and milestone payments related to in-licensed products and technologies, stock-based compensation expense, and costs associated with non-clinical activities and regulatory approvals.

Stock-Based Compensation

Employee stock-based compensation is measured based on the estimated fair value on the grant date. The grant date fair value of options granted is calculated using the Black-Scholes option-pricing model, which requires the use of subjective assumptions including volatility, expected term, and the fair value of the underlying common stock. For awards that vest based on service conditions, the Company recognizes expense using the straight-line method less estimated forfeitures.

The Company has awarded non-vested stock. The estimated fair value of these awards is determined at the date of grant based upon the estimated fair value of the Company's common stock. The Company recognizes the estimated fair value on a straight-line basis over the requisite service period as the awards vest.

The Company records the expense for stock option grants and non-vested stock subject to performance-based milestone vesting over the remaining service period when management determines that achievement of the milestone is probable. Management evaluates when the achievement of a performance-based milestone is probable based on the relative satisfaction of the performance conditions as of the applicable reporting date.

The Company records the expense of services rendered by non-employees based on the estimated fair value of the stock option using the Black-Scholes option-pricing model. The fair value of non-employee awards are remeasured at each reporting period. As a result, stock compensation expense for non-employee awards with vesting is affected by changes in the fair value of the Company's common stock.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

Net Earnings (Loss) Per Share

Basic net income (loss) per common share is determined by dividing the net income (loss) attributable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration of common stock equivalents. Diluted net income (loss) per share is computed by dividing the net income (loss) attributable to common stockholders by the weighted-average number of common share equivalents outstanding for the period. The treasury stock method is used to determine the dilutive effect of the Company's stock option grants and the if-converted method is used to determine the dilutive effect of the Company's Series A convertible preferred stock. With the exception of the year ended December 31, 2009 and the nine month period ended September 30, 2009, the weighted-average shares used to calculate both basic and diluted loss per share are the same. The following common stock equivalents were excluded in the calculation of diluted net income (loss) per share because their effect would be anti-dilutive:

	December 31,			September 30,	
	2007	2008	2009	2009	2010
Series A convertible preferred stock	49,000,000	49,000,000	—	—	49,000,000
Stock options and non-vested stock	2,382,389	2,183,152	—	—	1,791,290

The pro forma net income (loss) per share is computed using the weighted-average number of common shares outstanding and assumes the conversion of all outstanding shares of the Company's Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of the Company's planned IPO, as if they had converted at the beginning of the period. The Company believes the unaudited pro forma net income (loss) per share provides material information to investors, as the conversion of the Company's Series A convertible preferred stock to common stock is expected to occur upon the closing of an IPO, and the disclosure of pro forma net

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

income (loss) per share thus provides an indication of net income (loss) per share that is comparable to what will be reported by the Company as a public company.

	December 31, 2009	September 30, 2010 (unaudited)
Pro forma net income (loss) per common share		
Numerator:		
Net income (loss) used to compute pro forma net income (loss) per common share:		
Basic	$ 460,238	$ (29,890,555)
Diluted	$ 460,238	$ (29,890,555)
Denominator:		
Weighted-average number of common shares, used to calculate net income (loss) per common share:		
Basic	5,653,506	6,345,420
Diluted	*56,324,761	6,345,420
Add: Pro forma adjustments to reflect assumed weighted-average effect of conversion of Series A convertible preferred stock	49,000,000	49,000,000
Weighted-average number of common shares used in calculating pro forma net income (loss) per common share:		
Basic	56,324,761	55,345,420
Diluted	56,324,761	55,345,420
Pro forma net income (loss) per common share:		
Basic	$ 0.01	$ (0.54)
Diluted	$ 0.01	$ (0.54)

* The weighted-average number of common shares used to calculate diluted income (loss) per share at December 31, 2009 includes the following common stock equivalents, which were not included in the calculation of basic net income (loss) per share because their effect would be anti-dilutive:

Series A convertible preferred stock	49,000,000
Stock options and non-vested stock	1,671,255

Recently Issued Accounting Pronouncements

In April 2010, the FASB issued ASU No. 2010-17, *Revenue Recognition—Milestone Method* (ASU 2010-017). ASU 2010-017 provides guidance in applying the milestone method of revenue recognition to research or development arrangements. This guidance concludes that the milestone method is a valid application of the proportional performance model when applied to research or development arrangements. Accordingly, an entity can make an accounting policy election to recognize a payment that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved. The guidance is effective for fiscal years, and interim periods within those years, beginning on or after June 15, 2010. The adoption of this accounting standard is not expected to impact the Company's financial position or results of operations.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

In February 2010, the FASB issued amended guidance on subsequent events. Under this amended guidance, SEC filers are no longer required to disclose the date through which subsequent events have been evaluated in originally issued and revised financial statements. This guidance was effective immediately and the Company adopted these new requirements upon issuance of this guidance.

In January 2010, the FASB issued Accounting Standards Update (ASU) No. 2010-06, *Fair Value Measurements and Disclosures (Topic 820)—Improving Disclosures about Fair Value Measurements* (ASU No. 2010-06). ASU No. 2010-06 requires: (1) fair value disclosures of assets and liabilities by class; (2) disclosures about significant transfers in and out of Levels 1 and 2 on the fair value hierarchy, in addition to Level 3; (3) purchases, sales, issuances, and settlements be disclosed on gross basis on the reconciliation of beginning and ending balances of Level 3 assets and liabilities; and (4) disclosures about valuation methods and inputs used to measure the fair value of Level 2 assets and liabilities. ASU No. 2010-06 becomes effective for the first financial reporting period beginning after December 15, 2009, except for disclosures about purchases, sales, issuances, and settlements of Level 3 assets and liabilities which will be effective for fiscal years beginning after December 15, 2010. The Company is currently assessing what impact, if any, ASU No. 2010-06 will have on its fair value disclosures. However, the Company does not expect the adoption of the guidance provided in this codification update to have any material impact on its consolidated financial statements.

In October 2009, the FASB issued ASU No. 2009-13, *Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements: a consensus of the FASB Emerging Issues Task Force* (ASU 2009-13). ASU 2009-13 establishes a selling-price hierarchy for determining the selling price of each element within a multiple-deliverable arrangement. Specifically, the selling price assigned to each deliverable is to be based on vendor-specific objective evidence (VSOE) if available, third-party evidence, if VSOE is unavailable, and estimated selling prices if neither VSOE or third-party evidence is available. In addition, ASU 2009-13 eliminates the residual method of allocating arrangement consideration and instead requires allocation using the relative selling price method. ASU 2009-13 will be effective prospectively for multiple-deliverable revenue arrangements entered into, or materially modified, in fiscal years beginning on or after June 15, 2010. Presently, the Company is assessing what impact, if any, the adoption of ASU 2009-13 may have on its consolidated financial statements.

In August 2009, the FASB issued ASU No. 2009-05, *Fair Value Measurements and Disclosures (Topic 820)—Measuring Liabilities at Fair Value* (ASU 2009-05). ASU 2009-05 provides guidance in measuring the fair value of a liability when a quoted price in an active market does not exist for an identical liability or when a liability is subject to restrictions on its transfer. ASU 2009-15 was effective for the Company beginning with the quarter ended December 31, 2009. The adoption of ASU 2009-05 had no impact on the fair value measurements of the Company's liabilities.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

3. Marketable Securities

Marketable securities held by the Company were as follows:

At December 31, 2008:

Available-for-Sale	Amortized Cost	Unrealized Gains/(Losses)	Fair Value
Auction rate securities	$ 7,502,636	$ —	$ 7,502,636
Mutual funds for SERP	169,621	—	169,621
	$ 7,672,257	$ —	$ 7,672,257

At December 31, 2009:

Available-for-Sale	Amortized Cost	Unrealized Gains/(Losses)	Fair Value
U.S. Treasuries and agencies	$ 35,116,363	$ 1,414	$ 35,118,047
Mutual funds for SERP	224,861	—	224,861
	$ 35,341,224	$ 1,414	$ 35,342,908

At September 30, 2010:

Available-for-Sale	Amortized Cost	Unrealized Gains/(Losses)	Fair Value
U.S. Treasuries and agencies	$ 20,564,971	$ 1,414	$ 20,566,385
Mutual funds for SERP	237,656		237,656
	$ 20,802,627	$ 1,414	$ 20,804,041

Gross realized gains (losses) that were included in earnings as a result of sales of securities are $0, $(10,265) and $0 for the years ended December 31, 2007, 2008, and 2009, and $0 for each of the nine-month periods ended September 30, 2009 and 2010, respectively.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

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4. Property and Equipment

Property and equipment consists of the following:

	December 31, 2008	December 31, 2009	September 30, 2010 (unaudited)
Computer equipment	$ 511,483	$ 531,757	$ 548,060
Software	148,305	174,078	174,078
Lab equipment and furniture	3,149,977	3,327,632	3,471,465
Leasehold improvements	324,377	815,160	973,314
	4,134,142	4,848,627	5,166,917
Less accumulated depreciation and amortization	(2,146,564)	(2,989,441)	(3,697,912)
	$ 1,987,578	$ 1,859,186	$ 1,469,005

Depreciation expense on property and equipment for the years ended December 31, 2007, 2008 and 2009 was $702,985, $886,629 and $842,877, respectively, and $789,597 and $889,648 for the nine months ended September 30, 2009 and 2010, respectively.

5. Purchased Patents

In connection with a purchase agreement with Shire Laboratories, Inc., the Company acquired certain patents in 2005. The following sets forth the gross carrying amount and related accumulated amortization of the patents:

	Weighted-Average Life	December 31, 2008 Gross Carrying Amount	December 31, 2008 Accumulated Amortization	December 31, 2009 Gross Carrying Amount	December 31, 2009 Accumulated Amortization	September 30, 2010 Gross Carrying Amount	September 30, 2010 Accumulated Amortization
						(unaudited)	
Purchased patents	10.0	$ 2,292,253	$ 692,303	$ 2,292,253	$ 921,528	$ 2,292,253	$ 1,093,447

Amortization expense for the years ended December 31, 2007, 2008 and 2009 was $229,225 each year as is the estimated annual aggregate amortization expense through December 31, 2015. The net book value of intangible assets as of December 31, 2008 and 2009 and September 30, 2010 was approximately $1.6 million, $1.4 million and $1.2 million, respectively.

6. Non-Recourse Notes Payable

In April 2008, certain royalty payment rights and other license rights of the Company that it had under license agreements with two unrelated companies were transferred to TCD, a 100%-owned subsidiary in exchange for approximately $63.3 million. TCD raised funds for the transaction from a completed private placement of $75.0 million in Secured 16% Notes; due April 15, 2024 (the Notes). The Notes are non-recourse to the Company and are secured by TCD's assets including the royalty payment rights and other related rights of the transferred license agreements. While the Notes are outstanding, all royalty payments under these license agreements go to the payment of interest.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

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6. Non-Recourse Notes Payable (Continued)

Royalties earned in excess of the stated interest rate will be applied to the principal on such Notes. Interest expense related to the Notes for the years ended December 31, 2007, 2008 and 2009 was $0.0 million, $8.5 million, $12.0 million, respectively, and $9.0 million and $9.1 million for the nine months ended September 30, 2009 and 2010, respectively. As of December 31, 2008, 2009 and September 30, 2010 TCD had interest payable of $2.5 million.

In conjunction with the issuance of the Notes, TCD initially placed $8.0 million into a restricted cash interest reserve account to cover payments required when the initial royalties are not sufficient to meet the interest payments due. At December 31, 2008 and 2009 and September 30, 2010, the remaining interest reserve balance was approximately $6.1 million, $1.9 million and $1.4 million, respectively, and is recorded as restricted cash and cash equivalents on the consolidated balance sheets. Any excess in the interest reserve account will be used as additional principal payments. The syndication costs to complete the transaction were approximately $4.4 million for investment banking, legal, consulting, accounting, and printing fees. These costs were capitalized as deferred financing costs and are being amortized over the term of the related debt using the effective interest method. Amortization of deferred financing costs for the years ended December 31, 2007, 2008 and 2009 approximated $0, $179,000 $270,000, respectively, and $203,000 and $202,000 for the nine month periods ended September 30, 2009 and 2010, respectively.

In the first quarter of 2010, the $8.0 million interest reserve was exhausted. As of September 30, 2010, TCD had approximately $1.4 million available for the quarterly interest payment of $3.0 million due on October 15, 2010. In December 2010, TCD has paid the interest shortfall of $1.6 million and had $0.8 million available for future interest payments. Under the terms of the Notes, TCD is not in default for payment of interest unless it fails to make payment in full on the interest payment by the next succeeding payment date. To date, TCD has been able to make payment in full of all interest payments before the next succeeding payment date. In the event of a default for failure to pay interest timely, the noteholders do not have recourse to the Company as the Notes are non-recourse beyond TCD and non-convertible into any other securities of the Company, and have not been guaranteed by the Company. The Company has pledged all equity interests of TCD to the noteholders so, upon an event of default, the noteholders could elect to exercise their rights to acquire those equity interests in TCD.

7. Stockholders' Equity (Deficit)

In 2005 and 2006, the Company issued an aggregate of 49,000,000 shares of its Series A convertible preferred stock (Series A Preferred Stock), which includes 4.0 million shares issued in connection with the purchase of certain assets from Shire Laboratories, Inc. The offering price per share was $1.00, resulting in aggregate gross cash proceeds of $45.0 million. The Company incurred approximately $286,000 in expenses directly related to these offerings, and these expenses were charged to additional paid-in capital.

Dividends are cumulative and accrue at a rate per annum of $0.07 per share, subject to adjustment for certain dilutive events. The Company is not obligated to pay the dividends unless it declares or pays dividends on any other shares of capital stock or in the event of a liquidation, dissolution or winding up

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

7. Stockholders' Equity (Deficit) (Continued)

of the Company. As of December 31, 2007, 2008 and 2009 dividends of approximately $6.8 million, $10.2 million and $13.7 million, respectively, have been accumulated. In liquidation, the holders of Series A Preferred Stock are entitled to receive $1.00 per share plus an amount equal to all accrued unpaid dividends plus any dividends declared but unpaid before any distribution to the holders of any shares of common stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock. A merger or consolidation in which the Company is a constituent party is deemed to be a liquidation.

The holders of the Series A Preferred Stock are entitled to cast the number of votes equal to the number of whole shares of common stock into which the shares of Series A Preferred Stock held are convertible as of the specified record date. The holders of the Series A Preferred Stock are entitled to elect four directors of the Company. Without the affirmative vote of two-thirds of then outstanding shares of Series A Preferred Stock, the Company shall not, among other things, change the number of directors from nine; create any additional shares of preferred stock; liquidate or dissolve the business affairs of the Company; create or issue any security or obligation that is convertible or exchangeable into securities of the Company; pay dividends or distributions on any shares of stock; or incur any liability for indebtedness that exceeds $500,000.

At any time, the Series A Preferred Stockholders may convert their Series A shares into shares of common stock. The initial conversion is one-for-one. The conversion ratio is subject to adjustment should specified dilutive events occur. The Company has reserved 49,000,000 shares of common stock for the potential conversion of its Series A Preferred Stock. Each share of Series A Preferred Stock automatically converts into shares of the Company's common stock upon closing of a firm commitment underwritten public offering of common stock registered under the Securities Act of 1933 at a price of at least $3.00 per share (adjusted to reflect stock splits, stock dividends, stock combinations, recapitalizations, and like occurrences), and which generates gross proceeds to the Company of at least $35.0 million. The holders of the Series A Preferred Stock have the right to elect to convert all outstanding shares of their stock into shares of common stock upon a two-thirds vote. The Series A Preferred Stock is not redeemable or contingently redeemable.

Common Stock

The holders of the common stock are entitled to one vote for each share of common stock held. Except for certain matters specified in the Company's amended and restated certificate of incorporation, the holders of common stock shall vote together as a single class on all matters with the holders of the Series A Preferred Stock.

8. Share-Based Payments

As of September 30, 2010, the Company had one share-based compensation plan. The Supernus Pharmaceuticals, Inc. 2005 Stock Plan (the Plan), which is stockholder-approved, permits the grant of options, purchase rights, and awards to its employees, officers, directors, consultants, or advisors for up to 8.0 million shares of common stock. The Company believes that such awards better align the interest of its employees with those of its stockholders. Option awards are generally granted with an exercise

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

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8. Share-Based Payments (Continued)

price equal to the estimated fair value of the Company's common stock at the grant date; those option awards generally vest in four annual installments, starting on the first anniversary of the date of grant and have ten-year contractual terms. The Plan provides for the issuance of common stock of the Company upon the exercise of stock options. A portion of the grants to certain employees vests upon the achievement of specified Company milestones.

If an optionee is terminated for cause, the Company has the right and option to purchase, for a period of 180 days from the termination date, the shares of common stock the optionee obtained through the exercise of a stock option. The purchase price will equal the estimated fair market value of the common stock determined by mutual agreement between the Company and the optionee. There were no shares subject to repurchase at December 31, 2008, December 31, 2009, or September 30, 2010.

Stock-based compensation recognized related to the grant of employee and non-employee stock options, and non-vested stock was as follows:

	December 31,			September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
Research and development	$ 9,252	$ 27,872	$ 28,059	$ 21,044	$ 32,213
General and administrative	64,848	71,055	82,650	61,987	91,779
Total	$ 74,100	$ 98,927	$ 110,709	$ 83,031	$ 123,992

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model using the assumptions in the following table:

	Year Ended December 31,			September 30,
	2007	2008	2009	2010
				(unaudited)
Fair value of common stock	$0.10 – $0.40	$0.40	$0.40 – $1.76	$0.84
Expected volatility	60%	60%	60.3% – 61.5%	59.1% – 60.70%
Expected dividends	0%	0%	0%	0%
Expected term	6.25 years	6.25 years	6.25 years	6.25 years
Risk-free rate	3.81% – 5.25%	3.70% – 3.94%	1.65% – 2.72%	1.78% – 2.93%
Expected forfeiture rate	5%	5%	5%	5%

Fair Value of Common Stock—For all option grants the fair value of the Common Stock underlying the option grants was determined by the Company's Board of Directors (Board), with the assistance of management, which intended all options granted to be exercisable at a price per share not less than the per share fair value of the Company's Common Stock underlying those options on the date of grant. The Company utilized methodologies, approaches and assumptions as set forth by the American Institute of Certified Public Accountants, or the AICPA, in the AICPA Technical Practice

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

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8. Share-Based Payments (Continued)

Aid, "*Valuation of Privately-Held-Company Equity Securities Issued as Compensation,*" referred to herein as the AICPA Practice Aid, when estimating the fair value of common stock at each grant date.

Given the lack of an active public market for the common stock, the Board employed a third-party valuation firm to assist in the determination of fair value by completing contemporaneous valuations. In the absence of a public market, and as a clinical stage company with no significant revenues from product sales, the Company considered a range of factors to determine the fair market value of the common stock at each grant date. The factors include: (1) the achievement of clinical and operational milestones by the Company, (2) the status of strategic relationships with collaborators, (3) the significant risks associated with the Company's stage of development, (4) capital market conditions for life science companies, particularly similarly situated privately held, early-stage life science companies, (5) the Company's available cash, financial condition, and results of operations, (6) the most recent sales of the Company's preferred stock, and (7) the preferential rights of the outstanding preferred stock.

Expected Volatility—Volatility is a measure of the amount by which a financial variable such as a share price has fluctuated (historical volatility) or is expected to fluctuate (expected volatility) during a period. The Company does not maintain an internal market for its shares and its shares are not traded privately. The Company has identified several public entities of similar size, complexity, and stage of development and, accordingly, historical volatility has been calculated using the volatility of these companies.

Dividend Yield—The Company has never declared or paid dividends and has no plans to do so in the foreseeable future.

Expected Term—This is the period of time that the options granted are expected to remain unexercised. Options granted have a maximum term of ten years. The Company determines the average expected life of stock options according the "simplified method" ad described in Staff Accounting Bulletin 110, which is the mid-point between the vesting date and the end of the contractual term. The Company estimates the expected life of the option term to be 6.25 years. Over time, management will track estimates of the expected life of the option term so that estimates will approximate actual behavior for similar options.

Risk-Free Interest Rate—This is the U.S. Treasury rate for the week of each option grant during the year, having a term that most closely resembles the expected life of the option.

Expected Forfeiture Rate—The forfeiture rate is the estimated percentage of options granted that are expected to be forfeited or canceled on an annual basis before becoming fully vested. The Company estimates the forfeiture rate based on turnover data with further consideration given to the class of employees to whom the options were granted.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

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8. Share-Based Payments (Continued)

Information with respect to stock options granted to employees and nonemployees from January 1, 2009 through September 30, 2010 was as follows:

Grant Date	Number of Options Granted	Exercise Price	Estimated Fair Value	Intrinsic Value
01/19/2009	225,000	$ 0.40	$ 0.23	$ —
12/15/2009	257,200	$ 1.76	$ 1.03	$ —
02/10/2010	52,500	$ 0.84	$ 0.49	$ —
04/16/2010	32,750	$ 0.84	$ 0.49	$ —
07/20/2010	38,500	$ 0.84	$ 0.48	$ —

The following table summarizes stock option activity under the Plan during the year then ended:

	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term
Outstanding, December 31, 2008	1,737,219	$ 0.14	7.62
Granted	482,200	$ 1.13	9.53
Exercised	(197,826)	$ 0.10	6.11
Forfeited or expired	(372,485)	$ 0.11	
Outstanding, December 31, 2009	1,649,108	$ 0.44	7.53
Granted	123,750	$ 0.84	9.55
Exercised	(35,000)	$ 0.10	5.73
Forfeited or expired	(8,400)	$ 0.37	
Outstanding, September 30, 2010	1,729,458	$ 0.48	7.00
December 31, 2009:			
Vested and expected to vest	1,598,334	$ 0.44	7.51
Exercisable	709,061	$ 0.13	6.38
September 30, 2010:			
Vested and expected to vest	1,686,232	$ 0.47	6.97
Exercisable	940,324	$ 0.15	5.86

The aggregate intrinsic value of options outstanding and exercisable as of September 30, 2010 is approximately $857,000 and $646,000 respectively.

The weighted-average, grant-date fair value of options granted for the years ended December 31, 2007, 2008 and 2009, was $0.08, $0.24 and $0.66 per share, respectively. The total fair value of the underlying common stock related to shares that vested during the years ended December 31, 2007, 2008 and 2009, was $12,336, $37,163 and $48,945, respectively. As of December 31, 2009, the total unrecognized compensation expense, net of related forfeiture estimates, was $318,747 which the Company expects to recognize over a weighted-average period of approximately 2.27 years. As of September 30, 2010, the total unrecognized compensation expense, net of related forfeiture estimates,

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Notes to Consolidated Financial Statements (Continued)

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8. Share-Based Payments (Continued)

was $283,095 which the Company expects to recognize over a weighted-average period of approximately 2.19 years (see Note 13).

On December 22, 2005, the Company granted an officer a restricted award for 3.5 million shares of common stock. Approximately 2.5 million shares of the award vested on a quarterly basis over a four-year period through 2009. The remaining 1.0 million shares of the award vest upon the achievement of specified clinical and regulatory milestones, of which there are 411,765 shares remaining to vest as of September 30, 2010, pending successful completion of one last milestone. Failure to achieve this milestone will result in cancellation of that portion of the award. As of December 31, 2008 and 2009, 1,029,409 and 411,765 shares, respectively, related to this award remained unvested. On the grant date, the Company estimated the fair value of unrestricted common stock to be $0.10. The total estimated fair value of $350,000 is being attributed a) to the requisite service period ratably over four years and b) the portion subject to the achievement of the specified performance conditions is being recognized when achievement of those conditions is considered probable. For the years ended December 31, 2007, 2008 and 2009 the Company recognized $61,764, $61,764 and $61,764, respectively, in stock compensation related to this arrangement. The following table summarizes activity related to these non-vested shares:

	Number of Shares	Weighted-Average Fair Value
Non-vested shares, January 1, 2009	1,029,409	$ 0.10
Granted	—	
Vested	(617,644)	$ 0.10
Forfeited	—	
Non-vested shares, December 31, 2009	411,765	$ 0.10
Granted	—	
Vested	—	
Forfeited	—	
Non-vested shares, December 31, 2010	411,765	$ 0.10

As of September 30, 2010, total stock compensation expense for non-vested awards not yet recognized is approximately $10,000. The remaining stock compensation expense related to non-vested awards will be recorded during 2010.

9. Income Taxes

For the years ended December 31, 2007, 2008 and 2009 there was no current provision or benefit for federal or state income taxes.

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Notes to Consolidated Financial Statements (Continued)

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9. Income Taxes (Continued)

A reconciliation of the expected income tax benefit computed using the federal statutory income tax rate to the Company's effective income tax rate is as follows:

	Year Ended December 31,		
	2007	2008	2009
Income tax (benefit) computed at federal statutory tax rate	$ (5,873,173)	$ (11,383,775)	$ 156,481
Permanent items	9,402	25,665	37,845
State taxes	(939,066)	(1,818,968)	33,135
Change in valuation allowance	8,054,810	15,233,582	(666,690)
Other	(84,254)	414,166	1,424,790
Research and development credits	(1,167,719)	(2,470,670)	(985,561)
Total	$ —	$ —	$ —

The deferred tax benefit has been entirely offset by valuation allowances. The significant components of the Company's estimated deferred tax assets (liabilities) were as follows:

	December 31,		
	2007	2008	2009
Deferred tax assets:			
Net operating loss carryforward	$ 8,794,582	$ 21,900,173	$ 21,334,641
Deferred rent credit	164,202	172,547	314,434
Accrued compensation and nonqualified stock options	—	—	26,638
Deferred financing costs	—	—	(6,303)
Depreciation and amortization	(286,679)	(227,863)	(93,724)
Research and development credits	1,491,310	3,552,102	3,138,434
Other	395	434	16,583
Net deferred tax asset before valuation allowance	10,163,810	25,397,393	24,730,703
Valuation allowance	(10,163,810)	(25,397,393)	(24,730,703)
Net deferred tax asset	$ —	$ —	$ —

The Company has reported losses, except for a small, one-time gain in 2009, since inception and expects to continue to incur losses in the near term. These losses have not resulted in reported tax benefits because of increases in the valuation allowance for deferred tax assets that result from the inability to determine the realizability of the net operating loss carryforwards.

At December 31, 2009, the Company had net operating loss carryforwards of approximately $54.1 million, which begin to expire in 2025 if not utilized. The Company also had research and development tax credit carryforwards of approximately $3.1 million, which expire in 2025 if not utilized. The research and development tax credit reduces the Company's tax liability based on the amount spent on research and development activities on a new product or to improve existing products. Internal Revenue Code Section 382 places a limitation (the Section 382 Limitation) on the amount of

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Notes to Consolidated Financial Statements (Continued)

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9. Income Taxes (Continued)

taxable income, that can be offset by net operating loss carryforwards after a change in control (generally, a greater than 50% change in ownership). Typically, after a control change, a company cannot deduct operating loss carryforwards in excess of the Section 382 Limitation. Due to these changes in ownership provisions, utilization of the net operating loss and tax credit carryforwards may be subject to an annual limitation regarding their utilization against taxable income in future periods.

If applicable, the Company would classify interest and penalties related to uncertain tax positions in income tax expense. The tax years 2005 through 2009 remain open to examination by one or more major taxing jurisdictions to which the Company is subject. There are no income tax examinations currently in progress.

10. Commitments and Contingencies

The Company leases office and lab space over periods extending through April 2013. The lease contains provisions for operating expense reimbursement as well as an annual 3% rent escalation. The lease also contains tenant and capital improvement allowances in the aggregate of $1.1 million. Through December 31, 2009, $774,464 of the allowance has been utilized and included in fixed assets and deferred rent. Rent expense for each of the years ended December 31, 2007, 2008 and 2009, was $921,000. The Company incurred $690,750 and $690,750 of rent expense for the nine month periods ending September 30, 2009 and 2010, respectively. Future minimum lease payments under noncancelable operating leases at December 31, 2009, are as follows:

	Operating Leases
Year ending December 31:	
2010	$ 953,000
2011	982,000
2012	1,011,000
2013	340,000
Thereafter	—
	$ 3,286,000

The Company has obtained exclusive licenses from third parties for proprietary rights to support the product candidates in the Company's psychiatry portfolio. Under license agreements with Afecta Pharmaceuticals, Inc. (Afecta), the Company has an exclusive option to evaluate Afecta's CNS pipeline, and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810 and earlier stage product candidates of the Company. The Company does not owe any future milestone payments for SPN-810. However if the other product candidate is successfully developed and commercialized, the Company could be required to pay up $350,000 in total in potential future milestone payments through product approval and issuance of the U.S. patent for this product. The Company will also be obligated to pay royalties to Afecta based on worldwide net sales of each of these products in the low-single digits. The Company has also entered into a purchase and sale agreement with Rune Healthcare Limited (Rune), where the Company obtained the exclusive

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Notes to Consolidated Financial Statements (Continued)

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10. Commitments and Contingencies (Continued)

worldwide rights to a product concept from Rune. There are no future milestone payments owing to Rune under this agreement. If the Company receives approval to market and sell any products based on the Rune product concept for SPN-809, the Company will be obligated to pay royalties to Rune based on net sales worldwide in the low single digits.

11. Employee Benefit Plan

On January 2, 2006, the Company established the Supernus Pharmaceuticals, Inc. 401(k) Profit Sharing Plan (the Plan) for its employees under Section 401(k) of the Internal Revenue Code (Code). Under this Plan, all full-time employees who are at least 21 years old are eligible to participate in the Plan. Employees may participate starting on the first day of each month following their employment. Employees may contribute up to the lesser of 90% of eligible compensation or the applicable limit established by the Code.

Employees are 100% vested in their contributions to the Plan. The Company matches 100% of a participant's contribution for the first 3% of their salary deferral and matches 50% of the next 2% of their salary deferral. As determined by the Board, the Company may elect to make a discretionary contribution not exceeding 60% of the annual compensation paid to all participating employees. The Company's contributions to the Plan approximated $205,000 and $204,000 for the nine months ended September 30, 2009 and 2010, respectively, and $210,000, $273,000 and $255,000 for the years ended December 31, 2007, 2008 and 2009, respectively.

12. Related-Party Transactions

In May 2009, the Company entered into an amendment to a license agreement with Shire LLC, a holder of Series A convertible preferred stock, whereby Shire LLC and its affiliates paid the Company a one-time, lump-sum payment of $36.9 million in return for a fully paid-up license for one of its products that utilizes the Company's proprietary technologies. All four criteria necessary to recognize revenue in accordance with ASC 605-10-S25, *Revenue Recognition—Overall—Recognition*, were met during 2009 related to this transaction. Accordingly, the entire amount was recorded as royalty revenue in the consolidated statement of operations.

13. Subsequent Events

In December 2010, the Company amended its lease arrangement for its office and lab space in order to extend the expiration of the term from April 2013 to April 2018. Commencing in November 2013, the basic annual rent will be increased 2% per annum for the remaining term. The Company may elect to extend the term of the lease for an additional five year period on the same terms and conditions. In addition, the lease amendment provides for a tenant improvement allowance of $1,250,000.

In November 2010, the Board repriced 255,000 of the options granted on December 15, 2009 from a per share exercise price of $1.76 to $0.64. In addition, the Board approved the modification of the performance vesting requirements related to 157,697 employee stock options and 411,765 shares of

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

13. Subsequent Events (Continued)

non-vested stock awarded to the Company's chief executive officer. The vesting of these share-based awards were contingent upon the filing of the Company's first new drug application on or before December 22, 2010, and the Board extended the deadline for the achievement of this performance condition to March 31, 2011. As a result of these actions, there is no immediate charge related to the repriced and modified options, and the Company will recognize additional stock based compensation of approximately $50,000 over the remaining vesting periods for these options.

In January 2011, the Company entered into a secured credit facility pursuant to a loan and security agreement among Oxford Finance Corporation, as collateral agent and lender, and Compass Horizon Funding Company LLC, as lender, and promissory notes issued in favor of each lender, providing for term loans of up to an aggregate of $25.0 million. In connection with its first drawdown of $15.0 million under the new secured credit facility on January 26, 2011, the Company issued to its lenders ten-year warrants to purchase an aggregate of 375,000 shares of the Company's Series A convertible preferred stock at an exercise price of $1.00 per share. Upon completion of the IPO, each warrant will be exercisable for one share of the Company's common stock for each share of its Series A convertible preferred stock into which it was convertible at a price per share of $1.00. The term loans bear interest at a fixed rate per annum of 11.0% and will mature in 42-months from the date of each term loan, subject to a three-month extension under certain circumstances. In addition, the Company has the right to obtain additional term loans of up to $10.0 million under the same terms and conditions of its outstanding term loans under the new secured credit facility on or before April 30, 2011, provided that the Company is not in default under the terms of the loan and security agreement or other loan documents. In connection with any drawdown of additional term loans, the Company would be required to issue to the lenders additional warrants to purchase up to 250,000 shares of its Series A convertible preferred stock at an exercise price of $1.00 per share.

Table of Contents

Shares

SUPERNUS PHARMACEUTICALS, INC.

Common Stock

PRELIMINARY PROSPECTUS

, 2011

Joint Book-Running Managers

Citi
Barclays Capital

Co-Managers

Cowen and Company

Stifel Nicolaus Weisel

Until , 2011 (25 days after the date of this prospectus), all dealers that buy, sell or trade shares of our common stock, 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.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. ***Other Expenses of Issuance and Distribution.***

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of the common stock being registered hereby. All amounts are estimates except the SEC Registration Fee, the FINRA filing fee and NASDAQ Global Market listing fee.

	Amount to be Paid
SEC registration fee	$ 7,130
FINRA filing fee	$ 10,500
NASDAQ Global Market initial listing fee	$ 25,000
Blue Sky fees and expenses	$ *
Printing and engraving expenses	$ *
Legal fees and expenses	$ *
Accounting fees and expenses	$ *
Transfer agent and registrar fees	$ *
Miscellaneous	$ *
Total	$ *

* To be completed by amendment.

ITEM 14. ***Indemnification of Directors and Officers.***

On completion of this offering, our amended and restated certificate of incorporation will contain provisions that eliminate, to the maximum extent permitted by the General Corporation Law of the State of Delaware, the personal liability of directors and executive officers for monetary damages for breach of their fiduciary duties as a director or officer. Our amended and restated certificate of incorporation and bylaws will provide that we shall indemnify our directors and executive officers and may indemnify our employees and other agents to the fullest extent permitted by the General Corporation Law of the State of Delaware.

Sections 145 and 102(b)(7) of the General Corporation Law of the State of Delaware provide that a corporation may indemnify any person made a party to an action by reason of the fact that he or she was a director, executive officer, employee or agent of the corporation or is or was serving at the request of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she 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 no reasonable cause to believe his or her conduct was unlawful, except that, in the case of an action by or in right of the corporation, no indemnification may generally be made in respect of any claim as to which such person is adjudged to be liable to the corporation.

We are entering into indemnification agreements with each of our directors and executive officers, in addition to the indemnification provided for in our amended and restated certificate of incorporation and bylaws, and intend to enter into indemnification agreements with any new directors and executive officers in the future.

We intend to purchase and maintain insurance on behalf of any person who is or was a director or officer of our company against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

The Underwriting Agreement (to be filed as Exhibit 1.1 hereto) provides for indemnification by the underwriters of us and our executive officers and directors, and by us of the underwriters, for certain liabilities, including liabilities arising under the Securities Act.

See also the undertakings set out in response to Item 17 herein.

ITEM 15. ***Recent Sales of Unregistered Securities.***

The following sets forth information regarding all unregistered securities sold during the last three fiscal years:

(a) Within the last three years, we have issued and sold the following securities:

(1) From December 21, 2007 to July 20, 2010, we issued 282,826 shares of common stock upon the exercise of options to purchase shares of our common stock under the 2005 Stock Plan, all at $0.10 per share.

The sales and issuances of restricted securities in the transactions described in the paragraph above were deemed to be exempt from registration under the Securities Act in reliance upon the following exemptions: Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions pursuant to a written compensation benefit plan and contracts relating to compensation as provided under Rule 701.

(2) From April 16, 2008 to November 16, 2010, we granted to our employees and consultants options to purchase an aggregate of 1,748,050 shares of our common stock under the 2005 Stock Plan at prices ranging from $0.40 to $1.76 per share.

The sales and issuances of securities in the transactions described in the above paragraph (2) were deemed to be exempt from registration under the Securities Act in reliance upon Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions pursuant to a written compensation benefit plan and contracts relating to compensation as provided under Rule 701.

(3) On April 15, 2008, our subsidiary, TCD Royalty Sub LLC, issued and sold $75.0 million aggregate principal amount of 16% non-convertible, non-recourse, secured promissory notes due April 15, 2024 in a private placement to certain institutional investors for an aggregate purchase price of $75.0 million. TCD Royalty Sub LLC paid Morgan Stanley & Co. Incorporated, as placement agent, a cash placement fee of approximately $3.0 million.

(4) On January 26, 2011, in connection with our new secured credit facility, we issued promissory notes and ten-year warrants to purchase shares of our Series A convertible preferred stock at an exercise price of $1.00 per share to each of our lenders under our new secured credit facility in the following amounts:

- to Oxford Finance Corporation, a $12,000,000 promissory note and 300,000 warrants; and
- to Compass Horizon Funding Company LLC, a $3,000,000 promissory note and 75,000 warrants.

Upon completion of this offering, each warrant will be exercisable for one share of our common stock for each share of Series A convertible preferred stock into which it was convertible at a price per share of $1.00.

The issuance of the securities in the transactions described in the above paragraphs (3) and (4) were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder. The securities were issued directly by the registrant and did not involve a public offering or general solicitation. All recipients of the securities were "accredited investors" as that term is defined in Rule 501 of Regulation D.

(b) There were no underwritten offerings employed in connection with any of the transactions set forth in Item 15.

ITEM 16. ***Exhibits and Financial Statement Schedules.***

(a) Exhibits—The exhibits to the registration statement are listed in the Exhibit Index to this Registration Statement beginning on page E-1 and are incorporated herein by reference.

(b) Financial Statements Schedules—All schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

ITEM 17. ***Undertakings.***

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification by the Registrant for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 14 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 undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act of 1933, shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, 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 this 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, as amended, the Registrant has duly caused this Amendment No. 1 to the Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rockville, State of Maryland, on the 8th day of February, 2011.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ JACK A. KHATTAR

Name: Jack A. Khattar
Title: President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated below:

Signature	Title	Date
/s/ JACK A. KHATTAR Jack A. Khattar	President and Chief Executive Officer and Director (Principal Executive Officer)	February 8, 2011
/s/ RUSSELL P. WILSON Russell P. Wilson	Vice President, Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 8, 2011
* M. James Barrett, Ph.D.	Director and Chairman of the Board	February 8, 2011
* Michael F. Bigham	Director	February 8, 2011
* Frederick M. Hudson	Director	February 8, 2011
* Charles W. Newhall, III	Director	February 8, 2011
* William A. Nuerge	Director	February 8, 2011
* Michael B. Sheffery, Ph.D.	Director	February 8, 2011
/s/ JOHN M. SIEBERT, PH.D. John M. Siebert, Ph.D.	Director	February 8, 2011

*By: /s/ JACK A. KHATTAR

Jack A. Khattar
Attorney-in-Fact

EXHIBIT INDEX

Exhibit Number	Description
1.1*	Form of Underwriting Agreement
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended (as currently in effect)
3.2*	Form of Second Amended and Restated Certificate of Incorporation (to be effective upon the closing of this offering)
3.3**	By-laws of the Registrant (as currently in effect)
3.4*	Form of Amended and Restated By-laws of the Registrant (to be effective upon the closing of this offering)
4.1*	Specimen Stock Certificate evidencing the shares of common stock
4.2	Secured Promissory Note, dated as of January 26, 2011, between the Registrant and Oxford Finance Corporation
4.3	Secured Promissory Note, dated as of January 26, 2011, between the Registrant and Compass Horizon Funding Company LLC
4.4	Form of Warrant to Purchase Stock, issued in connection with the Loan and Security Agreement, dated as of January 26, 2011, by and among the Registrant, Oxford Finance Corporation, as collateral agent and lender and Compass Horizon Funding Company LLC, as lender
5.1*	Opinion of Ropes & Gray LLP
10.1**	2005 Stock Plan and form agreements thereunder
10.2**	Supplemental Executive Retirement Plan
10.3**	Employment Agreement, dated as of December 22, 2005, by and between the Registrant and Jack Khattar
10.4**	Stock Restriction Agreement, dated December 22, 2005, by and between the Registrant and Jack Khattar
10.5**	Lease, dated as of April 19, 1999, by and between ARE Acquisitions, LLC and Shire Laboratories Inc.
10.6**	First Amendment to Lease, dated as of November 1, 2002, by and between ARE Acquisitions, LLC and Shire Laboratories Inc.
10.7**	Second Amendment to Lease, dated as of December 22, 2005, by and among ARE-East Gude Lease, LLC, Shire Laboratories Inc. and Supernus Pharmaceuticals, Inc.
10.8**	Third Amendment to Lease, dated as of November 24, 2010, by and between ARE-East Gude Lease, LLC and the Registrant (successor-in-interest to Shire Laboratories Inc.)
10.9**	Investor Rights Agreement, dated as of December 22, 2005, by and among the Registrant and the holders of shares of Series A convertible preferred stock identified therein, as amended
10.10†	Asset Purchase and Contribution Agreement, dated as of December 22, 2005, by and among the Registrant, Shire Laboratories Inc. and Shire plc
10.11†	Guanfacine License Agreement, dated as of December 22, 2005, by and among the Registrant, Shire LLC and Shire plc, as amended
10.12†	Exclusive License Agreement, dated as of June 6, 2006, by and between the Registrant and United Therapeutics Corporation

Exhibit Number	Description
10.13†	Exclusive Option and License Agreement, dated as of April 27, 2006, by and between the Registrant and Afecta Pharmaceuticals, Inc.
10.14†	Purchase and Sale Agreement, dated as of June 9, 2006, by and between the Registrant and Rune Healthcare Limited
10.15†	Exclusive License Agreement, dated as of November 2, 2007, by and between the Registrant and Afecta Pharmaceuticals, Inc.
10.16	Indenture, dated as of April 15, 2008, by and between TCD Royalty Sub LLC, as issuer of the non-recourse notes, and U.S. Bank National Association, as initial trustee of the non-recourse notes
10.17	Loan and Security Agreement, dated as of January 26, 2011, by and among the Registrant, Oxford Finance Corporation, as collateral agent and lender and Compass Horizon Funding Company LLC, as lender
10.18*	Offer Letter, dated June 7, 2005, to Dr. Jones W. Bryan from the Registrant
10.19*	Offer Letter, dated June 10, 2005, to Dr. Padmanabh P. Bhatt from the Registrant
21.1**	Subsidiaries of the Registrant
23.1	Consent of Ernst & Young LLP
23.2*	Consent of Ropes & Gray LLP (included in 5.1)
24.1**	Power of Attorney (included on signature pages to original Filing)
24.2	Power of Attorney of John M. Siebert, Ph.D.

* To be filed by amendment.

** Previously filed.

† Confidential treatment requested under 17 C.F.R. §§200.80(b)(4) and 230.406. The confidential portions of this exhibit have been omitted and are marked accordingly. The confidential portions have been filed separately with the Securities and Exchange Commission pursuant to the Confidential Treatment Request.

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

SUPERNUS PHARMACEUTICALS, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Supernus Pharmaceuticals, 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"), hereby certifies as follows:

1. That the name of this corporation is Supernus Pharmaceuticals, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on March 30, 2005.

2. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of said Corporation and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

3. The text of the Certificate of Incorporation is hereby amended and restated to read in full as follows:

FIRST: The name of this corporation is Supernus Pharmaceuticals, Inc. (the "Corporation")

SECOND: The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of new Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: 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.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) sixty-two million (62,000,000) shares of Common Stock, $0.001 par value per share ("Common Stock"), and (ii) forty-nine million (49,000,000) shares of Preferred Stock, $0.001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation. Unless otherwise indicated, references to "Sections" or "Subsections" in this Article refer to sections and subsections of this Article Fourth

A. COMMON STOCK

1 General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote fox each share of Common Stock hold at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the General Corporation Law. Except as provided by law or this Amended and Restated Certificate of Incorporation (as amended from time to time, the "Certificate of Incorporation"), holders of Common Stock shall vote together as a single class on all matters with the holders of Preferred Stock. There shall be no cumulative voting. The number of authorized shares of 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 shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

Preferred Stock may be issued from time to time in one or more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, as stated or expressed herein. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or by the terms of any series of Preferred Stock.

C. SERIES A CONVERTIBLE PREFERRED STOCK

Forty-nine million (49,000,000) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series A Convertible Preferred Stock" with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. The Series A Convertible Preferred Stock is sometimes referred to herein as the "Series A Preferred Stock" and "Preferred Stock".

1. Dividends.

(a) From and after the date of the issuance of any shares of Series A Preferred Stock, dividends at the rate per annum of $0.07 per share shall accrue on such shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not earned or declared, and shall be cumulative; provided however, that except as set forth in the following sentence of this paragraph 1(a) or in Subsection 2(a), the Corporation shall be under no obligation to pay such

Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on any other shares of capital stock of the Corporation (other than dividends on shares of Common Stock payable solely in shares of Common Stock) unless the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series A Preferred Stock and not previously paid plus (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all such shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock determined by dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock and multiplying such fraction by an amount equal to $1 00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series A Preferred Stock) (such amount, as so adjusted from time to time, being hereinafter referred to as the "Series A Original Issue Price").

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales

(a) Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock (such Common Stock and other stock being collectively referred to as "Junior Stock") by reason of their ownership thereof, an amount equal to the Series A Original Issue Price plus an amount equal to all Accruing Dividends unpaid thereon (whether or not declared) plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Distribution of Remaining Assets. After the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock under Subsection 2(a), the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Series A Preferred Stock, Junior Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose an such securities as if they had been converted to Common Stock pursuant to

the terms of the Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Subsection 2(a) and 2(b) is hereinafter referred to as the "Series A Liquidation Amount."

(c) Deemed Liquidation Events.

(i) The following events shall be deemed to be a liquidation of the Corporation for purposes of this Section 2 (each a "Deemed Liquidation Event"), unless the holders of at least two-thirds (66 2/3%) in interest of the Series A Preferred Stock elect otherwise by written notice given to the Corporation at least 10 days prior to the effective date of any such event:

(A) a merger or consolidation in which

(I) the Corporation is a constituent party or

(II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock which represent, immediately following such merger or consolidation at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 2(c)(i), all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged);

(B) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole except where such sale, lease, transfer or other disposition is to a wholly owned subsidiary of the Corporation; or

(C) a transaction or series of related transactions in which a person or a group of persons (as defined in Rule 13d-5(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) acquires beneficial ownership (as determined in accordance with Rule 13d-3 under the Exchange Act) of a majority of voting power of the voting shares of the Corporation

(ii) The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection 2(c)(i)(A)(I) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2(a) and 2(b) above.

(iii) In the event of a Deemed Liquidation Event pursuant to Subsection 2(c)(i)(A)(II) or (B) above, if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 60 days after such Deemed Liquidation Event, then (A) the Corporation shall deliver a written notice to each holder of Series A Preferred Stock no later than the 60th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of such shares of Series A Preferred Stock, and (B) if the holders of at least two-thirds (66 2/3%) of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than 75 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation) (the "Net Proceeds") to redeem, to the extent legally available therefor, on the 90th day after such Deemed Liquidation Event (the "Liquidation Redemption Date"), all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock to the fullest extent of such Net Proceeds or such lawfully available funds, as the case may be, and, where such redemption is limited by the amount of lawfully available funds, the Corporation shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this Subsection 2(c)(iii), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in the ordinary course of business.

(iv) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. If' the amount deemed paid or distributed under this Subsection 2(c)(iv) is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(A) For securities not subject to investment letters or other similar restrictions on free marketability,

(1) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities

on such exchange or market over the thirty-day (30) period ending three (3) days prior to the closing of such transaction resulting in a Deemed Liquidation Event;

(2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty-day (30) day period ending three (3) days prior to the closing of such transaction resulting in a Deemed Liquidation Event; or

(3) 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 Corporation.

(B) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of directors of the Corporation) from the market value as determined pursuant to clause (A) above so as to reflect the approximate fair market value thereof.

3. Voting.

(a) General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Subsection 3(b) or 3(c) below, holders of Series A Preferred Stock shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(b) Board Composition. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect four (4) directors of the Corporation (the "Series A Directors"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of two-thirds (66 2/3%) of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the "Common Directors"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A Preferred Stock), voting together as a single class shall be entitled to elect the balance, if any, of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person

or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3(b). The rights of the holders of the Series A Preferred under the first sentence of this Subsection 3(b) shall terminate on the first date on which there are no issued and outstanding shares of Series A Preferred Stock.

(c) At any time when shares of Series A Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least two-thirds (66 2/3%) in interest of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, the Corporation shall not, either directly or by amendment, merger, consolidation or otherwise:

(i) increase or decrease the authorized number of directors constituting the Board of Directors from nine (9) directors;

(ii) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation;

(iii) create or authorize any additional shares of Preferred Stock and increase or decrease the number of shares of Preferred Stock;

(iv) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing;

(v) create, authorize or issue (by reclassification or otherwise) any additional class or series of shares of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or increase the authorized number of shares of Series A Preferred Stock, or increase the authorized number of shares of any additional class or series of shares of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or create or authorize any obligation or security convertible into shares of any class or series of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(iv) create, or authorize the creation of; or issue, or authorize the issuance of, or permit any subsidiary to take any such action, any bond, note, debt security or other obligation which by its terms is convertible into or exchangeable for or having option rights to purchase any equity security of the Corporation and any security of the Corporation

which is a combination of debt and equity unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(vi) reclassify any class or series of shares of Common Stock into shares of a different class or series of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(vii) purchase or redeem or pay or declare any dividend or make any distribution an, any shares of stock other than the Series A Preferred Stock as expressly authorized herein, or permit any subsidiary of the Corporation to take any such action, except for securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service on such terms as approved by the Board of Directors;

(viii) change the principal business of the Corporation, enter into a new line of business or exit the current line of business of the Corporation;

(ix) create, incur, assume or suffer to exist any liability with respect to indebtedness for money borrowed which exceeds, in the aggregate, $500,000; or

(x) assume, guarantee, endorse or otherwise become directly or contingently liable on (including, without limitation, liability by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) any indebtedness of any other person which exceeds, in the aggregate, $500,000.

4. Optional Conversion.

The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" shall initially be equal to the Series A Original Issue Price. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation Whether or not fractional shares would be issuable

upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) Mechanics of Conversion.

(i) In order for a holder of Series A Preferred Stock to voluntarily convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves us its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent of such certificates (or lost certificate affidavit and agreement) and notice (or by the Corporation if the Corporation serves as its own transfer agent) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such office to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price.

(iii) All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of such series, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

(iv) Upon any such conversion, no adjustment to the Series A Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(v) The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax of has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Series A Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "Series A Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock was issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the Series A Original Issue Date, other than the following ("Exempted Securities"):

(I) shares of Common Stock issued or deemed issued as a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4(c) or 4(f) below;

(II) an aggregate of eight million (8,000,000) shares of Common Stock authorized under the Corporation's 2005 Stock Plan, of which three million five hundred thousand (3,500,000) shares of Common Stock have been issued as restricted stock as of the Series A Original Issue Date or are issuable upon the exercise of Options outstanding as of the Series A Original Issue Date and four million five hundred thousand (4,500,000) shares of Common Stock are issuable to employees, consultants or directors pursuant to stock option, stock grant, stock purchase or similar plans or arrangements approved by the Corporation's Board of Directors or a committee thereof;

(III) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(IV) shares of Common Stock issued pursuant to the acquisition of another entity by the Corporation by merger, consolidation, reorganization or similar transaction (whereby the Corporation owns no less than a majority of the voting power of such corporation) or purchase of substantially all of such entity's stock or assets, if such acquisition has been approved by the Board of Directors;

(V) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors;

(VI) shares of Common Stock issued or issuable to strategic suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors; or

(VII) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, marketing or other similar agreements or strategic partnerships approved by the Board of Directors.,

(ii) No Adjustment of Series A Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection 4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Series A Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least two-thirds (66 2/3%) of the then outstanding shares of Series A Preferred Stock agreeing

that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(A) If the Corporation at any time or from time to time after the Series A Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Subsections 4(d)(i)(D)(I), (II), (III), (IV), (V) or (VI)) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time the Option is granted or the Convertible Security is issued or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4(d)(iv) below, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Series A Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price on the original adjustment date, or (ii) the Series A Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Subsections 4(d)(i)(D)(I), (II), (III), (IV), (V) or (VI)), the issuance of which did not result in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4(d)(iv) below (either because the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series A Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series A Original Issue Date), are revised after the Series A Original Issue Date

(either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4(d)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(iv) Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series A Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Series A Conversion Price in effect immediately prior to such issue, then the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$CP_2 = CP_1$ multiplied by $(A + B) \div (A + C)$For purposes of the foregoing formula, the following definitions shall apply:

(I) CP_2 shall mean the Series A Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(II) CP_1 shall mean the Series A Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(III) "A" shall mean the number of (i) shares of Common Stock issued and outstanding, (ii) shares of Common Stock issuable upon conversion of Options to purchase shares of Common Stock, and (iii) shares of Common Stock issuable upon conversion of Preferred Stock, in each case issued and outstanding immediately prior to such issue of Additional Shares of Common Stock;

(IV) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of the issuance of such Additional Shares of Common Stock by CP_1); and

(V) "C" shall mean the number of Additional Shares of Common Stock issued in such transaction.

(v) Determination of Consideration. For purposes of this Subsection 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4(d)(iv) above, and such issuance dates occur within a period of no more than 30 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Series A Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without additional giving effect to any adjustments as a result of any subsequent issuances within such period).

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock without a comparable subdivision of the Series A Preferred Stock or combine the outstanding shares of Series A Preferred Stock without a comparable combination of the Common Stock, the Series A Conversion Price in effect immediately before that subdivision or combination shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock without a comparable combination of the Series A Preferred Stock or effect a subdivision of the outstanding shares of Series A Preferred Stock without a comparable subdivision of the Common Stock, the Series A Conversion Price in effect immediately before the combination or subdivision shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion

Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Series A Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of capital stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section (1) do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2(c), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections (e), (f) or (g) of this Section 4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days

thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

(j) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent at least 20 days prior to the record date or effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed sent to such holder if deposited in the United States mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

5. Automatic Conversion.

(a) Upon the earlier of (A) the closing of the sale of shares of Common Stock to the public at a price of at least three (3) times the Series A Original Issue Price (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar

recapitalizations affecting such shares) in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $35,000,000 of gross proceeds to the Corporation (a "Qualified Public Offering") or (B) a date specified by vote or written consent of the holders of at least two-thirds (66 2/3%) in interest of the then outstanding shares of Series A Preferred Stock (the "Mandatory Conversion Date"), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation as shares of such series.

(b) All holders of record of shares of Series A Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, or given by electronic communication in compliance with the provisions of the General Corporation Law, to each record holder of Series A Preferred Stock. Upon receipt of such notice, each holder of shares of Series A Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all outstanding shares of Series A Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series A Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Series A Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Series A Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Series A Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Series A Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date Such converted Series A Preferred Stock may not be reissued as shares of such Series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

6. Redemption. The Series A Preferred Stock is not redeemable except in accordance with the Deemed Liquidation provisions of Subsection 2(d)(iii).

7. Waiver. Any of the rights, powers or preferences of the holders of Series A Preferred Stock set forth herein may be defeased by the affirmative consent or vote of the holders of at least two-thirds (66 2/3%) of the shares of Series A Preferred Stock then outstanding

FIFTH: Subject to any additional vote required by this 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 the Corporation.

SIXTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Sixth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

SEVENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents 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.

Any amendment, repeal or modification of the foregoing provisions of this Article Seventh shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or other agent occurring prior to, such amendment, repeal or modification.

EIGHTH: Subject to any additional vote required by this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this 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.

NINTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “Excluded Opportunity” is any matter, transaction or interest that is presented to, or acquired,

created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series A Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely is such Covered Person's capacity as a director of the Corporation.

TENTH: Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

ELEVENTH: The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

* * *

4. The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

5. That said Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 2nd day of February, 2006.

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President

CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SUPERNUS PHARMACEUTICALS, INC.

Supernus Pharmaceuticals, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation") which filed its Amended and Restated Certificate of Incorporation with the Secretary of State on February 3, 2006, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said Corporation duly adopted by unanimous consent the following resolutions setting forth the proposed amendment to the Amended and Restated Certificate of Incorporation of said Corporation. The resolutions setting forth the proposed amendment are as follows:

RESOLVED, that the first paragraph of Article FOURTH of the Corporation's Amended and Restated Certificate of Incorporation is hereby amended in its entirety to read as follows:

FOURTH. The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) sixty-two million six hundred twenty-five thousand (62,625,000) shares of Common Stock, $0.001 par value per share ("Common Stock"), and (ii) forty-nine million six hundred twenty five thousand (49,625,000) shares of Preferred Stock, $0.001 par value per share ("Preferred Stock").

RESOLVED, that the first paragraph of Section C of Article FOURTH is hereby amended in its entirety to read as follows:

Forty-nine million six hundred twenty-five (49,625,000) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series A Convertible Preferred Stock" with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. The Series A Convertible Preferred Stock is sometimes referred to herein as the "Series A Preferred Stock" and "Preferred Stock."

SECOND: That the aforementioned amendment was duly adopted in accordance with the applicable provisions of Section 242 and 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Corporation has caused this Certificate of Amendment to be signed by a duly authorized officer of the Corporation this 25th day of January, 2011.

By: /s/ Jack Khattar
Jack Khattar
President and Chief Executive Officer

Exhibit 4.2

SECURED PROMISSORY NOTE

$12,000,000 Dated: January 26, 2011

FOR VALUE RECEIVED, the undersigned, SUPERNUS PHARMACEUTICALS, INC., a Delaware corporation with offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("**Borrower**") HEREBY PROMISES TO PAY to the order of **OXFORD FINANCE CORPORATION** ("**Lender**") the principal amount of TWELVE MILLION DOLLARS ($12,000,000) or such lesser amount as shall equal the outstanding principal balance of the Term Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of Term Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated January 26, 2011, by and among Borrower, Lender, Oxford Finance Corporation, as Collateral Agent and as a Lender, and the Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower agrees to pay any initial partial monthly interest payment from the date the Term Loan is made to Borrower under this Secured Promissory Note (this "Note") to the first Payment Date ("**Interim Interest**") on the first Payment Date.

Principal, interest and all other amounts due with respect to the Term Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Note. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term Loan, interest on the Term Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

Note Register; Ownership of Note. The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

SUPERNUS PHARMACEUTICALS, INC.

By /s/ JACK A. KHATTAR
Name: Jack A. Khattar
Title: President & CEO

[*Signature Page to Secured Promissory Note*]

Exhibit 4.3

SECURED PROMISSORY NOTE

$3,000,000 Dated: January 26, 2011

FOR VALUE RECEIVED, the undersigned, SUPERNUS PHARMACEUTICALS, INC., a Delaware corporation with offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("**Borrower**") HEREBY PROMISES TO PAY to the order of **COMPASS HORIZON FUNDING COMPANY LLC** ("**Lender**") the principal amount of THREE MILLION DOLLARS ($3,000,000) or such lesser amount as shall equal the outstanding principal balance of the Term Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of Term Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated January 26, 2011, by and among Borrower, Lender, Oxford Finance Corporation, as Collateral Agent and as a Lender, and the Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower agrees to pay any initial partial monthly interest payment from the date the Term Loan is made to Borrower under this Secured Promissory Note (this "Note") to the first Payment Date ("**Interim Interest**") on the first Payment Date.

Principal, interest and all other amounts due with respect to the Term Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Note. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term Loan, interest on the Term Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

SUPERNUS PHARMACEUTICALS, INC.

By /s/ JACK A. KHATTAR
Name: Jack A. Khattar
Title: President & CEO

[*Signature Page to Secured Promissory Note*]

Exhibit 4.4

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company:	SUPERNUS PHARMACEUTICALS, INC., a Delaware corporation
Number of Shares:	, Subject to adjustment (including pursuant to Sections 1.7 and 1.8 hereof)
Class of Stock:	Series A Convertible Preferred Stock (the "Class")
Warrant Price:	$1.00
Issue Date:	
Expiration Date:	The 10th anniversary after the Issue Date
Credit Facility:	This Warrant is issued in connection with the Loan and Security Agreement among Company, Oxford Finance Corporation, as Collateral Agent and Lender and Compass Horizon Funding Company LLC, as Lender, dated as of January 26, 2011, as amended from time to time (the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, including without limitation the mutual promises contained in the Loan Agreement (together with any registered holder from time to time of this Warrant or any holder of the shares issuable or issued upon exercise of this Warrant, "Holder") is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the "Shares") of the Company at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, by surrendering this Warrant for that number of shares of the Class equal to the quotient obtained by dividing (x) the product of (i) the number of Shares underlying that portion of the Warrant to be surrendered, multiplied by (ii) the positive difference, if any, between the exercise price of such Warrant and the fair market value (as defined below), by (y) the fair market value. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value. If the Company's common stock is traded in a public market, the fair market value of each Share shall be the average closing price of the Company's common stock for the ten (10) trading days ending on the trading date immediately prior to the date Holder delivers its Notice of Exercise to the Company. Solely in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering, the fair market value of each Share shall be the "price to public" per share price specified in the final prospectus relating to such offering. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment based on the Company's 409A independent valuations dated no more than 30 days prior to the proposed date of exercise.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.6.2 Treatment of Warrant at Acquisition. Treatment of Warrant Upon Acquisition. Upon the consummation of any Acquisition, the Underlying Shares shall have the rights, preferences, powers, privileges, qualifications and restrictions set forth in the Company's Certificate of Incorporation as in effect on the date of such Acquisition attributed to (i) the Company's common stock if the Shares are common stock or (ii) the Company's Series A Convertible Preferred Stock if the Shares are Series A Convertible Preferred Stock.

1.7 Treatment of Warrant Upon a Deemed Liquidation Event.

1.7.1 "Deemed Liquidation Event". For the purpose of this Warrant, "Deemed Liquidation Event" has the meaning given such term in the Company's Certificate of Incorporation as in the effect on the date of such Deemed Liquidation Event.

1.7.2 Treatment of Warrant at Deemed Liquidation Event. Upon the occurrence of any Deemed Liquidation Event, the Underlying Shares shall have the rights, preferences, powers, privileges, qualifications and restrictions set forth in the Company's Certificate of Incorporation as in effect on the date of such Deemed Liquidation Event attributed to (i) the Company's common stock if the Shares are common stock or (ii) the Company's Series A Convertible Preferred Stock if the Shares are Series A Convertible Preferred Stock

1.8 Adjustment in Class of Stock and Warrant Price. If the Company consummates a public offering of its equity securities after the Issue Date (the "IPO"), the unexercised portion of this Warrant, if any, shall automatically convert into a Warrant exercisable for Common Stock at the lesser of (i) the price per share of Company's common stock issued in the IPO, or (ii) $1.00 per share (the lesser, the "Next Round Price"). The Shares for which this Warrant is exercisable, if at all, shall bear the same rights, preferences, and privileges of such Common Stock (and not less than the rights, preferences and privileges provided the holders of the Company's Series A Preferred stock). Company shall provide Holder no less than twenty (20) days' written notice prior to any IPO. Any adjustment to the Class of Stock and/or Warrant Price to be made as a result of an automatic conversion pursuant to this Section 1.8 shall be in addition to any adjustment(s) to be made in accordance with Section 1.9 and Article 2 hereof.

1.9 Adjustment to Number of Shares. The Number of Shares for which this Warrant is exercisable shall automatically be increased, concurrently with the making of the Term B Loan under and as defined in the Loan Agreement, and without further action by Holder or the Company, by an amount equal to (x) 50,000 or, (y) in the event this Warrant is exercisable for Common Stock in accordance with Section 1.8, (i) $50,000 divided by (ii) the Next Round Price. Any adjustment to the Number of Shares made as a result of this Section 1.9 shall be in addition to any adjustment(s) to be made in accordance with Article 2 hereof.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of the Class or the underlying common stock in the event the Class converted to common stock (the "Underlying Shares") payable in additional shares of the Class or other securities, then upon exercise or conversion of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of the Class or the Underlying Shares by reclassification or otherwise into a greater number of shares or takes any other action which increase the amount of the Underlying Shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class or the Underlying Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation upon the closing of a registered public offering of the Company's common stock. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the

number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this Warrant or, if the Shares are preferred stock, the number of shares of common stock issuable upon 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 if the Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Shares in the Company's Certificate of Incorporation relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that notwithstanding the foregoing, nothing in this Article 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences, and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Shares in the same manner as the other holders of outstanding shares of the Class.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares or Underlying Shares, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price, Class and number of Shares or Underlying Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price, Class or Underlying Shares and number of Shares.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the price per share at which the Shares were last issued.

(b) All Shares including, but not limited to, Underlying Shares, which may be issued upon the exercise or conversion of this Warrant shall at all times during the term hereof and prior to exercise or conversion in full hereof be duly reserved out of the Company's authorized and unissued capital stock for issuance upon exercise or conversion hereof and shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached hereto as Schedule 1 is true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of the Class, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription or sale any additional shares of any class or series of the Company's stock; (c) to effect any reclassification, reorganization or recapitalization of the shares of the Class; or (d) to effect an Acquisition or to liquidate, dissolve or wind up; then, in each such event the Company shall provide written notice thereof to Holder at the same time and in the same manner as the Company gives notice thereof to the holders of the outstanding shares of the Class. Company will also provide information requested by Holder reasonably necessary to enable the Holder to comply with the Holder's accounting or reporting requirements.

3.3 Registration Under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain incidental, or "Piggyback," registration rights pursuant to and as set forth in the Company's Investor Rights Agreement or similar agreement. The provisions set forth in the Company's Investor Right Agreement or similar agreement relating to the above in effect as of the Issue Date may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification, or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

3.4 No Shareholder Rights. Without limitation of any provision of this Warrant, Holder agrees that it will not have any rights as a shareholder of the Company until the exercise or conversion of this Warrant.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution in

violation of applicable securities laws. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. 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. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon one or more exemptions therefrom, which exemptions depend upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless an exemption from such registration and qualification requirements is otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 OF THE WARRANT TO PURCHASE STOCK, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER,

SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and/or the Shares issuable upon exercise or conversion of this Warrant may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any affiliate of Holder, provided that such affiliate is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. After receipt by Holder of the executed Warrant, Holder may transfer this Warrant to any affiliate of Holder, by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing Company with written notice, any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The foregoing provisions of this Article 5.4 shall not apply to a public sale of any Shares issued on exercise or conversion of this Warrant in reliance on the provisions of Rule 144 promulgated under the Act.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid (or on the first business day after transmission by facsimile), at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such holder from time to time. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Attention:
Telephone:
Facsimile:

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

SUPERNUS PHARMACEUTICALS, INC.
1550 East Gude Drive
Rockville, Maryland 20850

Attn: Russell ("Rip") Wilson
Telephone:
Facsimile:

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Article 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Article 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles regarding conflicts of law.

5.11 Market Stand-Off Agreement. Holder agrees that, if requested in writing by the underwriters for the initial underwritten public offering of securities of the Company, Holder shall agree not to sell publicly any Underlying Shares or any other shares of common stock (other than Underlying Shares or other shares of common stock being registered in such offering), without the consent of such underwriters, for a period not to exceed 180 days following the effective date of the registration statement relating to such offering; provided, however, that all persons entitled to registration rights with respect to shares of the Company's common stock who are not parties to the Company's Investor Rights Agreement dated December 22, 2005 (the "IRA"), all other persons selling shares of common stock in such offering, all persons holding in excess of 1% of the capital stock of the Company on a fully diluted basis and all executive offers and directors of the Company shall also have agreed not to sell publicly their common stock under the circumstances and pursuant to the terms set forth in Section 15(g) of the IRA; and provided, further, however, that any such lock-up agreement shall provide that if the managing underwriter releases any shares from the lock-up with respect to such offering prior the scheduled expiration date of such lock-up, the managing underwriter shall contemporaneously release a pro rata portion of the Underlying Shares from such lock-up.

5.12 Conflicts with Certificate of Incorporation. Except with respect to Section 2.4 hereof, in the event that any provisions of this Warrant conflict with the Company's Certificate of Incorporation in any manner related to the subject matter hereof, then the Company's Certificate of Incorporation shall control such provisions and supersede the provisions of this Warrant.

[***Balance of Page Intentionally Left Blank***]

"COMPANY"

Dated as of the Issue Date indicated above

SUPERNUS PHARMACEUTICALS, INC.

By: _____

Name: _____
(Print)

Title: Chairman of the Board, President or Vice President

By: _____

Name: _____
(Print)

Title: Chief Financial Officer, Secretary, Assistant Treasurer or Assistant Secretary

"HOLDER"

_____

By: _____

By: _____

Its: _____

[*Signature Page to Warrant to Purchase Stock*]

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase shares of the Common/Series Preferred [strike one] Stock of SUPERNUS PHARMACEUTICALS, INC. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

_____
Holders Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, hereby sells, assigns and transfers unto

Name:
Address:

Tax ID:

that certain Warrant to Purchase Stock issued by SUPERNUS PHARMACEUTICALS, INC. (the "Company"), on (the "Warrant") together with all rights, title and interest therein.

_____

By: _____

By: _____

_____

Its: _____

Date: _____

By its execution below, and for the benefit of the Company, makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

_____

By: _____

Name: _____

Title: _____

Exhibit 10.10

EXECUTION COPY

ASSET PURCHASE AND CONTRIBUTION AGREEMENT

dated as of

December 22, 2005

among

SUPERNUS PHARMACEUTICALS, INC.,

SHIRE LABORATORIES INC.

and

SHIRE PLC

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

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[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

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ASSET PURCHASE AND CONTRIBUTION AGREEMENT

AGREEMENT dated as of December 22, 2005 among Supernus Pharmaceuticals, Inc., a Delaware corporation (**"Supernus"**), Shire Laboratories Inc., a Delaware corporation (**"SLI"**) and Shire plc, a company incorporated under the laws of England and Wales (**"Guarantor"**).

W I T N E S S E T H :

WHEREAS, SLI conducts a business which develops pharmaceutical products using its oral drug delivery technologies for or in partnership with pharmaceutical companies and which consists of (i) predictive discovery lead selection and oral bioavailability screening, (ii) oral bioavailability enhancement, including solubility enhancement, permeation enhancement and efflux and protease protection, (iii) the development of oral controlled release formulations and (iv) the development of reduced abuse potential formulations (collectively, the **"Business"**); *provided* that the term "Business" shall not include the Retained Business (as defined herein);

WHEREAS, the parties desire to effect the contribution, sale and licensing of assets attributable to the Business currently conducted by SLI to Supernus, with a view towards Supernus carrying on the Business as a going concern in succession to SLI, in consideration for securities issued by Supernus and cash, upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, concurrently herewith, Supernus, Shire LLC, an Affiliate (as defined herein) of SLI, and Guarantor have entered into (i) a License Agreement dated as of the date hereof relating to the license of Guanfacine (as defined herein) and (ii) a License Agreement dated as of the date hereof relating to the Compounds (as defined herein) being licensed to Shire LLC and its Affiliates (the licenses in clauses (i) and (ii), collectively, the "**Licenses**");

WHEREAS, concurrently herewith, Supernus, SLI and certain other parties have entered into a Series A Convertible Preferred Stock Purchase Agreement (the **"Stock Purchase Agreement"**);

WHEREAS, concurrently herewith Supernus, Shire LLC and Guarantor have entered into an Ongoing Projects Agreement (as defined herein); and

WHEREAS, Guarantor has agreed to guarantee the obligations of SLI hereunder.

The parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.*

(a) The following terms, as used herein, have the following meanings:

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person, where "control" means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of such Person.

"Amphetamine" means (i) (±)-alpha-Methylbenzeneethanamine; (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"Anagrelide" means 6,7-Dichloro-1,5-dihydroimidazo-[2,1-b]quinazolin-2(3H)-one.

"Business Day" means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"Business Intellectual Property Rights" means (i) the SLI Patents, (ii) the SLI Trademarks and Tradenames and (iii) the SLI Other Know-How.

"Carbamazepine" means (i) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide); (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii); *provided* that the definition of Carbamazepine shall not include Oxcarbazepine.

"Closing Date" means the date of the Closing.

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

"Compound Fields" means the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import and export of any pharmaceutical product containing any of the Compounds as an active ingredient.

"Compounds" means Amphetamine, Carbamazepine, Guanfacine, Lanthanum, and Mesalamine (each a **"Compound"** and collectively, the **"Compounds"**).

"Contract" means any contract, agreement (including any confidential disclosure agreement), license, lease, sales or purchase order or other legally binding undertaking or commitment, whether written or oral.

"Damages" means any and all damage, loss and expense (including reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding whether involving a third party claim or solely between the parties hereto).

"Effective Time" means 12:01 a.m. (EST) on the Closing Date.

"Environmental Laws" means any statute, law (including common law), regulation, rule, judgment, order, injunction, permit or governmental restriction or requirement, in each case relating to the environment, or pollutants, contaminants, wastes or chemicals or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substances, wastes or materials.

"Environmental Liabilities" means any and all liabilities, obligations or commitments arising in connection with or in any way relating to the Business (as currently or previously conducted), the Contributed Assets or any activities or operations occurring or conducted at the Real Property (including offsite disposal), whether accrued, contingent, absolute, determined, determinable or otherwise, which arise under or relate to any Environmental Law (and including any matter disclosed or required to be disclosed in Schedule 3.13).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder.

"ERISA Affiliate" of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Code.

"GAAP" means generally accepted accounting principles in the United States.

"Guanfacine" means (i) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide); (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"IND" means an Investigational New Drug Application.

"Inventions" means all writings, inventions, discoveries, improvements, Know-How, and other technology (including without limitation any proprietary biological or other materials, compounds or reagents and computer software), whether or not patentable or copyrightable, and any patent applications, patents or copyrights based thereon relating, in whole or in part, to the Compounds.

"Intellectual Property Rights" means patents, trademarks, service marks, trade names, internet domain names, rights in designs, copyright (including rights in computer software databases) and moral rights, utility models and other intellectual property rights, and all rights in and to Know-How, in each case whether registered or unregistered and including any applications for the grant of any such rights and all rights and forms of protection having an equivalent or similar effect anywhere in the world.

"Know-How" means any non-public information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation databases; ideas; discoveries; inventions; trade secrets; practices; methods; tests; assays; techniques; specifications; processes; formulations; formulae; knowledge; skill; experience; materials including pharmaceutical, chemical and biological materials; products; compositions; scientific, technical, or test data including without limitation pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, and stability data; studies; procedures; drawings; plans; designs; diagrams; sketches; technology; documentation; and patent-related and other legal information or descriptions.

"Knowledge of SLI," "SLI's knowledge" or any other similar knowledge qualification in this Agreement means to the actual knowledge of the individuals listed in Schedule 1.01(a).

"Knowledge of Supernus," "Supernus' knowledge" or any similar knowledge qualification in this Agreement means to the actual knowledge of the individuals listed in Schedule 1.01(b).

"Lanthanum" means (i) lanthanum; (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"Lien" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

"Material Adverse Effect" means a material adverse effect on the business, assets or results of operations of the Business, except any such effect

resulting from or arising in connection with (i) this Agreement or the transactions contemplated hereby, (ii) changes or conditions affecting the pharmaceutical industry generally or (iii) changes in economic, regulatory or political conditions generally.

"Mesalamine" means (i) mesalamine (5-Amino-2-hydroxybenzoic acid); (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii).

"NDA" means a New Drug Application.

"Oxcarbazepine" means 10,11-Dihydro-10-oxo-5H-dibenz[b,f]azepine-5-carboxamide.

"Ongoing Projects Agreement" means the Ongoing Projects and Royalty Agreement between Supernus, Shire Development Inc. and Guarantor dated the date hereof.

"Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Pre-Closing Receivables" means an amount in respect of any accounts, notes or other receivables arising from the conduct of the Business or the Retained Business that SLI or any of its Affiliates had invoiced to a third party prior to the Effective Time and which remain outstanding as of such time.

"QA Agreement" means the Quality Assurance Agreement among Supernus, Shire Development Inc. and Shire Pharmaceuticals Development Limited dated the date hereof.

"Retained Business" means the business of SLI and its Affiliates related to the research, development and commercialization of the Compounds or products based on the Compounds, including all Intellectual Property Rights of SLI and its Affiliates related to the Compounds (other than, for the avoidance of doubt, the SLI Other Know-How and other than the patent families identified as: (i) [**], including US patent number [**]; and (ii) [**] and form part of the Business Intellectual Property Rights).

"SLI Compound Know-How" means Know-How relating, in whole or in part, to any of the Compounds, including their formulation development, stability, bioanalytics, testing, pharmacodynamics, pharmacokinetics, preclinical and clinical performance, manufacture, use, sale or design, and in which SLI or any of its Affiliates has any right or title as of the Effective Time.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

"SLI Other Know-How" means Know-How, other than the SLI Compound Know-How, relating to the Business and in which SLI has any right or title as of the Effective Time.

"SLI Patents" means the patents and patent applications set forth on Schedule 3.10(a) together with all foreign equivalents thereof held in SLI's name.

"SLI Trademarks and Tradenames" means the trademarks, service marks, trade names, internet domain names, rights in designs and copyright (including rights in computer software databases) held in SLI's name and set forth on Schedule 3.10(a), together with the goodwill associated therewith.

"Subsidiary" means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Supernus Consideration Shares" means 4,000,000 shares of Supernus Preferred Stock.

"Supernus Common Stock" means the common stock, par value $.001 per share, of Supernus.

"Supernus Preferred Stock" means the Series A Convertible Preferred Stock, par value $.001 per share, of Supernus.

"Transaction Documents" means, collectively, (i) the Stock Purchase Agreement, (ii) the Ongoing Projects Agreement, (iii) the QA Agreement and (iv) the Licenses.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Accounting Referee	7.06
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Assumed Liabilities	2.03
Business	Recitals
Closing	2.07
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Transfer Date	9.01
Transfer Taxes	8.03
Transferred Employee	9.01
Transferred Plans	9.03
Transferred SERP Liability	9.09

Section 1.02. *Other Definitional and Interpretative Provisions.* Unless specified otherwise, in this Agreement the obligations of any party consisting of more than one person are joint and several. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2
TRANSACTIONS AT CLOSING

Section 2.01. *Contribution of Assets.* Except as otherwise provided below, upon the terms and subject to the conditions of this Agreement, SLI agrees to contribute, sell, convey, transfer, assign and deliver, or cause to be contributed, sold, conveyed, transferred, assigned and delivered, to Supernus at the Closing, free and clear of all Liens, other than Permitted Liens, all of SLI's right, title and interest in, to and under the following assets and properties, as the same shall exist at the Effective Time (the **"Contributed Assets"**):

(a) the Business Intellectual Property Rights; and

(b) the other assets and properties of the Business owned, used or held for use by SLI that are not Intellectual Property Rights, including all right, title and interest of SLI in, to and under the following assets to the extent owned, used or held for use exclusively in the conduct of the Business:

(i) all personal property (including office and laboratory equipment) and interests therein;

(ii) all raw materials, supplies and other inventories;

(iii) all rights under all Contracts to which SLI is a party other than those relating to the Retained Assets, including those set forth on Schedule 3.06;

(iv) all accounts, notes and other receivables arising after the Effective Time;

(v) all transferable licenses, permits or other governmental authorizations;

(vi) all books, records, files and papers, whether in hard copy or computer format; *provided* that SLI shall be entitled to make and maintain copies of such books, records, files and papers; and

(vii) all goodwill associated with the Contributed Assets, together with the right to represent to third parties that Supernus is the successor to the Business;

provided that in no event shall the Contributed Assets include any Retained Asset.

Section 2.02. *Retained Assets.* Supernus expressly understands and agrees that the following assets and properties of SLI (the **"Retained Assets"**) shall be retained by SLI and its Affiliates and not included in the Contributed Assets:

(a) all cash and cash equivalents, including any marketable securities, on hand and in banks and any security deposits in respect of any Retained Asset or Contributed Asset;

(b) insurance policies relating to the Business or the Contributed Assets and all claims, credits, causes of action or rights thereunder;

(c) all Intellectual Property Rights other than the Business Intellectual Property Rights (the **"Retained Intellectual Property Rights"**), including for the avoidance of doubt but without limiting the

foregoing the patents and patent applications, together with all foreign equivalents thereof, and other items set forth on Schedule 2.02 and the SLI Compound Know-How;

(d) the other property and assets of the Retained Business set forth on Schedule 2.02;

(e) all books, records, files and papers, whether in hard copy or computer format (i) used or held for use in the Retained Business or relating to any of the other Retained Assets, including all data, regulatory filings, quality assurance records, processes and manufacturing materials relating to the Compounds, (ii) related to the matters set forth on Schedules 3.07 or 6.01, including all documents and attorney work papers related thereto or (iii) prepared in connection with this Agreement or the transactions contemplated hereby;

(f) all minute books and corporate records of SLI and its Affiliates;

(g) the Pre-Closing Accrued Income and the Pre-Closing Receivables;

(h) all Tax refunds or credits of the Business relating to the Pre-Closing Tax Period, whether received prior to or after the Effective Time; *provided* that SLI or its Affiliates paid the Tax in respect of such refund or credit;

(i) all rights of SLI arising under this Agreement or any other Transaction Document to which it is a party or the transactions contemplated hereby or thereby;

(j) the Lease Agreement dated November 1, 2002 between ARE Acquisitions, LLC and SLI for the premises located at 1330 Piccard Drive, Rockville, Maryland; and

(k) all prepaid expenses, including *ad valorem* taxes, leases and rentals (collectively, **"Prepaid Expenses"**).

Section 2.03. *Assumed Liabilities.* Upon the terms and subject to the conditions of this Agreement, Supernus agrees, effective at the time of the Closing, to assume all liabilities and obligations of any kind, character or description (whether known or unknown, absolute, contingent or otherwise) relating to or arising out of the Contributed Assets or the conduct of the Business and, in each case, arising after the Effective Time, except for the Retained Liabilities (the **"Assumed Liabilities"**).

Section 2.04. *Retained Liabilities.* Notwithstanding any provision in this Agreement or any other writing to the contrary, Supernus is assuming only the

Assumed Liabilities and is not assuming any other liability or obligation of SLI or its Affiliates of whatever nature, whether in existence prior to the Effective Time or arising thereafter, including any liability or obligation set forth on Schedule 2.04, relating to the Retained Business or the Retained Assets or relating to the Contributed Assets or the Business and arising prior to the Effective Time. All such other liabilities and obligations shall be retained by and remain obligations and liabilities of SLI (all such liabilities and obligations not being assumed being herein referred to as the **"Retained Liabilities"**).

Section 2.05. *Assignment of Contracts and Rights.* (a) Subject to the terms and conditions of this Agreement, promptly after the Closing, Supernus will use its reasonable best efforts to obtain the consent of any third party required to assign the Contributed Assets to Supernus and, if Supernus so requests, SLI shall use its reasonable best efforts to assist Supernus in obtaining such third party consents; *provided* that SLI shall not be required to make any payment or incur any liability in connection therewith other than in respect of a Retained Liability.

(b) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contributed Asset or any right thereunder if an attempted assignment, without the consent of a third party, would constitute a breach or in any way adversely affect the rights of Supernus or SLI thereunder. If such consent is not obtained, SLI and Supernus will, if possible, (i) cooperate in a mutually agreeable arrangement under which Supernus would obtain the benefits and assume the obligations thereunder in accordance with this Agreement or (ii) take such other action or enter into such other arrangement in respect of such Contributed Asset as they may mutually agree.

Section 2.06. *Consideration; Allocation of Consideration.* (a) The consideration for the contribution of the Contributed Assets is (i) the Supernus Consideration Shares and (ii) $1,500,000 in cash (the **"Supernus Consideration Amount"** and, together with the Supernus Consideration Shares, the **"Supernus Consideration"**). The Supernus Consideration shall be delivered to SLI as provided in Section 2.07.

(b) Supernus and SLI agree that the Supernus Consideration (plus Assumed Liabilities, to the extent properly taken into account under Section 1060 of the Code) shall be allocated in accordance with Schedule 2.06 (b). SLI and Supernus agree to (i) be bound by the allocation set forth on Schedule 2,06 (b) and (ii) act in accordance with such allocation in the preparation, filing and audit of any Tax return (including filing Form 8594 with its federal income Tax return for the taxable year that includes the date of the Closing). Not later than 30 days prior to the filing of their respective Forms 8594 relating to this transaction, each party required to file such form shall deliver to the other parties hereto a copy of such form.

Section 2.07. *Closing*. The closing of the contribution of the Contributed Assets, the assumption of the Assumed Liabilities, the issuance of the Supernus Consideration Shares and the payment of the Supernus Consideration Amount hereunder (the **"Closing"**) shall take place at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York, on the date hereof. At the Closing:

(a) Supernus shall issue to SLI certificates for the Supernus Consideration Shares pursuant to the Stock Purchase Agreement and shall register such shares in its corporate books.

(b) Supernus shall deliver to SLI the Supernus Consideration Amount in immediately available funds by wire transfer to an account of SLI with a bank previously designated by SLI in writing to Supernus; *provided* that, at the request of SLI, the amount of such payment shall be less the amount payable by SLI to Supernus pursuant to a certain letter agreement dated the date hereof relating to the leased property at 1550 East Gude Drive, Rockville, Maryland.

(c) SLI and Supernus shall enter into (i) an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit A, (ii) an Assignment of SLI Patents substantially in the form attached hereto as Exhibit B and (iii) subject to the provisions hereof, SLI shall deliver to Supernus such bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary to vest in Supernus all right, title and interest of SLI in, to and under the Contributed Assets, free and clear of any Liens, other than Permitted Liens.

(d) Each of SLI and Supernus shall execute and deliver each Transaction Document to which it is a party to each other party to such Transaction Document.

(e) SLI shall deliver a certification signed under penalties of perjury that it is not a "foreign person" as defined in Section 1445 of the Code.

(f) (i) Supernus shall have received all documents it may reasonably request relating to the existence of SLI and the authority of SLI to enter into this Agreement and consummate the transactions contemplated hereby, all in form and substance reasonably satisfactory to Supernus and (ii) SLI shall have received all documents it may reasonably request relating to the existence of Supernus and the authority of Supernus to enter into this Agreement and consummate the transactions contemplated hereby, all in form and substance reasonably satisfactory to SLI.

Section 2.08. *License to the SLI Compound Know-How.* SLI hereby grants to Supernus and its Affiliates, a paid-up, worldwide, irrevocable, exclusive (except as to SLI and its Affiliates) license under the SLI Compound Know-How relating to the Business for any use outside the Compound Fields to conduct any business with respect to any compounds other than the Compounds. The grant of the license in this Section 2.08 includes the right to grant sublicenses to third parties and to appoint distribution and independent sales organizations or representatives under the rights granted to Supernus or its Affiliates. Such grant to Supernus and its Affiliates, and the right to grant sublicenses, is subject to the restrictions and obligations set forth in Section 6.04. As used in this Section 2.08, an "exclusive (except as to SLI and its Affiliates) license" means that SLI shall not grant any other entity any license under such SLI Compound Know-How other than in respect of the Compounds, but that SLI and its Affiliates retain all of their rights, including but not limited to any rights to practice the rights and ownership of such SLI Compound Know-How, in all fields. It is understood and agreed that this Section 2.08 does not grant Supernus or its Affiliates any right other than as specified in this Section 2.08 in any intellectual property of SLI or its Affiliates, nor the right to sue.

Section 2.09. *Access for Possession of Retained Assets.* As soon as practicable after the Closing, Supernus will afford to SLI, its Affiliates and their respective authorized representatives such access to Supernus' offices, properties, books, records, employees and auditors as may be reasonably necessary or appropriate to permit SLI and its Affiliates to obtain possession of all Retained Assets, including those referred to in Section 2.02 (e).

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SLI

Except as set forth in the Disclosure Schedules to this Agreement, SLI represents and warrants to Supernus as of the date hereof that:

Section 3.01. *Corporate Existence and Power.* SLI is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation.

Section 3.02. *Corporate Authorization.* The execution, delivery and performance by SLI of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby are within SLI's corporate powers and have been duly authorized by all necessary corporate action on the part of SLI. This Agreement and each Transaction Document to which it is a party constitutes a valid and binding agreement of SLI.

Section 3.03. *Governmental Authorization.* The execution, delivery and performance by SLI of this Agreement and each Transaction Document to which

it is a party and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any governmental body, agency or official other than (i) in relation to NDAs and INDs in SLI's name, notifications to be made to the U. S. Food and Drug Administration (and competent regulatory authorities in other counties) of the transaction and consequent change of principal office address of SLI, (ii) any such actions or filings as to which the failure to make or obtain would not have, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (iii) any filings or notices not required to be made or given until after the Closing Date.

Section 3.04. *Noncontravention.* The execution, delivery and performance by SLI of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of SLI, (ii) assuming compliance with the matters referred to in Section 3.03, violate any applicable law, (iii) assuming the obtaining of all Required Consents, to SLI's knowledge, constitute a default under or give rise to any right of termination, cancellation or acceleration of any right or obligation or to a loss of any benefit relating to the Business to which SLI is entitled under any provision of any agreement or other instrument binding upon SLI or (iv) result in the creation or imposition of any Lien on any Contributed Asset, except in the case of clause (ii), (iii) or (iv) for such matters as would not have, individually or in the aggregate, a Material Adverse Effect.

Section 3.05. *Required Consents.* Schedule 3.05 sets forth each Contract binding upon SLI requiring a consent or other action by any Person as a result of the execution, delivery and performance of this Agreement, except such consents or actions that would not have, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect if not received or taken by the Closing Date (the **"Required Consents"**).

Section 3.06. *Material Contracts.* (a) Except for the Contracts disclosed in Schedule 3.06 (collectively, the **"Material Contracts"**), with respect to the Business, SLI is not a party to or bound by:

(i) any lease (whether of real or personal property) providing for annual rentals of S 50,000 or more that cannot be terminated on not more than 60 days' notice without payment by SLI of any material penalty;

(ii) any agreement for the purchase of materials, supplies, goods, services, equipment or other assets providing for either (A) annual payments by SLI of $50,000 or more or (B) aggregate payments by SLI of $50,000 or more, in each case that cannot be terminated on not more than 60 days' notice without payment by SLI of any material penalty;

(iii) any sales, distribution or other similar agreement providing for the sale by SLI of materials, supplies, goods, services, equipment or other assets that provides for annual payments to SLI of $100,000 or more;

(iv) any material partnership, joint venture or other similar agreement;

(v) any agreement relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise);

(vi) any agreement relating to indebtedness for borrowed SLI money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset), except any such agreement with an aggregate outstanding principal amount not exceeding $50,000;

(vii) any agreement, other than this Agreement and the Transaction Documents, that limits in any material respect the freedom of SLI or the Business to compete in any line of business or with any Person or in any area; or

(viii) any material agreement with or for the benefit of any Affiliate of SLI.

(b) Each Material Contract required to be disclosed pursuant to this Section is a valid and binding agreement of SLI and is in full force and effect, and none of SLI or, to the Knowledge of SLI, any other party thereto is in default or breach in any respect under the terms of any such Material Contract, except for any such defaults or breaches which would not have, or would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.07. *Litigation.* Except for the matters disclosed in Schedule 3.07, there is no action, suit, investigation or proceeding pending against, or to the Knowledge of SLI, threatened against or affecting, SLI or the Business before any court or arbitrator or any governmental body, agency or official which is reasonably likely to have a Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

Section 3.08. *Compliance with Laws and Court Orders.* SLI is not in violation of any law, rule, regulation, judgment, injunction, order or decree applicable to the Contributed Assets or the conduct of the Business, except for violations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.09. *Properties.* (a) Schedule 3.09(a) correctly describes all real property used or held for use exclusively in the Business which SLI owns, leases, operates or subleases (the **"Real Property"**).

(b) SLI has good title to, or in the case of any leased Real Property or personal property has valid leasehold interests in, all Contributed Assets, except for properties and assets where the failure to have such good title or valid leasehold interests is not material to such properties or assets or to the Business. No Contributed Asset is subject to any Lien, except:

(i) Liens disclosed on Schedule 3.09(b);

(ii) Liens for taxes, assessments and similar charges that arc not yet due or are being contested in good faith;

(iii) mechanic's, materialman's, carrier's, repairer's and other similar Liens arising or incurred in the ordinary course of business or that are not yet due and payable or arc being contested in good faith; or

(iv) Liens incurred in the ordinary course of business (clauses (i) through (iv) of this Section 3.09(b) are, collectively, the "**Permitted Liens**").

Section 3.10. *Intellectual Property.* (a) Schedule 3.10(a) contains a list of the SLI Patents and the SLI Trademarks and Tradenames included in the Business Intellectual Property Rights.

(b) Schedule 3.10(b) sets forth a list of all agreements (excluding customer agreements entered into in the ordinary course of business) as to which SLI is a party and pursuant to which any Person is authorized to use any material Business Intellectual Property Right.

(c) To the Knowledge of SLI, except for the Retained Intellectual Property Rights, the Business Intellectual Property Rights and the license to the SLI Compound Know-How granted pursuant to Section 2.08 together constitute all the Intellectual Property Rights necessary for the conduct of the Business as currently conducted, other than rights in respect of third party commercial computer software.

(d) SLI has not received any written notice of infringement of or conflict with the rights of others with respect to the use of any of the Business Intellectual Property Rights.

(e) No Business Intellectual Property Right is subject to any outstanding judgment, injunction, order or decree restricting the use thereof by SLI with respect to the Business.

Section 3.11. *Insurance Coverage.* SLI has made available to Supernus a list of, and true and complete copies of, all insurance policies and fidelity bonds relating to the Contributed Assets, the Business and its officers and employees.

Section 3.12. *Employee Benefit Plans.* (a) SLI has made available to Supernus a list and copies of each material "employee benefit plan", as defined in Section 3(3) of ERISA, each employment, severance or similar contract, plan arrangement or policy and each other plan or arrangement providing for compensation, bonuses, profit-sharing, stock option or other stock related rights or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangements), health or medical benefits, employee assistance program, disability or sick leave benefits, workers' compensation, supplemental unemployment benefits, severance benefits and post-employment or retirement benefits (including compensation, pension, health, medical or life insurance benefits) which is maintained, administered or contributed to by SLI or any of its ERISA Affiliates and covers any individual employed by SLI. Such plans are referred to collectively herein as the **"SLI Plans"**.

(b) Except as otherwise provided in this Agreement, no facts or circumstances exist which would reasonably be expected to impose upon Supernus any liability or obligation with respect to any current or former employee benefit plan sponsored, maintained or contributed to SLI or any ERISA Affiliate of SLI or any predecessor thereof.

Section 3.13. *Environmental Compliance.* Except as disclosed on Schedule 3.13 and as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) (i) no written notice, order, request for information, complaint or penalty has been received by SLI, and (ii) there are no judicial, administrative or other actions, suits or proceedings pending or threatened, in the case of each of (i) and (ii), which allege a violation of any Environmental Law and relate to the Contributed Assets or Real Property;

(b) SLI has obtained or caused to be obtained all environmental permits necessary for the operation of the Contributed Assets and the Real Property to comply with all applicable Environmental Laws (as in effect on the date hereof) and SLI is in compliance with the terms of such permits and, with respect to the operation of the Contributed Assets and the Real Property, with all other applicable Environmental Laws (as in effect on the date hereof); and

(c) there has been no written environmental audit conducted within the past five years by SLI of any Contributed Asset or any of the Real Property which has not been made available to Supernus prior to the date hereof.

Section 3.14. *Title to the Contributed Assets.* Upon consummation of the transactions contemplated hereby, Supernus will have acquired good title in and to, or a valid leasehold interest in, each of the Contributed Assets, free and clear of all Liens, except for Permitted Liens, and the right to use the Contributed Assets, subject to the terms and conditions of this Agreement, the Transaction Documents and Contracts with third parties that are in respect of or relate to the Contributed Assets.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SUPERNUS

In addition to the representations and warranties being made by Supernus to the Purchasers (as defined in the Stock Purchase Agreement) in the Stock Purchase Agreement, Supernus represents and warrants to SLI as of the date hereof that:

Section 4.01. *Corporate Existence and Power.* Supernus is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted.

Section 4.02. *Corporate Authorization.* The execution, delivery and performance by Supernus of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of Supernus and have been duly authorized by all necessary corporate action on the part of Supernus. This Agreement and each Transaction Document to which it is a party constitutes a valid and binding agreement of Supernus.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by Supernus of this Agreement and each Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any governmental body, agency or official.

Section 4.04. *Noncontravention.* The execution, delivery and performance by Supernus of this Agreement and each Transaction Document to which it is a patty and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of Supernus or (ii) assuming compliance with the matters referred to in Section 4.03, violate any applicable law, rule, regulation, judgment, injunction, order or decree.

Section 4.05. *Capitalization; Issuance of Supernus Consideration Shares.* (a) The authorized capital stock of Supernus consists of 52,000,000 shares of

Supernus Common Stock and 39,000,000 shares of Supernus Preferred Stock. Immediately prior to the consummation of the transactions contemplated hereby and by the Stock Purchase Agreement, there are outstanding 6,500,000 shares of Supernus Common Stock and no shares of Supernus Preferred Stock.

(b) All outstanding shares of capital stock of Supernus have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth in this Section 4.05, there are no outstanding (i) shares of capital stock or voting securities of Supernus, (ii) securities of Supernus convertible into or exchangeable for shares of capital stock or voting securities of Supernus or (iii) options or other rights to acquire from Supernus, or other obligation of Supernus to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of Supernus (the items in Sections 4.05(b)(i), 4.05(b)(ii) and 4.05(b)(iii) being referred to collectively as the **"Supernus Securities"**). There are no outstanding obligations of Supernus to repurchase, redeem or otherwise acquire any Supernus Securities.

(c) Schedule 4.05(c) lists, for each holder of any Supernus Securities (i) the identity of such holder, (ii) the type and amount of Supernus Securities held by such holder and (iii) the percentage of such holder's fully diluted equity interest in Supernus, in each case, immediately after the consummation of the transactions contemplated hereby and by the Stock Purchase Agreement.

(d) Upon issuance of the Supernus Consideration Shares, the Supernus Consideration Shares shall be duly authorized and validly issued and will be fully paid and non-assessable.

Section 4.06. *Litigation.* There is no action, suit, investigation or proceeding pending against, or to the Knowledge of Supernus threatened against or affecting, Supernus before any court or arbitrator or any governmental body, agency or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement or any Transaction Document to which it is a party.

Section 4.07. *No Prior Activities.* Supernus has not engaged in any activities or incurred any liabilities other than in connection with its incorporation, this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby.

Section 4.08. *Representations of SLI.* Neither Supernus nor any of its Affiliates has any knowledge, or any reason to believe, that any representation or warranty made by SLI pursuant to this Agreement is not true and correct.

Section 4.09. *Inspections; No Other Representations.* Supernus, together with its expert advisors, is an informed and sophisticated purchaser, experienced in the evaluation and purchase of property and assets such as the Contributed Assets as contemplated hereunder. Supernus, together with its expert advisors,

has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Supernus acknowledges that SLI has given Supernus complete and open access to the key employees, documents and facilities of the Business. Supernus agrees to accept the Contributed Assets and the Business in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to SLI, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Supernus acknowledges that no representation or warranty is made by either SLI or any of its Affiliates with respect to (i) any projections, estimates or budgets delivered to or made available to Supernus of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future business and operations of the Business or (ii) any other information or documents made available to Supernus or its counsel, accountants or advisors with respect to the Business, except as expressly set forth in this Agreement.

ARTICLE 5
COVENANTS OF SLI

Section 5.01. *Access to Information.* On and after the Closing Date, SLI will afford to Supernus and its agents reasonable access to its books of account, financial and other records (including accountant's work papers), information, employees and auditors to the extent necessary for Supernus in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to the Business or the Contributed Assets; *provided* that any such access by Supernus shall not unreasonably interfere with the conduct of the business of SLI or its Affiliates.

Section 5.02. *SLI Trademarks and Tradenames.* After the Closing, SLI shall cooperate with Supernus to effect the transfer of the SLI Trademarks and Tradenames to Supernus.

Section 5.03. *Confidentiality.* (a) After the Closing, SLI and its Affiliates will hold, will cause their respective officers, directors and employees to hold, and will use their best efforts to cause their respective accountants, counsel, consultants, advisors and agents to hold, in confidence, all confidential documents and information as of the Effective Time concerning the Business or relating to any of the Contributed Assets (including all data, regulatory filings, quality assurance records, processes, and manufacturing materials relating to the Contributed Assets or the Business), whether furnished to SLI or its Affiliates in connection with the transactions contemplated by this Agreement or any Transaction Document or in the possession of, or known by, any current

employee of any Affiliate of SLI who had previously worked at SLI prior to the Closing Date, except to the extent that such information (i) can be shown to have been in the public domain through no fault of SLI or any of its Affiliates, (ii) can be shown to have been later lawfully acquired by SLI or any of its Affiliates from sources other than Supernus, (iii) relates to the Retained Business or the Retained Assets or any continuing business of SLI and its Affiliates; *provided* that, if any such information is the subject of a separate written confidentiality obligation between Supernus and any Affiliate of SLI, any obligations of SLI and its Affiliates regarding such information shall be governed by the terms of such other confidentiality obligation, (iv) relates to any Retained Liability and may reasonably be necessary in the satisfaction of or resolution of any dispute involving such Retained Liability and (v) relates to any past, present or future products of SLI or any of its Affiliates and may reasonably be necessary or may be required in connection with the development, manufacturing, offer for sale, sale, distribution, importation or exportation of such products or may reasonably be requested or may be required by any governmental agency or authority (collectively, **"Supernus Confidential Information"**). SLI shall be responsible for any failure to treat any Supernus Confidential Information confidentially by such Persons.

(b) Notwithstanding the restriction set forth in Section 5.03(a) to the contrary, SLI may disclose Supernus Confidential Information (i) to its Affiliates, potential and actual sublicensees, consultants, outside contractors, clinical investigators, and other third parties, on a need-to-know basis; *provided* that such Persons shall only use the Supernus Confidential Information for purposes specifically authorized by this Agreement, (ii) to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality (it being understood that any sublicensee referred to in clause (i) above may disclose the relevant Supernus Confidential Information to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality), (iii) to government or other regulatory authorities to the extent that such disclosure is reasonably necessary to obtain intellectual property protection or authorizations to conduct clinical trials of, and to commercially market, products; *provided* that SLI or its Affiliates requests confidential treatment, if it is available, with respect to such Supernus Confidential Information, and (iv) pursuant to interrogatories, requests for information or documents, subpoena, civil investigative demands issued by a court or governmental agency or as otherwise required by applicable law or regulation (including the rules of any national securities exchange or listing authority to which it or its Affiliates are subject or submit); *provided* that SLI shall, where legally permissible, notify Supernus promptly upon receipt thereof, giving Supernus, where legally permissible, sufficient advance notice to permit it to seek a protective order or other similar order with respect to such Supernus Confidential Information; and *provided, further,* that SLI shall furnish only that portion of such Supernus Confidential Information which it is advised by counsel is legally required whether or not a protective order or other similar order is obtained by Supernus.

Section 5.04. *Non-Solicit.* SLI agrees that for a period of four years after the Closing Date, neither it nor any of its Affiliates shall solicit for employment any employee of Supernus or any of its Subsidiaries or induce any such employee to terminate his or her employment with Supernus or any of its Subsidiaries; *provided* that general advertisement for employment in newspapers, magazines, trade publications or other public media (including the Internet) shall not be considered solicitation for employment.

ARTICLE 6
COVENANTS OF SUPERNUS

Section 6.01. *Access; Cooperation.* On and after the Closing Date, Supernus will afford to SLI, its Affiliates and their respective counsel, auditors and other authorized representatives reasonable access to its offices, properties, books, records, employees and auditors to the extent relating to the Retained Assets or the Retained Liabilities or necessary to permit SLI to determine any matter relating to its rights and obligations for the period ending on or prior to the Closing Date; *provided* that any such access by SLI shall not unreasonably interfere with the conduct of the business of Supernus. Without limiting the foregoing, Supernus will, and will cause its employees, officers and advisers to, cooperate with and provide assistance to SLI and its Affiliates in connection with (i) determining any amounts owed to SLI pursuant to Section 7.05 and (ii) the litigation matters set forth on Schedule 6.01, including preserving and retaining records, and furnishing records, information and testimony, and attending conferences, discovery proceedings, hearings, trials or appeals; *provided* that, with respect to clause (ii) above, Supernus shall be reimbursed by SLI or one of its Affiliates for the time reasonably spent by any of its employees cooperating with or providing assistance to SLI and its Affiliates in connection with such litigation, at the FTE Rate (as defined in the Ongoing Projects Agreement) for such time, and for any out-of-pocket expenses reasonably incurred by Supernus or its employees in connection therewith.

Section 6.02. *Trademarks; Tradenames.* (a) Except as set forth in Section 6.02(b), after the Closing, Supernus and its Affiliates shall not use any of the trademarks, service marks or tradenames that are part of the Retained Intellectual Property Rights.

(b) Supernus shall have the right to use existing packaging, labeling, containers, supplies, logos and advertising materials bearing the name "Shire Laboratories" or "SLI" for a period not to exceed six months following the Closing Date. All goodwill from such use by Supernus shall accrue to the benefit of SLI and its Affiliates, and all such use shall conform to any trademark usage guidelines provided by SLI. Supernus shall comply with all applicable laws in any use of packaging or labeling containing the name "Shire Laboratories" or "SLI".

(c) If Supernus violates any provision of this Section 6.02 or if, in the reasonable view of SLI or its Affiliates, Supernus deviates from the permissible scope of use in connection with or the manner and nature of the permitted use of the names "Shire Laboratories" or "SLI", SLI or its Affiliates shall provide Supernus written notice of the violation and/or deviation from the permissible standard and allow Supernus ten Business Days from receipt of the written notice to cure such violation and/or deviation. If, after ten Business Days from receipt of the written notice of the violation and/or deviation, Supernus has not cured such violation and/or deviation to the reasonable satisfaction of SLI or its Affiliate that provided the notice, SLI or its Affiliates may immediately terminate Supernus's right to use such names and Supernus shall permanently and immediately discontinue all use of such names. The parties acknowledge and agree that a violation of any provision of this Section 6.02 will cause SLI and its Affiliates irreparable injury and that if Supernus does not cure the violation within the specified time period, SLI and its Affiliates shall be entitled to seek emergency relief from a federal or state court to enforce the terms of this Agreement.

Section 6.03. *Confidentiality.* (a) After the Closing, Supernus and its Affiliates will hold, will cause their respective officers, directors and employees to hold, and will use their best efforts to cause their respective accountants, counsel, consultants, advisors and agents to hold, in confidence, all confidential documents and information concerning the Retained Business or relating to any of the Retained Assets (including all data, regulatory filings, quality assurance records, processes, dissolution methodologies and manufacturing materials relating to the Compounds), whether furnished to Supernus or its Affiliates in connection with the transactions contemplated by this Agreement or any Transaction Document or in the possession of, or known by, any Transferred Employee on or prior to the Closing Date, except to the extent that such information can be shown to have been (i) in the public domain through no fault of Supernus, its Affiliates or any Transferred Employee, (ii) later lawfully acquired by Supernus from sources other than SLI, any Transferred Employee or any other current or former employee of SLI or its Affiliates or (iii) relates solely to the Business or the Contributed Assets and not in any respect to the Retained Business or the Retained Assets; *provided* that, if any such information is the subject of a separate written confidentiality obligation between Supernus and any Affiliate of SLI, any obligations of Supernus and its Affiliates regarding such information shall be governed by the terms of such other confidentiality obligation (collectively, **"SLI Confidential Information"**). Supernus shall be responsible for any failure to treat SLI Confidential Information confidentially by such Persons.

(b) Notwithstanding the restriction set forth in Section 6.03(a) to the contrary, Supernus may disclose SLI Confidential Information related to the SLI Compound Know-How (i) to its Affiliates, potential and actual sublicensees, consultants, outside contractors, clinical investigators, and other third parties, on a need-to-know basis; *provided* that such Persons shall only use any such SLI Confidential Information for purposes specifically authorized by this Agreement,

(ii) to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality (it being understood that any sublicensee referred to in clause (i) above may disclose such SLI Confidential Information to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality), (iii) to government or other regulatory authorities to the extent that such disclosure is reasonably necessary to obtain authorizations to conduct clinical trials of, and to commercially market, products; *provided* that Supernus requests confidential treatment, if it is available, with respect to such SLI Confidential Information, (iv) pursuant to interrogatories, requests for information or documents, subpoena, civil investigative demands issued by a court or governmental agency or as otherwise required by applicable law or regulation (including the rules of any national securities exchange or listing authority to which it or its Affiliates are subject or submit); *provided* that Supernus shall, where legally permissible, notify SLI promptly upon receipt thereof, giving SLI, where legally permissible, sufficient advance notice to permit it to seek a protective order or other similar order with respect to such SLI Confidential Information; and *provided, further,* that Supernus shall furnish only that portion of such SLI Confidential Information which it is advised by counsel is legally required whether or not a protective order or other similar order is obtained by SLI and (v) related to improvements to the Business for the purpose of filing patent applications; *provided* that such disclosure does not disclose confidential information concerning the Retained Business or relating to any of the Retained Assets (including all data, regulatory filings, quality assurance records, processes, dissolution methodologies and manufacturing materials relating to the Compounds).

Section 6.04. *Restriction on Use.* (a) Supernus agrees that, except for activities conducted pursuant to contracts or agreements with SLI or any of its Affiliates, from time to time, neither Supernus nor any of its Restricted Affiliates shall engage in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, analytical testing, technology assessment or oral bioavailability screening, enhancement or other activities that relate, in whole or in part, to any of the Compounds in any field of use, either directly or indirectly, including as a principal or for its own account or solely or jointly with others, or as a stockholder in any corporation or joint stock association, as a partner, member, joint venturer, joint researcher, joint sponsor, joint promoter, joint marketer, joint developer, collaborator or other equity interest holder in a partnership, a limited liability company or other Person, or as a licensor of Intellectual Property Rights (or otherwise aid or assist any Person in connection with any of the foregoing); *provided, however,* subject to Section 6.04(g), Supernus may provide services to, license Intellectual Property Rights in the ordinary course of business to, or otherwise work with, providing such services, license or work is unrelated to any of the Compounds, any Person who has, without any prior contact with or assistance from Supernus, any of its Affiliates or any Transferred Employee, independently engaged in (or who has the present intention to engage in) any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design,

analytical testing, technology assessment or oral bioavailability screening, enhancement or other activities that relate, in whole or in part, to any of the Compounds in any field of use, either directly or indirectly **("Independent Compound Activities")**, so long as (i) Supernus, its Affiliates and the Transferred Employees are and remain in compliance with Section 6.03 and this Section 6.04, and the provision of such services or such other work does not contravene Section 6.03 or this Section 6.04, (ii) Supernus and its Affiliates comply with Section 6.04(b) and (iii) also, in the case of a license, the scope and terms of the license between Supernus and such Person are sufficient to ensure that the licensee cannot use the Business Intellectual Property Rights in a manner inconsistent with Section 6.03 or this Section 6.04. For purposes of this Section 6.04(a) and Section 6.05, **"Restricted Affiliates"** means Affiliates of Supernus other than investors who are investing in Supernus pursuant to the Stock Purchase Agreement and future financial investors in equity or debt of Supernus, in either case, who are not or who do not become a Successor Business Entity.

(b) Supernus hereby agrees that, from and after the Closing, it shall not provide any services to, license any Business Intellectual Property Rights to, or otherwise perform any work for, any Person (each such Person, a **"Customer"**) unless the contract or agreement relating to such services, license or work (each such contract or agreement, a **"Customer Contract"**) between Supernus and the Customer contains the provisions set forth in Exhibit D (the **"Shire-Related Customer Provisions"**). Supernus further agrees that, from and after the Closing, (i) it shall not amend or waive, in whole or in part, any of the Shire-Related Customer Provisions in any Customer Contract, without the prior written consent of Shire, (ii) it shall from time to time and upon the request of SLI (or such other entity as may be designated by Guarantor) provide SLI and its Affiliates, for monitoring purposes, with a list of all Customers, (iii) if SLI or any of its Affiliates in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the Shire-Related Customer Provisions under any Customer Contract, at the written request of SLI (or such other entity as may be designated by Guarantor), Supernus shall provide SLI and its Affiliates with an executed copy of the relevant Customer Contract and (iv) it shall indemnify and hold harmless SLI and its Affiliates against any and all Damages suffered by SLI and its Affiliates as a result of a breach of the Shire-Related Customer Provisions by any Customer, if and to the extent that any of Shire-Related Customer Provisions in the Customer Contract that SLI or any of its Affiliates is seeking to enforce shall for any reason be held invalid, illegal or unenforceable in any respect. SLI and its Affiliates agree to keep the information in any Customer Contract confidential in accordance with the provisions of Section 5.03, except to the extent reasonably necessary or appropriate for SLI or any of its Affiliates to enforce its rights and/or pursue its remedies under or with respect to such Customer Contract.

(c) Supernus may sell, assign, or otherwise transfer any Business Intellectual Property Rights to any of its Subsidiaries so long as such Subsidiary expressly agrees in writing with SLI or such other entity as designated by

Guarantor as a prior condition to such sale, assignment or other transfer to be bound by the terms of Section 6.03 and this Section 6.04.

(d) Supernus or any of its Affiliates may, subject to Section 6.04(g), enter into and consummate any transaction involving a direct or indirect sale, assignment, transfer or other disposition of all or any part of the Business or the Business Intellectual Property Rights (a **"Subsequent Transaction"**), *provided* that, as a condition to entering into any such Subsequent Transaction, any acquiror, successor, assignee or direct or indirect transferee of all or such part of the Business or the Business Intellectual Property Rights (each such acquiror, successor, assignee or direct or indirect transferee, a **"Successor Business Entity"**) shall have expressly agreed in writing with SLI or such other entity as designated by Guarantor that such Successor Business Entity shall comply with, and, as applicable, shall cause Supernus (or its successor), the Subsidiaries of Supernus, if any, in existence immediately prior to such Subsequent Transaction, and the Affiliates of the Successor Business Entity to comply with, the terms of Section 6.03 and this Section 6.04. The provisions of this Section 6.04 shall apply mutatis mutandis to each Subsequent Transaction and any and all Successor Business Entities as if it were Supernus hereunder.

(e) Supernus shall, and as a further condition to entering into any Subsequent Transaction each Successor Business Entity shall have expressly agreed in writing with SLI (or such other entity as may be designated by Guarantor) that such Successor Business Entity shall, provide to SLI (or such other entity as may be designated by Guarantor) on an annual basis within 30 days of the end of the calendar year a certificate signed by its chief executive officer, chief financial officer or general counsel certifying the compliance of Supernus and its Affiliates or such Successor Business Entity and its Affiliates, as the case may be, with all of their obligations under Section 6.03 and this Section 6.04.

(f) For the avoidance of doubt, to the extent that any Successor Business Entity or any Affiliate of a Successor Business Entity (an "**SBE Affiliate**") is, prior to closing of any Subsequent Transaction, without any prior assistance from Supernus, any of its Affiliates or any Transferred Employee, independently engaged in (or who has the present intention to engage in) any Independent Compound Activities, the Independent Compound Activities of such Successor Business Entity or SBE Affiliate shall not constitute a breach of Section 6.03 or this Section 6.04 so long as (i) the Business and the Business Intellectual Property Rights are held separate by the Successor Business Entity or SBE Affiliate from, and are not used in connection with, any Independent Compound Activities, (ii) all non-public information concerning the Business Intellectual Property Rights relating to the Compounds is kept confidential from any Successor Business Entity or SBE Affiliate engaged in any Independent Compound Activities and is not used in any manner by any Successor Business Entity or SBE Affiliate in connection with any Independent Compound Activities and (iii) SLI (or such other entity as may be designated by Guarantor) has received in a timely manner the certification required by Section 6.04(e). The

parties hereto agree that the obligation to "hold separate" shall not require a separate physical location provided that the Successor Business Entity or SBE Affiliate has otherwise taken all steps necessary and appropriate to ensure compliance with Section 6.03 and this Section 6.04.

(g) Notwithstanding any other provisions of this Section 6.04, for a period of seven years from the Closing Date, Supernus agrees that neither Supernus nor any of its Subsidiaries shall, directly or indirectly (i) provide any services to or on behalf of, license any Intellectual Property Rights to, or otherwise work with or for, any of the Persons set forth on Schedule 6.04(g) (the **"Specified Persons"**), their successors or any of their Affiliates or (ii) enter into any business combination or merge or consolidate with, be acquired by, or enter into any joint venture, joint research, joint sponsorship, joint promotion, joint development, collaboration or Subsequent Transaction with any of the Specified Persons, their successors or any of their Affiliates.

Section 6.05. *Waiver.* Except as otherwise specifically set forth in this Agreement (including Supernus' right of indemnification pursuant to Section 10.02(a)), Supernus agrees not to, and agrees to cause its Restricted Affiliates not to, either alone or in cooperation with any third party, sue or to bring any cause of action in any court, patent office or other forum (including those for any type of infringement invalidity, or unenforceability of any Intellectual Property Rights), against SLI or any of its Affiliates or any of their respective officers, directors, employees, agents, representatives, distributors, salespersons, customers, licensees, and/or end-users to prevent, inhibit, financially affect or encumber in any manner any of the activities of SLI or any of its Affiliates related, in whole or in part, to the research, development, manufacture, use, offer to sell, sale, distribution, import, and export of any compound(s), composition(s), article(s), material(s), method(s), use(s), or product(s) relating, in whole or in part, to the Compounds. For the avoidance of doubt, the provisions of this Section 6.05 shall not affect the rights and obligations of Supernus or any of its Affiliates under the Ongoing Projects Agreement or the Licenses in the event of an alleged breach of any of these agreements by SLI or any of its Affiliates.

Section 6.06. *First Right Regarding [**].* (a) Supernus hereby grants to SLI or its designated Affiliate the first right to enter into a license under all Intellectual Property Rights of Supernus and its Affiliates relating to any oral formulation for [**] which Supernus or any of its Affiliates proposes to commercialize or to grant rights in to any third party. If Supernus or any of its Affiliates proposes to commercialize or grant any rights to any third party relating to any oral formulation of [**], Supernus shall notify SLI in writing of such proposal. The notice shall (i) provide details about such oral formulation and the proposed commercialization or granting of rights, and any material commercial terms associated therewith and (ii) offer to provide or make available such other information as may be reasonably requested by SLI or its designated Affiliate to the extent it is available to Supernus and is not a trade or business secret of a third party. During the 90-day period following receipt of such written

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

notice, SLI or its designated Affiliate shall have the right to enter into negotiations with Supernus regarding such oral formulation and, if SLI or its designated Affiliate shall so elect, Supernus shall negotiate, exclusively and in good faith, during such 90-day period, with SLI or such designated Affiliate commercially reasonable terms for the commercialization or granting of rights with respect to such oral formulation to SLI or such designated Affiliate.

(b) If SLI or its designated Affiliate does not elect to enter into negotiations with Supernus during such 90-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.06 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party without any further obligations under this Section 6.06 to SLI or any of its Affiliates.

(c) If SLI or its designated Affiliate has entered into negotiations with Supernus and, by the end of such 90-day period, SLI or such designated Affiliate and Supernus have not been able to reach agreement on the terms for the commercialization or granting of rights to SLI or such designated Affiliate with respect to such oral formulation, Supernus shall be free to negotiate with a third party so long as the terms and conditions of such third party agreement or arrangement are at least as favorable to Supernus as those proposed by SLI or such designated Affiliate. If the terms and conditions of such proposed third party agreement or arrangement are the same as or less favorable to Supernus than those previously proposed by SLI or its designated Affiliate, before the execution of any agreement(s) with such third party, Supernus shall provide SLI or such designated Affiliate with a copy of the relevant agreement(s) and, for a period of 30 days from the receipt of copies of the relevant agreement(s), SLI or such designated Affiliate shall have the right to enter into an agreement (or agreements) with Supernus on the same terms and conditions. Should SLI or such designated Affiliate not enter into any such agreement(s) with Supernus during such 30-day period, at the end of such 30-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.06 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party without any further obligations under this Section 6.06 to SLI or any of its Affiliates.

Section 6.07. *First Right Regarding [**].* (a) Supernus hereby grants to SLI or its designated Affiliate the first right to enter into a license under all Intellectual Property Rights of Supernus and its Affiliates relating to any oral formulation for [**] which Supernus or any of its Affiliates proposes to commercialize or to grant rights in to any third party. If Supernus or any of its

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Affiliates proposes to commercialize or grant any rights to any third party relating to any oral formulation of [**], Supernus shall notify SLI in writing of such proposal. The notice shall (i) provide details about such oral formulation and the proposed commercialization or granting of rights, and any material commercial terms associated therewith and (ii) offer to provide or make available such other information as may be reasonably requested by SLI or its designated Affiliate to the extent it is available to Supernus and is not a trade or business secret of a third party. During the 90-day period following receipt of such written notice, SLI or its designated Affiliate shall have the right to enter into negotiations with Supernus regarding such oral formulation and, if SLI or its designated Affiliate shall so elect, Supernus shall negotiate, exclusively and in good faith, during such 90-day period, with SLI or such designated Affiliate commercially reasonable terms for the commercialization or granting of rights with respect to such oral formulation to SLI or such designated Affiliate.

(b) If SLI or its designated Affiliate does not elect to enter into negotiations with Supernus during such 90-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.07 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party without any further obligations under this Section 6.07 to SLI or any of its Affiliates.

(c) If SLI or its designated Affiliate has entered into negotiations with Supernus and, by the end of such 90-day period, SLI or such designated Affiliate and Supernus have not been able to reach agreement on the terms for the commercialization or granting of rights to SLI or such designated Affiliate with respect to such oral formulation, Supernus shall be free to negotiate with a third party so long as the terms and conditions of such third party agreement or arrangement are at least as favorable to Supernus as those proposed by SLI or such designated Affiliate. If the terms and conditions of such proposed third party agreement or arrangement are the same as or less favorable to Supernus than those previously proposed by SLI or its designated Affiliate, before the execution of any agreement(s) with such third party, Supernus shall provide SLI or such designated Affiliate with a copy of the relevant agreement(s) and, for a period of 30 days from the receipt of copies of the relevant agreement(s), SLI or such designated Affiliate shall have the right to enter into an agreement (or agreements) with Supernus on the same terms and conditions. Should SLI or such designated Affiliate not enter into any such agreement(s) with Supernus during such 30-day period, at the end of such 30-day period, (i) neither SLI nor any of its Affiliates shall have any further right, claim or interest under this Section 6.07 or in any oral formulation of [**] developed by Supernus or any of its Affiliates and (ii) Supernus shall be free to negotiate the commercialization or granting of rights with respect to [**] or any oral formulation of [**] developed by Supernus or any of its Affiliates with a third party

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without any further obligations under this Section 6.07 to SLI or any of its Affiliates.

Section 6.08. *Business.* Supernus confirms that it is its intention as of the date of this Agreement to continue the conduct of its business as a going concern for the foreseeable future.

ARTICLE 7
COVENANTS OF SUPERNUS AND SLI

Section 7.01. *Reasonable Best Efforts; Further Assurance.* Subject to the terms and conditions of this Agreement, Supernus and SLI will use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement. Subject to Section 2.05, SLI and Supernus agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to (i) consummate or implement expeditiously the transactions contemplated by this Agreement, (ii) vest in Supernus good title to the Contributed Assets and (iii) ensure title and rights with respect to the Retained Assets remain with SLI or its Affiliates, as applicable, and are not affected by this Agreement or the transactions contemplated hereby.

Section 7.02. *Certain Filings.* SLI and Supernus shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any governmental body, agency, official or authority is required in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking to obtain any such actions, consents, approvals or waivers in a timely manner.

Section 7.03. *Public Announcements.* The parties agree to work together to prepare a mutually acceptable press release regarding the transaction contemplated by this Agreement. The parties agree to consult with each other before issuing any other press release or making any other public statement with respect to this Agreement or the transactions contemplated hereby and, except for any press releases and public statements the making of which may be required by applicable law or any listing agreement with any national securities exchange, will not issue any such press release or make any such public statement prior to such consultation. The parties acknowledge and agree that nothing in this Section 7.03 shall preclude any of the parties from disclosing this Agreement and the transactions contemplated hereby to customers, potential customers, suppliers, potential sources of financing and any third party whose consent may be required to effect the transactions contemplated hereby.

Section 7.04. *Quality Assurance Services.* For a period of three months following the Closing Date, SLI or one or more of its Affiliates shall provide Supernus with quality assurance services and, as reasonably required by Supernus, shall assist Supernus in establishing its own internal quality assurance capability.

Section 7.05. *Receivables, Retained Liabilities and Prepaid Expenses; Set-off.* (a) Promptly after the Closing, Supernus shall mail invoices in respect of any accounts, notes or other receivables, other than the Pre-Closing Receivables, arising from the conduct of the Business or the Retained Business (including any work in progress) that had accrued to SLI or any of its Affiliates prior to the Effective Time (such amounts, the **"Pre-Closing Accrued Income"**) to each third party that owes any such amount, with appropriate instructions for such amounts to be paid directly to SLI. After the Closing, Supernus shall promptly pay, subject to Section 7.05(d), to a bank account designated by SLI or any of its Affiliates, any Pre-Closing Receivables or Pre-Closing Accrued Income it receives from any third party. Supernus shall use its reasonable best efforts to assist SLI and its Affiliates to collect any Pre-Closing Receivables or Pre-Closing Accrued Income from third parties. After the Closing, SLI shall promptly pay, subject to Section 7.05(d), to a bank account designated by Supernus, any amounts it receives from third parties in respect of accounts, notes or other receivables arising from the conduct of the Business after the Effective Time.

(b) Promptly after the Closing, subject to Section 7.05(d), Supernus shall pay to a bank account designated by SLI or any of its Affiliates an amount equal to all Prepaid Expenses that SLI or any Affiliate of SLI has paid, or is owed, with respect to the Business, any Contributed Asset or any Assumed Liability. If at any time after the Closing, SLI notifies Supernus regarding any other Prepaid Expense to which it is entitled under this Agreement, or if Supernus discovers any other Prepaid Expenses to which SLI is entitled pursuant to this Agreement, Supernus shall, subject to Section 7.05(d), promptly pay such amount to a bank account designated by SLI or any of its Affiliates. Any amounts payable pursuant to this 7.05(b) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to 4.75% for the first 75 days from the Closing Date and 5% above the U.S. Federal Funds rate thereafter.

(c) After the Closing, Supernus agrees to pay all amounts owed to any third party in respect of any Contributed Asset; *provided* that if any such amount includes any Retained Liability, Supernus shall notify SLI of the Retained Liability, which notice shall include documentation substantiating such liability together with proof of payment by Supernus and, subject to Section 7.05(d), SLI shall promptly pay such amount to a bank account designated by Supernus.

(d) After the Closing, each of SLI and Supernus shall have the right to deduct any amount the other owes to it pursuant to this Section 7.05 from any payment such party is obligated to make to the other party pursuant to this Section

7.05; *provided* that, in each case, the party claiming any right to deduct any amount hereunder receives the prior written consent of the party that owes such amount.

(e) The parties hereto agree that any payment made pursuant to this Section 7.05 shall be treated for all Tax purposes as an adjustment to the Supernus Consideration.

(f) Any amounts properly invoiced by either Supernus or SLI for payment by the other party pursuant to Section 7.05(c) or Article 9 shall be paid by the other party within 15 days from the date of the receipt of the invoice. Interest shall be chargeable on any amounts overdue, from the due date for payment of the unpaid sum (i.e., the 15th day from the date of the receipt of the relevant invoice) to the date of actual payment of the full amount, at a rate equal to 5% above the U.S. Federal Funds rate from time to time, such interest to accrue daily and to be compounded on the last day of each calendar month.

Section 7.06. *Closing Financial Statements.* (a) As promptly as practicable, but in no event later than 75 days after the Closing Date, Supernus agrees to prepare and deliver to SLI (i) financial statements for SLI (including a balance sheet as of the Closing Date and a statement of income and cash flows for the period from January 1, 2005 through the Closing Date, but, in each case, before giving effect to the transactions contemplated by this Agreement) and (ii) a certificate based on such financial statements setting forth Supernus's calculation of each of the amounts arising under Section 7.05, which certificate shall fairly present the accounts receivables, accrued liabilities and Prepaid Expenses arising under the Business as at the Effective Time, in each case, consistent with the methodologies used by SLI and its Affiliates to prepare financial statements and record such amounts prior to the Closing Date.

(b) If after SLI's review of the documents referred to in Section 7.06(a) SLI disagrees with Supernus's calculation of the financial statements or amounts set forth in the certificate delivered pursuant to Section 7.06(a), SLI may, within 30 days after delivery of such documents, deliver a notice to Supernus disagreeing with such calculation and setting forth SLI' s calculation of such financial statements or amount, as applicable.

(c) If a notice of disagreement shall be duly delivered pursuant to Section 7.06(b), SLI and Supernus shall, during the 30 days following such delivery, use their best efforts to reach agreement on the disputed items or amounts. If during such period, SLI and Supernus are unable to reach such agreement, either SLI or Supernus by notice to the other party may initiate the process whereby they shall promptly jointly retain a nationally recognized accounting firm (the **"Accounting Referee"**) and cause it to promptly review this Agreement and the disputed items or amounts and to resolve the disputed items or amounts. The Accounting Referee shall deliver to SLI and Supernus, as promptly as practicable, a report setting forth its calculation of the disputed items or

amounts. Such report shall be final and binding upon SLI and Supernus and any amount set forth therein that is payable to a party hereto pursuant to Section 7.05, shall promptly be paid to such party by the party hereto obligated to make such payment pursuant to Section 7.05. The cost of such review and report shall be borne (i) by Supernus if the amount it owes SLI pursuant to such report is greater than the amount reflected on the certificate delivered pursuant to Section 7.06(a), (ii) by SLI if the amount Supernus owes SLI pursuant to such report is less than the amount reflected on the certificate delivered pursuant to Section 7.06(a) and (iii) otherwise equally by SLI and Supernus.

(d) SLI and Supernus agree that they will, and agree to cause their respective independent accountants to, cooperate and assist in the preparation of the financial statements and the certificate delivered pursuant to Section 7.06(a) and in the conduct of the reviews referred to in this Section 7.06, including the making available to the extent necessary of books, records, work papers and personnel.

Section 7.07. *Notices From Third Parties.* After the Closing, (a) Supernus shall promptly send to SLI any notices or claims it receives in respect of the Retained Assets, Retained Liabilities, Retained Business or any other notice from any third party relating to (i) any asset to which SLI or any of its Affiliates have a right or (ii) any liability to which SLI or any of its Affiliates is subject (including any notices under any provisions of the Hatch Waxman Act or requests under Section 287, Title 35 U.S.C., product liability claims and notices from the U.S. Food and Drug Administration) and (b) SLI shall promptly send to Supernus any notices or claims it receives in respect of the Business, the Contributed Assets or the Assumed Liabilities.

Section 7.08. *Reports.* For so long as SLI or any of its Affiliates owns any Supernus Preferred Stock or Supernus Common Stock, Supernus agrees to furnish to SLI (or such other Affiliate of SLI as may be designated by either SLI or Guarantor) the reports and other information to be provided to holders of Supernus Preferred Stock or Supernus Common Stock pursuant to the Investor Rights Agreement dated as of the date hereof entered into by Supernus and the holders of Supernus Preferred Stock.

Section 7.09. *Warranty Disclaimer; Exclusion of Damages.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SLI NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR EXTEND ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY CONTRIBUTED ASSETS OR ASSUMED LIABILITIES TRANSFERRED HEREUNDER, OR ANY MATERIAL OR INFORMATION PROVIDED TO SUPERNUS UNDER THIS AGREEMENT, OR WITH RESPECT TO ANY PRODUCTS OR SERVICES OF SUPERNUS OR ITS AFFILIATES. FURTHERMORE, NOTHING IN THIS AGREEMENT SHALL

BE CONSTRUED AS A WARRANTY THAT ANY PATENT OR OTHER PROPRIETARY RIGHTS INCLUDED IN THE BUSINESS OR THE CONTRIBUTED ASSETS ARE VALID OR ENFORCEABLE OR THAT USE BY SUPERNUS OR ITS AFFILIATES OF SUCH CONTRIBUTED ASSETS, OR ANY MATERIALS OR INFORMATION PROVIDED TO SUPERNUS UNDER THIS AGREEMENT, DOES NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

WITHOUT LIMITING THE PARTIES' OBLIGATIONS UNDER ARTICLE 10 REGARDING INDEMNIFICATION, NO PARTY HERETO SHALL BE LIABLE TO ANY OTHER PARTY HERETO FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OR LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO A PARTY'S PERFORMANCE OR NON-PERFORMANCE HEREUNDER.

ARTICLE 8
TAX MATTERS

Section 8.01. *Tax Definitions.* The following terms, as used herein, have the following meanings:

"Pre-Closing Tax Period" means (i) any Tax Period ending on or before the Closing Date and (ii) with respect to a Tax Period that commences before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

"Tax" means (i) any tax or other like assessment or charge of any kind whatsoever (including withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by any governmental authority (a **"Taxing Authority"**) responsible for the imposition of any such tax (domestic or foreign), or (ii) liability for the payment of any amounts of the type described in (i) as a result of being party to any agreement or any express or implied obligation to indemnify any other Person.

Section 8.02. *Tax Matters.* SLI hereby represents and warrants to Supernus that:

(a) SLI has paid all material Taxes which will have been required to be paid prior to the Effective Time, the non-payment of which would result in a Lien on any Contributed Asset.

(b) SLI has established, in accordance with GAAP applied on a basis consistent with that of preceding periods, adequate reserves for the payment of, and will pay, all material Taxes which arise from or with respect to the Contributed Assets or the operation of the Business and are incurred in or attributable to the Pre-Closing Tax Period, the non-payment of which would result in a Lien on any Contributed Asset.

Section 8.03. *Tax Cooperation; Allocation of Taxes.* (a) Supernus and SLI agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Contributed Assets (including access to books and records) as is reasonably necessary for the filing of all Tax returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Supernus and SLI shall retain all books and records with respect to Taxes pertaining to the Assets for a period of at least six years following the Closing Date. On or after the end of such period, each party shall provide the other with at least 30 days prior written notice before destroying any such books and records, during which period the party receiving such notice can elect to take possession, at its own expense, of such books and records. SLI and Supernus shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Contributed Assets or the Business, at the cost and expense of the party being audited.

(b) All real property taxes, personal property taxes and similar *ad valorem* obligations levied with respect to the Contributed Assets for a taxable period which includes (but does not end on) the Closing Date (collectively, the **"Apportioned Obligations"**) shall be apportioned between SLI and Supernus based on the number of days of such taxable period included in the Pre-Closing Tax Period and the number of days of such taxable period after the Closing Date (any such portion of such taxable period, the **"Post-Closing Tax Period"**). SLI shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Tax Period, and Supernus shall be liable for the proportionate amount of such taxes that is attributable to the Post-Closing Tax Period.

(c) All excise, sales, use, value added, registration stamp, recording, documentary, conveyancing, franchise, property, transfer, gains and similar Taxes, levies, charges and fees (collectively, **"Transfer Taxes"**) incurred in connection with the transactions contemplated by this Agreement shall be borne by SLI. Supernus and SLI shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

(d) Apportioned Obligations and Taxes described in Section 8.03(b) or 8.03(c) shall be paid in a timely manner, and all applicable filings, reports and returns shall be filed, as provided by applicable law. The paying party shall be entitled to reimbursement from the non-paying party in accordance with Section 8.03(b) or 8.03(c), as the case may be. Upon payment of any such Apportioned

Obligation or Tax, the paying party shall present a statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled under Section 8.03(b) or 8.03(c), as the case may be together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. The non-paying party shall make such reimbursement promptly but in no event later than 10 days after the presentation of such statement. Any payment not made within such time shall bear interest at a rate per annum equal to the Prime rate as published in the *Wall Street Journal,* Eastern Edition, in effect from time to time, for each day until paid.

ARTICLE 9
EMPLOYEE BENEFITS

Section 9.01. *Employment Offers and Terms.* (a) Supernus shall offer employment to each employee listed on Schedule 9.01(a) (the **"Scheduled Employees"**) effective as of the Closing in a position which provides a status, base salary and health and welfare benefits no less favorable to the employee than those provided to the employee by SLI and its Affiliates as of the Closing (the **"Employment Terms"**). Each offer of employment by Supernus to a Scheduled Employee shall be conditioned upon such Scheduled Employee's execution of a confidentiality and proprietary rights agreement in the form set forth in Exhibit C hereto. Each Scheduled Employee who accepts Supernus's offer of employment shall hereinafter be referred to as a **"Transferred Employee"** and the **"Transfer Date"** with respect to such Transferred Employee shall be the Closing Date. Notwithstanding the foregoing, any Scheduled Employee who is not actively at work as of the Closing Date shall not be deemed a Transferred Employee unless he or she reports to work for Supernus after the Closing Date and the Transfer Date for such Scheduled Employee shall be the date on which such Scheduled Employee reports to work for Supernus after the Closing Date. Supernus may retract its offer of employment to any Scheduled Employee who is not actively at work as of the Closing Date and does not report to work for Supernus within 9 months following the Closing Date.

(b) During the six-month period following the Closing, Supernus shall not terminate or constructively terminate the employment of any Transferred Employee without just cause. Nothing in this Agreement shall restrict the ability of Supernus to modify the Employment Terms with respect to any Transferred Employee any time following such Transferred Employee's Transfer Date. The Parties agree that modifications of the Employment Terms with respect to any Transferred Employee following such Transferred Employee's Transfer Date are not intended to give such Transferred Employee any rights or recourse under any benefit plans of SLI or its Affiliates or any rights or recourse against SLI or its Affiliates. If, however, any such Transferred Employee successfully asserts any right or recourse under any benefit plan of SLI or its Affiliates or against SLI or its Affiliates as a result of a modification of the Employment Terms with respect to such Transferred Employee following such Transferred Employee's Transfer

Date, Supernus shall reimburse SLI and its Affiliates for all Damages incurred by SLI and its Affiliates arising from the assertion of such rights or recourse by such Transferred Employee.

(c) The Scheduled Employees set forth on Schedule 9.01(c) have declined the Supernus employment offer (collectively, the **"Resigning Employees"**) and have entered into termination agreements with SLI pursuant to which such Resigning Employees shall receive the special resignation benefits described in Schedule 9.01(c) (the **"Special Resignation Benefits"**). SLI shall bear full responsibility for the cost of the Special Resignation Benefits payable to the Resigning Employees under such termination agreements.

Section 9.02. *Employee Liabilities.* (a) Schedule 9.02(a) sets forth the names of employees of SLI (the **"Redundant Employees"**) whose employment terminated prior to the Closing and who have been determined by SLI to be entitled to severance benefits (the **"Severance Benefits"**) under the Shire severance policy covering the SLI employees. Supernus agrees that effective as of Closing it shall assume responsibility for the payment of the Severance Benefits to the Redundant Employees as directed by SLI in writing and shall pay such Severance Benefits through the Supernus payroll, making all necessary deductions, withholding and payroll tax payments relating to such Severance Benefits. Supernus shall furnish to SLI itemized written monthly statements of the amounts of such Severance Benefits paid by Supernus and within thirty (30) days after receiving each such written statements SLI shall reimburse to Supernus in readily available funds the aggregate amount of such Severance Benefit payments. Notwithstanding the foregoing, if Supernus or any Affiliate of Supernus retains any Redundant Employee as an employee or consultant during the period that such Terminated Employee is entitled to receive Severance Benefits: (i) Supernus shall promptly notify SLI in writing, setting forth the name of such Redundant Employee and the date such Redundant Employee was retained by Supernus or its Affiliate, (ii) Supernus shall cease all payments of Severance Benefits to such Redundant Employee in respect of the period following the date such Redundant Employee was retained by Supernus or its Affiliate and (iii) SLI shall not be required to reimburse Supernus for any severance benefits or other amounts (including any Severance Benefits) in respect of the period following the date such Redundant Employee was retained by Supernus or its Affiliate.

(b) Except as otherwise provided in this Article 9 and any corresponding schedules hereto, SLI shall retain, and shall indemnify and hold harmless Supernus and its Affiliates with respect to, all liabilities relating to the SLI Plans, including, without limitation, all liabilities arising under any such SLI Plans for health, medical and dental benefits and disability and workers compensation benefits and accrued and unpaid bonus and incentive compensation for any year (or portion thereof) with respect to any employee of SLI including any Transferred Employee prior to the Transferred Employee's Transfer Date. Except as expressly provided in this Article 9, SLI shall retain, and shall

indemnify and hold harmless Supernus from, all employment-related liabilities (i) with respect to each employee and former employee of the Business who does not become a Transferred Employee and (ii) with respect to each Transferred Employee to the extent that such liabilities arise, accrue or are incurred before the Transfer Date of such Transferred Employee.

(c) Except as otherwise provided in this Article 9 and any corresponding schedules hereto, Supernus shall assume, and shall indemnify and hold harmless SLI and its Affiliates with respect to, all employment-related liabilities with respect to each Transferred Employee to the extent that such liabilities arise, accrue or are incurred on or after the Transfer Date of such Transferred Employee.

Section 9.03. *Sponsorship of Welfare Benefit Plans.* Effective as of the Closing, Supernus shall convert sponsorship of the SLI Plans listed on Schedule 9.03 to Supernus plans (the **"Transferred Plans"**). SLI and Supernus shall, and shall cause their respective Affiliates to, take all actions necessary to effect the transfer to and assumption by Supernus of the Transferred Plans on the terms set forth in Schedule 9.03. From and after the Closing, Supernus shall assume all responsibility for the benefits payable from and after the Effective Time under the Transferred Plans to all participants, beneficiaries and dependants covered by the Transferred Plans. To the extent that any former employee of the SLI business who is not an employee of the SLI business as of the Closing Date or any partner or dependent of any such employee has elected or elects COBRA continuation coverage under any Transferred Plan (each a **"Pre-Closing COBRA Participant"**): (i) Supernus shall cause such COBRA continuation coverage to be provided to such Pre-Closing COBRA Participant under such Transferred Plan for the full elected duration applicable under COBRA and (ii) to the extent that SLI has provided pursuant to any agreement or arrangement that any such Pre-Closing COBRA Participant shall be entitled to a continuation of a company-paid contribution toward the premium for coverage under any such Transferred Plan during the COBRA continuation period, Supernus shall continue to fund such company-paid contribution after the Closing; *provided* that Supernus shall furnish to SLI itemized written monthly statements of the amounts of such company-paid contributions funded by Supernus and within thirty (30) days after receiving each such written statement SLI shall reimburse to Supernus in readily available cash funds the aggregate amount of such company-paid contributions. The reimbursement provisions above in this section shall not apply with respect to any Resigning Employee or any partner or dependent of any Resigning Employee and instead any company-paid contributions toward the COBRA benefits of any such individual shall be paid and reimbursed by the Parties pursuant to Section 9.01(c).

Section 9.04. *Spin-off of 401(k) Plan.* (a) SLI shall cause each Transferred Employee who is or has at any time been a participant in the SLI 401(k) Plan to be 100% vested in their account balance thereunder, if any, as of the Closing Date.

(b) Effective as of the Closing Date, Supernus has adopted a prototype, non-standardized, defined contribution plan intended to qualify under Section 401(a) and Section 401(k) of the Code (the **"Supernus 401(k) Plan"**) in which Transferred Employees shall be eligible to participate on and after the Closing Date and that is substantially comparable to the SLI 401(k) Plan, provided that such Supernus 401(k) Plan shall not permit future investments in or hold securities of SLI or its Affiliates except as provided below in this Section 9.04. The prototype plan on which the Supernus 401(k) Plan is based has received a favorable qualification opinion letter.

(c) As soon as practicable after the Closing Date, SLI shall cause to be transferred to the Supernus 401(k) Plan, cash or, to the extent provided below, other assets as the parties may agree, having a fair market value equal to the aggregate value of the account balances in the SLI 401(k) Plan as of the date of the plan asset transfer for Transferred Employees. Such plan asset transfer shall include any notes evidencing loans to Transferred Employees from their account balances, marketable securities acceptable to Supernus, shares of common stock of SLI or any of its Affiliates, if any, held in any Transferred Employee's account and the balance in cash, and shall also include all qualified domestic relations orders, within the meaning of Section 414(p) of the Code, applicable to Transferred Employees. Supernus shall assume exclusive responsibility for the administration of the transferred assets from and after the transfer of those assets, including, without limitation, responsibility for: (i) all duties and obligations associated with those assets and the investment alternatives made available for those assets while those assets are held under the Supernus 401(k) Plan or any successor plan, (ii) the proper distribution of benefits relating to the transferred assets and (iii) any future transfer of the assets out of any trust or account maintained under the Supernus 401(k) Plan.

Section 9.05. *Credit for Prior Service.* Each Transferred Employee will receive service credit for all periods of employment with SLI or any Affiliate of SLI or any predecessor thereof prior to the Closing Date to the same extent and for all purposes under any employee benefit plan of Supernus or any Affiliate of Supernus in which such employee participates after the Closing (including the Transferred Plans), to the extent that such service was recognized under any analogous plan of SLI or any Affiliate of SLI in effect immediately prior to the Closing (including the Transferred Plans). For the avoidance of doubt, Supernus may establish any service requirements for any employee benefit plans implemented after Closing which are additional and not analogous to any plan of SLI or any Affiliate of SLI in effect immediately prior to the Closing, including any additional equity-based or non-qualified deferred compensation plans. In addition, Supernus reserves the right to change all employee benefit plan rules, except as prohibited by law and as limited under Section 9.01.

Section 9.06. *Health Plan Exclusions, Deductibles and Co-Pays. If* on or after the Closing Date, any Transferred Employee becomes covered under any benefit plan of Supernus or any Affiliate of Supernus providing medical, dental,

health, pharmaceutical or vision benefits (a **"Successor Plan"**) to replace benefits of a similar type provided under a plan of SLI or an Affiliate of SLI immediately prior to Closing Date (a **"Prior Plan"**), such Successor Plan shall not include any restrictions or limitations with respect to any pre-existing condition exclusions and actively-at-work requirements (except to the extent such exclusions or requirements were applicable under the corresponding Prior Plan), and any eligible expenses incurred by such Transferred Employee and his or her covered dependents during the calendar year in which the Transferred Employee becomes covered under any Successor Plan shall be taken into account under any such Successor Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and/or his or her covered dependents for that year, to the extent that such expenses were incurred during a period in which the Transferred Employee or covered dependent was covered under a corresponding Prior Plan.

Section 9.07. *Vacation*. Effective as of the-Closing Date, SLI shall pay to each Transferred Employee, within 30 days after the Closing Date, all accrued but unused vacation days under the SLI vacation policy.

Section 9.08. *Annual Bonus.* SLI shall pay to each Transferred Employee, within 30 days after the Closing Date, such Scheduled Employee's 2005 annual bonus entitlement under the SLI annual bonus plan for the full calendar year 2005, based on 100% of each such Employee's target bonus.

Section 9.09. *Other.* Each Transferred Employee shall cease his or her participation, if any, in the Shire Employee Stock Purchase Plan, and Shire Deferred Bonus Plan effective as of the Closing and shall be paid his or her accrued balance or benefit under such plans in accordance with the terms of such plans and SLI and its Affiliates shall have no further obligation in respect of such amounts or benefits or any tax liabilities or attributes associated with such amounts or benefits. Under the Shire Supplemental Executive Retirement Plan (the **"Shire SERP"**), the transactions contemplated under this Agreement shall not be treated as a termination of the employment of any Transferred Employee participating in the Shire SERP for as long as SLI continues to hold a material voting interest in Supernus (or any successor). As of the Closing Date, Supernus shall establish a mirror plan to the Shire SERP (the **"Supernus SERP"**) and, under the Supernus SERP, Supernus shall assume sole responsibility and liability for the benefits accrued by each Transferred Employee under the Shire SERP as of the Closing Date (each, a **"SERP Transferee"**) and all matters and liabilities relating to such benefits (including, without limitation, the administration of such benefits before, on and after the Closing Date, the transfer of such benefits as provided above, the payment of such benefits and any taxes and withholding related thereto and the administration and updating of the Supernus SERP (collectively, the **"Transferred SERP Liability"**)). As soon as practicable following the Closing Date (but within 30 days following the Closing Date), SLI shall transfer to Supernus in readily available cash funds, an amount equal to the aggregate benefit liability under the Shire SERP as of the Closing Date in respect

of the benefits accrued under the Shire SERP by the SERP Transferees as of the Closing Date. Subject to such transfer, neither SLI nor any Affiliate of SLI (other than Supernus and its successors) shall have any further liability or obligation with respect to the Transferred SERF Liability. As of the Closing Date, Supernus shall deliver to SLI an indemnity agreement {in a form reasonably acceptable to SLI) executed by each SERP Transferee, indemnifying SLI and its Affiliates (other than Supernus and its successors) against the Transferred SERP Liability associated with such SERP Transferee's benefit under the Shire SERP and the Supernus SERP.

ARTICLE 10
SURVIVAL; INDEMNIFICATION

Section 10.01. *Survival.* The representations and warranties of the parties hereto contained in this Agreement shall expire on the Closing Date; *provided* that the representations and warranties contained in Sections 3.01, 3.02, 3.03, 3.14, 4.01, 4.02, 4.03 and 4.05 shall survive until the latest date permitted by applicable law. The covenants and agreements of the parties hereto contained in this Agreement shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the latest date permitted by applicable law. Notwithstanding the preceding sentence, any breach of covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

Section 10.02. *Indemnification.* (a) Effective at and after the Closing, SLI hereby indemnifies Supernus and its Affiliates against and agrees to hold each of them harmless from any and all Damages actually suffered by Supernus or any of its Affiliates arising out of:

(i) any misrepresentation or breach of Section 3.01, 3.02, 3.03 or 3.14;

(ii) any breach of covenant or agreement made or to be performed by SLI pursuant to this Agreement; or

(iii) any Retained Liability;

provided that with respect to indemnification by SLI pursuant to Section 10.02(a)(i), SLI's maximum aggregate liability for all such misrepresentations or breaches shall not exceed $1,500,000.

(b) Effective at and after the. Closing, Supernus hereby indemnifies SLI and its Affiliates against and agrees to hold each of them harmless from any and all Damages actually suffered by SLI or any of its Affiliates arising out of:

(i) any misrepresentation or breach of Section 4.01, 4.02, 4.03 or 4.05;

(ii) any breach of covenant or agreement made or to be performed by Supernus pursuant to this Agreement; or

(iii) any Assumed Liability;

provided that with respect to indemnification by Supernus pursuant to Section 10.02(b)(i), Supernus's maximum aggregate liability for all such misrepresentations or breaches shall not exceed $1,500,000.

Section 10.03. *Procedures.* (a) The party seeking indemnification under Section 10.02 (the **"Indemnified Party"**) agrees to give prompt notice to the party against whom indemnity is sought (the **"Indemnifying Party"**) of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought under such Section and will provide the Indemnifying Party such information with respect thereto that the Indemnifying Party may reasonably request. The Indemnified Party's failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have adversely prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any third party (**"Third Party Claim"**) and, subject to the limitations set forth in this Section, shall be entitled to control and appoint lead counsel for such defense, in each case at its own expense.

(c) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 10.03, (i) the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld) before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party from all liabilities and obligations with respect to such Third Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party, and (ii) the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ separate counsel of its choice for such purpose. The fees and expenses of such separate counsel shall be paid by the Indemnified Party.

(d) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such records, information and testimony, and

attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

Section 10.04. *Calculation of Damages.* (a) The amount of any Damages payable under Section 10.02 by the Indemnifying Party shall be net of any (i) amounts recovered or recoverable by the Indemnified Party under applicable insurance policies, or from any other Person alleged to be responsible therefor and (ii) Tax benefit realized by the Indemnified Party arising from the incurrence or payment of any such Damages. In computing the amount of any such Tax benefit, the Indemnified Party shall be deemed to fully utilize, at the highest applicable marginal tax rate then in effect, all Tax items arising from the incurrence or payment of any indemnified Damages. If the Indemnified Party receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Damages, subsequent to an indemnification payment by the Indemnifying Party, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount received by the Indemnified Party, net of any expenses incurred by such Indemnified Party in collecting such amount.

(b) The Indemnifying Party shall not be liable under Section 10.02 for any (i) consequential or punitive Damages or (ii) Damages for lost profits.

Section 10.05. *Assignment of Claims.* If the Indemnified Party receives any payment from an Indemnifying Party in respect of any Damages pursuant to Section 10.02 and the Indemnified Party could have recovered all or a part of such Damages from a third party (a **"Potential Contributor"**) based on the underlying Claim asserted against the Indemnifying Party, the Indemnified Party shall assign such of its rights to proceed against the Potential Contributor as are necessary to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment; *provided* that the Indemnified Party shall not be required to assign any right to proceed against a Potential Contributor if the Indemnified Party determines in its reasonable discretion that such assignment would be materially detrimental to its reputation or future business prospects.

Section 10.06, *Exclusivity.* After the Closing, Section 10.02 will provide the exclusive remedy for any misrepresentation, breach of warranty, covenant or other agreement or other claim (other than those arising out of a breach of Sections 5.01, 5.02, 5.03, 6.01, 6.02, 6.03, 6.04, 6.05, 6.06 and 6.07 (collectively, the **"Specified Covenants"**)) arising out of this Agreement or the transactions contemplated hereby, other than in the case of fraud.

ARTICLE 11
MISCELLANEOUS

Section 11.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to Supernus, to:

[**]

with a copy to:

[**]

if to SLI, to:

[**]

with a copy to:

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

and, in the case of Sections 7.05, 7.06, 7.08 and 8.03, with a copy to:

[**]

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 11.02. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(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 11.03. *Expenses.* Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense. SLI agrees to reimburse Supernus for an amount of its reasonable legal fees and expenses up to, but not to exceed, $100,000.

Section 11.04. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that, except as otherwise expressly provided in this Agreement, no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. For the avoidance of doubt, (i) the limitations on assignment, delegation or other transfer under this Section 11.04 relate to the parties' rights and obligations under this Agreement and are not otherwise intended to limit or restrict the ability of Supernus to sell or dispose of its assets so long as it complies

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

with its obligations under Article 6 and (ii) any such sale or disposition shall not affect the rights of Supernus under Article 10.

Section 11.05. *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 11.06. *Jurisdiction.* (a) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of any Delaware State or Federal court sitting in New Castle County, Delaware and any appellate court from any thereof; in any suit, action, or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Delaware State court, or, to the extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 11.01 shall be deemed effective service of process on such party.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 11.06(a).

(c) Each of the parties hereto hereby irrevocably waives, to the fullest extent it may legally and effectively do so, the defense of an inconvenient forum to the maintenance of such suit, action, or proceeding in any such court, and agrees not to plead the same, and agrees that nothing herein will limit the right to sue in any other jurisdiction if a Delaware State or Federal court of competent jurisdiction sitting in New Castle County, Delaware rules or orders that it will not exercise jurisdiction over any such action or proceeding.

(d) To the extent that a party hereto has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or execution, on the ground of sovereignty or otherwise) with respect to itself or its property, it hereby irrevocably waives, to the fullest extent it may legally and effectively do so, such immunity in respect of its obligations under this Agreement.

(e) Each of the parties hereto hereby acknowledges that a breach of a Specified Covenant may cause irreparable harm to the non-breaching party and that the remedy or remedies at law for any such breach may be inadequate. Each

of the parties hereto hereby agrees that, in the event of any such breach, in addition to all other available remedies hereunder, the non-breaching party shall have the right to obtain equitable relief to enforce the provisions of this Agreement.

Section 11.07. *Waiver of Jury Trial.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY,

Section 11.08, *Counterparts; Effectiveness; Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 11.09. *Entire Agreement.* This Agreement and the Transaction Documents constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. For the avoidance of doubt, this Agreement and each of the Transaction Documents shall be treated as a stand-alone agreement unless otherwise expressly provided for herein or therein.

Section 11.10. *Bulk Sales Laws.* Supernus and SLI each hereby waive compliance by SLI with the provisions of the "bulk sales," "bulk transfer" or similar laws of any state.

Section 11.11. *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 so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.12. *Guarantor.* Guarantor hereby guarantees to Supernus the prompt and full discharge by SLI of all of SLI's covenants, agreements, indemnities, obligations and liabilities under this Agreement including the due and punctual payment of all amounts which are or may become due and payable by SLI hereunder, when and as the same shall become due and payable, in accordance with the terms 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.

SHIRE LABORATORIES INC.

By: /s/ Scott Applebaum
Name: Scott Applebaum
Title: Secretary

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President & CEO

SHIRE PLC

By: /s/ Matthew Emmens
Name: Matthew Emmens
Title: Director

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December 22, 2005, between Shire Laboratories Inc., a Delaware corporation (**"SLI"**) and Supernus Pharmaceuticals, Inc., a Delaware corporation (**"Supernus"**).

W I T N E S S E T H :

WHEREAS, Supernus and SLI have concurrently herewith consummated the purchase by Supernus of the Contributed Assets pursuant to the terms and conditions of the Asset Purchase and Contribution Agreement dated as of December 22, 2005 among Supernus, SLI and Shire plc (the "**Asset Purchase Agreement**"; capitalized terms defined in the Asset Purchase Agreement and not otherwise defined herein being used herein as therein defined);

WHEREAS, pursuant to the Asset Purchase Agreement, Supernus has agreed to assume certain liabilities and obligations of SLI with respect to the Contributed Assets and the Business.

NOW, THEREFORE, in consideration of the sale of the Contributed Assets and in accordance with the terms of the Asset Purchase Agreement, Supernus and SLI agree as follows:

1. (a) SLI does hereby sell, transfer, assign and deliver to Supernus all of the right, title and interest of SLI in, to and under the Contributed Assets; *provided* that no sale, transfer, assignment or delivery shall be made of any or any material portion of any Contributed Asset if an attempted sale, assignment, transfer or delivery, without the consent of a third party, would constitute a breach or other contravention thereof or in any way adversely affect the rights of Supernus or SLI thereunder.

(b) Supernus does hereby accept all the right, title and interest of SLI in, to and under all of the Contributed Assets (except as aforesaid) and Supernus assumes and agrees to pay, perform and discharge promptly and fully when due all of the Assumed Liabilities and to perform all of the obligations of SLI to be performed under the Contracts that comprise the Contributed Assets except to the extent liabilities thereunder constitute Retained Liabilities.

2. This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state.

3. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SHIRE LABORATORIES INC.

By: _____
Name:
Title:

SUPERNUS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

EXHIBIT B

ASSIGNMENT OF PATENTS

WHEREAS SHIRE LABORATORIES INC., a corporation incorporated under the laws of Delaware whose principal office is situated at 1550 East Gude Drive, Rockville, Maryland (**"Shire"**) (hereinafter **"ASSIGNOR"**) in consideration of the sum of Ten Dollars ($10.00), or the equivalent thereof, and other good and valuable consideration, the sufficiency of which and receipt of which are hereby acknowledged, paid to it by Supernus Pharmaceuticals, Inc, a corporation incorporated under the laws of Delaware whose principal office is at 1550 East Gude Drive, Rockville, Maryland (**"Supernus"**); (hereinafter **"ASSIGNEE"**), does hereby sell and assign to the said ASSIGNEE, its successors and assigns, the below indicated right, title, and interest throughout the world, in and to the patents and patent applications listed on Schedule A attached hereto, which patents and patent applications are owned by it, and all patents, divisions, reissues, continuations and any extensions thereof and rights of priority therein, said interest being its entire ownership interest in the same, to be held and enjoyed by said ASSIGNEE, its successors, assigns, or other legal representatives, to the full end of the term thereof, except as expressly provided herein, as fully and entirely as the same would have been held and enjoyed by ASSIGNOR if this assignment and sale had not been made;

WHEREAS, in connection with the sale and assignment by ASSIGNOR to said ASSIGNEE of the patents and patent applications listed on Schedule A attached hereto, said ASSIGNEE and ASSIGNOR have entered into two License Agreements dated as of December 22, 2005 pursuant to which said ASSIGNEE has granted to ASSIGNOR and its affiliates an irrevocable, exclusive license, including the right to sue and grant sublicenses, under such patents and patent applications to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world.

And for the consideration aforesaid, ASSIGNOR hereby covenants and agrees to and with said ASSIGNEE, its successors and assigns, that whenever ASSIGNEE, its counsel or representative, or the counsel or representative of its successors or assigns, shall advise that an amendment to, or a division of, or any other proceeding or action in connection with any patent applications listed on Schedule A attached hereto, including interference proceedings, is lawful and desirable, or that a reissue or continuation or extension of such application or patent issuing therefrom is lawful and desirable, ASSIGNOR will, through an authorized representative, have all papers and drawings signed, have all rightful oaths and affidavits taken, and have all acts done that are necessary or required to be done for the procurement of all lawful rights associated with the patents and patent applications listed on Schedule A attached hereto, or for the reissue or continuation or extension of the same, will, through an authorized representative,

have done all acts necessary or required to secure in said ASSIGNEE, its successors and assigns, the title to and full benefit of all rights hereby assigned, without charge to said ASSIGNEE or its successors or assigns, but at its or their expense and ASSIGNOR hereby appoints every present or future officer of said ASSIGNEE as its agent to sign all such papers and to do all such necessary acts on its behalf, to the fullest extent permitted by law;

And ASSIGNOR hereby authorizes and requests the Commissioner of Patents and Trademarks and any other granting authority to issue any Letters Patent resulting from said patent applications listed on Schedule A attached hereto concerning same to said ASSIGNEE;

And ASSIGNEE hereby covenants and agrees to and with said ASSIGNOR, its successors and assigns, such covenant to run with and attach to each patent and patent application assigned to ASSIGNEE by ASSIGNOR in this assignment, that the owner of any patents or patent applications listed on Schedule A attached hereto shall not use, directly or indirectly, solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, any of the intellectual property rights covered by such patents and/or patent applications in any research, development, formulation, testing, design, manufacture, use, offer for sale, sale, distribution, importation or exportation, that relates, in whole or in part, to any of the Compounds in any field of use, other than for or on behalf of ASSIGNOR and its affiliates. For purposes hereof, **"Compounds"** means any and all of (a)(i) (+)-alpha-Methylbenzeneethanamine; (ii) carbamazepine (5H-Dibenz{b,f} azepine-5-carboxyamide), (iii) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (iv) lanthanum and (v) mesalamine (5-Amino-2-hydroxybenzoic acid), (b) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of any of clause (a); and (c) any compound involving forming or breaking a bond or bonds with any of clause (a) or (b) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (a) or (b), other than, in the case of clauses (a), (b) and (c), 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide.

This assignment shall have an effective date of December 22, 2005.

I declare under penalty of perjury under the laws of the United States of America, and under penalty of the laws of any other jurisdiction before which this document may be presented, that I am an officer of the above identified ASSIGNOR, that I have signed this document on behalf of ASSIGNOR with the full authority of its board of directors, and that all of the foregoing is true and correct.

Dated: December 22, 2005

By: _____
Name: _____
Title: _____

ACCEPTANCE BY ASSIGNEE

I hereby accept this assignment on behalf of said ASSIGNEE. I declare under penalty of perjury under the laws of the United States of America, and under penalty of the laws of any other jurisdiction before which this document may be presented, that I am an officer of the above-identified ASSIGNEE, that I have signed this document on behalf of ASSIGNEE with the full authority of its board of directors, and that all of the foregoing is true and correct.

Dated: December 22, 2005

By: _____
Name: _____
Title: _____

EXHIBIT C

SHIRE LABORATORIES INC.

Confidentiality and Proprietary Rights Agreement

In consideration of my employment by Shire Laboratories Inc. **("Shire"** or **"SLI")** (which together with Shire plc and any affiliated companies and any predecessors thereof shall hereinafter be referred to as the **"Company")** and in consideration of my transfer of employment to Supernus Pharmaceuticals, Inc. **("Supernus")** and the compensation and benefits made available to me by the Company and Supernus, I understand, acknowledge and agree that:

1. The Company intends to sell the Business to Supernus pursuant to the terms and conditions of an Asset Purchase and Contribution Agreement dated as of December 22, 2005 among Supernus, the Company and Shire plc (the **"Purchase Agreement"**) and in so doing will assign to Supernus certain patents, trademarks and tradenames of SLI and certain know how not pertaining to the Compounds (collectively, the **"Business Intellectual Property Rights"**). However, the Company has not agreed to assign or transfer to Supernus any intellectual property rights other than the Business Intellectual Property Rights. The intellectual property, proprietary property, assets and information retained by the Company include the following types of property and information: (i) client lists, financial information, proprietary scientific methods and protocols, scientific results, market research and product ideas which do not pertain to the Business; (ii) all other knowledge or information of a proprietary, private, confidential or secret nature which in any way relates to the business of the Company or the design, construction, manufacture or sale of the Company's products or services which do not pertain to the Business, and (iii) any confidential business plans, budgets, financial information, legal information, records or similar information of the Company, other than such information that has been assigned or transferred by the Company to Supernus and made available to you for use in the context of your employment with Supernus. This is not an exhaustive list, but rather it is intended to illustrate those types of information or materials that the Company deems protected by this Agreement. The intellectual property, proprietary property, assets and information retained by the Company shall hereinafter be referred to as the **"Retained Intellectual Property".**

2. I shall not, publish, disclose, or make use of, or authorize anyone else to publish, disclose or otherwise make use of any of the Retained Intellectual Property, except as may be expressly permitted by the Purchase Agreement. I shall not disclose or cause others to disclose any of the Retained Intellectual Property to Supernus or any other party, or induce Supernus or any other party to use any information or material which is the property of the Company or its affiliates or other individuals or companies (other than Supernus) and which is of a proprietary or confidential nature. If I have any doubt as to whether any information or material includes any of the Retained Intellectual Property I will

consult with senior management of Supernus who, in turn, will consult with officials of Shire plc to resolve such doubt.

3. All documents, written information and other items including, but not limited to, notes, sketches, manuals, blueprints, notebooks, products, tools, fixtures, records and information made or obtained by me while employed by the Company which constitute part of the Retained Intellectual Property or which include any of the Retained Intellectual Property shall be the exclusive property of the Company and, upon the request of the Company, I shall promptly deliver such material to the Company without retaining any copies thereof, whether in written, electronic, oral, visual or other form.

4. My interest in (a) any and all inventions, improvements, and ideas (whether or not patentable) which I have made or conceived, either solely or jointly with others, at any time during the period of my employment with the Company, and (b) any suggestions, proposals, writings and the like, of any sort whatsoever, including any interest in any copyright, which I have developed and with which my work for the Company was concerned during my employment with the Company, or which relate or are applicable directly or indirectly to any phase of the Company's business shall be the exclusive property of the Company or the Company's rightful successor, assignee, or nominee with respect thereto, except to the extent it is part of the Business Intellectual Property in which case it shall be the exclusive property of Supernus. The items defined in (a) and (b) above will hereinafter be referred to collectively as **"Proprietary Subject Matter"**. I have made full and prompt disclosure in writing to an official of the Company of all Proprietary Subject Matter made or conceived during the term of my employment with the Company. At the request and expense of the Company, but without further compensation to me, I shall do such acts, and execute, acknowledge and deliver all such papers, including without limitation patent applications, as may be necessary or desirable in the sole discretion of the Company to obtain, maintain, protect or vest in applications, patents, copyrights or other proprietary rights of any kind relating thereto, in all countries of the world; including rendering such assistance as the Company may request in any contemplated or pending litigation, patent office proceeding, or other proceeding.

5. Excepted from this Agreement are only such inventions, improvements, ideas, suggestions, proposals, writings and the like relating to any phase of the Company's business made or conceived by me prior to my employment with the Company which are (a) embodied in a United States Letters Patent, Copyright Registration or an application for United States Letters Patent or Copyright Registration filed prior to the commencement of my employment; (b) in the physical possession of a former employer who owns them; or (c) disclosed in detail in an attachment hereto signed by the Company.

6. The terms **"Business", "Business Intellectual Property Rights", "Compounds"** and **"Retained Intellectual Property Rights"**, as used in this Agreement, are intended to have the same meanings given to those terms in the

Purchase Agreement. In the event of any inconsistency or conflict between the meaning of any such term in this Agreement and in the Purchase Agreement, the meaning given to such term in the Purchase Agreement shall control. A copy of the relevant provisions of the Purchase Agreement will be made available during normal business hours at the offices of the Company or Supernus in the event of any questions concerning the meanings of any of these terms or the scope of the confidentiality provisions contained therein.

7. This Agreement is to be made under and shall be construed in accordance with the laws of the State of Maryland.

Signature of Employee	Print Name of Employee

IN WITNESS WHEREOF, I have hereunto set my hand this day of in the year 200

Signature of Witness	Print Name of Witness

EXHIBIT D

CUSTOMER CONTRACT/LICENSE AGREEMENT PROVISIONS

Section . *Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights.* (a) Customer acknowledges that Supernus has certain contractual agreements with subsidiaries of Shire plc (**"Shire"**) pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable, exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, **"Compounds"** means any and all of: (A)(I) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) Customer hereby agrees that it shall not use any of the services or Confidential Information(1) provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the Purpose(2) and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Compounds in any field of use. The provisions of this Section (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement

(1) To be separately defined based on information to be provided or shared as part of the customer arrangements.

(2) To be separately defined based on scope of the customer arrangements.

and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customers' names from time to time for monitoring purposes and Customer hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this Section . Customer acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this Section , at the written request of Shire, Supernus shall provide Shire and its subsidiaries with an executed copy of this Agreement, and Customer hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event Customer breaches or threatens to breach the provisions of this Section , should the breach or threatened breach relate directly or indirectly to any activities relating to any of the Compounds then, in addition to any rights that Supernus may have against Customer, Customer acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against Customer for any and all damages suffered or incurred by Shire and its subsidiaries as a result of Customer's breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this Section , and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this Section , and such action is unsuccessful, Customer shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Customer may be entitled. Customer further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. Customer agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) Customer agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could be asserted by Customer against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. Customer further agrees to waive against Shire and its subsidiaries any such claims or

counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) [This Agreement] [the provisions of this Section] shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State. Each of the parties hereto acknowledges and agrees that this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this Agreement.

(f) Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to [this Agreement] [the provisions of this Section] and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint [name to be inserted], as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO [THIS AGREEMENT] [THE PROVISIONS OF THIS SECTION].

Exhibit 10.11

GUANFACINE LICENSE AGREEMENT

THIS GUANFACINE LICENSE AGREEMENT ("Agreement"), effective on the 22nd day of December, 2005, ("Effective Date") is entered into by and between Supernus Pharmaceuticals, Inc. ("Supernus"), a corporation incorporated under the laws of Delaware with its principal place of business at 1550 East Gude Drive, Rockville, Maryland; Shire LLC, (Shire") a limited liability company organized under the laws of Kentucky with its principal place of business in Florence, Kentucky; and Shire plc, a company incorporated in England and Wales ("Guarantor").

RECITALS

WHEREAS Supernus has acquired certain patents and Know-How (as defined below) from an Affiliate (as defined below) of Shire;

WHEREAS concurrently herewith, Supernus, an Affiliate of Shire certain other parties have entered into a Series A Convertible Preferred Stock Purchase Agreement ("the Stock Purchase Agreement");

WHEREAS concurrently herewith, Supernus, Guarantor, and an Affiliate of Shire have entered into an Asset Purchase Agreement (as defined below);

WHEREAS concurrently herewith, Supernus, Guarantor, and an Affiliate of Shire have entered into an Ongoing Projects Agreement (as defined below);

WHEREAS concurrently herewith, Supernus, Guarantor, and Shire have entered into a General License Agreement ("the General License");

WHEREAS Supernus owns all right, title, and interest in the Guanfacine Patents (as defined below) and Guanfacine Know-How (as defined below);

WHEREAS Shire is desirous of obtaining and Supernus is desirous of granting a license under the Guanfacine Patents and Guanfacine Know-How to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import, and export Licensed Products (as defined below) in the Guanfacine Field (as defined below) in the Territory (as defined below) under the terms and conditions set forth herein; and

WHEREAS, Guarantor has agreed to guarantee the obligations of SLI hereunder.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties (as defined below) hereto, intending to be legally bound, hereby agree as follows.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 1 - DEFINITIONS

The terms in this Agreement with initial letters capitalized, whether used in the singular or the plural, shall have the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

1.1 "Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person, where "control" means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of such Person.

1.2 "Asset Purchase Agreement" means the Asset Purchase and Contribution Agreement between, *inter alia,* Supernus and Shire Laboratories Inc. dated the date hereof.

1.3 "Business Day" means any day other than (1) Saturday or Sunday or (2) any other day on which banks in New York, New York, United States or London, England are permitted or required to be closed.

1.4 "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.

1.5 "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.

1.6 "Combination Product" means any product that contains one or more pharmaceutically-, therapeutically-, prophylactically- or diagnostically-active ingredients in addition to Guanfacine.

1.7 "Commercial Sale" means the transfer of title to a Licensed Product by Shire, its Affiliates, or its sublicensees to a Third Party for consideration in any arm's length transaction in any country following governmental approval for commercial sale in such country. If governmental approval is not necessary in order to sell a Licensed Product in a particular country, then Commercial Sale shall mean the transfer of title to a Licensed Product by Shire, its Affiliates, or its sublicensees to a Third Party for consideration in any arm's length transaction in such country.

1.8 "Control" means, with respect to any intellectual property right or other intangible property, that a Party or one of its Affiliates owns any right, title, or interest or has a license or sublicense to such item or right, and has the ability to grant access, license, or sublicense, in whole or in part, in or to such right without violating the terms of any agreement or other arrangement with any Third Party.

1.9 "Effective Date" means the date first written above.

1.10 "First Commercial Sale" means the first Commercial Sale.

1.11 "Guanfacine" means (i) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (ii) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii)..

1.12 "Guanfacine Field" means the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import, and export of any pharmaceutical product containing Guanfacine as an active ingredient.

1.13 "Guanfacine Know-How" means any Know-how in which Supernus has acquired or acquires any right, title, interest or Control under the Asset Purchase Agreement.

1.14 "Guanfacine Patents" means the following patent application and patents:

U.S. Patent Nos. [**] and [**] and the patent application identified as [**], filed in the U.S. Patent and Trademark Office on [**], entitled [**]; continuation and divisional applications of any of the foregoing; any patents granted on any of the foregoing; re-examinations, reissues, renewals, extensions, supplementary protection certificates and term restorations, any confirmation patent or registration patent or patent of addition based on any such patent; and all foreign counterparts of any of the foregoing.

1.15 "Intellectual Property Rights" means patents, trade marks, service marks, trade names, internet domain names, rights in designs, copyright (including rights in computer software databases) and moral rights, utility models and other intellectual property rights, and all rights in and to Know-How, in each case whether registered or unregistered and including any applications for the grant of any such rights and all rights and forms of protection having an equivalent or similar effect anywhere in the world.

1.16 "Know-How" means any non-public information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation, databases; ideas; discoveries; inventions; trade secrets; practices; methods; tests; assays; techniques; specifications; processes; formulations; formulae; knowledge; skill; experience; materials including pharmaceutical, chemical and biological materials; products; compositions; scientific, technical, or test data including without limitation pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, and stability data; studies; procedures; drawings; plans; designs; diagrams; sketches; technology; documentation; and patent-related and other legal information or descriptions.

1.17 "Licensed Product" means any pharmaceutical product containing Guanfacine as an active ingredient.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.18 "Net Sales" means, with respect to a Licensed Product, the amount received by Shire, its Affiliates, or its sublicensees for Commercial Sales of such Licensed Product to a Third Party less:

(A) transportation charges, freight and insurance;

(B) taxes (other than taxes based on income), tariffs, customs duty, excise or other duty and any other governmental charges, all to the extent imposed upon the sale, transportation or delivery of such Licensed Product and paid by the seller;

(C) trade, quantity discounts, cash discounts, rebates or chargebacks actually granted, allowed or incurred in the ordinary course of business in connection with the sale of such Licensed Product, including any credits, volume rebates, charge-back and prime vendor rebates, fees, reimbursements or similar payments granted or given to wholesalers and other distributors, buying groups, health care insurance carriers, pharmacy benefit management companies, health maintenance organizations or other institutions or health care organizations;

(D) adjustments, allowances or credits to customers, including on account of price adjustments, governmental requirements, billing errors, rejection, damage, recalls or return of such Licensed Product, in each case, in the ordinary course of business; and

(E) payments or rebates paid in connection with sales of Licensed Products to any government or governmental authority in respect of any state or federal Medicare, Medicaid or similar programs.

For the purposes of determining Net Sales in the event a Licensed Product is a Combination Product, the Net Sales of any such Combination Product shall be determined by multiplying the Net Sales of the Combination Product by the fraction A/(A+B), where A is the weighted (by sales volume) average sale price of the Licensed Product when sold separately in finished form and B is the weighted (by sales volume) average sale price of the other product(s) sold separately in finished form. In the event that such average sale price cannot be determined for both the Licensed Product and the other product(s) in combination, Net Sales for purposes of determining royalties shall be mutually agreed by the Parties based on the relative value contributed by each component.

Notwithstanding the foregoing, the disposition of, or the use of, a Licensed Product in clinical studies, compassionate use, named patient use, test marketing, or any non-registrational studies where the Licensed Product is supplied without charge or at cost shall not result in any Net Sales. Additionally, amounts received by Shire or its Affiliates or sublicensees for the sale of Licensed Products among Shire and its Affiliates and sublicensees for resale shall not be included in the computation of Net Sales hereunder.

For the avoidance of doubt, Net Sales shall not include any upfront fees or milestones.

1.19 "Ongoing Projects Agreement" means the Ongoing Projects and Royalty Agreement among Supernus, Guarantor, and Shire Development Inc. dated the date hereof

1.20 "Parties" means Supernus, Guarantor, and Shire.

1.21 "Party" means Supernus, Guarantor, or Shire.

1.22 "Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

1.23 "Representatives" means Affiliates of the Parties and the respective officers, directors, employees, agents, advisors, representatives, distributors, salespersons, customers, licensees, subcontractors and end-users of each Party and its Affiliates.

1.24 "Term" means, on a country-by-country basis, the later of (i) [**] or (ii) [**], absent this Agreement, would be infringed by the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import, and export of a Licensed Product.

1.25 "Territory" means the world.

1.26 "Third Party" means any entity including for-profit and non-profit institutions other than Supernus and Shire and Shire's Affiliates.

1.27 "Transaction Documents" means, collectively, (i) the Asset Purchase Agreement, (ii) the Stock Purchase Agreement, (iii) the Ongoing Projects Agreement, (iv) the Quality Assurance Agreement among Supernus, Shire Pharmaceuticals Development Ltd. and Shire Development Inc. dated the date hereof, (v) this Agreement, and (vi) the General License.

1.28 "Valid Claim" means a claim of an issued and unexpired patent which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental authority of competent jurisdiction, unappealable or unappealed within the time allowed for appeal.

1.29 Other Terms. Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Actions	5.5
Agreed Rate	4.8
Agreement	Preamble
Effective Date	Preamble
General License	Recitals
Guarantor	Preamble
Liabilities	5.4

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Term	Section
Royalty Term	4.4
Shire	Preamble
Stock Purchase Agreement	Preamble
Supernus	Preamble

1.30 Other Definitional and Interpretative Provisions. Unless specified otherwise, in this Agreement the obligations of any party consisting of more than one person are joint and several. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles and Sections are to Articles and Sections of this Agreement unless otherwise specified. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2 - GRANT OF RIGHTS

2.1 Grant of License to Shire. Subject to the terms and conditions of this Agreement, Supernus hereby grants to Shire and its Affiliates, in the Guanfacine Field, an irrevocable, exclusive license under the Guanfacine Patents and the Guanfacine Know-How to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import, and export Licensed Products in the Territory.

2.2 Sublicenses. The grant of the license in this Article 2 includes the right to grant sublicenses to Third Parties and to appoint distribution and independent sales organizations or representatives under the rights granted to Shire and its Affiliates pursuant to Section 2.1. All sublicense agreements entered into by Shire or its Affiliates shall be consistent with the terms and conditions of this Agreement.

2.3 No Other Technology Rights. It is understood and agreed that this Guanfacine License Agreement does not grant either Party any license or other right in the Intellectual Property Rights of the other Party other than as specified in this Article 2.

2.4 Covenant Not to Sue. Supernus and its Affiliate(s) individually and jointly hereby covenant and agree not, either alone or in cooperation with any Third Party, to sue or to bring any cause of action including those for any type of infringement of any Intellectual Property Rights, against Shire or any of its Representatives to prevent, inhibit, financially affect or encumber in any

manner any of the activities of any of Shire or any of its Affiliates related, in whole or in part, to the research, development, testing, design, formulation, manufacture, use, offer to sell, sale, distribution, import, and export of any compound(s), composition(s), article(s), material(s), method(s), use(s), or product(s) relating, in whole or in part, to Guanfacine or Licensed Products. This covenant shall not prevent Supernus from enforcing its rights under any of the Transaction Documents, including, in the case of this Agreement, indemnification under Section 5.4.

2.5 Covenant for Intellectual Property. Supernus hereby covenants and agrees, at its own expense, to file, prosecute, and maintain, on a Guanfacine Patent-by-Guanfacine Patent and country-by-country basis, the Guanfacine Patents, *provided however,* that Supernus may decide, in its sole discretion, not to file, prosecute, maintain any of the Guanfacine Patents in any country. In the event that Supernus decided not to file, prosecute, or maintain any of the Guanfacine Patents in any country, Supernus shall provide to Shire sufficient notice of such decision to permit Shire to decide whether Shire desires to file, prosecute, or maintain such Guanfacine Patent(s) in such country and if Shire so desires, Supernus shall assign to Shire, at no cost to Shire, all right, title, and interest in such Guanfacine Patent(s) in such country with sufficient time for Shire to file, prosecute, or maintain such Guanfacine Patent(s) in such country.

2.6 Mutual Covenant. Neither Party has entered into, and neither Party shall, during the term of this Agreement, enter into, any agreements, contracts, or other arrangements that will be inconsistent with its obligations under this Agreement.

2.7 Access to Documentation. During the Term of this Agreement, Supernus and its Affiliates will continuously provide Shire and its Affiliates access to, if such access is not a violation by Supernus or any of its Affiliates of any obligations of confidentiality of Supernus or its Affiliates to any Third Party, at Shire's sole cost and subject to any obligations of confidentiality of Supernus or its Affiliates that would not be such a violation, originals or copies of Supernus's research and development documentation relating, in whole or in part, to Guanfacine.

2.8 Availability of Supernus Personnel. Personnel of Supernus and its Affiliates, designated by Supernus and subject to Shire's approval will be made available to Shire and its Affiliates, during Supernus's regular business hours and upon reasonable advance notice to Supernus, at Shire's sole cost for the purpose of consulting with Shire on the scientific development of the Guanfacine Patents and the Guanfacine Know-How including assisting Shire and its Affiliates in understanding or interpreting the documentation provided to Shire and its Affiliates under Section 2.7.

2.9 Confirmatory Recording. On the Effective Date, Supernus shall execute a confirmatory license in the form attached hereto as Exhibit A solely for recordation as Shire may deem necessary or desirable. It shall not be a violation or breach of any agreement to which Supernus and Shire are parties, to record such confirmatory license. Such confirmatory license shall not amend, modify, cancel, or supersede the terms of this Agreement. In the event of any inconsistencies between this Agreement and such confirmatory license, this Agreement shall prevail.

ARTICLE 3 - ENFORCEMENT OF PATENT RIGHTS

3.1 Notification of Third Party Infringement. Each Party shall promptly notify the other Party in writing of any claim or evidence of possible Third Party infringement or misappropriation of any the Guanfacine Patents or Guanfacine Know-How insofar as such infringement or misappropriation relates to Guanfacine.

3.2 Right to Respond. Shire or its Affiliates shall have the first right, but not any obligation, to take any action against any infringement, misappropriation, or allegation of invalidity or unenforceability of any Guanfacine Patents insofar as such infringement, misappropriation, or allegation of invalidity or unenforceability relates to Guanfacine by a Third Party with counsel to be chosen by Shire or its Affiliates *provided* that, to the extent practicable and not materially detrimental to Shire, Shire notifies Supernus prior to its response and allows Supernus sufficient opportunity to contribute to such action if Supernus determines that Shire's action will have an effect on other Supernus' licensees. Shire shall also have the sole right, and at its sole discretion, to settle or compromise any such action in any manner. The expense and costs of counsel in such action by Shire shall be borne entirely by Shire. Supernus shall be permitted to retain its own counsel in an action by Shire at Supernus' own expense and costs, and Shire shall have no obligation to reimburse Supernus for such expense or costs. If Shire does not take any action against such infringement, misappropriation, or allegation of invalidity or unenforceability of the Guanfacine Patents and Supernus chooses to act at its own election, the expense and costs of such action shall be borne entirely by Supernus, but Shire shall be permitted to retain its own counsel in such action at Shire's own expense and costs and Supernus shall have no obligation to reimburse Shire for such expense or costs.

Supernus or its Affiliates shall have the sole right, but not any obligation, to take any action against any infringement, misappropriation, or allegation of invalidity or unenforceability of any Guanfacine Patents insofar as such infringement, misappropriation, or allegation of invalidity or unenforceability does not relate to Guanfacine by a Third Party with counsel to be chosen by Supernus or its Affiliates, *provided* that, to the extent practicable and not materially detrimental to Supernus, Supernus notifies Shire prior to its response and allows Shire sufficient opportunity to contribute to such action. Supernus shall also have the sole right, and at its sole discretion, to settle or compromise any such action in any manner. The expense and costs of counsel in such action by Supernus shall be borne entirely by Supernus. Shire shall be permitted to retain its own counsel in an action by Supernus at Shire's own expense and costs, and Supernus shall have no obligation to reimburse Shire for such expense or costs.

Supernus shall not take any direct or indirect actions and shall not assist any Third Party or any Affiliate of Supernus in any action asserting that any Guanfacine Patent is invalid, is not enforceable, or is not infringed.

3.3 Recovery. Any and all monetary damages recovered from a Third Party in connection with any action by Shire regarding infringement, misappropriation, invalidity, or unenforceabilty of any of the Guanfacine Patents shall be used to reimburse Shire for the expense and costs of Shire's counsel. Any excess over such reimbursement shall be treated as Net Sales under this Agreement. Any and all monetary damages recovered from a Third Party in connection with any action by Supernus regarding infringement, misappropriation, invalidity, or unenforceabilty of

any of the Guanfacine Patents shall be used to reimburse Supernus for the expense and costs of Supernus's counsel. Shire shall receive the equivalent of the then applicable royalty rate payable by Supernus under Section 4.2 of any excess over such reimbursement.

ARTICLE 4 — MILESTONE, ROYALTIES, AND REPORTING

4.1 Milestone and Milestone Payment. Shire shall, upon the First Commercial Sale in the United States of the first Licensed Product, pay to Supernus [**] dollars (US$[**]). This milestone payment shall accrue and be paid for the first Licensed Product only, and shall be made only once when this milestone is achieved for the first time under this Agreement regardless of how many times such milestone is achieved for the first Licensed Product. Shire shall pay any such milestone payment to Supernus within ten (10) Business Days of the date the payment becomes due. No payment shall be owed unless the milestone is achieved.

4.2 Royalty Rate on Licensed Products. During the Royalty Term (as defined in section 4.4, below) Shire shall pay to Supernus a running royalty of [**] ([**]%) of Net Sales of each Licensed Product that, absent this Agreement, would infringe a Valid Claim of a Guanfacine Patent in the country in which such Licensed Product is sold and that is not researched, developed, formulated, or manufactured for Shire or its Affiliates by or on behalf of Supernus. If the term of such Guanfacine Patent that would be infringed absent this Agreement expires during the Royalty Term for such Licensed Product, Shire shall pay to Supernus a running royalty of [**] ([**]%) of Net Sales of such Licensed Product for the remainder of the Royalty Term for such Licensed Product. The foregoing notwithstanding, no running royalties shall be due to Supernus under any Guanfacine Patents or Guanfacine Know-How assigned to Shire pursuant to Section 2.5.

4.3 One Royalty. Only one royalty shall be due for the Net Sales of any Licensed Product, no matter what Intellectual Property Rights are incorporated into such product. Furthermore, Shire's obligation to pay royalties shall only be imposed once with respect to the same unit of a Licensed Product, no matter how many times that unit may be sold.

4.4 Royalty Term. Royalties due under this Article 4 will be due on a country-by-country until the later of (i) [**] or (ii) [**], absent this Agreement, would be infringed by the sale of such Licensed Product in such country ("the Royalty Term"). After expiration of the Royalty Term for any Licensed Product, the licenses granted in this Agreement shall become permanent, irrevocable, and fully paid-up with respect to such Licensed Product.

4.5 Payments. Shire shall within thirty (30) days following the conclusion of each Calendar Quarter after the First Commercial Sale of a Licensed Product for which a royalty is due, deliver to Supernus a written report showing the information and basis on which the payment under Section 4.2 due for such Calendar Quarter is calculated. Supernus shall within ten (10) days following the receipt of such information issue to Shire an invoice for the payment of such amount due under Section 4.2. Shire shall pay any amounts properly invoiced by Supernus within fifteen (15) days from the date of receipt of the invoice. Any such amounts shall be payable in United States dollars and shall be paid by bank wire transfer in immediately available

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[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

funds to such bank account as designated in writing by Supernus.

4.6 Payment Currency. If Net Sales are in a currency other than U.S. dollars, then, for the purpose of determining the amount of royalties payable hereunder, such amount shall be converted into U.S. dollars at the exchange rate used by Shire consistent with its standard operating procedures as they relate to its income statement, for the purposes of consolidating its own net revenues. Such policies will be made available to Supernus upon request and are consistent with customary industry practices.

4.7 Withholding Taxes. All amounts payable by Shire pursuant to this Agreement shall be paid free and clear of, and without deduction for and on account of, tax unless Shire is required by law to make those payments subject to deduction or withholding of tax, in which case Shire will deduct or withhold such taxes in accordance with the applicable tax treaty, law or regulation and will pay such taxes to the appropriate taxing authorities. Shire shall make certificates of such tax payments available to Supernus to review and copy.

4.8 Interest. Subject to Section 4.7, interest shall be chargeable on any amounts overdue to Supernus at the Agreed Rate, from the due date for payment of the unpaid sum to the date of actual payment of the full amount. The Agreed Rate for these purposes is the rate of [**] ([**]%) above the U.S. Federal Funds Rate from time to time, such interest to accrue daily and to be compounded on the last day of each calendar month.

4.9 Records and Audits. Shire, its Affiliates and its sublicensees shall keep and maintain complete and accurate records of their revenues received from sales of Licensed Product(s) for a period of three (3) years. Shire shall permit, and cause its Affiliates and sublicensees to permit, independent certified public accountants retained by Supernus and approved by Shire, such permission not to be unreasonably withheld or delayed, to have access to their records and books for the sole purpose of verifying Net Sales and any payment under Section 4.2 due thereon. Such independent certified public accountant must be under an obligation of confidentiality (a) not to use the information contained in the audited Party's records and books or the auditing results for any other purpose and (b) not to disclose the information contained in the audited Party's records and books or the auditing results except that the independent certified public accountant may disclose the auditing results to Supernus solely to confirm the accuracy of the information being audited and to identify any errors therein. The independent certified public accountant shall promptly forward the results of such audit to both Supernus and Shire upon completion of such audit. Such examination shall be conducted during regular business hours and upon reasonable notice and no more than once in each Calendar Year during the Term of this Agreement, and once during the Calendar Year following the termination of this Agreement and only for the two (2) Calendar Years preceding the date of such request for such audit. Any adjustment in the amount of payment under Section 4.2 due to Supernus on account of overpayment or underpayment of amounts due hereunder shall be made at the next date when payments are to be made under this Agreement. Supernus shall pay the fees and expenses of the accountant engaged to perform the audit unless such audit reveals an underpayment of [**] ([**]%) or more for the period examined, in which case the audited Party shall pay all reasonable fees and expenses of the accountant.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

4.9 Legal Restrictions. If at any time legal restrictions prevent the remittance by Shire of all or any part of royalties on Net Sales in any country, Shire will have the right and option to make such payment by depositing the amount thereof in local currency to an account in the name of Supernus in a bank or other depository in such country. Shire will consult with Supernus regarding, and promptly notify Supernus of, any and all such arrangements.

4.10 Current Products. If there have been Net Sales of any product prior to or on the Effective Date, there shall be no royalties due to Supernus for any Net Sales of such product made after the Effective Date. For the avoidance of doubt, this Section 4.10 refers to all units of such product no matter when produced or sold.

4.11 Future Products. Shire has no obligation to Supernus or its Affiliates to make, use, offer to sell, sell, import, or commercialize any compounds or products under this Agreement, and therefore, there is no obligation or commitment to Supernus that any payments of any kind will ever accrue to Supernus under this Agreement. This Section 4.11 is not a grant of any license for Shire to make, use, offer to sell, sell, import, or commercialize any compounds or products under this Agreement.

ARTICLE 5 - REPRESENTATIONS, WARRANTIES, DISCLAIMERS, LIABILITY

5.1 Supernus's Representations and Warranties. Supernus represents and warrants that:

(A) Supernus is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware;

(B) Supernus has the legal right, authority, and power to enter into this Agreement;

(C) Supernus has taken all necessary action to authorize the execution, delivery, and performance of this Agreement;

(D) upon the execution and delivery of this Agreement, this Agreement shall constitute a valid and binding obligation of Supernus, enforceable in accordance with its terms; and

(E) the performance of Supernus's obligations under this Agreement will not conflict with its certificate of incorporation, as amended, or by-laws, or result in a breach of any agreements, contracts, or other arrangements to which it is a party.

5.2 Shire's Representations, and Warranties. Shire represents and warrants that:

(A) Shire is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Kentucky;

(B) Shire has the legal right, authority, and power to enter into this Agreement;

(C) Shire has taken all necessary action to authorize the execution, delivery, and performance of this Agreement;

(D) upon the execution and delivery of this Agreement, this Agreement shall constitute a valid and binding obligation of Shire, enforceable against Shire in accordance with its terms; and

(E) the performance of Shire's obligations under this Agreement will not conflict with its organizational documents or result in a breach of any agreements, contracts, or other arrangements to which it is a party.

5.3 WARRANTY DISCLAIMER; EXCLUSION OF DAMAGES; LIMITATIONS OF LIABILITY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GUANFACINE PATENTS, THE GUANFACINE KNOW-HOW, OR ANY LICENSE GRANTED BY EITHER PARTY HEREUNDER, OR ANY MATERIALS OR INFORMATION PROVIDED TO EITHER PARTY UNDER THIS AGREEMENT, OR WITH RESPECT TO ANY PRODUCTS OR SERVICES OF EITHER COMPANY OR THEIR RESPECTIVE AFFILIATES. FURTHERMORE, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY THAT ANY PATENT OR OTHER PROPRIETARY RIGHTS INCLUDED IN THE GUANFACINE PATENTS OR THE GUANFACINE KNOW- HOW ARE VALID OR ENFORCEABLE OR THAT USE BY EITHER PARTY OR THEIR RESPECTIVE AFFILIATES OF THE GUANFACINE PATENTS, THE GUANFACINE KNOW-HOW, OR ANY OTHER RIGHTS LICENSED HEREIN, OR ANY MATERIALS OR INFORMATION PROVIDED TO EITHER PARTY UNDER THIS AGREEMENT, DO NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

WITHOUT LIMITING THE PARTIES' OBLIGATIONS UNDER ARTICLE 5 REGARDING INDEMNIFICATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OR LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO A PARTY'S PERFORMANCE OR NON-PERFORMANCE HEREUNDER. ALL CONDITIONS, WARRANTIES OR OTHER TERMS, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCONSISTENT WITH THE PROVISIONS OF THIS SECTION ARE EXPRESSLY EXCLUDED.

The foregoing exclusion of damages (i) applies even if a Party had or should have had knowledge, actual or constructive, of the possibility of such damages, (ii) is a fundamental element of the basis of the bargain between the Parties and this Agreement would not be entered into without such limitations and exclusions, and (iii) shall apply whether a claim is based on breach of contract, breach of warranty, tort (including negligence), product liability, strict liability or otherwise, and notwithstanding any failure of essential purpose of any limited remedy herein. The foregoing exclusion of damages is intended to apply even if there is a total and fundamental breach of this Agreement. The essential purpose of the exclusion of damages clause is to limit the Parties' respective liabilities to each other hereunder.

5.4 Indemnification. Shire hereby agrees to defend, indemnify and hold harmless Supernus and each of its Representatives from and against any liabilities, claims, costs, expenses (including reasonable legal fees), loss or damage ("Liabilities") to the extent arising from Shire's or its Representatives' willful misconduct, gross negligence or material breach of its representations and warranties or its obligations under this Agreement, and except, in each case, to the extent that such Liability arises, in whole or in part, as a result of Supernus' or its Representatives' gross negligence, willful misconduct, or breach of this Agreement. For the avoidance of doubt and notwithstanding the immediately preceding sentence, this indemnity shall not include protection for any loss, claim, damage, or liability resulting, in whole or in part, directly or indirectly, from actions or omissions covered by the warranty disclaimers in Section 5.3 herein.

Supernus hereby agrees to defend, indemnify and hold harmless Shire and each of its Representatives from and against any Liabilities to the extent arising from Supernus' or its Representatives' wilful misconduct, gross negligence or material breach of its representations and warranties or its obligations under this Agreement, except, in each case, to the extent that such Liability arises, in whole or in part, as a result of Shire's or its Representatives' wilful misconduct, gross negligence, or breach of this Agreement. For the avoidance of doubt and notwithstanding the immediately preceding sentence, this indemnity shall not include protection for any loss, claim, damage, or liability resulting, in whole or in part, directly or indirectly, from actions or omissions covered by the warranty disclaimers in Section 5.3 herein.

5.5 Indemnification Procedure. The indemnified Party shall promptly notify the indemnifying Party, in writing, if it learns of any litigation, claim, administrative or criminal proceedings (collectively "Actions") asserted or threatened against the indemnified Party for which the indemnified Party is entitled to indemnification hereunder. With respect to any such Action, the indemnified Party shall cooperate with and provide such assistance to the indemnifying Party as such Party may reasonably request. Such assistance may include providing copies of all relevant correspondence and other materials that the indemnifying Party may reasonably request; *provided however,* that any information so provided which is confidential shall be treated in accordance with the confidentiality provisions of the Ongoing Projects Agreement.

In the event of any claim or notice of the commencement of any proceedings to which the indemnities in this Article 5 may apply, the indemnified Party shall permit the indemnifying Party to take control of the relevant proceedings and shall not make any admission or offer or make any settlement without the prior consent of the indemnifying Party. If the indemnifying Party shall assume the control of the relevant proceedings in accordance with the previous sentence, (a) the indemnifying Party shall obtain the prior written consent of the indemnified Party before entering into any settlement with respect to such proceedings if the settlement would not release the indemnified Party from all liabilities and obligations with respect to such proceedings or the settlement would impose injunctive or other equitable relief against the indemnified Party and (b) the indemnified Party shall be entitled to participate in such proceedings and to employ separate counsel of its choice for such purpose. The fees and expenses of such separate counsel shall, absent a conflict between the indemnifying Party and the indemnified Party, be paid by the indemnified Party. The failure or delay to deliver notice to the indemnifying Party within a reasonable time after the commencement of any such action, if irreparably prejudicial to the indemnifying Party's ability to defend such action, shall relieve the

indemnifying Party of any liability to the indemnified Party under this Article 5 to the extent that is directly attributable in its entirety to such failure or delay, but the omission to deliver notice to the indemnifying Party will not relieve the indemnifying Party of any liability that the indemnifying Party may have to any indemnified Party otherwise. The indemnified Party shall cooperate fully with the indemnifying Party and its legal representatives in the investigation of any loss, action, claim, damage, or liability covered by this indemnification.

5.6 Compliance with Law. Each Party shall comply, and shall require its Affiliates and sublicensees to comply, with all applicable laws and regulations relative to its obligations hereunder.

ARTICLE 6 - TERMINATION

6.1 Term of the Licenses. The licenses granted to Shire by this Agreement shall become permanent, irrevocable, and paid-up, on a country-by-country basis and a Licensed Product-by-Licensed Product basis, upon the expiration of the Term in such country.

6.2 Term of Supernus's Covenant Not to Sue. Supernus's covenant not to sue set forth in Article 2 shall run for [**] from the Effective Date.

6.3 No Termination by Supernus. The Agreement cannot be terminated by Supernus for any reason.

6.4 Termination by Shire - Financial. Shire shall have the right to terminate immediately (a) this entire Agreement, other than those provisions which shall survive pursuant to Section 6.6 or (b) any provisions of this Agreement other than those that shall survive this Agreement pursuant to Section 6.6, at Shire's sole discretion, if Supernus (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian on behalf of itself or for all or a substantial part of its property, (ii) becomes unable, or admits in writing its inability, to pay its debts generally as they mature, (iii) makes a general assignment for the benefit of its creditors, (iv) is dissolved or liquidated in full or in part other than in a solvent reorganization merger, or other similar activity, (v) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consents to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it under any bankruptcy, insolvency or other similar law, (vi) takes any action for the purpose of effecting any of the foregoing, (vii) becomes the subject of an involuntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect that is not dismissed within ninety (90) calendar days of commencement, or (viii) ceases to carry on its business as a going concern during the six (6) month period following the Effective Date. Supernus shall not have any right to cure termination under this Section 6.4.

6.5 Termination by Shire without Cause. Shire may terminate this Agreement, in whole or in part, without cause at any time.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

6.6 Survival. Termination or expiration of this Agreement for any reason shall not affect the accrued rights of Shire or Supernus arising in any way out of this Agreement and shall not release either Shire or Supernus from any liability which, at the time of such termination or expiration, has already accrued to Shire or Supernus, as applicable, or which is attributable to a period prior to such termination or expiration, nor preclude Shire or Supernus, as applicable, from pursuing any rights and remedies it may have hereunder or at law or in equity which accrued or are based upon any event occurring prior to such termination or expiration. Additionally, Articles 5, 6, 7, and 8 and Sections 2.3, 2.4, 2.5, 2.6, and 3.3 of this Agreement shall survive the termination or expiration of this Agreement.

ARTICLE 7 — DISPUTE RESOLUTION

7.1 Negotiation. Without prejudice to any rights under Section 7.7, the Parties hereby agree that they will attempt in good faith to resolve promptly by negotiations, any controversy or claim between the Parties arising out of or relating to this Agreement. If a controversy or claim should arise hereunder, the matter shall be referred to a senior executive of Supernus and a senior executive of Shire (the "Mediators"). If the matter has not been resolved within fifteen (15) days of the referral to the Mediators, subject to rights to injunctive relief and specific performance, and unless otherwise specifically provided for herein, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be brought in a court of competent jurisdiction as specified in Section 7.3.

7.2 Governing Law. The validity, construction, and interpretation of this Agreement and any determination of the performance which this Agreement requires will be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware.

7.3 Jurisdiction. Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Delaware State or Federal court sitting in New Castle County, Delaware and any appellate court from any thereof; in any suit, action, or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the Parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Delaware State court, or, to the extent permitted by law, in such Federal court. Each of the Parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

7.4 Venue. Each of the Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 7.3.

7.5 Inconvenient Forum. Each of the Parties hereby irrevocably waives, to the fullest extent it may legally and effectively do so, the defense of an inconvenient forum to the maintenance of such suit, action, or proceeding in any such court, and agrees not to plead the same, and agrees that nothing herein will limit the right to sue in any other jurisdiction if a Delaware State or

Federal court of competent jurisdiction sitting in New Castle County, Delaware rules or orders that it will not exercise jurisdiction over any such action or proceeding.

7.6 Immunity Waiver. To the extent that a Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or execution, on the ground of sovereignty or otherwise) with respect to itself or its property, it hereby irrevocably waives, to the fullest extent it may legally and effectively do so, such immunity in respect of its obligations under this Agreement.

7.7 Equitable Relief. Each of the Parties hereby acknowledges that a breach of their respective obligations under this Agreement may cause irreparable harm and that the remedy or remedies at law for any such breach may be inadequate. Each of the Parties hereby agrees that, in the event of any such breach, in addition to all other available remedies hereunder, the non-breaching Party shall have the right to seek equitable relief to enforce the provisions of this Agreement.

ARTICLE 8 — OTHER PROVISIONS

8.1 Headings. Headings and captions of the Articles and Sections hereof are for convenience only and are not to be used in the interpretation of this Agreement.

8.2 Assignment. Shire shall not be entitled to assign, transfer or charge all or any of its rights or obligations under this Agreement without the prior written consent of Supernus, such consent not to be unreasonably withheld or delayed; provided that Shire may transfer or assign, in whole or from time to time in part, all or any of its rights or obligations under this Agreement, without the prior written consent of Supernus (i) to an Affiliate or (ii) to any Third Party in connection with any sale or other disposition involving any assets or equity of Shire, by way of merger, business combination, asset sale, stock sale or otherwise.

Supernus shall have the right to assign, transfer, or charge its rights and obligations in their entirety under this Agreement without the consent of Shire only as part of a sale of the entire assets of Supernus to a single Third Party, and only if such assignment, transfer, or charge is to such single Third Party, such assets including all of those acquired by Supernus under the Transaction Documents. Supernus shall not have the right to assign, transfer, or charge any of its rights and obligations under this Agreement without the prior written consent of Shire under any circumstances other than such sale of its entire such assets, and Shire's consent may be withheld at Shire's sole discretion, *provided however,* that Supernus may assign, transfer, or charge its right to running royalties under Article 4 to any Third Party without the consent of Shire.

8.3 Notices. Any notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by facsimile, with confirmation of transmission, on such date, with paper copy being sent by certified first class mail, postage prepaid, or by next day express delivery service, addressed to it at its address below (or such address as it shall designate by written notice given to the other party).

if to Supernus, to:

[**]

with a copy to:

[**]

if to Shire or Guarantor, to:

[**]

with a copy to:

[**]

and with a copy to:

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

8.4 Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including without limitation, fire, floods, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other Party; *provided, however,* that the Party so affected shall use commercially reasonable and diligent efforts to avoid or remove such causes of non-performance, and shall continue performance hereunder with reasonable dispatch wherever such causes are removed. Each Party shall provide the other Parties with prompt written notice of any delay or failure to perform that occurs by reason of *force majeure.* The Parties shall mutually seek a resolution of the delay or the failure to perform in good faith.

8.5 Waivers and Modifications. The failure of any Party to insist on the performance of any obligation hereunder shall not be deemed to be a waiver of such obligation. Waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other breach of such provision or any other provision. No waiver, modification, release or amendment of any obligation under or provision of this Agreement shall be valid or effective unless in writing and signed by both Parties hereto.

8.6 Relationship of the Parties. It is expressly agreed that the relationship between Supernus and Shire shall not constitute a partnership, joint venture or agency. Supernus and Shire are independent contractors. Neither Supernus nor Shire shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior consent of the other Party to do so.

8.7 Counterparts. This Agreement may be executed in counterparts with the same effect as if both Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

8.8 Severability. In performing this Agreement, the Parties shall comply with all applicable laws. Wherever there is any conflict between any provision of this Agreement and any law, the law shall prevail, but in such event the affected provision of this Agreement shall be limited or eliminated only to the extent necessary, and the remainder of this Agreement shall remain in full force and effect. In the event the terms of this Agreement are materially altered as a result of the foregoing, the parties shall renegotiate in good faith the terms of this Agreement to resolve any inequities.

8.9 Entire Agreement. This Agreement and the other agreements referenced herein constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede any and all oral and/or written communications or understandings relating to the subject matter hereof. For the avoidance of doubt, the Agreement and each of the Transaction documents shall be treated as a stand alone agreement unless expressly provided for herein or therein.

8.10 Guarantor. Guarantor hereby guarantees to Supernus the prompt and full discharge by Shire of all of Shire's covenants, agreements, indemnities, obligations and liabilities under this Agreement including the due and punctual payment of all amounts which are or may become due and payable by Shire hereunder, when and as the same shall become due and payable, in accordance with the terms hereof.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute and deliver this Agreement as of the Effective Date.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar

Name: Jack Khattar
Title: President & CEO

SHIRE LLC

By: /s/ Mike Chapman

Name: Mike Chapman
Title: President

SHIRE LLC

By: /s/ Matthew Emmens

Name: Matthew Emmens
Title: Director

Exhibit A

CONFIRMATORY LICENSE AGREEMENT

THIS CONFIRMATORY LICENSE AGREEMENT ("Agreement"), effective on the 22nd day of December, 2005, ("Effective Date") is entered into by and between Supernus Pharmaceuticals, Inc. ("Supernus"), a corporation incorporated under the laws of Delaware with its principal place of business at 1550 East Gude Drive, Rockville, Maryland; Shire LLC, (Shire") a limited liability company organized under the laws of Kentucky with its principal place of business in Florence, Kentucky; and Shire plc, a company incorporated in England and Wales ("Shire plc").

RECITALS

WHEREAS Supernus has acquired and owns all right, title, and interest in the Guanfacine Patents (as defined below); and

WHEREAS Shire is desirous of obtaining and Supernus is desirous of granting a license under the Guanfacine Patents to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import, and export Licensed Products (as defined below) in all fields in the Territory (as defined below).

WHEREAS Supernus, Shire, and Shire plc have entered into a Guanfacine License that they wish to confirm herein, the terms stated below confirming, but not amending or restating, the terms of the Guanfacine License.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties (as defined below) hereto, intending to be legally bound, hereby agree as follows.

ARTICLE 1 - DEFINITIONS

The Guanfacine License incorporates, *inter alia,* the following terms with initial letters capitalized, whether used in the singular or the plural, and have the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

1.1 "Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person, where "control" means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of such Person.

1.2 "Effective Date" means the date first written above.

1.3 "Guanfacine" means (i) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (ii) any isomers, salts, solvates, hydrates, polymorphs, esters,

prodrugs, or metabolites of (i); and (iii) any compound involving forming or breaking a bond or bonds with any of (i) or (ii) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of (i) or (ii)..

1.4 "Guanfacine Field" means the research, development, formulation, testing, design, manufacture, use, offer to sell, sale, distribution, import, and export of any pharmaceutical product containing Guanfacine as an active ingredient.

1.5 "Guanfacine Know-How" means any Know-how in which Supernus has acquired or acquires any right, title, interest or Control under the Asset Purchase Agreement.

1.6 "Guanfacine Patents" means the following patent application and patents:

U.S. Patent Nos. [**] and [**] and the patent application identified as [**], filed in the U.S. Patent and Trademark Office on [**], entitled [**]; continuation and divisional applications of any of the foregoing; any patents granted on any of the foregoing; re-examinations, reissues, renewals, extensions, supplementary protection certificates and term restorations, any confirmation patent or registration patent or patent of addition based on any such patent; and all foreign counterparts of any of the foregoing.

1.7 "Licensed Product" means any pharmaceutical product containing Guanfacine as an active ingredient.

1.8 "Parties" means Supernus, Shire, and Shire plc.

1.9 "Party" means Supernus, Shire, or Shire plc.

1.10 "Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

1.12 "Territory" means the world.

1.13 Other Terms. Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Agreement	Preamble
Shire	Preamble
Shire plc	Preamble
Supernus	Preamble

1.15 Other Definitional and Interpretative Provisions. Unless specified otherwise, in this Agreement the obligations of any Party consisting of more than one person are joint and several. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles and Sections are to Articles and Sections of this Agreement unless otherwise specified. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2 - GRANT OF RIGHTS

2.1 Grant of License to Shire. The grant of the Guanfacine License provides that subject to the terms and conditions of that agreement, Supernus grants to Shire and its Affiliates, in the Guanfacine Field, an irrevocable, exclusive license under the Guanfacine Patents to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export Licensed Products in the Territory.

2.2 Sublicenses. The grant of the Guanfacine License includes the right to grant sublicenses to Third Parties and to appoint distribution and independent sales organizations or representatives under the rights granted to Shire and its Affiliates pursuant to Section 2.1.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute and deliver this Agreement as of the Effective Date.

SUPERNUS PHARMACEUTICALS, INC.

By: _____

Name:
Title:

SHIRE LLC

By: _____

Name:
Title:

SHIRE PLC

By: _____

Name:
Title:

AMENDMENT No. 1 TO THE
GUANFACINE LICENSE AGREEMENT
having an Effective Date of December 22nd, 2005
by and among Supernus Pharmaceuticals, Inc., Shire LLC and Shire plc

THIS AMENDMENT NO. 1 TO THE GUANFACINE LICENSE AGREEMENT effective on the 1st day of May, 2009, ("Guanfacine License Amendment") is entered into by and between Supernus Pharmaceuticals, Inc. ("Supernus"), a corporation incorporated under the laws of Delaware with its principal place of business at 1550 East Gude Drive, Rockville, Maryland; Shire LLC, (Shire") a limited liability company organized under the laws of Kentucky with its principal place of business at 9200 Brookfield Court, Florence, Kentucky; and Shire plc, a company organized and existing under the laws of England and Wales, now known as Shire Biopharmaceuticals Holdings ("Guarantor").

RECITALS

WHEREAS Supernus, Shire and Guarantor entered into a Guanfacine License Agreement having an Effective Date of December 22nd, 2005 (the "Guanfacine License Agreement") as part of a transaction on that same date which included a Stock Purchase Agreement, an Asset Purchase Agreement, an Ongoing Projects Agreement, and a General License Agreement;

WHEREAS the Guanfacine License Agreement provides for a royalty-bearing license under the Guanfacine Patents and Guanfacine Know-How;

WHEREAS Supernus, Shire and Guarantor are desirous of amending the Guanfacine License Agreement so that it is a paid-up, royalty-free license;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties (as defined below) hereto, intending to be legally bound, hereby agree as follows.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 1 - DEFINITIONS

The terms in this Guanfacine License Amendment with initial letters capitalized, whether used in the singular or the plural, shall have the meaning set forth in the Guanfacine License Agreement, or the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

ARTICLE 2- SPECIFIC AMENDMENTS TO THE GUANFACINE LICENSE AGREEMENT

2.1 The Guanfacine License Agreement is hereby amended as follows:
Article 1.18 of the Guanfacine License Agreement is deleted in its entirety.

2.2 The Guanfacine License Agreement is hereby amended as follows:

Article 4 of the Guanfacine License Agreement (inclusive of each of Articles 4.1 through and including 4.11) is deleted in its entirety and replaced with the following:

4.1 Within fifteen (15) days of entering into this Guanfacine License Amendment, Shire shall pay Supernus a one-time lump sum payment of thirty six million eight hundred seventy five thousand dollars ($36,875,000.00) by wire transfer to the account designated below. No other sums are payable to Supernus, now or in the future, for the licenses granted herein.

Bank Name: [**]

Bank Address: [**]

Account Number: [**]

ABA Number: [**]

2.3 The Guanfacine License Agreement is hereby amended as follows:

Article 3.3 of the Guanfacine License Agreement is deleted in its entirety and replaced with the following:

3.3 Recovery. Any and all monetary damages recovered from a Third Party in connection with any action by Shire regarding infringement, misappropriation, invalidity, or unenforceabilty of any of the Guanfacine Patents shall belong to Shire. Any and all monetary damages recovered from a Third Party in connection with any action by Supernus regarding infringement, misappropriation, invalidity, or unenforceabilty of any of the Guanfacine Patents shall be used to reimburse

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[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Supernus for the expense and costs of Supernus' counsel. Shire shall receive any excess over such reimbursement to the extent such Supernus action is related to Guanfacine and not other Supernus products or licensed products. To the extent such Supernus action relates to other Supernus products or licensed products, Supernus shall receive any excess over such reimbursement.

2.4 The Guanfacine License Agreement is hereby amended as follows:

Article 6.1 of the Guanfacine License is deleted in its entirety and replaced with the following:

6.1 Term of the Licenses. The licenses granted to Shire by this Agreement are permanent, irrevocable, and paid-up during the Term of this Agreement and thereafter.

2.5 The Guanfacine License Agreement is hereby Amended as follows:

The last sentence of Article 8.2 of the Guanfacine License Agreement is deleted in its entirety and replaced with the following sentence:

Supernus shall not have the right to assign, transfer, or charge any of its rights and obligations under this Agreement without the prior written consent of Shire under any circumstances other than such sale of its entire assets, and Shire's consent may be withheld at Shire's sole discretion.

ARTICLE 3- CONFIDENTIALITY

This Guanfacine License Amendment, and the terms thereof, shall be treated by Supernus as confidential and will not be disclosed or shared with any third parties. Notwithstanding the previous sentence, Supernus may disclose this Guanfacine License Amendment and the terms thereof (i) to its attorneys, accountants, and advisors who are bound by a professional duty of confidentiality, or (ii) pursuant to interrogatories, requests for information or documents, subpoena, civil investigative demands issued by a court or governmental agency or as otherwise required by applicable law or regulation (including the rules of any national securities exchange or listing authority to which it or its Affiliates are subject or submit); *provided* that Supernus shall, where legally permissible, notify Shire promptly upon receipt thereof, giving Shire, where legally permissible, sufficient advance notice to permit it to seek a protective order or other similar order with respect to such information; and *provided, further,* that Supernus shall furnish only that portion of such information which it is advised by counsel is legally required whether or not a protective order or other similar order is obtained.

Except as expressly modified in this Guanfacine License Amendment, all terms of the Guanfacine License Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute and deliver this Agreement as of the Effective Date.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President & CEO

SHIRE LLC

By: /s/ Mike Chapman
Name: Mike Chapman
Title: President

SHIRE BIOPHARMACEUTICALS HOLDINGS

By: /s/ Patrick Clements
Name: Patrick Clements
Title: SVP

Exhibit 10.12

June 6, 2006

EXCLUSIVE LICENSE AGREEMENT

Between

SUPERNUS PHARMACEUTICALS INC.

and

UNITED THERAPEUTICS CORPORATION

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

EFFECTIVE DATE: **June 6, 2006**

PARTIES:

(1) **SUPERNUS PHARMACEUTICALS INC.,** a Delaware corporation with its principal place of business at 1550 East Gude Drive, Rockville, Maryland 20850 (**"*Supernus*"**); and

(2) **UNITED THERAPEUTICS CORPORATION**, located at One Park Drive, Research Triangle Park, NC 27709 **("*United Therapeutics*").**

BACKGROUND

(A) Supernus is the owner of all right, title and interest in the Supernus Intellectual Property (as defined below) relating to its drug delivery and drug formulation technologies.

(B) United Therapeutics is the owner of all rights, title and interest in the United Therapeutics Intellectual Property (as defined below) relating to United Therapeutics' Compound.

(C) On July 1, 2004, Supernus and United Therapeutics entered into the first of a series of Feasibility Agreements (as defined below) to evaluate the application of the Supernus Technology (as defined below) to the Compound (as defined below).

(D) In accordance with the Feasibility Agreements, United Therapeutics has requested, and Supernus agrees to grant, an exclusive license under the Supernus Intellectual Property to make, have made, use, supply and sell Licensed Products and Licensed Combination Products (as defined below) in the Territory (as defined below) on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement:

"Act" means the Federal Food Drug and Cosmetic Act of 1934, and the rules and regulations promulgated thereunder, as in effect from time to time;

"Affiliates" means corporations, firms, partnerships or other entities which directly or indirectly control, are controlled by, or are under common control with a Party to this Agreement. For the purpose of this definition, "control" of corporations, firms, partnerships or other entities means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock, by contract or otherwise, and the terms "controlled" and "common control" will have correlative meanings;

"Business Day" means any day other than Saturday or Sunday on which the New York Stock Exchange is open for business;

"cGMP" means current good manufacturing practices as defined in 21 CFR Parts 210 and 211 promulgated by the FDA under the Act or corresponding applicable Laws in any jurisdiction;

"Clinical Development Data" means all data, charts, summaries, analyses, reports, know how and other information resulting or derived from any animal or human clinical trials or studies of the Compound or the Licensed Products or the Licensed Combination Products conducted under or in connection with any Development Plan relating to United Therapeutics Intellectual Property but excluding (i) any Non-Clinical Development Data, or (ii) any information, data and materials that refer to, relate to, incorporate or claim Supernus Intellectual Property;

"Commercial Sale" means any sale of a Licensed Product or a Licensed Combination Product to a Third Party in any country in the Territory in the Field; provided, however, that a transfer of Licensed Products or Licensed Combination Products (i) for research and development purposes, or (ii) prior to United Therapeutics' receipt of Product Approval for use of such Licensed Product or Licensed Combination Product in humans, shall not be considered a Commercial Sale;

"Compound" means treprostinil diethanolamine, known as UT-15C, for oral administration;

"Confidential Information" means any scientific, technical, formulation, process, analytical methods, manufacturing, clinical, non-clinical, regulatory and related documentation, marketing, financial or commercial information or data relating to the business, projects or products of either Party and provided by one Party to the other (by written, oral, electronic or other means) in connection with this Agreement;

"Development Costs" means the costs and expenses of a Development Plan due and payable to Supernus by United Therapeutics in accordance with such Development Plan;

"Development Patent" means any Patent that discloses or claims subject matter generated or derived from Non-Clinical Development Data generated under or in connection with any Development Plan, and which may include Clinical Development Data supplied by United Therapeutics to Supernus under this Agreement;

"Development Plan" means (i) any plan for the development of the Compound by Supernus as set out in clause 4 and (ii) the Feasibility Agreements as set out in Schedule 1;

"Development Team" means the team set up by the Parties in accordance with clause 4.7 and 4.8;

"EnSoTrol®" means Supernus' proprietary osmotic tablet technology including formulas, methods, techniques, Patents, and related information;

"FDA" means the United States Food and Drug Administration or any successor thereto;

"Feasibility Agreements" means those certain feasibility agreements between Supernus and United Therapeutics dated, as set out in Schedule 1, and any amendments expansions or extensions thereto;

"Field" means the treatment of any and all therapeutic indications and uses;

"First Commercial Sale" means the first sale of Licensed Product or Licensed Combination Product to any Third Party in any country in the Territory; provided, however, that a first transfer of Licensed Products or Licensed Combination Products (i) for research and development purposes, or (ii) prior to United Therapeutics' receipt of Product Approval for use of such Licensed Product or Licensed Combination Product in humans, shall not be considered a First Commercial Sale so long as United Therapeutics receives no financial consideration for same;

"GAAP" means generally accepted accounting principles in the United States;

"Improvement" means any and all improvements, enhancements or modifications, patentable or otherwise, relating to the Compound or Licensed Products or Licensed Combination Products including, without limitation, any change or modification in the manufacture, formulation, analytical methodology, ingredients, preparation, presentation or means of delivery, administration or dosage of the Compound or Licensed Products or Licensed Combination Products;

"IND" means an investigational new drug application and any amendments thereto relating to the development or use of Licensed Product or Licensed Combination Product in the United States or the equivalent application in any other jurisdiction in the Territory;

"Laws" means all federal, state, provincial and local laws, ordinances, rules and regulations in any jurisdiction applicable to this Agreement or the activities contemplated under this Agreement, whether such laws, ordinances, rules and regulations are now or hereafter in effect;

"Licensed Patents" means:

(a) all domestic and international Patents set out in Schedule 2 which are owned by or licensed to Supernus to the extent necessary to enable United Therapeutics to make, have made, use or sell Licensed Products or Licensed Combination Products, and which claim (i) a Licensed Product or Licensed Combination Product, (ii) the process of manufacture or use of a Licensed Product or Licensed Combination Product, or (iii) a congener, if any, described within the Patents set forth in Schedule 2 to this Agreement, together with any and all Patents that issue or in the future issue therefrom, including utility and design Patents and certificates of invention, or (iv) any Patent that claims an invention in the Supernus Intellectual Property;

(b) any and all reissues, extensions, substitutions, confirmations, registrations, revalidations, renewals, supplementary protection certificates, additions, continuations, continuations-in-part, divisions, or foreign equivalents to any such Patents to the extent that they claim the subject matter set forth in (a) i, ii, iii or iv above;

(c) the Development Patents, if any, to the extent they are necessary to enable UT to make, have made, use or sell Licensed Products and Licensed Combination Products; and

(d) such other Patents as the Parties may agree in writing from time to time;

To the extent that any existing Patent, Patent disclosure or Supernus Improvement owned or licensed by Supernus is necessary to practice any Licensed Patent, then such necessary Patents, Patent disclosures, and Supernus Improvements will be included as Patents, to the extent that Supernus is capable to do so;

"Licensed Products" means pharmaceutical compositions comprised of the Compound as the therapeutically active ingredient and which uses or is developed or manufactured using or in connection with the Supernus Intellectual Property;

"Licensed Combination Products" means pharmaceutical compositions comprised of the Compound as a therapeutically active ingredient in combination with other active ingredients and which uses or is developed or manufactured using or in connection with the Supernus Intellectual Property.

"Milestone Event" means each event identified in clause 7 which trigger a Milestone Payment;

"Milestone Payments" means the payments by United Therapeutics to Supernus of the sum identified in clause 7 on the occurrence of a Milestone Event;

"NDA" means a New Drug Application and all supplements filed with the FDA, including all documents, data and other information concerning Licensed Products and Licensed Combination Products which are necessary for, or included in, a Product Approval to market Licensed Products and Licensed Combination Products in the United States of America, as more fully defined in the Act;

"Net Sales" means the amount invoiced by United Therapeutics, its Affiliates or its Sub-Licensees to Third Parties for the Commercial Sale of Licensed Products and Licensed Combination Products in the Territory commencing upon the date of First Commercial Sale, after deducting in accordance with GAAP, the following:

(a) trade, quantity or ordinary discounts including without limitation prompt payment and volume discounts;

(b) credits, allowances for Licensed Product and Licensed Combination Product returns, discounts and rebates to, and chargebacks from, the account of Third Parties for spoiled, damaged, obsolete, outdated, rejected or returned Licensed Products or Licensed Combination Products;

(c) sales, use or excise taxes, VAT or other taxes; or governmental charges incurred in connection with the sale, exportation or importation, transportation, or delivery of Licensed Products or Licensed Combination Products in final form; and

(d) rebates or similar payments made in connection with sales of Licensed Products and Licensed Combination Products to any governmental or regulatory authority in respect of any State or Federal Medicare, Medicaid or similar programs in any country of the Territory.

If United Therapeutics, its Affiliates or Sub-Licensees supply the Licensed Products or Licensed Combination Products to any Customer as part of a package of products or services then the Net Sales value of the Licensed Products or Licensed Combination Product shall be whichever is higher of:

(a) the fair market value of such Licensed Product or Licensed Combination Product; or

(b) the actual price at which United Therapeutics, its Affiliates or Sub-Licensees sold the Licensed Product or Licensed Combination Product to such Customer.

For the purposes of this clause, fair market value shall mean the value of Licensed Products or Licensed Combination Products sold to similar Third Parties in the Territory with similar pricing and reimbursement structures and for similar quantities. Any dispute as to the determination of fair market value that cannot be resolved through discussion between the Parties shall be referred to an expert in the pharmaceutical industry, knowledgeable in customary terms for such transactions and jointly chosen by the Parties, for resolution. In the absence of fraud or bad faith, the industry expert's determination will be binding.

Sales or other transfers between United Therapeutics and its Affiliates and Sub-Licensees shall be excluded from the computation of Net Sales, but Net Sales shall include the subsequent sales by such Affiliates and Sub-Licensees to any Third Parties.

"Non-Clinical Development Data" means all information, data, formulations, inventions, methods of manufacture, analytical methodology, charts, studies, summaries, analyses, reports, know how and other information generated, discovered or arising under any Development Plan relating to Supernus Technology, but excluding (i) any Clinical Development Data, or (ii) any information, data and materials that refer to, relate to, incorporate or claim United Therapeutics Intellectual Property;

"Party and Parties" means respectively Supernus or United Therapeutics, or as the case may be, being both parties to this Agreement;

"Patent" means a patent or patent application, including any and all divisions, continuations, continuations in part, extensions, substitutions, renewals, registrations, revalidations, reissues or other additions relating thereto including supplementary certificates of protection of or to any patent or patent application;

"Product Approval" means the grant of all necessary regulatory and governmental approvals required to manufacture, use, store, import, export, transport and/or sell Licensed Products or Licensed Combination Products in any country of the Territory;

"Product Launch" shall mean the date selected by United Therapeutics on which United Therapeutics first makes a Licensed Product or Licensed Combination Product available for commercial sale in each country of the Territory, after the receipt of all applicable Product Approvals required to be obtained by United Therapeutics or its suppliers prior to commercial sale of Licensed Products or Licensed Combination Products;

"*Quarter*" means a three-month period ending on the last day of March, June, September or December in any calendar year;

"*Royalty Term*" means, with respect to each Licensed Product or Licensed Combination Product in each country of the Territory, the period of 12.5 years from the date of the First Commercial Sale of each Licensed Product or Licensed Combination Product in such country;

"*Supernus Improvements*" means any and all improvements, enhancements and modifications, patentable or otherwise, which improvements, enhancements and modifications, patentable or otherwise, do not refer to, relate to, incorporate or claim United Therapeutics Intellectual Property, relating to Supernus Intellectual Property and Supernus Technology that has been, is or will be (i) identified or discovered by Supernus, or United Therapeutics, and their subcontractors or sublicensees, under any Development Plan or otherwise in accordance with this Agreement and which relate to the use of United Therapeutics Intellectual Property or Supernus Intellectual Property, or (ii) identified or discovered by United Therapeutics, and its subcontractors or sublicensees, with the use of Supernus Intellectual Property and which relate to Supernus Intellectual Property and Supernus Technology, or (iii) specific to the development and/or commercialization of Licensed Products and Licensed Combination Products within the Field;

"*Supernus Intellectual Property*" means the Licensed Patents and the Supernus Know-How existing as of the Effective Date and improved during the term of this Agreement as may be qualified by clause 25.16;

"*Supernus Know-How*" means all information, data and materials, including but not limited to the Supernus Technology, processes, formulae, data, inventions, analytical methods, know-how, trade secrets, Non-Clinical Development Data and Supernus Improvements, which are proprietary to or owned or controlled by Supernus and which are required for the development, use, manufacture or sale of Licensed Products or Licensed Combination Products, as may be qualified by clause 25.16, but which know how, trade secrets, results,

inventions and any other intellectual property rights, whether patentable or otherwise, do not refer to, relate to, incorporate or claim United Therapeutics Intellectual Property;

"*Supernus Technology*" means Supernus' proprietary drug delivery technologies whether owned by Supernus, licensed to Supernus, or available to Supernus, existing as of the Effective Date including but not limited to ProPhile®, ProScreen®, OptiScreen®, Microtrol®, Solutrol®, EnSoTrol®, and any Supernus Improvements thereto that may be generated by Supernus during the term of this Agreement for use during the term of this Agreement as may be qualified by clause 25.16;

"*Specifications*" means the written methods, formulae, procedures, tests (and testing protocols) and standards and acceptance criteria relating to the testing and manufacture of Licensed Products and or Licensed Combination Products, as agreed upon in writing by the Parties;

"*Sub-Licensee*" means any Third Party sub-licensee of the rights granted to United Therapeutics to develop Licensed Products and Licensed Combination Products under this Agreement; provided, however, that entities purchasing Licensed Products and Licensed Combination Products from United Therapeutics, its Affiliates and Sub-Licensees in order to resell such Licensed Products and Licensed Combination Products to Third Parties shall not be deemed to be Sub-Licensees within the meaning of the foregoing sentence;

"*Sub-Licensee Agreement*" means any agreement entered into by United Therapeutics and a Sub-Licensee pursuant to which United Therapeutics sub-licenses any of the rights granted by Supernus under this Agreement provided such agreement contains the provisions set forth in clause 3;

"Territory" means the universe;

"Third Party" means any person or entity who or which are neither a Party nor an Affiliate of a Party;

"United Therapeutics Improvements" means any and all improvements, enhancements and modifications, patentable or otherwise, which improvements, enhancements and modifications, patentable or otherwise, do not refer to, relate to, incorporate or claim Supernus Intellectual Property relating to United Therapeutics Intellectual Property and United Therapeutics Technology that has been, is or will be (i) identified or discovered by United Therapeutics or Supernus, and their subcontractors or sublicensees, under a Development Plan or otherwise in accordance with this Agreement or with the use of United Therapeutics Intellectual Property or Supernus Intellectual Property, or (ii) identified or discovered by United Therapeutics or Supernus, and their subcontractors or sublicensees, with the use of United Therapeutics Intellectual Property or Supernus Intellectual Property and which relate solely to United Therapeutics Intellectual Property, or (iii) specific to the development and/or commercialization of Licensed Products and Licensed Combination Products within the Field;

"United Therapeutics Intellectual Property" means the Compound, United Therapeutics Patents, United Therapeutics Know How and United Therapeutics improvements;

"United Therapeutics Know How" means (i) all information, data and materials, including but not limited to reports, data, inventions, Clinical Development Data and all other data arising from the performance of *in silico* modeling of the Compound and all United Therapeutics Improvements, know how and trade secrets, patentable or otherwise, which are owned or controlled by United Therapeutics or its Affiliates and relate to the Compound or Licensed Products or Licensed Combination Products, and (ii) results, inventions and any other intellectual property rights, whether patentable or otherwise, created, developed, or arising from the performance of any Development Plan, but which know how, trade secrets, results, inventions and any other intellectual property rights, whether patentable or otherwise do not refer to, relate to, incorporate or claim Supernus Technology or Supernus Intellectual Property;

"United Therapeutics Patents" means all domestic and international Patents set out in Schedule 3; and

"Valid Patent Claim" means a claim of an issued Licensed Patent that has not (i) expired or been canceled, (ii) been declared invalid by an unreversed and unappealable decision of a court or other appropriate body of competent jurisdiction, (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, and/or (iv) been abandoned.

1.2 In this Agreement, unless the context requires otherwise:

(a) the headings are included for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular clause;

(b) references to "persons" includes individuals, bodies corporate (wherever incorporated), unincorporated associations, limited liability companies, partnerships and other entities;

(c) words denoting the singular shall include the plural and vice versa;

(d) words denoting one gender shall include each gender and all genders; and

(e) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted.

1.3 The Schedules comprise part of and shall be construed in accordance with the terms of this Agreement. In the event of any inconsistency between the Schedules and the terms of this Agreement, the terms of this Agreement shall prevail.

2. GRANT OF LICENSE

2.1 Subject to the terms of this Agreement, Supernus hereby grants United Therapeutics an exclusive license in the Field under the Supernus Intellectual Property to develop, make, have made, use, offer for sale, sell, have sold and import Licensed Products and Licensed Combination Products in the Territory for the Royalty Term.

2.2 The term "exclusive" for the purposes of clause 2.1 means to the exclusion of all others, including Supernus and its Affiliates, except to the extent necessary to enable Supernus to perform its obligations under this Agreement.

2.3 During the term of this Agreement, neither United Therapeutics nor its Affiliates shall have the right to use the Supernus Intellectual Property otherwise than as expressly set out and agreed to by the Parties in this Agreement, and without prejudice to the generality of the foregoing, United Therapeutics and its Affiliates shall not:

(a) use or exploit the Supernus Intellectual Property for any purpose other than in respect of the use, development, manufacture, sale or supply of Licensed Products and Licensed Combination Products in the Field; or

(b) utilize any part of the Supernus Intellectual Property in the making of any Patent application, except as otherwise agreed in writing by the Parties pursuant to the terms of this Agreement and shall be bound by, enforce and monitor its obligation set for in clause 25.16. herein

2.4 During the term of this Agreement, Supernus agrees that it shall not assert nor cause to be asserted against United Therapeutics, its Affiliates or its Sub-Licensees any existing information, data, materials, invention, Patent know-how, improvements or other Supernus Technology of any kind or nature not included in the Supernus Intellectual Property that is or might be infringed by reason of United Therapeutics', its Affiliates' or its Sub-Licensees' exercise of rights granted to United Therapeutics under clause 2.1.

2.5 During the term of this Agreement, United Therapeutics or its Affiliates, agree that it shall not assert nor cause to be asserted against Supernus, its Affiliates or its Sub-Licensees any claims relating to existing information, data, materials, invention, Patent know-how, improvements or other technology of any kind or nature that results from any development activity with parties other than Supernus or its Affiliates or its Sub-Licensees initiated by United Therapeutics that is infringed by Supernus, its Affiliates or its Sub-Licensees in connection with the development work done by Supernus, its Affiliates' or its Sub-Licensees on behalf of United Therapeutics resulting in this License Agreement to United Therapeutics.

2.6 United Therapeutics, at its expense, may register the exclusive license granted under this Agreement in any country, or community or association of countries within the Territory, where the use, sale or manufacture of a Licensed Product or Licensed Combination Product in such country would be covered by a Valid Patent Claim. Upon request of United Therapeutics, Supernus agrees after reviewing for accuracy to promptly execute any "short

form" licenses in a form submitted to it by United Therapeutics from time to time in order to affect the foregoing registration in such country.

3. SUB-LICENSING

3.1 United Therapeutics shall have the right to grant sub-licenses of the rights granted to United Therapeutics by Supernus under clause 2.1 to its Affiliates or any Third Party provided that:

(a) United Therapeutics shall, prior to execution of any Sub-Licensee Agreement or any sub-license agreement with an Affiliate, (i) ensure that all sub-license agreements and the obligations, covenants and agreements of sublicensee or Affiliate sublicense contained therein are consistent with and not contrary to the obligations, covenants and agreements of Licensee to Licensor in this Agreement, and (ii) provide Supernus with a copy of the agreement and give due consideration to any further comments offered in a timely manner in writing by Supernus;

(b) any Sub-Licensee Agreement or any sub-license agreement with an Affiliate shall be in writing and shall give no greater rights to Sub-Licensee or Third Party than rights held by Licensor; and

(c) the Sub-Licensee or Affiliate sub-licensee or Third Party shall not have the right to sub-license or assign any rights and any Sub-License Agreement or any sub-license agreement with an Affiliate shall terminate automatically on termination or expiration of this Agreement, subject to reasonable sell-off periods. In the event United Therapeutics licenses, sublicenses, transfers or in any way acts inconsistently with this Section 3, Supernus shall be entitled to immediate injunctive relief and incidental and consequential damages in addition to any other remedies available to Supernus.

3.2 In the event and to the extent that any such Sub-Licensee directly pays Supernus the Milestone Payments and royalty obligations under clauses 7 and 8, then in such event United Therapeutics shall not make such payments to Supernus.

4. COMMERCIALIZATION AND NEW DEVELOPMENT PLANS

4.1 Supernus has provided services under the Feasibility Agreement that United Therapeutics believes are sufficient for United Therapeutics to commercialize a Licensed Product or Licensed Combination Product for a first indication.

(a) United Therapeutics may request in writing that Supernus perform additional services with respect to United Therapeutics' development of Licensed Products or Licensed Combination Products under this Agreement, including (i) additional work to be performed by Supernus with respect to a first indication, and (ii) work to be performed by Supernus with respect to indications beyond the first indication, together referred to as ***"Additional Services"***.

(b) Upon receipt of a written request from United Therapeutics for Supernus to provide Additional Services, the Parties shall negotiate in good faith and enter into a Development Plan Agreement and with respect to each such request for Additional Services execute a work order which is bound by said Development Plan Agreement (***"Work Order"***) that will set forth the Development Costs for each such Development Plan. The Development Costs shall be Supernus' actual costs calculated at $[**] plus [**]% on a mutually agreed invoicing schedule in connection with the activities carried out under each Development Plan and expansions thereof and billed accordingly. In addition, United Therapeutics shall reimburse Supernus for travel and other reasonable and customary out-of-pocket expenses incurred in the performance of a Development Plan as approved in advance in writing by United Therapeutics unless such expense satisfies previously agreed-upon written policies.

4.2 With respect to each such Development Plan Agreement or Work Order, Supernus shall:

(a) perform such Additional Services in connection with each such Development Plan, and ensure that such services are performed with reasonable care and skill; and

(b) ensure that personnel employed or engaged in the provision of services in connection with each such Development Plan are competent and have appropriate qualifications, training and experience.

4.3 United Therapeutics shall at its own cost provide Supernus with adequate supplies of the Compound in accordance with each such Development Plan. In the event that United Therapeutics fails to deliver or is late in delivering the Compound or any other active ingredient, the timetable for such Development Plan will be automatically extended accordingly.

4.4 If requested by United Therapeutics in writing, the Parties will negotiate the terms of a supply agreement with Supernus responsible for the manufacture and supply of Licensed Products or Licensed Combination Products to United Therapeutics for use in pre-clinical and clinical studies, in accordance with each such Development Plan. Under such a supply agreement, Supernus shall manufacture Licensed Products and Licensed Combination Products:

(a) in accordance with the Specifications; and

(b) in compliance with cGMP, where applicable.

4.5 In the event that United Therapeutics wishes to amend or request additional services under a Development Plan, the Parties shall discuss the scope of any change in services under such Development Plan and the additional costs (if any). If mutually acceptable, the Parties shall, by written agreement, amend such Development Plan to incorporate the amended or additional services.

4.6 On reasonable written notice and no more than twice annually, Supernus shall give United Therapeutics or its preapproved nominee access to its offices and laboratories during normal

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business hours to review and discuss the progress of a Development Plan, approval of such nominee not to be unreasonably withheld or delayed. The Parties hereby acknowledge that since Supernus is in the partner-based drug delivery business, the Parties will be required to take certain reasonable precautions during facility visits, tours and audits to preserve the confidential nature of partner programs that may be in progress in the same facility at the appointed time.

4.7 The Parties shall establish a Development Team for each Development Plan consisting of not less than a representative from each Party who shall be the primary point of contact for all relevant aspects of the development and commercialization of Licensed Products and Licensed Combination Products.

4.8 The purpose of the Development Team is to provide a forum for the Parties to share information and knowledge in relation to the development, regulatory filing and commercialization of Licensed Products and Licensed Combination Products including, but not limited to, monitoring progress of each Development Plan, clinical studies, clinical trial programs and discussing relevant regulatory, technical, quality assurance or safety issues in relation to Licensed Products and Licensed Combination Products. The Development Team shall meet or hold telephone conferences as often as the Parties may reasonably determine.

4.9 The Development Plan Agreement shall set forth that Supernus shall:

(a) from time to time during the course of each Development Plan and at United Therapeutics' expense, provide United Therapeutics with written updates on a mutually acceptable schedule detailing the work being performed, and will provide such other information or data reasonably requested by United Therapeutics; and

(b) at the conclusion of each Development Plan, provide United Therapeutics with a written summary of the work performed in connection with each such Development Plan and the data generated.

4.10 After completion of any Development Plan and for as long as each such Licensed Product or Licensed Combination Product is manufactured or sold by United Therapeutics, its subcontractors, sublicensees, or assignees, United Therapeutics shall inform Supernus of any Improvements or proposed changes to such Licensed Product or Licensed Combination Product formulation, manufacturing process or United Therapeutics Know-How and shall consult with Supernus concerning the impact of any such Improvements or proposed changes.

4.11 United Therapeutics shall have complete control in its sole discretion over all aspects of the development and commercialization of Licensed Products or Licensed Combination Products under this Agreement, including without limitation to the development, use, manufacture and sale of Licensed Products or Licensed Combination Products in accordance with the Specifications. Pursuant to this clause, United Therapeutics will use commercially reasonable efforts to enforce confidentiality and limitations of use on its subcontractors, sublicensees and assignees as pertain to Supernus Intellectual Property and the Licensed Patents.

4.12 United Therapeutics shall, at its own cost, retain sole responsibility for the preparation, filing, prosecution and maintenance of all filings and applications for Product Approvals relating to Licensed Products or Licensed Combination Products, and United Therapeutics shall solely in its direction manage all applications, requests for authorization, submissions of information and data and for all interactions with the FDA or applicable governing health authority for the purpose of attempting to obtain registration of Licensed Products and Licensed Combination Products within the Territory. United Therapeutics shall solely and exclusively own all regulatory applications, approvals, Clinical Development Data and Licensed Product and Licensed Combination Products registrations obtained by United Therapeutics or its Affiliates with respect to Licensed Products and Licensed Combination Products, including retaining control and ownership of each Drug Master File related to Licensed Products and Licensed Combination Products.

4.13 Supernus shall, at the request and reasonable expense of United Therapeutics, provide United Therapeutics with reasonable assistance in any IND, NDA or other regulatory filings and meetings worldwide relating to Compound or Licensed Products or Licensed Combination Products. United Therapeutics shall have the right to reference Non-Clinical Development Data, Supernus Technology and Supernus Intellectual Property to the extent necessary to support its worldwide regulatory filings and compliance program as may be pre-approved by Supernus, such approval not to be unreasonably withheld or delayed.

5. NON-CLINICAL AND CLINICAL DEVELOPMENT DATA

5.1 As soon as practicable after the Effective Date, Supernus shall provide United Therapeutics in a timely manner with:

(a) copies of all Non-Clinical Development Data and information generated in connection with any Development Plans, including without limitation all related Supernus Intellectual Property, that is necessary for United Therapeutics to develop and commercialize Licensed Products and Licensed Combination Products under this Agreement, including without limitation the development, use, manufacture and sale of Licensed Products and Licensed Combination Products;

(b) any other information or data, that in Supernus' reasonable view is generally useful for United Therapeutics to develop and commercialize Licensed Products and Licensed Combination Products under this Agreement, including without limitation the development, use, manufacture and sale of Licensed Products and Licensed Combination Products; and

(c) provide United Therapeutics at its expense as shall be mutually pre-agreed upon in writing, at its request with reasonable assistance and consultation regarding the Supernus Technology and Supernus Intellectual Property, as they relate to Licensed Products and Licensed Combination Products.

5.2 After the Effective Date and from time to time during the term of this Agreement United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, supply any Clinical Development Data to Supernus, reasonably necessary for use in:

(a) fulfilling Supernus' obligations under this Agreement or any Development Plan; or

(b) preparing, filing, prosecuting or defending any Development Patents.

5.3 During the term of this Agreement, neither Supernus nor its Affiliates shall have the right to use the United Therapeutics Intellectual Property, Licensed Products and Licensed Combination Products otherwise than as expressly set out in this Agreement, and without prejudice to the generality of the foregoing, Supernus and its Affiliates shall not:

(a) use, study, experiment with or otherwise exploit the United Therapeutics Intellectual Property, Licensed Products and Licensed Combination Products; and

(b) utilize any part of the United Therapeutics Intellectual Property, Licensed Products and Licensed Combination Products (but excluding Supernus' Intellectual Property) in the making of any Patent application, except as otherwise agreed in writing by the Parties pursuant to the terms of this Agreement.

6. PAYMENT TERMS

6.1 Payments of Development Costs under this Agreement shall be made by United Therapeutics to Supernus within 30 days after United Therapeutics' receipt of Supernus' invoice. In the event that United Therapeutics disputes any Development Cost, it shall pay the undisputed amount of Supernus' invoice as provided above, and shall, within 15 Business Days of receipt of Supernus' invoice, provide written notice to Supernus identifying the disputed charge and providing a detailed explanation of the nature of its position with respect to disputed amount. If a notice of disagreement shall be duly delivered, Supernus and United Therapeutics shall, during the 30 days following such delivery, use their best efforts to reach agreement on the disputed charges or amounts. If during such period, Supernus and United Therapeutics are unable to reach such agreement, either Supernus or United Therapeutics by notice to the other party may initiate the process whereby they shall promptly jointly retain a nationally recognized accounting firm (the **"Accounting Referee"**) and cause it to promptly review this Agreement and the disputed charges or amounts and to resolve the disputed charges or amounts. The Accounting Referee shall deliver to Supernus, as promptly as practicable but no later than 45 days, a report setting forth its calculation of the disputed charges or amounts. Such report shall be final and binding upon Supernus and United Therapeutics and any amount due to be paid or reimbursed, as the case may be, shall promptly be paid or reimbursed by the appropriate party. The cost of such review and report shall be borne by Supernus if the Accountant Referee finds in United Therapeutics favor and Supernus is required to reimburse United Therapeutics, or shall be born by United Therapeutics, if the Accountant Referee finds in Supernus' favor and United Therapeutics owes or has paid Supernus the disputed charges.

6.2 Unless otherwise agreed between the Parties, all sums due under this Agreement to Supernus shall be paid in United States dollars. Net Sales shall be determined in accordance with GAAP in the currency in which each Licensed Product or Licensed Combination Product was sold and shall be converted into United States dollars using the average buying rate as published in the Wall Street Journal for the [**] for which such payment is being determined.

6.3 Other than as otherwise provided herein, all sums due under this Agreement shall be paid without deduction, set-off or counterclaim and shall be made in full without deduction of income, value added or other taxes, charges or duties that may be imposed, except (i) insofar as United Therapeutics is required to withhold or deduct the same to comply with Laws, and (ii) to the extent that the determination of Net Sales incorporates such deductions. In the event that United Therapeutics is required to make any such deduction, it shall promptly provide Supernus with a certificate or other documentary evidence sufficient to enable Supernus to support a claim for a tax credit in respect of any amount so withheld.

6.4 If Laws require withholding of income taxes or other taxes imposed upon any payments by United Therapeutics to Supernus under this Agreement, Supernus shall provide United Therapeutics with applicable forms or documentation required by any applicable taxation Laws, treaties or agreements to such withholding or as necessary to claim a benefit due to Supernus thereunder (including, but not limited to Form W-8BEN or any successor forms) and United Therapeutics shall make such withholding payments as required and subtract such withholding payments from the payments due Supernus as set forth in this Agreement. United Therapeutics will use commercially reasonable efforts consistent with its usual business practices and cooperate with Supernus to ensure that any withholding taxes imposed are reduced as far as possible under the provisions of the current or any future applicable taxation treaties or agreements between foreign countries

6.5 Interest shall be payable by United Therapeutics on any amounts payable to Supernus under this Agreement which are not paid within 30 days of the due date for payment. All interest shall accrue and be calculated on a daily basis (both before and after any judgment) at the rate of [**] as published in the Wall Street Journal on that due date, for the period from the due date for payment until the date of actual payment.

6.6 Notwithstanding any other provision of this Agreement, if at any time legal restrictions prevent the prompt remittance of part or all of the payments required hereunder in any country, payment shall be made through such lawful means or methods as United Therapeutics may determine. When in any country the Laws prohibit both the transmittal and deposit of royalties on sales in such a country, royalty payments shall be suspended for as long as such prohibition is in effect, and shall be paid within thirty (30) days after such prohibition ceases to be in effect all royalties that United Therapeutics would have been obligated to transmit or deposit, but for the prohibition, shall be deposited or transmitted, as the case may be, to the extent allowable, less any transactional costs. United Therapeutics shall use reasonable commercial efforts to resolve with any country any prohibitions or suspensions of royalty payments. If the royalty rate specified in this Agreement should exceed the permissible rate established in any country, the royalty rate for sales in such

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country shall be adjusted to the highest legally permissible or government approved rate.

7. MILESTONE PAYMENTS

7.1 Milestone Payments for the First Indication in the Field and Territory. Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall pay Supernus, or an Affiliate of Supernus designated in writing, the following Milestone Payments as pertaining to the development of Licensed Products for a first indication, contingent upon the occurrence of the corresponding specified contingent Milestone Event detailed below. For the avoidance of doubt, each Milestone Payment shall be made no more than once with respect to the achievement of such Milestone Event, but shall be payable the first time such Milestone Event is achieved:

(a) $[**] within 30 days of results of the [**] human pilot pharmacokinetic study and United Therapeutics' decision to continue development;

(b) $[**] within 30 days of release of the [**] batch of pivotal GMP supplies;

(c) $[**] upon the earlier of (i) validation of technology transfer to commercial manufacturing site, or (ii) April 1, 2007. Validation of Technology transfer to Commercial Site shall mean the successful manufacture of the [**] of the [**] product strengths that are suitable for use in the clinic;

(d) $[**] within 30 days of completion of the [**] pivotal efficacy study and United Therapeutics' decision to pursue filing for Product Approval; and

(e) $[**] within 30 days of the [**] Product Launch for the first indication.

7.2 Milestone Payments for the Second Indication in the Field and Territory. Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall pay Supernus, or an Affiliate of Supernus designated in writing, the following Milestone Payments as pertaining to the development of Licensed Products or Licensed Combination Products for a second indication, contingent upon the occurrence of the corresponding specified contingent Milestone Event detailed below. For the avoidance of doubt, each Milestone Payment shall be made no more than once with respect to the achievement of such Milestone Event, but shall be payable the first time such Milestone Event is achieved:

(a) $[**] within 30 days of release of the [**] batch of pivotal GMP supplies in accordance with, or as a result of, a Development Plan for the second indication, if any;

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(b) $[**] at the earlier of: (i) initiation of the [**] pivotal efficacy study for the second indication using any of the strengths developed for the first indication, or (ii) the successful manufacture of the [**] of the new product strength for the second indication that are suitable for use in the clinic;

(c) $[**] within 30 days of completion of the [**] pivotal efficacy study for the second indication and United Therapeutics' decision to pursue regulatory filing for Product Approval; and

(d) $[**] within 30 days of the [**] Product Launch for the second indication.

7.3 Milestone Payments for Each Combination Product in the Field and Territory. Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall pay Supernus, or an Affiliate of Supernus designated in writing, the following Milestone Payments as pertaining to the development of each Licensed Combination Product, contingent upon the occurrence of the corresponding specified contingent Milestone Event detailed below. For the avoidance of doubt, each Milestone Payment shall be made no more than once for each Licensed Combination Product with respect to the achievement of such Milestone Event, but shall be payable the first time such Milestone Event is achieved:

(a) $[**] within 30 days of results of the [**] human pilot pharmacokinetic study and a decision to continue development for each Licensed Combination Product;

(b) $[**] within 30 days of release of the [**] of pivotal GMP supplies for each Licensed Combination Product in accordance with, or as a result of, a Development Plan, if any;

(c) $[**] within 30 days of validation of technology transfer to commercial manufacturing site to include the successful manufacture of the [**] of the first product strength for each Licensed Combination Product that are suitable for use in the clinic;

(d) $[**] within 30 days of both completion of the primary registration study using product manufactured at the commercial site for each Licensed Combination Product and United Therapeutics' decision to pursue registration filing for Licensed Combination Product approval; and

(e) $[**] within 30 days of the Product Launch for each Licensed Combination Product, or

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(f) as an alternative to Milestone Payments outlined in Articles 7.3.a through 7.3.e, a one-time payment of $[**] within sixty(60) days of signing of this Agreement to expand the Field from a single Compound to all Licensed Combination Products.

7.4 If any of the Milestone Events outlined for the Licensed Products or Licensed Combination Products are not met or not pursued by United Therapeutics (***"Missed Event"***) resulting in a non-payment of the Milestone amount(s) to Supernus, but United Therapeutics chooses to proceed with the development of the Licensed Products or Licensed Combination Products notwithstanding, the Milestone Payments, not previously paid to Supernus shall be paid at the moment that the next Milestone Event is pursued by United Therapeutics.

7.5 United Therapeutics shall notify Supernus immediately upon achievement of each Milestone Event and the corresponding Milestone Payment will be paid within (30) Business Days of United Therapeutics' receipt of an invoice from Supernus.

8. ROYALTIES

8.1 Subject to the terms and conditions contained in this Agreement, and in consideration of the rights granted by Supernus hereunder, United Therapeutics shall for the Royalty Term, pay each Quarter to Supernus, or an Affiliate of Supernus designated in writing, royalties based on Net Sales during the Royalty Term as set out in the following table:

Territory/Type of Product	Indication	Royalty rate as a percentage of Net Sales
Worldwide	First	[**]%
Worldwide	Second	[**]%
Worldwide	Third and beyond	[**]%
Each Licensed Combination Product, if existing Third Party royalty obligations	All	[**]%
Each Licensed Combination Product, if no existing Third Party royalty obligations	All	[**]%

8.2 Upon Product Approval of a Licensed Product for the second indication the royalty rate for the first indication will be reduced to [**]% and the royalty rate for the Second Indication will be [**]%. Upon Product Approval of a Licensed Product for the Third Indication, the royalty rate for the Second Indication will be reduced to [**]% and the royalty rate for the Third Indication will be [**]%.

8.3 In the event that [**] study for the second indication has not been initiated using Licensed Products or Licensed Combination Products at the time of first approval for a Licensed Product the royalty rate for the first indication will be increased to [**]%.

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8.4 No royalties shall be payable on Licensed Products or Licensed Combination Products distributed to Third Parties without the receipt of compensation solely as a sample for testing or evaluation purposes. Only one payment of royalties shall be due with respect to the same unit of a Licensed Product or Licensed Combination Product, and no multiple royalties shall be payable because any Licensed Product or Licensed Combination Product, or its manufacture, sale or use, is covered by more than one Valid Claim or is subject to both Supernus Know-How and a Valid Patent Claim. Following First Commercial Sale in any country, United Therapeutics shall have the right to distribute (without receipt of compensation and without payment of a royalty to Supernus) in any calendar year for compassionate purposes to indigent patients, an aggregate of up to [**] ([**]%) of the total number of Licensed Products or Licensed Combination Products sold in units (with the receipt of compensation) in such country in such calendar year by United Therapeutics, its Affiliates and Sub-Licensees.

8.5 If United Therapeutics, its Affiliates or its Sub-Licensees are required to pay royalties to any Third Party because the manufacture, use or sale of Licensed Products or Licensed Combination Products infringes any Patent or other intellectual property rights of such Third Party in any country in the Territory in accordance with clause 14 and where such infringement is not otherwise caused by United Therapeutics, its Affiliates, its Sub-Licensees, subcontractors, or its suppliers, and where such Patent or other intellectual property rights cover Supernus Intellectual Property used in such Licensed Products or Licensed Combination Products, then United Therapeutics, its Affiliates or its Sub-Licensees may deduct from royalties thereafter due to Supernus with respect to Net Sales of any Licensed Product up to the lower of: (i) [**] ([**]%) of the royalties or such other fees paid to acquire rights in such Patent or other intellectual property right, or (ii) [**] ([**]%) of the royalties due to Supernus with respect to Net Sales of any Licensed Product or Licensed Combination Products in a given quarter.

9. [DELIBERATELY OMITTED]

10. RECORDS AND REPORTS

10.1 During the term of this Agreement, and for a period of four years after its expiration or termination, United Therapeutics shall, and shall procure that its Affiliate and Sub-Licensees shall, keep at its normal place of business detailed, accurate and up to date records and books of account showing any regulatory filings made in relation to Licensed Products or Licensed Combination Products and price increases in each country in the Territory sufficient to ascertain the achievement, or progress towards achievement, of any Milestone Events.

10.2 Upon the written request of Supernus, and not more than once in each calendar year, United Therapeutics shall permit an independent certified public accounting firm of nationally recognized standing, selected by Supernus and reasonably acceptable to United Therapeutics, at Supernus' expense, to have access during normal business hours to such of the books of account and records of United Therapeutics as may be reasonably necessary to verify the accuracy of the royalty reports hereunder for any year ending not more than twenty-four (24)

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months (unless fraud has been determined by such certified public accounting firm of nationally recognized standing in writing) prior to the date of such request. The accounting firm shall disclose to Supernus only whether the records are correct or not and the specific details concerning any discrepancies. No other information shall be shared. The accounting firm shall be entitled to take copies or extracts from the records and books of account during any such review or audit.

10.3 Supernus shall be solely responsible for its costs in making such review and audit unless such accounting firm identifies a discrepancy in the amounts paid in any calendar year from those payable under this Agreement for that calendar year of greater than [**]%, in which event United Therapeutics shall pay the reasonable and direct fees and expenses charged by such accounting firm, and make good the deficit in any payments that are due to Supernus (including interest on the deficit at [**] as published in the Wall Street Journal on the due date on and from the date that the relevant payments became due).

10.4 All information disclosed by United Therapeutics, its Affiliates and its Sub-Licensees pursuant to this clause 10 shall be deemed Confidential Information, and Supernus shall cause its accounting firm and consultants to retain all such financial information in confidence.

11. LAUNCH AND MARKETING EFFORTS

11.1 United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, use reasonable commercial efforts to develop and commercialize Licensed Products and Licensed Combination Products. For the purpose of this clause, reasonable commercial efforts means commercial efforts consistent with normal business practices and effort used by United Therapeutics in connection with other United Therapeutics products of similar market size or importance which United Therapeutics intends to launch or has launched and sold in the Territory or any part of it, or in the absence of any such similar products, then such effort as is consistent with good industry practice.

11.2 United Therapeutics shall use reasonable efforts to meet and comply with any timelines which are mutually agreed by the Parties in writing for the delivery of sufficient quantity of Compound, other related material, and information requested by Supernus as may be required for development, regulatory filing, launch and commercialization of Licensed Products and Licensed Combination Products.

12. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

12.1 Nothing in this Agreement shall affect the ownership of any Party's intellectual property rights existing at the date of this Agreement or generated outside of a Development Plan which one Party agrees to make available to the other in the course of a Development Plan.

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12.2 Subject to clauses 12.1., 12.3 and 12.4, United Therapeutics shall retain and is the sole and exclusive owner of all existing and future right, title and interest in and to all Clinical Development Data, United Therapeutics Intellectual Property whether or not created, developed, or arising from the performance of any Development Plan hereunder and to the extent all such United Therapeutics Intellectual Property has not previously been assigned to United Therapeutics, Supernus hereby completely and irrevocably assigns and transfers to United Therapeutics any and all right, title and interest that it may have in and to such United Therapeutics Intellectual Property. At the request and expense of United Therapeutics, Supernus shall promptly execute such documents and do such acts as may be reasonably necessary to completely and exclusively vest such rights in United Therapeutics. In the event that Supernus has any rights in and to the work which cannot be assigned, and which is not Non-Clinical Development Data, Supernus' Intellectual Property, Supernus' Improvements or subject to clause 25.16, Supernus agrees to waive enforcement worldwide of such rights against United Therapeutics, its successors, distributors, licensees and assigns and, if necessary, hereby grants a fully-paid up irrevocable worldwide exclusive license to United Therapeutics with the right to sublicense and assign. Subject to clause 5.3, and other than as may be required for the purposes of this Agreement, Supernus shall not use United Therapeutics Intellectual Property without the prior written consent of United Therapeutics. Notwithstanding the provisions of this clause 12.2, Supernus may use the Clinical Development Data only for purposes of preparing, prosecuting or maintaining Patents.

12.3 Subject to clauses 12.1., 12.2 and 12.4, Supernus shall retain and is the sole and exclusive owner of all existing and future right, title and interest in and to all Non-Clinical Development Data, Supernus Intellectual Property, Supernus Technology, and Supernus Improvements whether or not created, developed, or arising from the performance of any Development Plan hereunder, which intellectual property belonging to Supernus includes, but is not limited to, Supernus Technology, including ProPhile^{SM}, ProScreen®, OptiScreen®, Microtrol®, Solutrol^{TM}, or EnSoTrol® technology platforms, but explicitly excludes the United Therapeutics Intellectual Property, and United Therapeutics hereby completely and irrevocably assigns and transfers to Supernus any and all right, title and interest that it may have in and to such Supernus Technology, Supernus Intellectual Property, and Supernus Improvements. At the request and expense of Supernus, United Therapeutics shall promptly execute such documents and do such acts as may be reasonably necessary to completely and exclusively vest such rights in Supernus. Subject to clause 5.3, and other than as may be required for the purposes of this Agreement, United Therapeutics shall not use Supernus Intellectual Property without the prior written consent of Supernus. Notwithstanding the provisions of this clause 12.3, United Therapeutics may use the Non-Clinical Development Data only for purposes of preparing, prosecuting or maintaining Patents that are not in conflict with Supernus' rights and obligations under this Agreement.

12.4 Each Party agrees (i) to disclose promptly to the other any and all Patent applications prepared or filed by that Party which applications are made directly or indirectly as a result of the collaboration under this Agreement or further collaboration between the Parties on the subject matter of this Agreement, and (ii) promptly upon request by the other Party to sign such documents and do such things, or procure the signing of such documents or the doing of

such things, as is reasonably necessary to vest such relevant intellectual property rights in the other Party.

12.5 Subject to the terms of this Agreement, Supernus expressly acknowledges and agrees that it shall have no right, title or any other interest in the United Therapeutics Intellectual Property.

12.6 Subject to the terms of this Agreement, United Therapeutics expressly acknowledges and agrees that it shall have no right, title or any other interest in the Supernus Intellectual Property.

12.7 United Therapeutics shall only use the Supernus Intellectual Property and Non-Clinical Development data or any other Confidential Information provided by Supernus from the Agreement solely in connection with the development and commercialization of Licensed Products and Licensed Combination Products including, but not limited to, negotiating, implementing and operating Third Party development, use, manufacturing and other partnering agreements and relationships with respect to Licensed Products and Licensed Combination Products in accordance with the Specifications, provided that the relevant Third Party enters into a confidentiality agreement with United Therapeutics on terms no less onerous than those contained in clause 17 prior to such use and further agrees to be subject to the restrictions set forth herein in clause 25.16 herein.

12.8 United Therapeutics hereby grants Supernus a royalty-free, non-exclusive license to use United Therapeutics Intellectual Property only in relation to:

(a) the performance of any services in connection with any Development Plan or the further development of a Licensed Product or Licensed Combination Product under this Agreement; or

(b) the filing, prosecuting, maintaining or commercializing any Patent arising from and relating to the Supernus Intellectual Property and Development Patents.

12.9 The express provisions of this Agreement provide for all licenses granted by and to the Parties hereunder and no additional transfer, license or other grant of rights concerning a Party's intellectual property shall be implied from either such express provisions of this Agreement or from the performance under any Development Plan.

12.10 Each Party shall promptly disclose to the other Party, in such detail as is reasonably required, any Improvements developed in accordance with the terms of this Agreement.

12.11 Nothing in this Agreement gives either Party any right, title or interest in any trademarks owned or used by the other Party.

13. **PATENTS**

13.1 Subject to clause 13.3, Supernus shall at its sole option and expense prepare, file, prosecute and maintain the Licensed Patents that relate to the Licensed Products or Licensed Combination Products in the [**] and at the expense of United Therapeutics in any other countries requested in writing. At Supernus' option, all filings in additional countries will be prepared, filed, prosecuted and maintained by United Therapeutics on behalf of Supernus at United Therapeutics' sole cost and expense.

13.2 Supernus shall, at its sole option at its own cost, file, prosecute and maintain any Development Patents in the [**] and at United Therapeutics' expense any other countries requested by United Therapeutics in writing. At Supernus' option, all filings of Development Patent applications in additional countries will be prepared, filed, prosecuted and maintained by United Therapeutics on behalf of Supernus at United Therapeutics' sole cost and expense.

13.3 In the event that Supernus elects to abandon any pending application or granted Patent for both Licensed Patents and Development Patents, it shall provide adequate written notice to United Therapeutics and give United Therapeutics the opportunity to file or maintain such application or Patent on behalf of Supernus, the cost and expense of which shall be deducted from payments to be made by United Therapeutics to Supernus under this Agreement. Without limiting the generality of the foregoing, in no event shall Supernus provide United Therapeutics with written notice of abandonment of any Licensed Patent or Development Patent less than 60 days prior to its date of lapse.

13.4 Each Party shall keep the other Party reasonably informed of all material matters in connection with the filing, prosecution and maintenance of Patents with respect to both Licensed Patents and Development Patents, including providing United Therapeutics with copies of substantive communications submitted to or received from patent offices throughout the Territory.

13.5 Each Party for a reasonable period of time shall make available to the other Party or its authorized attorneys, agents, consultants or representatives, if available, such information necessary or appropriate but subject to any restraints of confidentiality or contract to enable the appropriate Party to prepare, file, prosecute and maintain Patents with respect to both Licensed Patents and Development Patents as set forth in this clause 13 Where appropriate, each Party shall sign or cause to have signed all documents relating to said Patents at no charge to the other.

14. INFRINGEMENT OF THIRD PARTY RIGHTS

14.1 If either Party becomes aware that the exercise of such Party's rights and obligations under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify the other Party in writing and provide the other Party with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

14.2 The Parties shall, after receipt of notice referred to in clause 14.1, discuss the infringement and, to the extent necessary, attempt to agree on a course of action. Such course of action may include:

(a) obtaining an appropriate license from the Third Party; or

(b) contesting any claim or proceedings brought by the Third Party.

14.3 If within 28 days of the date of the notice referred to in clause 14.1, the Parties have not agreed upon an appropriate course of action then:

(a) Supernus may decide, at its own cost and expense, upon the course of action with respect to any claim which relates exclusively or predominantly to any of the Supernus Technology (***"Supernus Action"***); and

(b) United Therapeutics may decide, at its own cost and expense, upon the course of action with respect to any claim which relates exclusively or predominantly to, such Licensed Product or Licensed Combination Product (so long as it does not fall within the definition of a Supernus Action), Clinical Development Data or other United Therapeutics Intellectual Property (***"United Therapeutics Action"***).

14.4 For the avoidance of doubt, United Therapeutics may negotiate a license for the use of Third Party intellectual property rights, in connection with any United Therapeutics Action, and Supernus may negotiate a license for the use of Third Party intellectual property rights, in connection with any Supernus Action. In such event, the Parties shall keep each other fully informed of any license negotiations.

14.5 If within 180 days from receiving notice from a Third Party relating to a Supernus Action, Supernus fails or refuses to respond to or defend any such claim or negotiate a license from such Third Party, United Therapeutics may defend such claim or (subject to the prior written consent of Supernus, not to be unreasonably withheld or delayed) negotiate a license with such Third Party. If within 180 days from receiving notice from a Third Party relating to a United Therapeutics Action, United Therapeutics fails or refuses to respond to or defend any such claim or negotiate a license from such Third Party, Supernus may defend such claim or (subject to the prior written consent of United Therapeutics, not to be unreasonably withheld or delayed) negotiate a license with such Third Party.

14.6 If at any time a Third Party files a lawsuit against United Therapeutics, its Affiliates, Sub-Licensees or distributors asserting that the alleged infringing process, method or composition is claimed under the Supernus Intellectual Property, Supernus shall have the right, in its sole discretion, to control the defense of such suit at its own expense, in which event United Therapeutics shall have the right to be represented by advisory counsel of its own selection, at its own expense, and shall cooperate fully in the defense of such suit and furnish to Supernus all evidence and assistance in its control. If Supernus does not elect within thirty (30) days after receiving written notice of such Third Party lawsuit to so control the defense

of such suit, United Therapeutics may undertake such control at its own expense, and Supernus shall then have the right to be represented by advisory counsel of its own selection, at its own expense, and Supernus shall cooperate fully in the defense of such suit and furnish to United Therapeutics all evidence and assistance in United Therapeutics' control. The Party controlling the suit may not settle the suit or otherwise consent to an adverse judgment in such suit that diminishes the rights or interests of the non-controlling Party without the express written consent of the non-controlling Party. Any judgments, settlements or damages payable with respect to legal proceedings covered by this clause 14.6 shall be paid by the Party which controls the litigation, subject to the other Party's indemnification obligations under clause 16, if any.

15. INFRINGEMENT OF LICENSED PATENTS BY THIRD PARTY

15.1 If either Party becomes aware of any Third Party infringement or suspected infringement of any Supernus Intellectual Property used in connection with a Licensed Product or Licensed Combination Product, it will promptly notify the other Party in writing and provide it with such details of the Third Party infringement as are known to it.

15.2 The Parties shall, after receipt of notice referred to in clause 15.1, discuss the infringement and, to the extent necessary, attempt to agree on the necessary steps to be taken to prevent or terminate such Third Party infringement, the proportions that any costs of proceedings or action shall be shared and the proportions that any damages or other sums awarded in their favor (or against them) shall be divided.

15.3 If within 90 days of the date of the notice referred to in clause 15.1, the Parties have not agreed upon an appropriate course of action then the following shall apply:

(a) if the Licensed Patent or Development Patent contains one or more claims specifically directed to Compound or a Licensed Product or a Licensed Combination Product (including but not limited to compositions containing the Compound), then United Therapeutics shall have the right, but not the obligation, to commence, at its sole expense, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. United Therapeutics shall provide Supernus with prior written notice of the initiation of any such action or proceedings and shall keep Supernus informed of any significant developments. In the event that United Therapeutics has not commenced any action or proceedings to terminate or prevent such infringement within 120 days after having become aware of such potential infringement, then Supernus may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement; and

(b) if the Licensed Patent or Development Patent does not contain one or more claims specifically directed to formulations of Compound or a Licensed Product or a Licensed Combination Product (including but not limited to compositions containing the Compound), then Supernus shall have the right, but not the obligation, to commence, at Supernus' expense, any action or proceedings, negotiate a license or

take such other steps as are necessary to terminate or prevent the Third Party infringement. Supernus shall provide United Therapeutics with prior written notice of the initiation of any such action or proceedings and shall keep United Therapeutics informed of any significant developments. In the event that Supernus has not commenced any action or proceedings to terminate or prevent such infringement within 120 days after having become aware of such potential infringement, then United Therapeutics may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement.

15.4 The Party controlling the action or proceedings shall not settle the action or proceedings or otherwise consent to an adverse judgment that diminishes the rights or interests of the other Party without the prior written consent of that Party, such consent not to be unreasonably withheld or delayed.

15.5 Each Party shall use reasonable efforts to cooperate with the other Party's requests and, to the extent possible, shall keep the other Party reasonably informed of all material matters in connection with the commencement and prosecution of any such action or proceeding.

15.6 Each Party shall make available to the other Party or its authorized attorneys, agents, consultants or representatives, if available, such information necessary or appropriate to enable the appropriate Party to commence and prosecute any such action or proceeding for a period of time reasonably sufficient for such Party to obtain the assistance it needs from such personnel.

15.7 Any award of damages or other amount received by either Party as a result of a successful action, proceedings or settlement negotiations under clauses 14 or 15 shall be divided between the Parties as follows:

(a) the Party that initiated, prosecuted or maintained the defense of the action or proceedings shall recoup all of its costs and expenses (including reasonable attorneys' and expert fees) incurred in connection with the action or proceedings;

(b) after deducting the costs and expenses identified in clause 15.7(a), the other Party shall, to the extent possible, recover its costs and expenses (including reasonable attorneys' and expert fees) incurred in connection with the action or proceedings;

(c) if Supernus initiated, prosecuted or maintained the defense of, the action or proceedings, any amount remaining after the deduction of both Parties' costs and expenses outlined in clauses 15.7 (a) and (b) shall be retained by Supernus; and

(d) if United Therapeutics initiated, prosecuted or maintained the defense of the action or proceedings, any amount remaining after the deduction of both Parties' the costs and expenses outlined in clauses 15.7 (a) and (b) shall be retained by United Therapeutics, except that Supernus shall receive a portion equivalent to the royalties it would have received under this Agreement if such remaining recovery amount were deemed to be Net Sales.

16. INDEMNIFICATION AND LIABILITY

16.1 Subject to Supernus' compliance with clause 16.3, United Therapeutics will indemnify and hold Supernus, and its Affiliates and its and their directors, officers, employees and agents (each an *"**Supernus Party**"*) harmless from and against any Third Party costs, claims, damages and expenses (including reasonable attorneys' fees, expenses to defend and amounts paid in settlement of any action paid in accordance with clause 16.3. herein) suffered or incurred by any Supernus Party, and arising out of any development activity initiated by United Therapeutics with Third Parties, or in connection with the clinical trials to be conducted by or on behalf of United Therapeutics under this Agreement or under any Development Plan, or in connection with any aspect of bringing Licensed Products or Licensed Combination Products to market including but not limited to any development, scale-up, transfer, manufacturing, marketing, sale and distribution of Licensed Products or Licensed Combination Products, except to the extent that such costs, claims, damages or expenses arise from the gross negligence, breach of the terms of this Agreement or willful misconduct by a Supernus Party.

16.2 Subject to United Therapeutics' compliance with clause 16.3, Supernus will indemnify and hold United Therapeutics, its Affiliates, Sub-Licensees and its and their directors, officers, employees and agents (each a *"**United Therapeutics Party**"*) harmless from and against any Third Party costs, claims, damages and expenses (including reasonable attorneys' fees, expenses to defend and amounts paid in settlement of any action paid in accordance with clause 16.3. herein) suffered or incurred by any United Therapeutics Party, and arising out of or in connection with the activities conducted by Supernus or by Third Parties under its control in its facility in connection with any Development Plan under this Agreement, except to the extent that such costs, claims, damages or expenses arise from the gross negligence, breach of the terms of this Agreement or willful misconduct by a United Therapeutics Party.

16.3 In all cases where a Party seeks indemnification by the other under this clause 16, the Party seeking indemnification shall promptly notify the indemnifying Party in writing, in the manner set forth in clause 23, of receipt of any claim or lawsuit covered by such indemnification obligation and shall cooperate fully with the indemnifying Party in connection with the investigation and defense of such claim or lawsuit. The indemnifying Party shall have the right to control the defense, with counsel of its choice, provided that the non-indemnifying Party shall have the right to be represented by advisory counsel at its own expense. The indemnifying Party shall not settle or dispose of the matter in any manner, which could negatively and materially affect the rights or liability of the non-indemnifying Party without the non-indemnifying Party's prior written consent, which shall not be unreasonably withheld or delayed.

16.4 EXCEPT AS MAY BE OTHERWISE SET FORTH HEREIN, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, COLLATERAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS OF THE OTHER PARTY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATIONS SET FORTH

HEREIN, EXCEPT FOR THOSE DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MALFEASANCE.

17. CONFIDENTIALITY AND PUBLICATIONS

17.1 The Parties, their Affiliates and their respective employees, directors, officers, consultants and contractors shall keep and maintain as confidential and shall not publish or otherwise disclose any Confidential Information supplied by the other Party during the term of this Agreement. The confidentiality and non-disclosure obligations contained in this Agreement shall not apply to the extent that a Party can demonstrate by competent written evidence that such Confidential Information is:

(a) information that at the time of disclosure by one Party to the other is in the public domain or otherwise generally available to the public;

(b) information which after disclosure by one Party to the other becomes part of the public domain or otherwise becomes generally available to the public, other than by breach of this Agreement by the receiving Party;

(c) information which the receiving Party can establish was already in its possession at the time of receipt or was independently developed by the receiving Party; or

(d) information received from a Third Party who was lawfully entitled to disclose such information and

the disclosure of which will not violate clause 25.16 herein.

17.2 Notwithstanding the limitations in this clause 17.1, but so long as it does not violate the provisions of clause 25.16, each Party may disclose Confidential Information to the extent such disclosure is reasonably necessary in the following instances, but solely for the limited purpose of such necessity:

(a) prosecuting or defending litigation;

(b) complying with applicable governmental Laws, including without limitation, NASDAQ and SEC disclosure requirements, or court orders;

(c) to file Patent applications or prosecute such applications to grant or to gain approval to conduct clinical trials in relation to Licensed Products or Licensed Combination Products;

(c) disclosure to employees, consultants or agents, solely in furtherance of this Agreement, provided that such individuals have agreed in writing to be bound by similar terms of confidentiality and non-use at least equivalent in scope to those set forth in clause 17.1; or

(d) general information of a non-material nature regarding the general status of the development and commercialization of Licensed Products or Licensed Combination Products.

Notwithstanding the foregoing, in the event that a Party is required to make a disclosure of the Confidential Information of the other Party pursuant to clauses 17.2(a) and (b), it will give prompt advance written notice to the other Party of such disclosure and shall use its best efforts to assist the other Party in securing confidential treatment of such information.

17.3 The Parties shall consult with each other, in advance, with regard to the terms of all proposed press releases, public announcements and other public statements relating to any Confidential Information or the transactions contemplated under this Agreement. The obligations contained in this clause 17 shall continue for the duration of the Agreement and for a period of [**] after the termination or expiration of this Agreement.

17.4 From time to time it may be to the mutual interest of the Parties to publish articles relating to data generated or analyzed as a part of this Agreement. Neither Party shall submit for written or oral publication or presentation any manuscript, abstract, writing, printed material or the like which includes data or any other information generated and provided solely by the other Party without first obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided however, that (i) valid commercial reasons may exist for withholding such consent, (ii) such prior consent shall not be required for publications and presentations that do not disclose details of the Supernus Technology (e.g., clinical articles), and (iii) if a party does not object within ten days of its receipt of a proposed publication or presentation from the other party, then it will be deemed to have consented to such publication or presentation. Nothing contained herein shall be construed as precluding either Party from its own intellectual property, making, in its discretion, any disclosures of information of any type which relate to the safety, efficacy, toxicology, or pharmacokinetic characteristics of the Licensed Products and Licensed Combination Products to the extent that either Party may be required by law to make disclosures of such information.

17.5 The terms of this Agreement are deemed to be Confidential Information, subject to clause 17.1; provided however, each Party shall be free to disclose the terms of the Agreement to potential investors, financial institutions, licensors, licensees and consultants provided such disclosures are subject to no less restrictive terms of confidentiality than as are set forth in this Agreement.

18. COVENANTS, REPRESENTATIONS AND WARRANTIES

18.1 Covenants by Both Parties throughout the Term of this Agreement:

(a) Each Party covenants that it will use its reasonable best efforts to obtain and maintain in full force and effect all necessary licenses, permits and other authorizations required by Law to carry out its duties and obligations under this Agreement. Each Party shall cooperate with the other to provide such letters,

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documentation and other information on a timely basis as the other Party may reasonably require to fulfill its reporting and other obligations under Laws to applicable regulatory authorities. Except for such amounts as are expressly required to be paid by a Party to the other under this Agreement, each Party shall be solely responsible for any costs incurred by it to comply with its obligations under Laws. Each Party shall conduct its activities hereunder in an ethical and professional manner.

(b) Each Party hereby covenants that each of its employees and other Third Parties performing any work under the any Development Plan and otherwise in accordance with this Agreement shall have entered into a written invention assignment agreement requiring that each such Third Party assign to such Party all right, title and interest in and to any intellectual property conceived of and/or reduced to practice by such Third Party or its employees, consultants or agents in connection with any activities under any Development Plans and otherwise in accordance with this Agreement.

(c) Each Party hereby covenants that it has not and shall not knowingly misappropriate or otherwise misuse, nor shall it knowingly permit any of its employees, consultants or agents to misappropriate or otherwise misuse, any intellectual property of any Third Party in its conduct in accordance with any Development Plan and this Agreement.

(d) Each Party covenants that it shall cooperate with the other and provide such assistance and resources as the other Party may reasonably request in connection with performance of the obligations under this Agreement.

(e) Each Party covenants that it shall not, without the prior written consent of the other Party, acquire, directly or indirectly, any securities of the other Party or any right or options to acquire any such securities, or issue any public announcements naming the other Party without the prior written consent of such Party.

(f) Each Party covenants that it will immediately notify the other in writing if any debarment proceedings have commenced against a Party or any employees of consultants of a Party, or if an employee or consultant of a Party is debarred by the FDA.

18.2 By Supernus. Supernus represents and warrants to United Therapeutics as of the Effective Date that:

(a) It has the full right, power and authority to enter into this Agreement, perform this Agreement and to grant all of the rights, property and authorizations granted in this Agreement; that this Agreement has been duly executed and delivered by Supernus and is a legal, valid and binding obligation enforceable against Supernus in accordance with its terms; that, to the best of its knowledge, there are no agreements, commitments or obstacles, technical or legal, including intellectual

property rights of others, which could prevent it from carrying out all of its obligations hereunder; and that the execution, delivery and performance of this Agreement does not and will not violate any law, statute, local ordinance, state or federal regulation, court order, or administrative order ruling, its corporate charter or bylaws, nor any agreement by which it is bound

(b) It is the sole owner or exclusive licensee of the Supernus Intellectual Property in the Territory with the power and right to license or sublicense the Supernus Intellectual Property in accordance with this Agreement and, to the best of Supernus' knowledge as of the Effective Date, the use of the Supernus Intellectual Property under the terms and conditions contemplated by this Agreement will not infringe upon any Third Party's know-how, Patent or other intellectual property rights or constitute misuse of confidential information by United Therapeutics;

(c) To the best of its knowledge, there is no (i) action, suit, proceeding or investigation pending or threatened against Supernus that challenges the validity of this Agreement or the right of Supernus to enter into this Agreement, or to consummate the transactions contemplated hereby, or which might result, either individually or in the aggregate, in any material adverse change in the development of the Supernus Intellectual Property or commercial sales of a Licensed Product or Licensed Combination Product hereunder. The foregoing includes, without limitation, actions pending or threatened involving the prior employment of any of Supernus' employees, their use in connection with Supernus' business or any confidential information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers; (ii) any pending or threatened claims or litigation brought by a Third Party under any Third Party Patent, trade secret or other Third Party proprietary right in respect of Supernus' exploitation of the Supernus Intellectual Property; (iii) any basis upon which practice of the inventions described in the Licensed Patents or Supernus Intellectual Property would infringe on the rights of Third Parties; (iv) any licenses or other restrictions on the ability to develop, make, have made, use, import, market, promote, sell, have sold or otherwise practice the Supernus Intellectual Property; or (v) any scientific information, published or unpublished, relating to studies or experiments with the Supernus Intellectual Property, whether conducted by Supernus or by Third Parties, that would suggest development and commercialization of the Supernus Intellectual Property is not feasible;

(d) To the best of its knowledge, Supernus 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 that would have a material adverse effect on the license granted pursuant to clause 2.1;

(e) To the best of its knowledge, Supernus is not in violation of any applicable Laws or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties which violation would have a material adverse effect on the development and

commercialization of Licensed Products and Licensed Combination Products hereunder;

(f) To the best of its knowledge, Supernus nor any of its employees or consultants engaged in any Development Plan have been "debarred" by the United States Food and Drug Administration (the *"**FDA**"*), nor have any such debarment proceedings against it or any such employees or consultants been commenced.

(g) A complete list of (i) all Patents included in the Licensed Patents as of the Effective Date and (ii) all Patents owned by Third Parties and validly and exclusively licensed to Supernus, with the unrestricted right except as may be qualified herein to exclusively sublicense to United Therapeutics, is provided at Schedule 2 attached to this Agreement. Supernus owns or controls under valid licenses and has the right to license or sublicense, except as may be qualified herein all right, title and interest in and to any Third Party Patents listed on Schedule 2; and

(h) It has made available to United Therapeutics all material Supernus Know-How, Non-Clinical Development Data and Supernus Confidential Information in its possession or control that is required for the development and commercialization of the Supernus Intellectual Property as permitted in clause 2.1, including without limitation the development, use, manufacture and sale of Licensed Products.

18.3 By United Therapeutics. United Therapeutics represents and warrants to Supernus as of the Effective Date that:

(a) It has the full right, power and authority to enter into this Agreement, perform this Agreement and to grant all of the rights, property and authorizations granted in this Agreement; that this Agreement has been duly executed and delivered by United Therapeutics and is a legal, valid and binding obligation enforceable against United Therapeutics in accordance with its terms; that, to the best of its knowledge, there are no agreements, commitments or obstacles, technical or legal, including intellectual property rights of others, which could prevent it from carrying out all of its obligations hereunder; and that the execution, delivery and performance of this Agreement does not and will not violate any law, statute, local ordinance, state or federal regulation, court order, or administrative order ruling, its corporate charter or bylaws, nor any agreement by which it is bound;

(b) It has the power and right to commercialize Licensed Products and Licensed Combination Products in accordance with this Agreement and, to the best of United Therapeutics' knowledge as of the Effective Date, the use of the United Therapeutics Intellectual Property and Confidential Information under the terms and conditions contemplated by this Agreement will not infringe upon any Third Party's know-how, Patent or other intellectual property rights or constitute misuse of confidential information by either Party hereto;

(c) To the best of its knowledge, there is no (i) action, suit, proceeding or investigation pending or threatened against United Therapeutics that challenges the validity of this Agreement or the right of United Therapeutics to enter into this Agreement, or to consummate the transactions contemplated hereby, or which might result, either individually or in the aggregate, in any material adverse change in the development of a Licensed Product or Licensed Combination Product hereunder. The foregoing includes, without limitation, actions pending or threatened involving the prior employment of any of United Therapeutics' employees, their use in connection with United Therapeutics' business or any confidential information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers; or (ii) any pending or threatened claims or litigation brought by a Third Party under any Third Party Patent, trade secret or other Third Party proprietary right in respect of United Therapeutics exploitation of the United Therapeutics Intellectual Property;

(d) To the best of its knowledge, United Therapeutics 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 that would have a material adverse effect on the development and commercialization of Licensed Products and Licensed Combination Products hereunder; and

(e) To the best of its knowledge, United Therapeutics is not in violation of any applicable Laws or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties which violation would have a material adverse effect on the development and commercialization of Licensed Products and Licensed Combination Products hereunder;

(f) To the best of its knowledge, United Therapeutics' nor any of its employees or consultants engaged in any Development Plan have been "debarred" by the United States Food and Drug Administration (the *"**FDA**"*), nor have any such debarment proceedings against it or any such employees or consultants been commenced.

18.4 EXCEPT AS EXPRESSLY PROVIDED HEREIN EACH PARTY DISCLAIMS ALL WARRANTIES AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED. THE PARTIES EACH ACKNOWLEDGES AND AGREE THAT THE DEVELOPMENT ACTIVITIES HEREUNDER ARE EXPERIMENTAL IN NATURE AND THAT NEITHER PARTY MAKES A GUARANTEE AS TO THE RESULTS OR PERFORMANCE THEREOF THROUGH THE DEVELOPMENT STAGE. HOWEVER, THIS PROVISION IS NOT INTENDED TO MITIGATE OR REDUCE THE EFFECT OF THE INDEMNITY PROVISIONS SET FORTH HEREIN.

19. TERM

This Agreement commences on the Effective Date and, subject to earlier termination in accordance with clause 20, shall expire on a country-by-country and Licensed Product-by-

Licensed Product or Licensed Combination Product-by-Licensed Combination Product basis upon the date of the last to expire payment obligation pursuant to the Royalty Term.

20. TERMINATION

20.1 Either Party may terminate this Agreement by giving written notice to the other if the other Party commits any material breach of this Agreement, which, in the case of a breach capable of remedy, is not remedied by the Party in default within 60 days of receipt of a detailed notice requiring it to do so.

20.2 In the event of the institution by or against either Party of insolvency, receivership, bankruptcy proceedings, or any other proceedings for the settlement of a Party's debts which are not dismissed within sixty (60) days, or upon a Party's making an assignment for the benefit of creditors, or upon a Party's dissolution or ceasing to do business, the other Party may terminate this Agreement upon written notice. All rights and licenses granted to United Therapeutics under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the U.S. Bankruptcy Code. The Parties agree that United Therapeutics, as a licensee of certain rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; provided however, nothing herein shall be deemed to constitute a present exercise of such rights and elections and such rights shall be no greater than provided pursuant to this Agreement. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Supernus under the U.S. Bankruptcy Code, and so long as United Therapeutics is not in material breach of this Agreement, United Therapeutics shall be entitled to reasonable access to appropriate Supernus Intellectual Property, unless Supernus elects to continue to perform all of its obligations under this Agreement

20.3 This Agreement may be terminated by United Therapeutics by notice in writing to Supernus at any time after Supernus has a reasonable opportunity to cure after receiving written notice (if a cure is possible) from United Therapeutics for a technical, strategic or market-related cause (including, without limitation, technical, safety, efficacy, regulatory, competition, patient-related issues, emergence of new technologies, etc. rendering further development unjustified in United Therapeutics' opinion) in its sole discretion upon written notice to Supernus. Termination by United Therapeutics shall immediately terminate all licenses granted hereunder.

20.4 If United Therapeutics or any Sub-Licensee, after having launched a Licensed Product or Licensed Combination Product in any country in the Territory, discontinues sale of such Licensed Product or Licensed Combination Product in such country for a period of [**] or more for reasons unrelated to Force Majeure (as defined in clause 22), regulatory or safety issues and subsequently fails to resume sales of any Licensed Product or Licensed Combination Product in such country within 120 days of having been notified in writing of such failure by Supernus, then Supernus may in its discretion terminate the license granted to United Therapeutics under this Agreement with respect to such discontinued Licensed Product or Licensed Combination Product in such country. For the purposes of this clause

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20.5, sales of minimal or commercially insignificant quantities of a Licensed Product or Licensed Combination Product in a country shall be deemed to constitute a discontinuation of sales in such country.

21. CONSEQUENCES OF TERMINATION

21.1 On termination or expiration of this Agreement for any reason other than a material breach by Supernus, the license granted under clause 2.1 shall immediately cease and United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, immediately:

(a) subject to clause 21.3, cease to carry out any of the activities permitted by this Agreement (or any relevant Sub-License Agreement or Third Party Agreement) and cease to use or exploit in any way the Supernus Intellectual Property;

(b) within 30 days of the effective date of the termination, make all outstanding undisputed payments, including any Milestone Payments and royalty payments due to Supernus at the date of termination; and

(c) return, or at Supernus' option, destroy all Supernus Know-How and Supernus Confidential Information and any materials containing the Supernus Know-How and Supernus Confidential Information in its possession, custody or power except for such records as may be required by any Laws; provided however, that United Therapeutics may retain one copy of each document of Supernus' Confidential Information to enable United Therapeutics to determine its surviving obligations of confidentiality and non-use with respect to Supernus' Confidential Information, provided, however, that the copy (i) is kept in a secure place with access limited to the General Counsel only, and (ii) is returned to Supernus at the expiration of the last of any surviving obligations.

21.2 On termination or expiration of this Agreement for any reason, Supernus shall promptly return, or at United Therapeutics' option, destroy all United Therapeutics Know-How and United Therapeutics Confidential Information and any materials containing the United Therapeutics Know-How and United Therapeutics Confidential Information in its possession, custody or power except for such records as may be required by any Laws; provided however, that Supernus may retain one copy of each document of United Therapeutics Confidential Information to enable Supernus to determine its surviving obligations of confidentiality and non-use with respect to United Therapeutics Confidential Information, provided, however, that the copy (i) is kept in a secure place with access limited to the General Counsel only, and (ii) returned to United Therapeutics at the expiration of the last of any surviving obligations.

21.3 Subject to payment of royalty and related obligations, United Therapeutics, its Affiliates and its Sub-Licensees shall be entitled to continue to sell existing stocks of the Licensed Products and Licensed Combination Products in the Territory for a period of not longer than [**] following the date of termination in accordance with the terms and conditions of this Agreement.

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21.4 Upon the termination or expiration of this Agreement, United Therapeutics shall, and shall procure that its Affiliates and Sub-Licensees shall, execute such documents as Supernus may reasonably require to record at all appropriate patent offices throughout the Territory that United Therapeutics or the relevant Sub-Licensee has ceased to be entitled to use and exploit the Licensed Patents.

21.5 Clauses 6, 8, 10, 12, 13, 14, 15, 16, 17 (for [**]), 18.2 and 18.3 (for three years), 19, 21, 25, and applicable definitions herein shall survive the termination or expiration of this Agreement.

21.6 Termination or expiration of this Agreement shall not relieve either Party of any liability that accrued hereunder prior to the effective date of such termination, nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice either Party's right to obtain performance of any obligation

21.7 Termination of this Agreement will be without prejudice to Supernus' right to receive payment of (i) all undisputed Development Costs, Milestone Payments or Royalties, incurred or committed to as of the effective date of the termination, and (ii) all Royalties for as long as the Licensed Products and Licensed Combination Products are sold by United Therapeutics, its Affiliates or Sub-Licensees.

21.8 In the event of termination of this Agreement, the Parties shall meet in good faith to discuss and endeavor to agree on the steps required to affect an orderly closure of any ongoing Development Plan. In the event that the termination of this Agreement occurred for a reason other than as a result of a material breach by Supernus, Supernus shall be entitled to reasonable payment for work carried out or for noncancellable or unavoidable work committed to by Supernus under a Development Plan and any reasonable and direct out-of-pocket expenses incurred or noncancellable or unavoidable reasonable and direct out-of-pocket expenses committed to by Supernus under a Development Plan as of the date of termination.

22. FORCE MAJEURE

22.1 Neither Party shall be entitled to terminate this Agreement or shall be liable to the other under this Agreement for loss or damages attributable to any act of God, earthquake, flood, labor strike or lockout, war, revolution, civil commotion, epidemic, blockage or embargo, failure or default of public utilities or common carriers, destruction of production facilities or materials, or similar catastrophic event (*"**Force Majeure**"*), provided the Party affected shall give prompt written notice thereof to the other Party. Subject to clause 21.2, the Party giving such notice shall be excused from such of its obligations hereunder for so long as it continues to be affected by Force Majeure and the non-performing Party takes commercially reasonable efforts to remove the condition.

22.2 Notwithstanding the foregoing, if any such Force Majeure continues unabated for a period of at least [**], the Parties will meet to discuss in good faith what actions to take or what

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modifications should be made to this Agreement as a consequence of such Force Majeure in order to alleviate its consequences on the affected Party. If resolution has not been reached within [**] of good faith discussion, either Party shall have the right to terminate the Agreement on a country by country basis.

23. NOTICES

23.1 Any notice, consent or other document given under this Agreement shall be in writing in the English language, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given if (i) personally delivered or sent by prepaid first class certified or registered mail, express delivery service, or (ii) sent by fax transmission or e-mail and confirmed through one of the methods described in (i) above, to the address of the receiving Party as set out in clause 23.3, unless a different address or fax number has been notified to the other in writing for this purpose.

23.2 Each such notice or document shall:

(a) if personally delivered or if sent by express delivery service, be deemed to have been given when delivered at the relevant address;

(b) if sent by sent by prepaid first class certified or registered mail, be deemed to have been given seven days after posting; or

(c) if sent by fax transmission be deemed to have been given when transmitted provided that a confirmatory copy of such facsimile transmission shall have been sent by prepaid airmail within 24 hours of such transmission.

23.3 The address for services of notices and other documents on the Parties shall be:

To Supernus:		**To United Therapeutics:**	
Address:	[**]	**Address:**	[**]
Fax:	[**]	**Fax:**	[**]
Attention:	[**]	**Attention:**	[**]
Copy To:	[**]	**Copy To:**	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

[**] **Fax:** [**]

Fax: [**]

24. ASSIGNMENT

24.1 Subject to clauses 24.2 and 24.3, neither Party shall assign or transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other.

24.2 Notwithstanding the prohibition in clause 24.1, either Party may assign or transfer this Agreement to a wholly owned subsidiary or to a successor to the Party's business by merger, sale of stock, or sale of substantially all assets, provided that, in the case of any assignment or transfer of this Agreement to a wholly-owned subsidiary, the assigning or transferring Party shall remain fully liable for all of its obligations hereunder. Any permitted successor or assignee of rights and/or obligations hereunder shall, in writing to the other Party, expressly assume performance of such rights and/or obligations. This Agreement shall be binding upon and shall inure to the benefit of each Party's permitted successors-in-interest and permitted assigns. Any assignment or attempted assignment by either Party in violation of the terms of this clause 24.2 shall be null and void and of no legal effect

24.3 Notwithstanding the prohibition in clause 24.1, United Therapeutics may sub-license all or any of its rights or obligations under this Agreement provided that United Therapeutics and its Sub-Licensees comply with the obligations set out in clauses 3.1 and 25.16 of this Agreement.

25. GENERAL PROVISIONS

25.1 Independent Contractors. The status of the Parties under this Agreement shall be that of independent contractors. Neither Party shall have the right to enter into any agreements on behalf of the other Party, nor shall it represent to any person that it has any such right or authority. Nothing in this Agreement shall be construed as establishing a partnership or joint venture relationship between the Parties.

25.2 Dispute Resolution. Any disagreement between Supernus and United Therapeutics on the interpretation of this Agreement or any aspect of the performance by either Party of its obligations under this Agreement shall be resolved in accordance with the dispute resolution procedure set out in Schedule 4.

25.3 Further Actions. Each of the Parties shall do, execute and perform and shall procure to be done, executed and performed, all such further acts, deeds, declarations, documents and things as the other Party may reasonably require from time to time to give full effect to the terms of this Agreement and carry out the purposes and intent of this Agreement.

25.4 Costs. Each Party shall pay its own costs, charges and expenses incurred in connection with the negotiation, preparation and completion of this Agreement.

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25.5 Entire Agreement. Except as otherwise set forth herein, this Agreement sets out the complete, final and exclusive agreement and understanding between the Parties in respect of the subject matter hereof, and all of the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to such subject matter, and supersedes and terminates any prior agreements and understandings, either oral or written, with respect to such subject matter. It is further agreed that:

(a) there are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with respect to such subject matter other than as are set forth herein;

(b) no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other Party which is not expressly set out in this Agreement;

(c) no Party shall have any remedy in respect of misrepresentation or untrue statement made by the other Party or for any breach of warranty which is not contained in this Agreement;

(d) this clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation: and

(e) this Agreement supersedes any inconsistent language contained in any Feasibility Agreement.

25.6 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Nothing in this Agreement shall operate to:

(a) exclude any provision implied into this Agreement by law and which may not be excluded by law; or

(b) limit or exclude any liability, right or remedy to a greater extent than is permissible under law.

25.7 Amendment. No extension, termination, alteration, amendment, modification, change, addition to or other variation of this Agreement shall be binding upon the Parties unless it is in writing and signed by an authorized officer of each Party. Unless expressly agreed, no such amendment or

variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

25.8 Severability. If and to the extent that any provision of this Agreement is held to be illegal, void, invalid or unenforceable, such provision shall be given no effect and shall he deemed

not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

25.9 No Waiver. No failure or delay by either Party in enforcing a Party's rights under this Agreement or exercising any right or remedy provided by law under or pursuant to this Agreement, or any waiver as to a particular default or other matter, shall be construed as a waiver of such Party's rights to the future enforcement of its rights under this Agreement or impair such right or remedy or operate or preclude its exercise at any subsequent time, and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

25.10 Remedies Cumulative. The rights and remedies of each of the Parties under or pursuant to this Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.

25.11 No Prejudice to Licensed Patents. If in any jurisdiction the effect of any provision of this Agreement or the absence from this Agreement of any provision would be to prejudice the Licensed Patents or any remedy under the Licensed Patents, the Parties will make such amendments to this Agreement and execute such further agreements and documents limited to that part of the Territory which falls under such jurisdiction as may be necessary to remove such prejudicial effects.

25.12 Counterparts. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

25.13 Governing Law; Jurisdiction and Venue. Except as maybe otherwise set forth herein, this Agreement will be governed and construed in accordance with the Laws of the State of Maryland. No lawsuit pertaining to any matter arising under or growing out of this Agreement shall be instituted in any jurisdiction other than in the courts located in the State of Maryland, and the Parties consent to exclusive jurisdiction before the federal or state courts of the State of Maryland without reference to the choice of law provisions of any other jurisdiction.

25.14 Legal Fees. If any dispute arises between the Parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing Party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

25.15 Maintenance of Records. Each Party shall keep and maintain all records required by law or regulation with respect to development of a Licensed Product or Licensed Combination Product and shall make copies of such records available to the other Party upon request.

25.16 Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights.

(a) United Therapeutics acknowledges that Supernus represents that it has certain contractual agreements with subsidiaries of Shire plc ("**Shire**") pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable, exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Restricted Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Restricted Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, "**Restricted Compounds**" means any and all of: (A)(I) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) United Therapeutics hereby agrees that it shall not use any of the services or Confidential Information provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the purpose of this Agreement and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Restricted Compounds in any field of use. The provisions of this clause 25.16 (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customer names from time to time for monitoring purposes and United Therapeutics hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this clause 25.16. United Therapeutics acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this clause 25.16, at the written request of Shire, Supernus shall provide Shire and

its subsidiaries with an executed copy of this Agreement, and United Therapeutics hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event United Therapeutics breaches or threatens to breach the provisions of this clause 25.16, should the breach or threatened breach relate directly or indirectly to any activities relating to any of the Restricted Compounds then, in addition to any rights that Supernus may have against United Therapeutics, United Therapeutics acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against United Therapeutics for any and all damages suffered or incurred by Shire and its subsidiaries as a result of United Therapeutics' breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this clause 25.16, and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this clause 25.16, and such action is unsuccessful, United Therapeutics shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which United Therapeutics may be entitled. United Therapeutics further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. United Therapeutics agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) United Therapeutics agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could he asserted by United Therapeutics against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. United Therapeutics further agrees to waive against Shire and its subsidiaries any such claims or counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) The provisions of this clause 25.16 shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state. Each of the Parties hereto acknowledges and agrees that this provision of

this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this provision of this Agreement.

(f) Each of the Parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to this provision of this Agreement and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the Parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the Parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint [name to be inserted], as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE PROVISIONS OF THIS CLAUSE 25.16.

AS WITNESS WHEROF this Agreement has been signed by the duly authorized representatives of the Parties on the day and year first above written.

SIGNED for and by behalf of **SUPERNUS PHARMACEUTICALS, INC.**	)	/s/ Jack Khattar
	)	Jack Khattar, CEO **Print Name and Title**
SIGNED for and by behalf of **UNITED THERAPEUTICS CORPORATION**	)	/s/ David Mottola
	)	David Mottola, VP-Product Dev.
	)	**Print Name and Title**

SCHEDULE 1

Feasibility Agreements and Expansions

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[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

SCHEDULE 2
Licensed Patents -Issued Patents and Patent Applications

- **G** = Granted; **I** = Inactive; **F** = Filed

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SCHEDULE 3

United Therapeutics Patents

[**]

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SCHEDULE 4

Dispute Resolution Procedure

The Parties agree to consult and negotiate in good faith to try to resolve any dispute, controversy or claim that arises out of or relates to this Agreement.

1.1 In the event of any controversy or claim arising out of, relating to or in connection with an ongoing Development Program, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to the Development Team. Within 10 Business Days of receipt of a written request from either Party to the other, the Development Team shall meet to discuss and in good faith try to resolve any claim, dispute, controversy, or disagreement (a *"**Dispute**"*) between the Parties arising out of or in connection with such Development Program without recourse to legal proceedings.

1.2 In the event of a Dispute in connection with this Agreement, or the rights or obligations of the Parties hereunder, that is not related to an ongoing Development Program, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to Group Legal Counsel of the Parties (the *"**Legal Counsel**"*) for discussion and resolution. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and within fifteen Business Days of receipt of such notice, the Legal Counsel shall meet to discuss and in good faith try to resolve such Dispute arising out of or in connection with the terms (or interpretation of the terms) of this Agreement without recourse to legal proceedings.

1.3 If resolution of the Dispute does not occur within 20 Business Days after the Development Team meeting or the meeting of the Legal Counsel, as the case may be, the matter shall be escalated for determination by the respective Presidents of the Parties ***(the "Officers"***) who may resolve the matter themselves or jointly appoint a mediator or an independent expert. The Officers shall negotiate in good faith to achieve a resolution of the Dispute referred to them within 20 Business Days after such notice is received. If the Officers are unable to settle the Dispute between themselves within 20 Business Days, and the Officers are unable to agree on the appointment of an independent expert, they shall report to the Parties on the progress of the negotiations in writing and the Dispute shall then be referred to mediation as set forth in the following subsection 1.3.

Mediation

1.4 Upon the Parties receiving the Officers' report that the Dispute referred to them pursuant to subsection 1.3 has not been resolved, the Dispute shall be referred to mediation by written notice from either Party to the other. The mediation shall be conducted pursuant to the rules of the American Arbitration Association ("***AAA***"). The place of the mediation shall be Washington, D.C., United States and the language of the mediation shall be English.

1.5 If after the procedures set forth in subsections 1.2 to 1.4, the Dispute has not been resolved, a Party shall have the right to pursue its action in a court of law or equity having jurisdiction over the matter.

Exhibit 10.13

EXCLUSIVE OPTION AND LICENSE AGREEMENT

THIS EXCLUSIVE OPTION AND LICENSE AGREEMENT is made as of April 27, 2006 (the "Effective Date") by and between Supernus Pharmaceuticals Inc, a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("Supernus") and Afecta Pharmaceuticals, Inc. a California corporation with principal offices located at 2102 Business Center Drive, Irvine, California 92612 ("Afecta").

RECITALS:

WHEREAS, Afecta has the right and desires to grant exclusive licenses to Afecta Products in the Field (as hereinafter defined);

WHEREAS, Afecta has agreed to grant to Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth herein; and

WHEREAS, Supernus desires to obtain this exclusive option and potential licensing rights to Afecta Products selected on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement and the Warrant, the parties agree as follows:

ARTICLE 1.

DEFINITIONS

1.1. **"Afecta Filed Products"** shall mean any Afecta inventions in the Field or that could be used in the Field for which a patent application has been filed in the Major Markets prior to the execution of the Notice Letter and offered in the Offer Letter.

1.2. **"Afecta IP Products"** shall mean any Afecta Inventions in the Field or that could be used in the Field for which a patent has been issued to Afecta by the USPTO ("USPTO") prior to the execution of the Notice Letter and offered in the Offer Letter.

1.3. **"Afecta Intellectual Property Rights"** shall mean Afecta Patent Rights and all intellectual property rights including Afecta Know How belonging to Afecta in connection with Afecta Products.

1.4. **"Afecta Invention"** means any Invention in the Field or that could be used in the Field generated solely by employees or agents of Afecta prior to execution of the Notice Letter in connection with Afecta Licensed Products.

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1.5 **"Afecta Know How"** shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether patentable or not), modifications or enhancements that was generated by Afecta outside of this Agreement.

1.6. **"Afecta Licensed Products"** shall mean Afecta Products licensed to Supernus in accordance with the terms and conditions of this Agreement.

1.7. **"Afecta Patent Rights"** shall mean collectively Afecta's right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit C; (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation, supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents that existed prior to execution of the Notice Letter and (c) any improvements, modifications or expansions to the patent(s) as a result of work produced solely by Afecta in fields other than the Field with regard to Afecta Products. Notwithstanding the foregoing, the definition of Afecta Patent Rights shall exclude any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter, which rights shall belong to Supernus.

1.8. **"Afecta Pre-IP Products"** shall mean any Invention in the Field or that could be used in the Field that is not an Afecta Filed Product or an Afecta IP Product generated solely by employees or agents of Afecta and presented to Supernus by Afecta in an Offer Letter but prior to the Notice Letter.

1.9. **"Afecta Products"** shall mean Afecta IP Products, Afecta Filed Products and Afecta Pre-IP Products that existed prior to execution of the Notice Letter,

1.10. **"Affiliate"** shall mean a corporation or other business entity controlled by, controlling, or under common control with a Party. For this purpose, control shall mean the direct or indirect ownership of at least fifty percent (50%) of the voting stock or at least fifty percent (50%) interest in the income of such corporation or other business.

1.11. **"Agreement"** shall mean this Agreement.

1.12. **"Confidential Information"** shall mean (a) any information of either Party, which, if written, is marked confidential by the disclosing Party or, if oral, is reduced to writing, marked confidential by the disclosing Party, and provided to the non-disclosing Party within thirty (30) days of the oral disclosure, (b) all information relating to the prosecution, maintenance or defense of the Afecta Patent Rights or Afecta Intellectual Property Rights, (c) all information relating to the prosecution, maintenance or defense of the Supernus Patent Rights or Supernus Intellectual Property Rights, and (d) Net Sales.

1.13. **"Due Diligence"** shall mean all necessary activities to be conducted by Supernus in its sole discretion following receipt of an Offer Letter to determine its interest in licensing an Afecta Product.

1.14. **"Due Diligence Period"** shall mean [**] for a single Afecta Product or [**] for a second Afecta Product submitted within 60 days of previously submitted Afecta Product from the receipt date of the Offer Letter by Supernus as defined in Article 2.

1.15. **"Default"** shall mean, with respect to either Party, such Party shall have failed to perform any material obligation set forth herein; provided however, that such Party shall have not brought, or not commenced substantial remedial action to bring, the facts underlying such representation or warranty into conformance with such representation or warranty or shall not have performed, or commenced substantial remedial action to perform, such material obligation, within sixty (60) days after receipt of written notice from the other Party specifying in detail the material obligation which has not been performed and requesting that the failure to perform be remedied within sixty (60) days.

1.16. **"Development Costs"** shall mean all costs required to be expended to develop and obtain regulatory approval including costs to compensate a Third Party for the Afecta Licensed Products in the Territory; all costs to file, maintain and defend all intellectual property pertaining to the Licensed Products; all costs to third parties who may have interests in the Afecta Licensed Products or some aspect of them; all manufacturing, post-approval research, development and clinical costs; and all sales, marketing and administrative costs required to market the Afecta Licensed Product(s) in the Territory.

1.17. **"Effective Date"** shall mean the date of this Agreement.

1.18. **"First Commercial Sale"** shall mean the initial transfer of a Afecta Licensed Product to a Third Party in exchange for cash or some equivalent to which value can be assigned for purposes of determining Net Sales.

1.19. **"First Efficacy Trial"** shall mean testing the efficacy and safety of the Afecta Licensed Product in a population of patients within the Field.

1.20. **"Field"** shall mean pharmaceutical products for the treatment, diagnosis or prevention of central nervous system related diseases and indications in humans and animals.

1.21. **"Force Majeure"** shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, breakdown of plant, earthquake, strike, lockout, labor dispute, casualty or accident, or war, revolution, civil commotion, acts of public enemies, blockage or embargo, or any unforeseen delays associated with clinical trials of the Afecta Licensed Product, or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or of any subdivision including but not limited to the requirements and conditions of the Food and Drug Administration of the United States, authority or representative or any such government, inability to procure or use materials, including but not limited to any material needed to manufacture any Afecta Licensed Product, labor, equipment, transportation, or energy sufficient to meet manufacturing needs without the necessity of allocation, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence and to remedy it promptly if it shall have occurred and shall have notified the other Party in writing of the reasons for the delay or default.

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1.22. **"GAAP"** shall mean United States generally accepted accounting principles consistently applied.

1.23. **"Invention"** means any invention, discovery, or innovation, whether patentable or not, invented, discovered, or conceived either prior to the Notice Letter or after the Notice Letter by either party as the case may be or in collaboration as the case may be.

1.24. **"Major Markets"** shall mean the United States, Canada, United Kingdom, France, Spain, Germany, Italy, and Japan.

1.25. **"Net Sales"** shall mean all revenues recognized in accordance with GAAP from the sale of Licensed Products by Supernus and its Affiliates to Third Parties, less returns and allowances (actually paid and allowed, including, but not limited to, prompt payment and volume discounts, charge backs from wholesalers and other allowances granted to customers, whether in cash or trade), freight, packing, insurance, rebates actually paid and allowed, and sales and other taxes based on sales prices when included in gross sales, but not including taxes when assessed on income derived from such sales.

1.26. **"Party"** shall mean Supernus or Afecta, as the case may be, and **"Parties"** shall mean Supernus and Afecta collectively.

1.27. **"Person"** shall mean an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization, or any other entity, or a government or any department or agency thereof.

1.28 **"Purpose"** shall mean the research, development and commercialization of the Afecta Licensed Products.

1.29 **"Similar Product"** shall mean i) any product that contains same active ingredient and is approved for the same indications as for an Afecta Licensed Product after Effective Date.

1.30. **"Supernus Formulations"** shall mean ProPhile™, ProScreen®, OptiScreen®, RADAR™, Avert™, Microtrol®, Solutrol®, and EnSoTrol® technologies and such other technologies that existed prior to the date of this Agreement or are developed or acquired by Supernus during the course of this Agreement and as applied to Afecta Licensed Products.

1.31. **"Supernus Intellectual Property Rights"** shall mean Supernus Patent Rights and all intellectual property rights including Supernus Know How belonging to Supernus in connection with Supernus Formulations.

1.32. **"Supernus Invention"** means any Invention generated solely by employees or agents of Supernus or in collaboration with employees or agents of Afecta in connection with Afecta Licensed Products following execution of the Notice Letter.

1.33 **"Supernus Know How"** shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether

patentable or not), modifications or enhancements that was generated by Supernus outside of this Agreement.

1.34. **"Supernus Patent Rights"** shall mean collectively Supernus' right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit D and (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation, supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents and (c) the intellectual property rights in any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter

1.35. **"Territory"** shall mean the World.

1.36. **"Third Party"** shall mean any Person other than Afecta and Supernus or its Affiliates.

1.37. **"Valid Claim"** shall mean a claim of an issued and unexpired patent included within the Afecta Patent Rights which has not been held permanently revoked, unenforceable 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 been disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise.

ARTICLE 2

EXCLUSIVE OPTION AND WORLDWIDE LICENSE

2.1. **Exclusive Option Grant to Supernus**. Afecta hereby grants to Supernus an exclusive option to acquire exclusive worldwide licenses (including the right to sublicense) in Afecta Products to be offered to Supernus. Afecta agrees to review with Supernus all Afecta Products in the Field upon signing of this Agreement and no less than annually thereafter to jointly prioritize which Afecta Products will be formally offered to Supernus. Based on the joint prioritization Afecta will offer Supernus from time to time but no less than [**] times during the term of this Agreement, Afecta Products for potential worldwide license. The information required to be set forth in each offer shall be in accordance with the requirements of the Offer Letter attached hereto as Exhibit A and made a part hereof by this reference. For Each Afecta Product offered to Supernus, Supernus shall have [**] to conduct due diligence ("Due Diligence Period") to determine whether or not it desires to obtain from Afecta an exclusive worldwide license in said Afecta Product. In the event that more than one Afecta Product is offered to Supernus within a period of [**], the Due Diligence Period for the second Afecta Product shall be extended to [**]. Afecta hereby agrees to cooperate, on a "time is of the essence" basis, with Supernus and provide Supernus with such information it has in its possession or readily available to it that Supernus may reasonably require for it to conduct its due diligence process. In the event, Supernus desires to obtain a worldwide license, it shall notify Afecta of same prior to the expiration of the Due Diligence Period by executing and delivering the Notice Letter attached hereto as Exhibit B and made a part hereof by this reference. Supernus' license rights in the Afecta Product shall

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commence from the date of notification set forth in the Notice Letter in accordance with the terms of this Agreement. Failure of Supernus to notify Afecta shall be deemed to be an election by Supernus not to secure a license. Each Afecta Product licensed within the relative option period shall be identified as an "Afecta Licensed Product." Each Afecta Licensed Product licensed to Supernus shall be covered under the terms of a specific and separate License Agreement for each Afecta Product, the terms of which shall be in substantial agreement with the terms of this Agreement.

2.2. License Grant to Supernus.

2.2.1. Grant to Supernus. On the terms and conditions set forth herein, and effective only upon Supernus' timely execution and delivery of the Notice Letter to Afecta for each Afecta Product to be licensed, Afecta hereby grants to Supernus and its Affiliates an exclusive license, with the right to grant sub-licenses solely pursuant to Section 2.2.2, in the Afecta Intellectual Property Rights and the Afecta Licensed Product identified in the Notice Letter(s) to develop, have developed, make, have made, use, have used, sell, have sold and offer for sale the Afecta Licensed Product in the Field anywhere in the Territory.

2.2.2. Sub-licenses. Supernus shall have the right to grant sublicenses under this Agreement without the prior written consent of Afecta, provided however, that (i) Supernus agrees that its sublicensing agreements will not conflict with any of its obligations hereunder; (ii) Supernus agrees to provide to Afecta a redacted copy of any fully executed sublicense agreement within 5 **business** days of execution.

2.2.3. No Other Licenses. This Agreement confers no license or rights by implication, estoppel or otherwise to Supernus in any Afecta Products except as offered herein or as may be obtained in accordance with the terms and conditions of this Agreement.

2.3. License Grant to Afecta.

2.3.1. Grant to Afecta. On the terms and conditions set forth in Article 5.3 and herein, and effective only upon Supernus' sole election to terminate the Agreement of an Afecta Licensed Product ("Terminated Licensed Product"), per Article 10, 10.2 or 10.3 or Default under 10.4 or 10.5 herein, Supernus will at the request of Afecta grant to Afecta and its Affiliates the right to obtain an exclusive license with the right to grant sub-licenses solely pursuant to Section 2.3.2,in (i) Supernus Formulations, (ii) Supernus Intellectual Property Rights, and (iii) Supernus Inventions only as they relate to and are required for the development, manufacturing and sale of the Terminated Licensed Product. Supernus will also at the request of Afecta grant to Afecta and its Affiliates the right to obtain an exclusive access to and use of (i) data generated under the Agreement, and (ii) other Confidential Information all of which only relate to the Terminated Licensed Product and were reduced to practice to develop, have developed, make, have made, use, have used, sell, have sold and offer for sale of the Terminated Licensed Product in the Field anywhere in the Territory.

2.3.2. Sub-licenses. Subject to Articles 2.3.1 and 11 Afecta, shall have the right to grant sublicenses with the prior written consent of Supernus, provided however, that (i) Afecta agrees to offer Supernus a first right of refusal to license the Product for a period of [**] following Afecta's decision to seek a sublicensee and written notice to Supernus of that intention, (ii) Afecta agrees that its

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sublicensing agreements will not conflict with any of its obligations hereunder and in particular its obligations under Article 11; (ii) Afecta agrees to provide to Supernus a redacted copy of any fully executed sublicense agreement within 5 **business** days of execution.

2.3.3. **No Other Licenses.** This Agreement confers no license or rights by implication, estoppel or otherwise to Afecta in any data generated under the Agreement, Supernus Formulations, Supernus Intellectual Property Rights, Supernus Inventions, and other Confidential Information except as offered herein or as may be obtained in accordance with the terms and conditions of this section 2.3 and associated Supernus form license agreement that will be required to be executed between the Parties.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1. Representations and Warranties of Supernus.

3.1.1. **Corporate Power.** Supernus is duly organized and validly existing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

3.1.2. **Due Authorization.** Supernus is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Supernus' behalf has been duly authorized to do so by all requisite corporate action.

3.1.3. **Binding Agreement.** This Agreement is a legal and valid obligation binding upon Supernus, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Supernus does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.1.4. **No Other Warranties.** Supernus offers as warranties the statements set forth herein. Supernus makes no other warranties. Supernus does not warrant the validity or enforceability of the Supernus Patent Rights and makes no representations whatsoever with regard to the scope of the Supernus Patent Rights, or that the Supernus Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE SUPERNUS PATENT RIGHTS OR SUPERNUS INTELLECTUAL PROPERTY RIGHTS. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE LICENSED PRODUCTS.

3.2. Representations and Warranties of Afecta.

3.2.1. Corporate Power. Afecta is duly organized and validly existing under the laws of the State of California and has full corporate power and authority to enter into this Agreement and carry out the provisions hereof.

3.2.2. Due Authorization. Afecta is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Afecta's behalf has been duly authorized to do so by all requisite corporate action. Licensor represents and warrants that it has the full and lawful right and authority to grant the exclusive option and exclusive licensing rights described hereunder.

3.2.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Afecta, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Afecta does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.2.4. Afecta warrants to Supernus that it will not file an invention disclosure or patent application for any Supernus Invention that is revealed following the Offer Letter.

3.2.5. No Other Warranties. Afecta offers as warranties the statements set forth herein. Afecta makes no other warranties. Afecta does not warrant the validity or enforceability of the Afecta Patent Rights and makes no representations whatsoever with regard to the scope of the Afecta Patent Rights, or that the Afecta Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. AFECTA MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE AFECTA PATENT RIGHTS OR AFECTA INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 4

DEVELOPMENT AND COMMERCIALIZATION

4.1. Development and Commercialization. Supernus, in its sole discretion, shall have the right to make all decisions relating to the development and commercialization of Afecta Licensed Products including, but not limited to, all decisions relating to the research, pre-clinical, and clinical development of Afecta Licensed Products, and the promotion, advertising, marketing and pricing of Afecta Licensed Products. Supernus shall use its commercially reasonable efforts to actively develop and market all Afecta Licensed Products in the Territory. Notwithstanding the foregoing, Supernus at its sole discretion

will consult with Afecta and seek its input before making its final decisions relating to the development and commercialization of Afecta Licensed Products.

4.2. **Reports.** Supernus shall deliver to Afecta, on a quarterly basis, project updates on Supernus development activities for the Afecta Licensed Products.

ARTICLE 5

CONSIDERATION

5.1. **License Fee Payments.** In consideration for the grant of the rights and licenses set forth in Section 2.1, in addition to the other payments set forth in this Article 5, Supernus shall pay to Afecta (i) for each Afecta IP Product chosen by Supernus during its relative Due Diligence Period, $[**] within thirty (30) days of the date of notification of the Notice Letter, and an additional $[**] upon the successful completion of the First Efficacy Trial of the Afecta IP Product; or (ii) for each Afecta Filed Product or Afecta Pre IP Product chosen by Supernus during its relative Due Diligence Period , $[**] within thirty (30) days of the date of notification of the Notice Letter, and an additional $[**] upon the successful completion of the First Efficacy Trial and a third payment of $[**] upon issuance of the first patent.

5.2. **Royalties.**

5.2.1. **Net Sales.** In consideration for the grant of the rights and licenses set forth in Section 2.2, in addition to the other payments set forth in this Article 5, Supernus shall pay to Afecta in immediately available funds royalties on Net Sales in accordance with the following schedule: If the Afecta Licensed Product is Afecta IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is Afecta Filed Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is Afecta Pre IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis.

5.2.2. **Participation in Development Costs.** Afecta may elect to participate in the Development Cost or to decline participation in the Development Costs within 120 days of the licensing of an Afecta Licensed Product to Supernus. To the extent, Afecta agrees to participate in Development Costs prior to completion of the first Phase II study of a particular Licensed Product, Afecta's share of Net Sales set forth in 5.2.1. shall increase in accordance with the schedule below depending upon the amount Afecta contributes toward the payment of Development Costs ("Pre-Phase II Participation").

In the event that Afecta contributes less than [**]% in the Pre-Phase II Participation or does not participate until after completion of Phase II ("Post Phase II Participation") Afecta's share of Net Sales shall be the higher of: (i) [**] or (ii) that described in Article 5.2.1. herein.

Percent of Total Development Costs Contributed by Afecta	Percent of Licensed Product Net Sales Payable to Afecta		
	Afecta IP Product	Afecta Filed Product	Afecta Pre IP Product
[**]%	[**]%	[**]%	[**]%
[**]% -[**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
>[**]%	[**]%	[**]%	[**]%

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.2.3. **No Multiple Royalties.** Royalties under this Section 5.2 shall be payable on an Afecta Licensed Product-by-Afecta Licensed Product basis, and shall be imposed only once with respect to any sale of the same unit of Afecta Licensed Product by Supernus or its sub-licensees, and no multiple royalties shall be payable by Supernus because any Afecta Licensed Product is covered by more than one of the Afecta Patent Rights or one or more claims of the Afecta Patent Rights.

5.2.4. **Expiration of Royalty Payments.** Supernus' obligation to pay royalties to Afecta on a country-by-country basis for each Afecta Licensed Product shall expire upon the earlier of:

5.2.4.1. [**] or [**], or

5.2.4.2. [**], or

5.2.4.3. [**].

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.3. **License Fees and Royalties for Grant of License to Afecta.**

Pursuant to Article 2.3 herein and grant of licenses there under Afecta will pay to Supernus per Terminated Licensed Product:

5.3.1 Supernus' Development Costs plus [**]% (not to include any costs borne by a Supernus sub-licensee or other development partner) that were actually paid by Supernus to produce data relevant to the Terminated Licensed Product that Afecta at its sole discretion may select to have exclusive access to and use of. Such payment shall occur at the time of grant of exclusive access and use of the data to Afecta.

5.3.2 Supernus' Development Costs plus [**]% (not to include any costs borne by a Supernus sub-licensee or other development partner) that were actually paid by Supernus to produce data relevant to the Terminated Licensed Product that Afecta at its sole discretion may select to have exclusive access to and use of. In addition certain License fees and Royalties for use of: (i) Supernus Formulations, (ii) Supernus Intellectual Property Rights, (iii) Supernus Inventions, which are employed by Afecta or sublicensee in the final formulation of the Terminated Licensed Product. The exact amounts of the License fees and Royalties shall be determined on a Terminated Licensed Product by Terminated Licensed Product basis.

5.4 **Payment of Royalties; Reports.**

5.4.1. **First Commercial Sale.** Supernus shall report to Afecta the date of First Commercial Sale of an Afecta Licensed Product within thirty (30) days of such occurrence.

5.4.2. **Royalty Statements.** Supernus shall deliver to Afecta, within sixty (60) days after the end of each calendar quarter, a statement setting forth the Net Sales of Afecta Licensed Products during such calendar quarter (including the country of manufacture and an itemized calculation of the amount of Net Sales in the United States, its territories and possessions) and the royalties due hereunder. Each such statement shall be accompanied by a remittance of the royalties in United States Dollars due for such calendar quarter.

5.4.3. **Manner of Payment.** All payments hereunder shall be in United States dollars and shall be made by wire transfer to such bank account as may be designated in writing from time to time by Afecta.

5.4.4. **Currency.** If Net Sales are in a currency other than United States Dollars, the Net Sales, for the purpose of calculating payments hereunder shall be determined in the applicable foreign currency and then converted into United States Dollars at the end of each calendar quarter using an exchange rate equal to the [**] by the Federal Reserve Bank of New York (available on Bloomberg L.P. and Reuters).

5.4.5. **Taxes.** All taxes levied on account of royalties payable to Supernus hereunder shall be paid by Supernus. In the event laws or regulations require withholding of taxes from any payment of

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royalties, the taxes will be deducted by Supernus from the royalty payment and will be paid by Supernus to the proper taxing authority. Supernus will furnish Afecta with the copies of all official receipts for such taxes. In the event of any such withholding, the Parties agree to confer regarding other measures to minimize such withholding.

5.4.6. Overdue Payments. Any overdue payments under this Agreement, including without limitation, royalty payments made hereunder after the date such payment is due, shall bear interest at the [**] as of the date such payment was due (the "Interest Rate"). The Interest Rate shall be calculated based on a 360-day year from the date payment was due until received by Afecta.

ARTICLE 6

RECORDS; AUDIT

6.1 Record Retention. Supernus shall keep complete and accurate records in sufficient detail to permit Afecta to confirm the accuracy of reported royalties hereunder, including without limitation, Development Costs, general accounting ledgers, invoice/sale registers, original invoices and shipping documents, tax returns, inventory and manufacturing records, sublicense and distributor agreements and price lists, product catalogs and other marketing materials. Such records shall be retained by Supernus for at least the longer of one (1) year after completion of the audit thereof (if an audit has been requested) or three (3) years following the calendar year in which any such payments were made hereunder.

6.2 Royalty Audit. Once per each twelve-month period from the Effective Date, Supernus agrees to make its records for payment of royalties due available for examination by Afecta during normal business hours. Afecta shall have the option to engage, at its own expense, an independent certified public accountant reasonably acceptable to Supernus to examine, in confidence, Supernus' records as may be necessary to determine the correctness of any payment of royalties hereunder made by Supernus. The report of such accountant shall be limited to a certificate verifying any report made or payment submitted by Supernus during such period but may include, in the event the accountant shall be unable to verify the correctness of any such payment, information relating to why such payment is unverifiable. All information contained in any such certificate shall be deemed to be the Confidential Information of Supernus hereunder. If any audit performed under this Section 6.2 shall indicate that any payment due hereunder was underpaid, Supernus shall promptly pay the amount of any underpayment. If any audit performed under this Section 6.2 shall indicate that any payment hereunder was in error to Afecta's detriment by more than [**] percent for any annual period, Supernus shall pay the cost of the audit.

ARTICLE 7

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

7.1. Patent and Intellectual Property Rights Maintenance. During the term of this Agreement, Afecta, using its sole business judgment,shall have the right to maintain the Afecta Patent Rights or

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Afecta Intellectual Property Rights. Afecta shall consult with Supernus and keep Supernus regularly advised of Afecta's strategies, plans, progress and results of any such maintenance. If Afecta elects not to maintain within Afecta Patent Rights or any intellectual property within Afecta Intellectual Property Rights, Afecta shall timely notify Supernus of such decision, and Supernus may, elect to maintain, such patent or intellectual property rights upon providing written notice of such election to Afecta. Supernus shall consult with Afecta and keep Afecta regularly advised of Supernus' strategies, plans, progress and results of any such maintenance action. Such costs relating to maintenance of such patent and/or intellectual property rights, including attorney fees, shall be included in Development Costs.

7.2. Infringement of Third Party Rights.

7.2.1. Notice of Infringement. In the event of a Party becoming aware that the exercise of either Party's rights and obligations under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify the other Party in writing and provide the other Party with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it. Any defense of potential lawsuits brought on by a Third Party will be carried out as described in Sections 7.2.2 and 7.2.3 below.

7.2.2. Afecta Licensed Product. Subject to Section 7.2.3, if the Third Party claim is specifically related to the Afecta Licensed Product, Supernus will defend any suit resulting directly from such claim. Afecta hereby agrees to be joined in such suit, should Afecta be found to be an indispensable party to the proper defense of such suit. Afecta may choose to obtain its own counsel for such litigation.

7.2.3. Afecta Invention. If the Third Party claim is related solely to the Afecta Invention, and not to the Afecta Licensed Product, Afecta will defend such suit or claim. Supernus hereby agrees to be joined in such suit, should Supernus be found to be an indispensable party to the proper defense of such suit. Supernus may choose to obtain its own counsel for such litigation.

7.2.4. Change to Royalty Payments. Royalty Payments due to Afecta under Article 5 with respect to Afecta Licensed Product sold in such country will be reduced (i) if Supernus is required, by a final court order from which no appeal can be taken, to obtain license from a Third Party under any patent, which would be infringed by the manufacture, use, offer for sale, sale or import of the Product by Supernus, its Affiliates, Subcontractors, or Sublicensees, or (ii) if Supernus in the exercise of its reasonable judgment, believes that a license from such Third Party, is necessary. If the Royalty Payments required to be made under Article 5 for any country are reduced as provided hereunder, they will be reduced, in such country, by an amount equal to all considerations actually paid by Supernus to such Third Party under such license with respect to such country. In addition, such costs relating to defense or prosecution of such patent and/or intellectual property rights, including attorney fees, shall be included in Development Costs.

7.3. Infringement of Afecta Patents or Supernus Patents.

7.3.1. Notice of Third Party Infringement. In the event that either Party becomes aware of any Third Party infringement or suspected infringement of any Afecta Patents or Supernus Patents used in connection with the Afecta Licensed Product, it will promptly notify the other Party in writing and provide it with such details of the Third Party infringement as are known to it.

7.3.2. Necessary Steps. The Parties shall, after receipt of notice referred to in Section 7.3.1, promptly discuss the infringement and, to the extent necessary, attempt to agree on the necessary steps to be taken to prevent, terminate, or otherwise address such Third Party infringement.

7.3.3. Action After No Agreement. If within twenty (20) days of the date of the notice referred to in Section 7.3.1, the Parties have not agreed upon an appropriate course of action then the following shall apply:

7.3.3.1. If the patent is an Afecta Patent or a Supernus Patent that contains one or more claims specifically directed to the Afecta Licensed Product or the manufacture, use or sale thereof then Supernus shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Supernus shall provide Afecta with prior notice of the initiation of any such action or proceedings and shall keep Afecta informed of any significant developments. In the event that Supernus has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement and the patent is an Afecta Patent, then Afecta may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement; and

7.3.3.2. If the patent is an Afecta Patent not covered by Section 7.3.3.1 above, then Afecta shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Afecta shall provide Supernus with prior notice of the initiation of any such action or proceedings and shall keep Supernus informed of any significant developments. In the event that Afecta has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement, then Supernus may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement.

7.3.4. Prior Written Consent. The Party controlling the action or proceedings shall not settle the action or proceedings or otherwise consent to an adverse judgment that diminishes the rights or interests of the other Party without the prior written consent of that Party, such consent not to be unreasonably withheld or delayed.

7.3.5. Cooperation. Each Party shall use reasonable efforts to cooperate, at its own expense, with the other Party's requests and, to the extent possible, provide or procure the provision of such reasonable assistance in commencing and prosecuting any such action or any proceedings.

7.3.6. **Award of Damages.** Any award of damages or other amount received by either Party as a result of a successful action, proceedings or settlement negotiations under Article 7 shall be divided between the Parties as follows:

7.3.6.1. The Party that initiated, prosecuted or maintained the defense of the action or proceedings shall recoup all of its costs and expenses (including any attorneys' and expert fees) incurred in connection with the action or proceedings;

7.3.6.2. after deducting the costs and expenses identified in 7.3.6.1 the other Party shall, to the extent possible, recover its costs and expenses (including any attorneys' and expert fees) incurred in connection with the action or proceedings; and

7.3.6.3. thereafter, any remaining recovery shall be disbursed to Supernus and shall be treated as Net Sales for purposes of this Agreement.

7.4. **Afecta's Ownership in Intellectual Property.** Subject to the exclusive license(s) to Afecta Licensed Product(s) granted to Supernus in accordance with the terms and conditions of this Agreement, Afecta shall retain all right, title and interest in and to Afecta Patent Rights and Afecta Intellectual Property Rights that existed prior to the Effective Date of the Notice Letter but excluding data to the extent that it relates solely to Supernus Patent Rights, Supernus' Intellectual Property or Supernus Formulations. At Afecta's request, Supernus will sign any documents and do all such things as Afecta may deem reasonably necessary to vest such rights in Afecta, so long as such things do not interfere with Supernus' exclusive option granted and exclusive license rights granted to it under this Agreement.

7.5. **Supernus' Ownership in Intellectual Property.** Supernus shall retain all right, title and interest to all in and to Supernus Patent Rights, Supernus Intellectual Property Rights and Supernus Formulations that existed prior to the Effective Date of this Agreement and shall become the owner of all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products, but excluding data to the extent that it relates solely to Afecta Patent Rights, or Afecta Intellectual Property Rights. At Supernus' request, Afecta will sign any documents and do all such things as Supernus may deem reasonably necessary to vest such rights in Supernus.

7.6. **Invention Ownership.** Supernus shall have the sole and exclusive ownership of any Supernus Invention. Subject to the exclusive option and exclusive license rights granted under this Agreement to Supernus, Afecta shall have the sole and exclusive ownership of any Afecta Invention or Afecta Products.

7.7. **Execution of Documents.** Each party shall sign such documents and do such things, or procure the signing of such documents or the doing of such things, as is reasonably necessary to vest the relevant Intellectual Property Rights in the other party.

7.8. **Filing of Patent Applications.** In the event a party decides to file a patent application for an invention, it will give reasonable advance notice in writing of its intent to file, and will provide a draft of the application to the other party at least 20 days prior to filing. Except as provided below, the respective inventing party shall, in respect of a sole Invention (i) exclusively control

the preparation, filing and prosecution of any patent applications directed to such party's sole Invention; (ii) exclusively be responsible for all related fees, costs, and expenses associated with such party's sole Invention; and (iii) exclusively control and pay for the maintenance of any patents resulting therefrom.

7.9. **Supernus' Inventions.** Supernus shall exclusively control the preparation, filing, prosecution and maintenance of any patent applications in respect of Supernus Inventions. Supernus will provide Afecta with copies of all relevant documents relating to Supernus Inventions that relate to all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products but excluding data to the extent that it relates solely to Supernus Inventions held by Supernus prior to the Notice Letter or relates solely to Supernus Formulations so that Afecta may be informed and apprised of the continuing prosecution of patent applications in connection with the Afecta Licensed Products. Afecta agrees to cooperate and work together in good faith with Supernus' filing such patent applications.

ARTICLE 8

CONFIDENTIALITY

8.1. **Confidentiality.** For the term of this Agreement and any extensions and for a period of [**] thereafter, each Party agrees to keep confidential and not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement, any Confidential Information disclosed to it by the other Party, except that each Party shall not be prevented from disclosing information:

8.1.1. which it can demonstrate by written records was previously known to it;

8.1.2. which is, or becomes in the future, public knowledge through no fault or omission attributable to the receiving Party;

8.1.3. which is lawfully obtained without restriction by the receiving party from sources independent of the disclosing Party without breach of a confidentiality obligation; or

8.1.4. which was independently discovered or developed by the disclosing Party without access to or the use of the other Party's Confidential Information, as can be documented by written records created at the time of such independent discovery or development.

8.2. **This Agreement.** The Parties agree that the material terms of the Agreement shall be considered Confidential Information of both Parties. Notwithstanding the foregoing, (i) the Parties shall be permitted to disclose in filings with the Securities Exchange Commission ("SEC") those terms of this Agreement required to be disclosed under law or regulation; provided that the Parties shall consult with one another concerning which terms of this Agreement shall be requested to be redacted in any SEC filings, and provided however, that in the event of a filing each party shall seek confidential treatment in its SEC filings for the financial terms of this Agreement (ii) each Party shall have the right to disclose in confidence the terms of the Agreement to parties retained by such Party to perform legal, accounting or similar services and who have a need to know such terms in order to provide such services and (iii) at

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the request of either Party, the Parties shall mutually agree on a press release to be issued upon execution of this Agreement or reasonably soon thereafter.

8.3. Authorized Disclosure.

8.3.1. Disclosable Information. Each Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following:

8.3.1.1. enforcing and or defending rights or obligations under this Agreement; and

8.3.1.2. complying with any court order;

provided however that the Party required to or intending to disclose the other Party's Confidential Information under this Section 8.3 shall have first given prompt notice to the other Party to enable it to seek any available exemptions from or limitations on such disclosure, and shall reasonably cooperate in such efforts by the other Party.

8.3.2. Advance Notice of Disclosure. Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to this Section 8.3, it will give reasonable advance notice to the other Party of such disclosure and use reasonable commercial efforts to secure confidential treatment of such information. In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

ARTICLE 9

INDEMNIFICATION

9.1 Indemnification by Supernus.

9.1.1. Scope. Supernus shall indemnify, defend and hold harmless Afecta, its officers, directors, employees, stockholders, agents and representatives (collectively, "Afecta Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the research, development, marketing, design, manufacture, distribution, use and/or sale of Afecta Licensed Products by, on behalf of, or under authority of, Supernus or its sub-licensees; or Supernus Patent Rights or Supernus Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Afecta Indemnitee shall be entitled to indemnification under this Section 9.01 against any Losses arising out of such Afecta Indemnitee's negligence or willful misconduct.

9.1.2. Notification of Claim. Each Afecta Indemnitee shall notify Supernus in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Supernus' indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Supernus shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Afecta Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Supernus' indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Afecta Indemnitee after the assumption of the defense by Supernus. If Supernus does not assume the defense of the Claim, the Afecta Indemnitee may defend the Claim, at Supernus' expense; provided that the Afecta Indemnitee shall not settle or compromise the Claim without the consent of Supernus, which consent shall not be unreasonably withheld. The Afecta Indemnitee shall cooperate with Supernus and will make available to Supernus all pertinent information under the Afecta Indemnitee's control.

9.2 Indemnification by Afecta.

9.2.1. Scope. Afecta shall indemnity, defend and hold harmless Supernus, its officers, directors, employees, stockholders, agents and representatives (collectively, "Supernus Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the warranties and representations made by Afecta in the Agreement; or Afecta Patent Rights or Afecta Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Supernus Indemnitee shall be entitled to indemnification under this Section 9.2 against any Losses arising out of such Supernus Indemnitee's negligence or willful misconduct.

9.2.2. Notification of Claim. Each Supernus Indemnitee shall notify Afecta in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of

Afecta's indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Afecta shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Supernus Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Afecta's indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Supernus Indemnitee after the assumption of the defense by Afecta. If Afecta does not assume the defense of the Claim, the Supernus Indemnitee may defend the Claim, at Afecta's expense; provided that the Supernus Indemnitee shall not settle or compromise the Claim without the consent of Afecta, which consent shall not be unreasonably withheld. The Supernus Indemnitee shall cooperate with Afecta and will make available to Afecta all pertinent information under the Supernus Indemnitee's control.

9.3. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY PROVIDED HEREIN.

9.4. Insurance. Each party shall maintain, through self-insurance or commercially-placed insurance, adequate coverage for the indemnification obligations set forth herein, consistent with pharmaceutical industry practices and mutually acceptable to both parties.

ARTICLE 10

TERMINATION

10.1. Term. The exclusive option granted to Supernus under this Agreement shall commence on the Effective Date and terminate on the 5th anniversary of the Effective Date. The exclusive licenses granted to Supernus hereunder shall commence in accordance with the terms of this Agreement and shall automatically expire with regard to each Licensed Product after six months from the discontinuation of the commercial sale of the Afecta Licensed Product on a country-by-country basis.

10.2. Termination by Supernus. Supernus may terminate, in whole or in part, any of the licenses granted by Afecta to Supernus with 30 days' prior written notice to Afecta. All licenses so terminated shall revert back to Afecta in accordance with Section 2.3. Termination of a specific license shall not affect Supernus' exclusive option rights to other Afecta Products or other Afecta Licensed Products licensed to Supernus.

10.3. Termination for Discontinuation of Development. Subject to the Force Majeure provision set forth herein in Section 11.3, in the event that Supernus and its sub-licensees have discontinued all development and commercialization activities relating to a specific Afecta Licensed Product for a period of [**], this Agreement as it relates to that specific Afecta Licensed Product shall terminate and all licenses under the Afecta Patent Rights granted to Supernus and its sub-licensees hereunder in connection with that specific Afecta Licensed Product only shall revert to Afecta thirty (30) days thereafter in accordance with Section 2.3. All other licenses granted hereunder not affected by the

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

discontinuance of all development and commercialization in connection with a specific Afecta Licensed Product shall remain in good standing

10.4. **Termination for Default.** In the event of a Default by Supernus in its capacity as a Licensee under this Agreement, Afecta may terminate the license for the specified Afecta Licensed Product in the specified country subject to the Default granted to Supernus hereunder by written notice to Supernus, and upon Supernus' receipt of such notice, said license granted to Supernus shall revert to Afecta. All other licenses granted hereunder not affected by the Default shall remain in good standing.

In the event of a Default by Afecta under this Agreement, the License to Supernus will become irrevocable and fully paid.

10.5. **Insolvency or Bankruptcy.** All rights and licenses granted under or pursuant to this Agreement by the Parties are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that each Party, in its capacity as a licensee of such rights under this Agreement, shall retain all licenses granted to it hereunder and may fully exercise all of its rights and elections under the United States Bankruptcy Code, subject to payment to the other Party of any royalties or other payments due pursuant to Article 5. The Parties further agree that, in the event of commencement of a bankruptcy proceeding by or against either Party under the United States Bankruptcy Code, the Party hereto which is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property, and all embodiments of such intellectual property, and same, if not already in its possession, shall be promptly delivered to it (i) upon any such commencement of a bankruptcy proceeding upon its written request therefore, unless the Party subject to such proceeding elects to continue to perfonn all of its obligations under this Agreement, or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefore by any non-subject Party.

10.6 Surviving Obligations. The provisions of Articles 3,7,8,9 and Sections 10.4, 10.7, 11.1, 11.5, 11.10, 11.11 and 11.14 shall survive any termination or expiration of this Agreement. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration.

10.7. **Effects of Termination.** Upon termination of this Agreement in its entirety or otherwise with respect to rights in any Afecta Licensed Product in accordance with Section 10.3, Supernus and its sub-licensees shall thereupon have the right to sell that amount of any such Afecta Licensed Product that Supernus and its sub-licensees then have on hand, provided however, that with respect to any such Afecta Licensed Product for which any payment is due under Article 5 hereof, Supernus shall make such payment to Afecta as required therein.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1. Supernus Arrangement with Shire.

Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights. (a) Afecta acknowledges that Supernus has certain contractual agreements with subsidiaries of Shire plc **("Shire")** pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable, exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, **"Compounds"** means any and all of: (A)(1) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) Afecta hereby agrees that it shall not use any of the services or Confidential Information provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the Purpose and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Compounds in any field of use. The provisions of this Section 11 (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customers's names from time to time for monitoring purposes and Afecta hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this Section 11. Afecta acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this Section 11, at the written request of Shire, Supernus shall provide Shire and its subsidiaries with an executed copy of this Agreement, and Afecta hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event Afecta breaches or threatens to breach the provisions of this Section 11, should the breach or threatened breach relate directly or indirectly to any activities relating to any of the

Compounds then, in addition to any rights that Supernus may have against Afecta, Afecta acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against Afecta for any and all damages suffered or incurred by Shire and its subsidiaries as a result of Afecta's breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is unsuccessful, Afecta shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Afecta may be entitled. Afecta further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. Afecta agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) Afecta agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could be asserted by Afecta against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. Afecta further agrees to waive against Shire and its subsidiaries any such claims or counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) The provisions of this Section 11 shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State. Each of the parties hereto acknowledges and agrees that this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this Agreement.

(f) Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to the provisions of this Section 11 and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in

the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint Capitol Services, Inc, as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE PROVISIONS OF THIS SECTION 11.1.

11.2 Assignment. Neither this Agreement nor any interest hereunder shall be assignable by either Party without the prior written consent of the other Party; provided that either Party may assign this Agreement and all of its rights and obligations hereunder, without such consent, to an entity which acquires all or substantially all of the product rights to which this Agreement pertains, whether by merger, consolidation, reorganization, acquisition, sale, license or otherwise. This Agreement shall be binding upon the successors and permitted assigns of the Parties, and the name of a Party appearing herein shall be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 11.2 shall be void. Nothing herein shall preclude Supernus from sublicensing its exclusive licensing rights.

11.3. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

11.4. Force Majeure. Neither Party shall be liable to the other for loss or damages, nor shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure, if the Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled, provided however, that such affected Party commences and continues to take reasonable and diligent actions to cure such cause.

11.5. Notices. All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

[**]

With a copy to:
[**]

If to Afecta addressed to:

[**]

With a copy to:

11.6. **Amendment.** No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

11.7. **Waiver.** No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

11.8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

11.9. **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

11.10. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Delaware, without reference to the conflicts of law principles thereof, and the Parties hereby submit to the exclusive jurisdiction of the Delaware courts, both state and federal.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

11.11. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any or all of the Afecta Patent Rights or Afecta Intellectual Property rights as it relates to an Afecta Licensed Product shall not affect Supernus' license rights in and to the remaining Afecta Patent Rights or Intellectual Property Rights as it related to the other Afecta Licensed Products.

11.12. **Entire Agreement of the Parties.** This Agreement (including all Exhibits attached hereto, which are incorporated herein by reference) constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, representations, promises, understandings and agreements, whether oral or written, between the Parties respecting the subject matter thereof.

11.13. **Dispute Resolution.** The Parties agree that in the event of a dispute between them arising from, concerning or in any way relating to this Agreement, the Parties shall undertake good faith efforts to resolve any such dispute in good faith. In the event the Parties shall be unable to resolve any such dispute, the matter shall be first referred to the general counsel for each Party for further review and resolution and, if necessary, then to the chief executive officer of each Party. If after such efforts the Parties are unable to resolve such dispute, a Party may seek any remedy available under applicable law.

11.14. **Independent Contractors.** The relationship between Afecta and Supernus created by this Agreement is one of independent contractors, and neither Party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

11.15. **Use of Name.** No right, express or implied, is granted to either Party by this Agreement to use in any manner any trademark or trade name of the other Party, including the names "Supernus" and "Afecta", without the prior written consent of the owning Party.

11.16. **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their respective duly authorized officers.

SUPERNUS PHARMACEUTICALS, INC.		**AFECTA PHARMACEUTICALS, INC.**	
BY:	/s/ Jack Khattar	**BY:**	/s/ Bruce Kovacs, M.D.
TITLE:	President & CEO	**TITLE:**	President

Exhibit A
OFFER LETTER TEMPLATE

THIS OFFER LETTER is executed as of DATE by and between Supernus Pharmaceuticals, Inc. ("Supernus") and Afecta Pharmaceuticals, Inc. ("Afecta").

RECITALS:

WHEREAS, Supernus and Afecta are parties to the Exclusive Option and License Agreement dated April 27, 2006 ("the Agreement");

WHEREAS, Afecta has granted Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth in the Agreement;

NOW THEREFORE, in accordance with the terms of the Agreement and this Offer Letter, Afecta is offering commencing on the effective date of this Offer Letter an Afecta Product to Supernus for potential worldwide license following the Due Diligence Period and issuance of the Notice Letter. The Afecta Product offered herein is as defined below and includes the following:

1. Compound Name:
2. Currently Approved Indications:
3. Proposed Indications for Supernus:
4. Summary and rationale of Afecta Product
5. Historical Overview of Afecta Product:
    a. Physician or specialist interviews
    b. Market research
    c. Supportive articles
    d. Study designs and outcomes
6. Intellectual Property Summary
    a. Invention Disclosures or other summaries
    b. Patent Applications
    c. Patents
    d. Freedom to operate searches
7. Summary of Strategy for Afecta Product
    a. Market potential
    b. Competitive Analysis
    c. Forecasts
    d. Clinical & Regulatory Strategy

Afecta Pharmaceuticals, Inc.		**Supernus Pharmaceuticals, Inc**	
By:	_____	**By:**	_____
Title:	_____	**Title:**	_____
Date:	_____	**Date:**	_____

Exhibit B
NOTICE LETTER TEMPLATE

THIS NOTICE LETTER is issued as of DATE by Supernus Pharmaceuticals, Inc. ("Supernus") to Afecta Pharmaceuticals, Inc. ("Afecta").

RECITALS:

WHEREAS, Supernus and Afecta are parties to the Exclusive Option and License Agreement dated April 27, 2006 ("the Agreement");

WHEREAS, Afecta has granted Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth in the Agreement;

WHEREAS, in accordance with the terms of the Agreement, Afecta has offered an Afecta Product per the Offer Letter dated DATE ("Offer Letter") and Supernus has completed the Due Diligence Period;

NOW THEREFORE, in accordance with the terms of the Agreement, Supernus hereby notifies Afecta by way of this Notice Letter ("Notice Letter") of its intention to obtain a worldwide exclusive license to the Afecta Product as identified in the Offer Letter. By issuance of this Notice Letter by Supernus, and by its receipt by Afecta, the License Grant defined in Section 2.2 of the Agreement becomes fully effective and such Afecta Product becomes an Afecta Licensed Product.

Supernus Pharmaceuticals, Inc

By: _____
Title: _____
Date: _____

Exhibit C
AFECTA PATENT RIGHTS

AFECTA ISSUED PATENTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit D

SUPERNUS PATENT RIGHTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

SUPERNUS PATENT RIGHTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit 10.14

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is made as of June 9, 2006 (the "Effective Date") by and between Supernus Pharmaceuticals Inc, a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("Supernus") and Rune Healthcare Limited, an English corporation, with principal offices located at 9a Magdala Road, Nottingham NG3 5DE, United Kingdom ("RH").

RECITALS:

WHEREAS, RH has developed and owns the RH Concept (as hereinafter defined);

WHEREAS, RH has agreed to sell to Supernus and Supernus has agreed to buy from RH the RH Concept on the terms and conditions set forth herein; and

WHEREAS, RH has agreed not to compete, recreate or sell the RH Concept to any other party on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement, the parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 **"RH Concept"** shall mean RH pharmaceutical Product concepts, RH Market Analysis, any supportive data, information, reports, intelligence, or other data that may be in the possession of RH prior to the Effective Date (attached herein as Schedule 1) or may be obtained by RH at any time during the term of this Agreement that may be applicable or supportive to any Product, or Supernus Product.

1.2. **"Supernus Product"** shall mean any Product that is developed by or on behalf of Supernus and is based on the RH Concept.

1.3. **"RH Market Analysis"** shall mean those items set forth on Schedule I including but not limited to (i) Market Review with comparison of Product Profile vs. competitive products, (ii) RH Concept Analysis - publication search, (iii) Patent Search - Worldwide search dated, albeit minimal analysis done by patent experts, (iv) Primary Research - 50 structured experts' interviews at an international conference held in Europe and (v) Preliminary Forecasting Analysis based on said Primary Research, all such documents having been provided by RH to Supernus in writing prior to the Effective Date.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.4. **"Affiliate"** shall mean a corporation or other business entity controlled by, controlling, or under common control with a Party. For this purpose, control shall mean the direct or indirect ownership of at least fifty percent (50%) of the voting stock or at least fifty percent (50%) interest in the income of such corporation or other business.

1.5. **"Agreement"** shall mean this Agreement.

1.6. **"Confidential Information"** shall mean any information of either Party, which, if written, is marked confidential by the disclosing Party or, if oral, is reduced to writing, marked confidential by the disclosing Party, and provided to the non-disclosing Party within thirty (30) days of the oral disclosure, (b) all information relating to RH Concept and Supernus Product.

1.7. **"Due Diligence"** shall mean all necessary activities to be conducted by Supernus in its sole discretion and at its own cost following the Effective Date through the Due Diligence Period.

1.8. **"Due Diligence Period"** shall mean [**] from the Effective Date.

1.9. **"Default"** shall mean, with respect to either Party, such Party shall have failed to perform any material obligation set forth herein; provided however, that such Party shall have not brought, or not commenced substantial remedial action to bring, the facts underlying such representation or warranty into conformance with such representation or warranty or shall not have performed, or commenced substantial remedial action to perform, such material obligation, within sixty (60) days after receipt of written notice from the other Party specifying in detail the material obligation which has not been performed and requesting that the failure to perform be remedied within sixty (60) days.

1.10. **"Effective Date"** shall mean the date of this Agreement.

1.11. **"First Commercial Sale"** shall mean the initial sale of a Supernus Product by Supernus to a Third Party in exchange for cash or some equivalent to which value can be assigned for purposes of determining Net Sales.

1.12. **"Field"** shall mean the treatment, diagnosis or prevention of diseases in humans or animals.

1.13. **"Force Majeure"** shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, breakdown of plant, earthquake, strike, lockout, labor dispute (other than strike, lockout or labor dispute of a Party's own employees), casualty or accident, or war, revolution, civil commotion, acts of public enemies, blockage or embargo, or any reasonably unforeseen delays associated with clinical trials of the Supernus Product, or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or of any subdivision including but not limited to the requirements and

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conditions of the Food and Drug Administration of the United States, authority or representative or any such government, inability to procure or use materials, including but not limited to any material needed to manufacture any Supernus Product, equipment, transportation, or energy sufficient to meet manufacturing needs without the necessity of allocation, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence and to remedy it promptly if it shall have occurred and shall have notified the other Party in writing of the reasons for the delay or default.

1.14. **"Net Sales"** means the gross amount invoiced by Supernus, its Affiliates or its Licensees for the sale of the Supernus Products in the Territory commencing upon the date of First Commercial Sale, after deducting the following:

1. trade quantity or ordinary discounts including prompt payment and volume discounts; chargebacks from wholesalers and other allowances granted to customers (whether in cash or trade);

2. allowances for Product returns;

3. sales or excise taxes, VAT or other taxes charged or levied on sales (but excluding taxes on the income of Supernus, its Affiliates or its Licensees);

4. rebates or similar payments made in connection with sales of Supernus Product to any governmental or regulatory authority in respect of any State or Federal Medicare, Medicaid or similar programs in any country of the Territory.

Sales or other transfers between Supernus and its Affiliates or Licensees shall be excluded from the computation of Net Sales, and

5. freight, packing, freight insurance and rebates.

1.15. **"Party"** shall mean Supernus or RH, as the case may be, and "**Parties**" shall mean Supernus and RH collectively.

1.16. **"Person"** shall mean an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization, or any other entity, or a government or any department or agency thereof.

1.17. **"Product"** shall mean [**] or formulations thereof for the [**].

1.18. **"Territory"** shall mean the World.

1.19. **"Third Party"** shall mean any Person other than RH and Supernus or an Affiliate.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

1.20. **"Licensee"** shall mean a person or entity appointed by Supernus as a licensee under this Agreement and shall include any sub-licensee appointed by such Licensee.

ARTICLE 2

PURCHASE AND SALE OF RH CONCEPT

2.1. **RH Concept Purchase.** On the terms and subject to the conditions and exceptions contained herein, RH agrees to sell to Supernus and Supernus agrees to purchase from RH on the Closing Date, free and clear of all liens, claims, liabilities, obligations and encumbrances (except those liens, encumbrances and security interests set forth on Schedule 2.1 (the "Permitted Encumbrances")) all of Seller's right, title and interest in and to the RH Concept including but not limited to all of RH's right, title and interest in any copyrights or other intellectual property or ownership rights in and to the RH Concept.

2.2. **Due Diligence Period.** Supernus shall have the Due Diligence Period to determine whether or not it desires to close on the purchase of the RH Concept. RH hereby agrees to cooperate on a timely basis, with Supernus and provide Supernus with such information it has in its possession or readily available to it that Supernus may reasonably require for it to conduct its Due Diligence process. In the event Supernus desires not to purchase the RH Concept for any reason, it shall notify RH of same prior to the expiration of the Due Diligence Period by executing and delivering written notice attached hereto as Exhibit 2.2. and made a part hereof by this reference. If no notice is sent by Supernus to RH prior to the expiration of the Due Diligence Period, the parties shall close the purchase and sale of the RH Concept on the Closing Date.

2.3. **Closing.** The transactions contemplated herein shall be consummated (the "Closing") within thirty (30) calendar days following the expiration of the due diligence period or at such other time mutually acceptable by the parties hereto at the offices of Schmeltzer, Aptaker & Shepard, P.C., 2600 Virginia Avenue, N.W., Suite 1000, Washington, D.C. 20037.

2.4. **Non-Competition and Related Matters.** At the Closing, RH shall enter into a non-competition, non-solicitation, non-disclosure and non-circumvention agreement **(the "Noncompetition Agreement")** with Supernus in the form attached as Exhibit 2.4.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

Whenever the terms "knowledge" or "Supernus' knowledge" are used in this Agreement, including this Article 3, such terms shall mean the knowledge, after reasonably diligent inquiry, of Supernus. In order to induce RH to enter into this Agreement and to consummate the transactions contemplated herein, and with the knowledge that the RH is relying on the representations, warranties and covenants herein contained, Supernus

represents and warrants to RH on the date hereof, to be ratified in all respects as of the Closing Date.

3.1. Representations and Warranties of Supernus. Supernus offers as warranties the statements set forth herein. Supernus makes no other warranties.

3.1.1. Corporate Power. Supernus is duly organized and validly existing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

3.1.2. Due Authorization. Supernus is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Supernus' behalf has been duly authorized to do so by all requisite corporate action.

3.1.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Supernus, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Supernus does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.1.4. No Other Warranties. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE RH CONCEPT OR SUPERNUS PRODUCTS.

3.2. Representations and Warranties of RH. RH offers as warranties the statements set forth herein. RH makes no other warranties.

Whenever the terms "knowledge" or "RH's knowledge" are used in this Agreement, including this Article 3, such terms shall mean the knowledge, after reasonably diligent inquiry of RH. In order to induce Supernus to enter into this Agreement and to consummate the transactions contemplated herein, and with the knowledge that the Supernus is relying on the representations, warranties and covenants herein contained, RH represents and warrants to Supernus on the date hereof, to be ratified in all respects as of the Closing Date.

3.2.1. Corporate Power. RH is duly organized and validly existing under the laws of England and has full corporate power and authority to enter into this Agreement and carry out the provisions hereof.

3.2.2. Due Authorization. RH is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on RH's behalf has been duly authorized to do so by all requisite corporate

action. Licensor represents and warrants that it has the full and lawful right and authority to grant the exclusive option and exclusive licensing rights described hereunder.

3.2.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon RH, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by RH does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.2.4. No Undisclosed Liabilities. There are no liabilities or obligations (whether absolute, accrued, contingent or otherwise) in connection with the RH Concept.

3.2.5. Good Title. RH has and, upon consummation of the transactions contemplated hereby Supernus will have, good and marketable title to the RH Concept, free and clear of any lien, pledge, mortgage, security interest or encumbrance of any kind.

3.2.6. No Notice. RH has not received any notice from any government agency or any other third party which is applicable to the RH Concept and which would have a Material Adverse Effect on Supernus' full rights to develop the RH Concept or the Supernus Product as contemplated herein after the Closing Date.

3.2.7. No Other Contracts. Other than this Agreement, Seller is not a party to any oral or written contract, or understanding with any other party in connection with the RH Concept. RH is not in default under any contract, agreement or other understanding relating to the RH Concept to which it is or was a party.

3.2.8. No Litigation. RH is not party to any litigation and to the best of RH's knowledge no litigation is pending or threatened and no ground or basis exists which, either absolute or contingently would give rise to any litigation in connection with the RH Concept.

3.2.9. No Warranties Regarding Intellectual Property or Fitness. RH does not warrant that it has any intellectual property rights in the RH Concept except as described in this Agreement and makes no representations whatsoever with regard to the scope of the RH Concept or that the Supernus Product may he exploited without infringing other patents or other intellectual property rights of Third Parties. RH MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE RH MARKET ANALYSIS. RH MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE RH CONCEPT OR ANY SUPERNUS PRODUCT.

3.2.10. True Information. The information including but not limited to the RH Concept furnished by or on behalf of RH to Supernus in connection with this Agreement does not contain any untrue statement of a material fact and does not omit to state any

material fact necessary to make the statements made, in the context in which made, not false or misleading. Notwithstanding any knowledge or facts determined or which might have been determined by Supernus pursuant to any rights hereunder to investigate, Supernus shall be entitled to rely fully upon all representations, warranties, covenants and agreements and other undertakings contained in this Agreement or in any schedule, document or instrument delivered pursuant hereto or otherwise made pursuant to this Agreement, in Supernus' determination to consummate the transactions contemplated by this Agreement.

ARTICLE 4

DEVELOPMENT AND COMMERCIALIZATION

4.1. **Development and Commercialization.** Supernus, in its sole discretion and at its sole cost and risk, shall have the right to make all decisions relating to the development and commercialization of the Supernus Products under the RH Concept including, but not limited to, all decisions relating to the research, pre-clinical, and clinical development of the RH Concept, and the promotion, advertising, marketing and pricing of the Supernus Products. Supernus shall use its commercially reasonable efforts and judgment to actively develop and market the Supernus Product(s) throughout the Territory.

4.2. **Reports.** Supernus shall deliver to RH, on a semi-annual basis, project updates on Supernus development activities for the Supernus Product (including project timelines and the identities of actual partners).

ARTICLE 5

CONSIDERATION

5.1. **Consideration.** In consideration for the sale of the RH Concept and the execution of the Non-Competition Agreement, in addition to the other payments set forth in this Article 5, Supernus shall pay to RH the U.S. equivalent of £25,000 at Closing.

5.2. **Royalties.**

5.2.1. Net Sales. In consideration for the sale of the RH Concept and the execution of the Non-Competition Agreement in addition to the other payments set forth in this Article 5, Supernus shall pay to RH in immediately available funds royalties of [**]% of Net Sales of the Supernus Product.

5.2.2. No Multiple Royalties. Royalties under this Section 5.2 shall be payable on a Supernus Product-by-Supernus Product basis, and shall be imposed only once with respect to any sale of the same unit of Supernus Product by Supernus and no multiple royalties shall be payable by Supernus.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.2.3. Expiration of Royalty Payments. Supernus' obligation to pay royalties to RH on a country by country basis shall expire upon the earlier of:

5.2.3.1. Ten (10) years from the date of First Commercial Sale of an Supernus Product or

5.2.3.2. The market entry in a country of the Territory of a Product by any entity other than Supernus, an Affiliate of Supernus, or its Licensees.

5.2.3.3. Reduction of Royalty Payments. Supernus' obligation to pay royalties to RH shall at Supernus' sole discretion be reduced by the full amount of any damages or expenses resulting from RH's inability to fulfill any of its obligations under this Agreement including but not limited to Article 10 herein.

5.3. Payment of Royalties; Reports.

5.3.1. First Commercial Sale. Supernus shall report to RH the date of First Commercial Sale of a Supernus Product within thirty (30) days of such occurrence in each country of the Territory.

5.3.2. Royalty Statements. Supernus shall deliver to RH, within sixty (60) days after the end of each calendar quarter, a statement setting forth the Net Sales of the Supernus Product during such calendar quarter (including the country of sale and an itemized calculation of the amount of Net Sales) and the royalties due hereunder. Each such statement shall be accompanied by a remittance of the royalties in United States Dollars due for such calendar quarter.

5.3.3. Manner of Payment. All payments hereunder shall be in United States dollars and shall be made by wire transfer to such bank account as may be designated in writing from time to time by RH.

5.3.4. Currency. If Net Sales are in a currency other than United States Dollars, the Net Sales, for the purpose of calculating payments hereunder shall be determined in the applicable foreign currency and then converted into United States Dollars at the end of each calendar quarter using an exchange rate equal to [**] by the Federal Reserve Bank of New York (available on Bloomberg L.P. and Reuters).

5.3.5. Taxes. All taxes levied on account of royalties payable to Supernus hereunder shall be paid by Supernus. In the event laws or regulations require withholding of taxes from any payment of royalties, the taxes will be deducted by Supernus from the royalty payment and will be paid by Supernus to the proper taxing authority. Supernus will furnish RH with the copies of all official receipts for such taxes. In the event of any such withholding, the Parties agree to confer regarding other measures to minimize such withholding.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

5.3.6. Overdue Payments. Any overdue payments under this Agreement, including without limitation, royalty payments made hereunder after the date such payment is due, shall bear interest at [**] as of the date such payment was due (the "Interest Rate"). The Interest Rate shall be calculated based on a 360-day year from the date payment was due until received by RH as cleared funds.

ARTICLE 6

AUDIT

6.1 Audit. Once per twelve-month period from the Effective Date, Supernus agrees to make its records for payment of royalties and the calculation of Net Sales due available for examination by RH during normal business hours. RH shall have the option to engage, at its own expense, an independent certified public accountant reasonably acceptable to Supernus to examine, in confidence, Supernus' records as may be necessary to determine the correctness of any payment of royalties or calculation of Net Sales hereunder made by Supernus. The report of such accountant shall be limited to a certificate verifying any report made or payment submitted by Supernus during such period but may include, in the event the accountant shall be unable to verify the correctness of any such payment, information relating to why such payment is unverifiable. All information contained in any such certificate shall be deemed to be the Confidential Information of Supernus hereunder. If any audit performed under this Section 6.1 shall indicate that any payment due hereunder was underpaid, incorrect or unverifiable, Supernus shall promptly pay the amount of any underpayment, correct the figures or provide verification (as appropriate). If any audit performed under this Section 6.1 shall indicate that any payment hereunder was in error to RH's detriment by more than 8 percent for any annual period, Supernus shall pay the cost of the audit. Supernus undertakes to maintain true and accurate records of all transactions concerning the payment of royalties and the calculations of Net Sales.

ARTICLE 7

CLOSING

7.1. Conditions to Supernus' Obligations. Each and every obligation on the part of Supernus to be performed hereunder, including the payment of the Consideration, shall be subject to the prior satisfaction (in accordance with the terms of this Agreement) of each and every one of the following conditions precedent, provided that all transfers contemplated by this Agreement shall be deemed to take place simultaneously at Closing and to be interdependent, so that Supernus shall not be obligated to consummate any transfer unless all of the conditions precedent relating to all transfers shall have been satisfied in full:

7.1.1. Delivery of Documents By RH. Prior to or at the Closing, RH shall have executed and/or delivered to Supernus:

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(i) Such instruments of sale, transfer, assignment, conveyance and delivery in the form set out in Exhibit 7.1.1;

(ii) The Noncompetition Agreement;

(iii) The RH Concept including but not limited to all items scheduled on Schedule 1.1;

(iv) A copy, certified by the secretary of RH, of resolutions of the board of directors of RH authorizing the execution, delivery and consummation of this Agreement and the transactions contemplated hereby together with evidence of Seller's qualification and good standing in England and any required approval by the Shareholders; and

(v) Such other, further and different certificates, assurances and documents as Supernus may reasonably request (i) in order to evidence the accuracy of RH's representations and warranties, the performance of its covenants and agreements to be performed at or prior to the Closing Date, and the fulfillment of the conditions to Supernus' obligations; or (ii) which are otherwise necessary to consummate the transactions contemplated in this Agreement.

7.1.2. Closing Certificate. Supernus shall have received at Closing a closing certificate in the form attached hereto as Exhibit 7.1.2. signed by RH.

7.1.3. Consents; Regulatory Approvals. RH shall have obtained all contractual and governmental consents, approvals, and authorizations which are necessary or reasonably required to effectuate the consummation of the transactions contemplated hereby and the satisfaction of the conditions precedent to the obligations of Supernus under terms acceptable to Supernus in the exercise of its business judgment. RH agrees to cooperate with Supernus in effectuating the timely transfer of any and all permits and licenses, if any, which may require governmental consent and/or approval.

7.1.4. No Pending Litigation. As of the Closing Date, no litigation, order, enforcement action, or claim exists and to the best of RH's knowledge no litigation shall be pending or threatened against RH or any person holding an equity interest therein, seeking to enjoin, or to procure damages or fines as a result of, the consummation or the proposed consummation of the transactions contemplated herein.

7.1.5. Unrestricted Control. As of the Closing Date, the Seller shall have unrestricted control, possession of and title to the RH Concept.

7.2.1. Conditions to Seller's Obligations. The obligation of RH to consummate the transactions contemplated hereby is subject to Supernus executing and/or delivering to RH at or prior to the Closing the following:

(i) Payment of the Consideration due at Closing;

(ii) The Noncompetition Agreement; and

(iii) A copy, certified by the secretary of Supernus, of resolutions of Supernus' governing body authorizing the execution, delivery and consummation of this Agreement and the transactions contemplated hereby.

ARTICLE 8

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

8.1. Infringement of Third Party Rights.

8.1.1. Notice of Infringement. In the event that RH becomes aware that the rights and title acquired by Supernus under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify Supernus in writing and provide it with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it. Any defense of potential lawsuits brought on by a Third Party will be carried out as described in Sections 8.2.2 and 8.2.3 below.

8.1.2. Supernus Product. Subject to Section 8.2.3, if the Third Party claim is specifically related to the RH Concept or the Supernus Product, Supernus will defend any suit resulting directly from such claim. RH hereby agrees to be joined in such suit, should RH be found to be an indispensable party to the proper defense of such suit provided that Supernus reimburses RH's costs unless the claim is directly linked to a RH breach of warranty as set forth in Article 3. RH may choose to obtain its own counsel for such litigation in which event it shall be liable for its own costs.

8.1.3. Change to Royalty Payments. Royalty Payments in respect of the Product due to RH under Article 5 with respect to RH Product Concept Product sold in such country will be reduced to the extent that (i) Supernus is required, by a final court order from which no appeal can be taken, to obtain license from a Third Party under any patent, which would be infringed by the manufacture, use, offer for sale, sale or import of the Product by Supernus, its Affiliates, contractors, or licensees, or (ii) Supernus in the exercise of its reasonable judgment, believes that a license from such Third Party, is necessary. To the extent that the Royalty Payments required to be made under Article 5 for any country are reduced as provided hereunder, they will be reduced, in such country, by an amount equal to all considerations actually paid by Supernus to such Third Party under such license with respect to such country. Supernus will use reasonable efforts to minimize any such required payments to Third Parties.

8.1.4. Cooperation. Each Party shall use reasonable efforts to cooperate, at its own expense, with the other Party's reasonable requests and, to the extent reasonably

possible, provide or procure the provision of such reasonable assistance in defending any such action or any proceedings.

8.2. **Supernus' Ownership in Intellectual Property.** Supernus shall retain all right, title and interest in and to shall become the owner of all Intellectual Property Rights in the RH Concept and all Supernus Products developed thereunder. At Supernus' request, RH will sign any documents and do all such things as Supernus may deem reasonably necessary to vest such rights in Supernus.

ARTICLE 9

CONFIDENTIALITY AND NON-COMPETITION

9.1. **This Agreement.** The Parties agree that the material terms of the Agreement, the documents, information and data comprising the RH Concept and RH Market Analysis and such other trade secrets or intellectual property sold by RH to Supernus, all financial statements, financial information, projections, forecasts, business plans, development plans, formulations, product profiles, methods, ideas, concepts, materials, documents, records, computer programs, customer lists, referral sources, work, models, processes, designs, drawings, plans, inventions, devices, parts, improvements, other physical and intellectual property or other information in any form whatsoever relating directly or indirectly to the RH Concept and the documents generated pursuant to the obligations hereunder shall be considered Confidential Information of the Party providing or disclosing the same to the other.

9.2. Notwithstanding the foregoing, (i) the Parties shall be permitted to disclose in filings with the Securities Exchange Commission ("SEC") or the London Stock Exchange or to any applicable government authority including but not limited to the applicable taxing authorities, those terms of this Agreement required to be disclosed under law or regulation; provided that the Parties shall consult with one another concerning which terms of this Agreement shall be requested to be redacted in any such filings, and provided however, that in the event of a filing each party shall seek confidential treatment in its filings for the financial terms of this Agreement (ii) each Party shall have the right to disclose in confidence the terms of the Agreement to parties retained by such Party to perform legal, accounting or similar services and who have a need to know such terms in order to provide such services and (iii) at the request of either Party, the Parties shall mutually agree on a press release to be issued upon execution of this Agreement or reasonably soon thereafter.

ARTICLE 10

INDEMNIFICATION

10.1 Indemnification by Supernus.

10.1.1. Scope. Supernus shall indemnify, defend and hold harmless RH, its officers, directors, employees, stockholders, shareholders, agents and representatives (collectively, "RH Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to any breach of this Agreement (including any the warranties and representations made by Supernus in the Agreement) by Supernus, its affiliates or Licensees or arising out of or relating to the research, development, marketing, design, manufacture, promotion, marketing, distribution, use and/or sale of Supernus Product by, on behalf of, or under authority of, Supernus, its Affiliates or its Licensees.

10.1.2. Notification of Claim. Each RH Indemnitee shall notify Supernus in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Supernus' indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Supernus shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the RH Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Supernus' indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the RH Indemnitee after the assumption of the defense by Supernus. If Supernus does not assume the defense of the Claim, the RH Indemnitee may defend the Claim, at Supernus' expense; provided that the RH Indemnitee shall not settle or compromise the Claim without the consent of Supernus, which consent shall not be unreasonably withheld. The RH Indemnitee shall cooperate with Supernus and will make available to Supernus all pertinent information under the RH Indemnitee's control.

10.2. Indemnification by RH.

10.2.1. Scope. RH shall indemnify, defend and hold harmless Supernus, its officers, directors, employees, stockholders, shareholders, agents and representatives (collectively, "Supernus Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses") arising out of or relating any breach of this Agreement (including the warranties and representations made by RH in the Agreement) by RH. Notwithstanding the foregoing, no Supernus Indemnitee shall be entitled to indemnification under this Section 10.2 against any Losses arising out of such Supernus Indemnitee's negligence or willful misconduct or breach of warranties and representations made by Supernus in the Agreement.

10.2.2. Notification of Claim. Each Supernus Indemnitee shall notify RH in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of RH's indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. RH shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Supernus Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and RH's indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Supernus Indemnitee after the assumption of the defense by RH. If RH does not assume the defense of the Claim, the Supernus Indemnitee may defend the Claim, at RH's expense; provided that the Supernus Indemnitee shall not settle or compromise the Claim without the consent of RH, which consent shall not be unreasonably withheld. The Supernus Indemnitee shall cooperate with RH and will make available to RH all pertinent information under the Supernus Indemnitee's control.

10.3. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY PROVIDED HEREIN.

10.4. Insurance.

10.4.1. Supernus shall maintain, through self-insurance or commercially-placed insurance, adequate coverage for the indemnification obligations set forth herein, consistent with pharmaceutical industry practices and mutually acceptable to both parties.

10.4.2. Subject to Article 5.2.3.3 herein Rune shall purchase and maintain general liability, casualty product liability or such other insurance necessary to secure its obligations to Supernus hereunder including but not limited to its indemnity obligations. The insurance policies shall be with companies authorized to do business in the state of Maryland, satisfactory to Supernus. Copies of the policies shall be delivered to Supernus together with proof of payment no later than fifteen days from Closing. Supernus shall be listed as a named insured under all such policies. Such insurance policies shall not be cancelable without the permission of Supernus provided Rune may cancel same, provided it replaces the insurance with the same or better insurance coverage with another company meeting the obligations above. Further, the insurance companies shall be obligated to provide reasonable notice to Supernus in the event Rune cancels or defaults on its payment obligations in connection with said insurance. Notwithstanding anything to the contrary herein, Rune's maximum obligation for total insurance coverage shall be [**] annual coverage for a period of [**] commencing from the date of Closing.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

ARTICLE 11

TERMINATION

11.1. **Termination by Supernus.** Supernus may terminate this Agreement prior to the expiration of the Due Diligence Period. In the event of termination by Supernus, Supernus shall not compete with the RH Concept.

11.2. **Termination for Discontinuation of Development.** In the event that Supernus and/or its Licensees discontinue all development or commercialization activities relating to a specific Supernus Product for a period of [**], RH shall have a right of first refusal to continue such development or commercialization activities relating to said specific Supernus Product provided RH agrees to a license from Supernus on terms and conditions mutually acceptable by the parties. Said right of first refusal shall expire if the parties are unable to reach a negotiated agreement within [**].

11.3. **Termination for Default.** In the event of a Default by Supernus in its payment of Royalties or breach of its representations or warranties as set forth under this Agreement, RH's sole recourse is to sue Supernus for damages. RH shall have no recourse to reacquire or obtain any right title or interest or have a security interest in the RH Concept or any Supernus Product. In the event of a Default by RH in a breach of its representations or warranties as set forth under this Agreement, in addition to all of its other rights under law or equity, Supernus shall have the right to offset its damages and expenses in connection therewith against future Royalty payments.

11.4. **Surviving Obligations.** The provisions of this Article and Articles 3, 5, 6, 8, 9, 10, 11 and Articles 12.1, 12.4, 12.8, 12.9, 12.11, 12.12 and 12.13 shall survive any termination or expiration of this Agreement. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration.

ARTICLE 12

12.1. **Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party; provided that either Party may assign this Agreement and all of its rights and obligations hereunder, without such consent, to an entity which acquires all or substantially all of the product rights to which this Agreement pertains, whether by merger, consolidation, reorganization, acquisition, sale, license or otherwise. This Agreement shall be binding upon the successors and permitted assigns of the Parties, and the name of a Party appearing herein shall be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 12.1 shall be void. Nothing herein shall preclude Supernus from licensing its rights purchased herein.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

12.2. **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

12.3. **Force Majeure.** Neither Party shall be liable to the other for loss or damages, nor shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure, if the Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled, provided however, that such affected Party commences and continues to take reasonable and diligent actions to cure such cause.

12.4. **Notices.** All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

[**]

With a copy to:
[**]

If to RH addressed to:

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

12.5. **Amendment.** No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

12.6. **Waiver.** No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

12.7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

12.8. **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

12.9. **Governing Law.** Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to the provisions of this Agreement, and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding, and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent, and that the annual cost of maintaining such agent shall be paid for by Supernus on RH's behalf, and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint Capitol Services, Inc. as such agent.

12.10. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any of the provisions herein as it relates to an RH Concept Product shall not

affect Supernus' ownership rights in and to the RH Concept or any other Supernus Products.

12.11. Entire Agreement of the Parties. This Agreement (including all Exhibits and Schedules attached hereto and documents referred to, which are incorporated herein by reference) constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, representations, promises, understandings and agreements, whether oral or written, between the Parties respecting the subject matter thereof.

12.12. Dispute Resolution. The Parties agree that in the event of a dispute between them arising from, concerning or in any way relating to this Agreement, the Parties shall undertake good faith efforts to resolve any such dispute in good faith. In the event the Parties shall be unable to resolve any such dispute, the matter shall be first referred to the general counsel for each Party for further review and resolution and, if necessary, then to the chief executive officer of each Party. If after such efforts the Parties are unable to resolve such dispute, a Party may seek any remedy available under applicable law.

12.13. Use of Name. No right, express or implied, is granted to either Party by this Agreement to use in any manner any trademark or trade name of the other Party, including the names "Supernus" and "Rune," without the prior written consent of the owning Party.

12.14. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be reasonably necessary or appropriate in order to carry out the purposes and intent of this Agreement.

12.15. No Brokers. Neither Supernus nor RH nor any Shareholder has engaged, or caused to be incurred any liability to, any finder, broker, or sales agent in connection with the origin, negotiation, execution, delivery, or performance of this Agreement or the transactions contemplated hereby.

12.16. Public Announcements. Except as required by law, prior to the Closing, RH shall make no public announcement of the transactions contemplated hereby without the prior written consent of Supernus. After the Closing, Supernus and RH may make public announcements regarding the transactions contemplated hereby with respective mutual consent.

12.17 Interpretation. The parties hereby agree that each party has reviewed and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their respective duly authorized officers.

SUPERNUS PHARMACEUTICALS, INC.

BY: /s/ Jack Khattar

TITLE: President & CEO

DATE: 6/9/06

RUNE HEALTHCARE LIMITED

BY: /s/ Russ Pendleton

TITLE: CEO

DATE: 12/6/06

EXHIBIT 2.4

NON-COMPETITION, NON-SOLICITATION, NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

THIS NON-COMPETITION, NON-SOLICITATION, NON-DISCLOSURE AND NON-C1RCUMVENTION AGREEMENT ("Agreement") is made and entered into as of the 9th day of June, 2006 (the "Effective Date"), by and between Supernus Pharmaceuticals Inc., a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 (the "Company" or "Supernus"), and Rune Healthcare Limited, an English corporation with principal offices located at 9a Magdala Road, Nottingham NG3 5DE, United Kingdom and any of its affiliates or any of their respective officers, directors, shareholders, partners, members, employees or agents (collectively, "RH" or "Seller").

All initially capitalized terms used, but not defined herein, shall have the meanings ascribed thereto in the Purchase Agreement, as defined below.

RECITALS:

WHEREAS, on the Effective Date, the Company has consummated the purchase of the RH Concept of Seller, as defined in and pursuant to the terms of that certain Purchase and Sale Agreement dated as of June 9, 2006 (the "Purchase Agreement"), between the Company and Seller; and

WHEREAS, the Company is willing to consummate the purchase and sale contemplated in the Purchase Agreement upon the Seller's execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, the consideration provided pursuant to the Purchase Agreement, the parties hereto hereby agree as follows:

1. Non-Competition.

(a) The Seller covenants and agrees that until the expiration of the Royalty Term in the Purchase Agreement (the "Applicable Period"), they shall not, directly or indirectly, as a principal, shareholder, partner, member, representative, agent.

contemplated in the RH Concept" shall mean and refer to any business, directly or indirectly researching, promoting, developing, manufacturing, marketing, selling, distributing, or licensing the RH Concept or any Products in the Field.

(b) The Seller shall not be treated as engaging in an activity that competes with the business of the Company solely by reason of: (i) owning an equity interest of less than 1% of the capital and profits of a corporation, partnership, limited liability company or other entity whose securities are publicly traded on national exchange; or (ii) owning a debt obligation of any entity, provided that such debt obligation entitles Seller to receive only interest that is fixed, or varies by reference to an index or formula that is not based on the value or results of operations of such entity.

(c) If for any reason a court of competent jurisdiction shall determine that the foregoing covenant is unenforceable by reason of the scope of the term [or the territory] involved, the parties agree that the term [or territory] shall be reduced to the maximum amount or amounts enforceable under applicable law.

2. Non-Solicitation. During the Applicable Period, the Seller covenants and agrees (a) not to, directly or indirectly, interfere with, attempt to disrupt any account, customer, client, supplier or other person or entity with whom the Seller is aware or the Company notifies the Seller that the Company has a material business relationship and which would have a materially negative impact on the development or commercialization of the Supernus Product (b) not to, directly or indirectly, induce or attempt to induce any of the employees of the Company or any of its subsidiaries or affiliates to leave the employment of the Company or any of its subsidiaries or affiliates.

3. Non-Disclosure

(a) The Seller covenants and agree not to disclose the Confidential Information (hereinafter defined) to any person; provided, however, the Seller may disclose the Confidential Information only (i) in response to a valid order or subpoena issued by a court or administrative agency of competent jurisdiction (provided, however, the Seller shall immediately notify the Company of any such order or subpoena in order to provide the Company the opportunity to protect its interest in such Confidential Information); or (ii) to such other persons as are expressly approved by the written consent of the Company prior to the disclosure of the Confidential Information.

(b) In no event shall the Seller utilize the Confidential Information to promote or otherwise enhance the business of the Seller in competition with the Company or for any other commercial purpose whatsoever.

(c) The term "Confidential Information" means and includes any and all non-public and proprietary information regarding the RH Concept or the Supernus Product in the Field in any therapeutic dose, and such other trade secrets or intellectual property sold by RH to Supernus pursuant to the Purchase Agreement. The term "Confidential Information" shall include, without limitation, all financial statements, financial information, projections, forecasts, business plans, development plans,

formulations, product profiles, methods, ideas, concepts, materials, documents, records, computer programs, customer lists, referral sources, work, models, processes, designs, drawings, plans, inventions, devices, parts, improvements, other physical and intellectual property or other information in any form whatsoever relating directly or indirectly to the RH Concept.

4. Non-Circumvention.

(a) The Seller agrees not to contact or initiate contact at any time for any purpose, either directly or indirectly, in connection with the RH Concept or Supernus Products, or any other property or properties whose identity was revealed through the efforts of the Company (or its subsidiaries or affiliates), unless such approval is specifically granted in written form by Company on a case-by-case basis. The Seller further agrees not to undertake any transaction or a series of transactions of any kind in connection with any Company Opportunity (hereinafter defined) or to collect any fees in connection with a Company Opportunity without the express prior written consent of Company, which consent may be withheld in Company's sole discretion.

(b) The term "Company Opportunity" means and includes each and every business opportunity that is within the scope and purpose of the RH Concept or Supernus Products.

5. Equitable Relief. The Seller acknowledges, stipulates and agrees that irreparable harm will result to the Company if the Seller violates any provision of Sections 1 through 4 hereof, and that monetary damages will not adequately compensate the Company for such violation. Accordingly, the Seller agrees that the Company shall be entitled to enjoin and restrain the Seller from continuing any act that violates the provisions of Sections 1 through 4 hereof; provided, however, nothing contained in this Section 5 shall be construed as a waiver or election by the Company to forego any other remedy or remedies that may be available to it hereunder or at law or in equity and, if the Seller violates any provision of Sections 1 through 4 hereof, it shall be liable to the Company for any and all loss, cost or damage suffered by the Company, including, without limitation, profits received by the Seller or any other person and attorneys' fees.

6. Miscellaneous.

(a) *Notice.* All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

[**]

With a copy to:
[**]

If to RH addressed to:

[**]

(b) *Interpretation.* The parties hereby agree that each party has reviewed and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(c) *Incorporation.* All agreements and instruments referred to herein are hereby incorporated by reference into this Agreement as fully as if copied herein verbatim.

(d) *No Waiver.* No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

(e) *Attorneys' Fees.* If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement and such action is successful, the prevailing parties shall be entitled to recover reasonable attorney's fees, court costs and all reasonable expenses, even if not taxable or assessable as court costs

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[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which such party may be entitled.

(f) *Section Headings.* The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

(g) *Governing Law.* This Agreement shall be governed in all respects, including validity, interpretation and effect by, and shall he enforceable in accordance with the internal laws of the State of Delaware without regard to conflicts of laws principles.

(h) *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any of the provisions herein as it relates to an RH Concept Product shall not affect Supernus' ownership rights in and to the RH Concept or any other Supernus Products.

(i) *Counterpart Execution.* This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

(j) *Successors and Assigns.* This Agreement is binding on the successors and assigns of all parties hereto.

(k) *Amendments.* No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

(l) *Entire Agreement.* This Agreement contains the entire agreement between the parties regarding the subject matter hereof. Any prior agreements, discussions or representations not expressly contained herein shall be deemed to be replaced by the provisions hereof, and no party has relied on any such prior agreements, discussions or representations as an inducement to the execution hereof.

(m) *Rules of Construction.* As used in this Agreement:

(i) All defined terms in the singular and plural shall have comparable meanings when used in the plural and vice-versa, unless otherwise specified.

(ii) Any reference to a "person" shall mean and refer to any individual, partnership, firm, corporation, limited liability company, association, joint

venture, trust or other entity, or any governmental or political subdivision or agency department or instrumentality thereof.

(iii) Any reference to a "business day" shall mean and refer to any day that is not a Saturday, Sunday or any other day on which national banks located in Montgomery County, Maryland, arc required or permitted to close their regular banking business.

(iv) All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

(v) The words "hereof," "herein," "hereunder" and words of similar import shall refer to this Agreement as a whole and not any particular provision of this Agreement.

(vi) The word "party" or "Parties" when used in this Agreement means only those persons or entities who are signatories to this Agreement.

(vii) References to all documents, contracts, agreements or instruments shall include any and all supplements and amendments thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

COMPANY:

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar

Name: Jack Khattar

Title: President & CEO

Address: 1550 E. Gude Drive
Rockville, MD 20850

Attn: J.W. Bryan
Telephone: [**]
Facsimile: [**]

SELLER:

RUNE HEALTHCARE LIMITED, an English corporation

By: /s/ Russ Pendleton
CEO

Address: 9A Magdala Road
Nottingham, UK, NG3 5DE
Telephone: [**]
Facsimile: [**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit 10.15

EXCLUSIVE LICENSE AGREEMENT

THIS EXCLUSIVE LICENSE AGREEMENT is made as of November 2, 2007 (the "Effective Date") by and between Supernus Pharmaceuticals Inc, a Delaware corporation with principal offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("Supernus") and Afecta Pharmaceuticals, Inc. a California corporation with principal offices located at 2102 Business Center Drive, Irvine, California 92612 ("Afecta").

RECITALS:

WHEREAS, Afecta has granted to Supernus an exclusive option per the Exclusive Option and License Agreement dated April 27, 2006 ("the Option Agreement") to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products; and

WHEREAS, Afecta has granted an exclusive license to Supernus for the Afecta Licensed Product in the Field as noted in the Notice Letter dated March 14, 2007 (as hereinafter defined);

WHEREAS, by way of the Notice Letter dated March 14, 2007 the Afecta Product has become an Afecta Licensed Product; and

WHEREAS, Supernus and Afecta desire to define the exclusive licensing rights to the Afecta Licensed Product on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement and the Warrant, the parties agree as follows:

ARTICLE 1.

DEFINITIONS

1.1. For the purposes of this Agreement the Definitions for Afecta Pre-IP Products, Afecta Filed Products, and Afecta IP Products will be as defined in The Option Agreement.

1.2 "Afecta Intellectual Property Rights" shall mean Afecta Patent Rights and all intellectual property rights including Afecta Know How belonging to Afecta in connection with the Afecta Licensed Product that is the subject of this Agreement.

1.3. "Afecta Invention" means any Invention in the Field or that could be used in the Field generated solely by employees or agents of Afecta prior to execution of the Notice Letter in connection with the Afecta Licensed Product that is the subject of this Agreement..

1.4 "Afecta Know How" shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether

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[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

patentable or not), modifications or enhancements that was generated by Afecta outside of this Agreement with respect to the Afecta Licensed Product that is the subject of this Agreement.

1.5. **"Afecta Licensed Product"** as used herein shall mean molindone and it salts, racemic mixtures, isomers, derivatives, and analogues thereof as licensed to Supernus in accordance with the terms and conditions of this Agreement.

1.6. **"Afecta Patent Rights"** shall mean collectively Afecta's right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit A; (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation, supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents that existed prior to execution of the Notice Letter. Notwithstanding the foregoing, the definition of Afecta Patent Rights shall exclude any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter, which rights shall belong to Supernus.

1.7. **"Afecta Product"** shall mean Afecta IP Products, Afecta Filed Products and Afecta Pre-IP Products that existed prior to execution of the Notice Letter and pertain to: molindone and any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, metabolites or any other derivatives thereof; and any compound involving forming or breaking a bond or bonds with molindone or any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, metabolites or any other derivatives thereof where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is in the Field (as hereinafter defined).

1.8. **"Affiliate"** shall mean a corporation or other business entity controlled by, controlling, or under common control with a Party. For this purpose, control shall mean the direct or indirect ownership of at least fifty percent (50%) of the voting stock or at least fifty percent (50%) interest in the income of such corporation or other business.

1.9. **"Agreement"** shall mean this Agreement.

1.10. **"Confidential Information"** shall mean (a) any information of either Party, which, if written, is marked confidential by the disclosing Party or, if oral, is reduced to writing, marked confidential by the disclosing Party, and provided to the non-disclosing Party within thirty (30) days of the oral disclosure, (b) all information relating to the prosecution, maintenance or defense of the Afecta Patent Rights or Afecta Intellectual Property Rights, (c) all information relating to the prosecution, maintenance or defense of the Supernus Patent Rights or Supernus Intellectual Property Rights, and (d) Net Sales.

1.11. **"Default"** shall mean, with respect to either Party, such Party shall have failed to perform any material obligation set forth herein; provided however, that such Party shall have not brought, or not commenced substantial remedial action to bring, the facts underlying such representation or warranty into conformance with such representation or warranty or shall not have performed, or commenced substantial remedial action to perform, such material obligation, within sixty (60) days after receipt of written notice from the other Party specifying in detail the material obligation which has not been performed and requesting that the failure to perform be remedied within sixty (60) days.

1.12. **"Development Costs"** shall mean all costs required to be expended by either party to develop and obtain regulatory approval including but not limited to personnel, out of pocket, subcontract and any other costs to compensate a Third Party for the Afecta Licensed Product in the Territory; all costs to file, maintain and defend the intellectual property pertaining to the Afecta Licensed Product; all manufacturing, post-approval research, development and clinical costs; and all sales, marketing and administrative costs required to market the Afecta Licensed Product in the Territory.

1.13. **"Effective Date"** shall mean the date of this Agreement.

1.14. **"First Commercial Sale"** shall mean the initial transfer of the Afecta Licensed Product to a Third Party in exchange for cash or some equivalent to which value will be assigned for purposes of determining Net Sales.

1.15. **"First Efficacy Trial"** shall mean testing the efficacy and safety of the Afecta Licensed Product in a population of patients within the Field.

1.16. **"Field"** shall mean for the treatment, diagnosis or prevention of central nervous system related diseases and indications in humans and animals.

1.17. **"Force Majeure"** shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, breakdown of plant, earthquake, strike, lockout, labor dispute, casualty or accident, or war, revolution, civil commotion, acts of public enemies, blockage or embargo, or any unforeseen delays associated with clinical trials of the Afecta Licensed Product, or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or of any subdivision including but not limited to the requirements and conditions of the Food and Drug Administration of the United States, authority or representative or any such government, inability to procure or use materials, including but not limited to any material needed to manufacture any Afecta Licensed Product, labor, equipment, transportation, or energy sufficient to meet manufacturing needs without the necessity of allocation, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence and to remedy it promptly if it shall have occurred and shall have notified the other Party in writing of the reasons for the delay or default.

1.18. **"GAAP"** shall mean United States generally accepted accounting principles consistently applied.

1.19. **"Invention"** means any invention, discovery, or innovation, whether patentable or not, invented, discovered, or conceived either prior to the Notice Letter or after the Notice Letter by either party as the case may be or in collaboration as the case may be as related to the Afecta Licensed Product.

1.20. **"Major Markets"** shall mean the United States, Canada, United Kingdom, France, Spain, Germany, Italy, and Japan.

1.21. **"Net Sales"** shall mean all revenues recognized in accordance with GAAP from the sale of the Afecta Licensed Product by Supernus and/or its Affiliates to Third Parties, less returns and allowances (actually paid and allowed, including, but not limited to, prompt payment and volume discounts, charge backs from wholesalers and other allowances granted to customers, whether in cash or trade), freight, packing, insurance, rebates actually paid and allowed, and sales and other taxes based on sales prices when included in gross sales, but not including taxes when assessed on income derived from such sales.

1.22. **"Notice Letter"** shall mean the Notice Letter dated March 14, 2007 attached herein as Exhibit B and signed by Supernus and Afecta that grants Supernus an exclusive license the Afecta Licensed Product in accordance with the Option Agreement.

1.23 **"Party"** shall mean Supernus or Afecta, as the case may be, and **"Parties"** shall mean Supernus and Afecta collectively.

1.24. **"Person"** shall mean an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization, or any other entity, or a government or any department or agency thereof.

1.25. **"Purpose"** shall mean the research, development and commercialization of the Afecta Licensed Products.

1.26 **"Similar Product"** shall mean any product that contains same active ingredient and is approved for the same indications as for the Afecta Licensed Product that is the subject of this Agreement after Effective Date.

1.27. **"Supernus Formulations"** shall mean ProPhile®, ProScreen®, OptiScreen®, RADAR™, Avert®, Microtrol®, Solutrol®, and EnSoTrol® technologies and such other technologies that existed prior to the date of this Agreement or are developed or acquired by Supernus during the course of this Agreement and as applied to Afecta Licensed Products.

1.28. **"Supernus Intellectual Property Rights"** shall mean Supernus Patent Rights and all intellectual property rights including Supernus Know How belonging to Supernus in connection with Supernus Formulations.

1.29. **"Supernus Invention"** means any Invention generated solely by employees or agents of Supernus or in collaboration with employees or agents of Afecta in connection with Afecta Licensed Product following execution of the Notice Letter.

1.30. **"Supernus Know How"** shall mean all information, techniques, data, technical information and other proprietary information and know-how including, without limitation, improvements (whether patentable or not), modifications or enhancements that was generated by Supernus outside of this Agreement.

1.31. **"Supernus Patent Rights"** shall mean collectively Supernus' right, title and interest in the following intellectual property rights: (a) the patents listed in Exhibit C and (b) any and all extensions or restorations by existing or future extension or restoration mechanisms, including without limitation,

supplementary protection certificates or the equivalent thereof, substitutions, confirmations, re-registrations, reexaminations, revalidations, reissues, renewals, extensions or additions to any such foregoing patents and (c) the intellectual property rights in any improvements, modifications or expansions to the patent(s) by work produced solely by Supernus or in collaboration with Afecta, after the execution of the Notice Letter

1.32. **"Territory"** shall mean the World.

1.33. **"Third Party"** shall mean any Person other than Afecta and Supernus or its Affiliates.

1.34. **"Valid Claim"** shall mean a claim of an issued and unexpired patent included within the Afecta Patent Rights which has not been held permanently revoked, unenforceable 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 been disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise.

ARTICLE 2

EXCLUSIVE WORLDWIDE LICENSE

2.1. License Grant to Supernus.

2.1.1. Grant to Supernus. On the terms and conditions set forth herein, and effective from the Effective Date of the Notice Letter to Afecta for the Afecta Product, Afecta hereby grants to Supernus and its Affiliates an exclusive license, with the right to grant sub-licenses solely pursuant to Section 2.1.2, in the Afecta Intellectual Property Rights and the Afecta Licensed Product identified in the Notice Letter dated March 14, 2007 to develop, have developed, make, have made, use, have used, sell, have sold and offer for sale the Afecta Licensed Product in the Field anywhere in the Territory.

2.1.2. Sub-licenses. Supernus shall have the right to grant sublicenses under this Agreement without the prior written consent of Afecta, provided however, that (i) Supernus agrees that its sublicensing agreements will not conflict with any of its obligations hereunder; (ii) Supernus agrees to provide to Afecta a redacted copy of any fully executed sublicense agreement within 5 business days of execution.

2.1.3. No Other Licenses. This Agreement confers no license or rights by implication, estoppel or otherwise to Supernus in any other Afecta Products except as offered herein or as may be obtained in accordance with the terms and conditions of this Agreement.

2.2. License Grant to Afecta.

2.2.1. Grant to Afecta. Upon Supernus' sole election to terminate this Agreement, per Articles 10.2, 10.3, 10.4 or 10.5 herein, Supernus will at the request of Afecta negotiate the appropriate licenses with Afecta and its Affiliates according to Sections 2.2, 2.3, and 5.3 of the Option Agreement for the right to grant to Afecta an exclusive license with the right to grant sub-licenses solely pursuant to,(i) data

generated under the Notice Letter or this Agreement, (ii) Supernus Formulations, (iii) Supernus Intellectual Property Rights, and (iv) Supernus Inventions only as they relate to and are required for the development, manufacturing and sale of the Afecta Licensed Product that is subject of this Agreement and the Notice Letter.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1. Representations and Warranties of Supernus.

3.1.1. Corporate Power. Supernus is duly organized and validly existing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

3.1.2. Due Authorization. Supernus is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Supernus' behalf has been duly authorized to do so by all requisite corporate action.

3.1.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Supernus, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Supernus does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.1.4. Invention Disclosure. Supernus warrants to Afecta that it will not file an invention disclosure or patent application for any Afecta Invention that is revealed prior to the Notice Letter with respect to the Afecta Licensed Product.

3.1.5. No Other Warranties. Supernus offers as warranties the statements set forth herein. Supernus makes no other warranties. Supernus does not warrant the validity or enforceability of the Supernus Patent Rights and makes no representations whatsoever with regard to the scope of the Supernus Patent Rights, or that the Supernus Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE SUPERNUS PATENT RIGHTS OR SUPERNUS INTELLECTUAL PROPERTY RIGHTS. SUPERNUS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED REGARDING THE SUCCESS OF THE DEVELOPMENT, MANUFACTURING OR MARKETING OF THE LICENSED PRODUCTS.

3.2. Representations and Warranties of Afecta.

3.2.1. Corporate Power. Afecta is duly organized and validly existing under the laws of the State of California and has full corporate power and authority to enter into this Agreement and carry out the provisions hereof.

3.2.2. Due Authorization. Afecta is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder. The Person executing this Agreement on Afecta's behalf has been duly authorized to do so by all requisite corporate action. Afecta represents and warrants that it has the full and lawful right and authority to grant the exclusive option and exclusive licensing rights described hereunder.

3.2.3. Binding Agreement. This Agreement is a legal and valid obligation binding upon Afecta, and enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by Afecta does not conflict with any material agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.2.4. Invention Disclosure. Afecta warrants to Supernus that it will not file an invention disclosure or patent application for any Supernus Invention that is revealed after the Notice Letter with respect to the Afecta Licensed Product that is the subject of this Agreement.

3.2.5 Afecta Ownership. Afecta warrants that it is the sole and exclusive owner of all legal and equitable title to the Afecta Patent Rights and has good and valid title to such rights free and clear of all encumbrances.

3.2.6. No Other Warranties. Afecta offers as warranties the statements set forth herein. Afecta makes no other warranties. Afecta does not warrant the validity or enforceability of the Afecta Patent Rights and makes no representations whatsoever with regard to the scope of the Afecta Patent Rights, or that the Afecta Patent Rights may be exploited without infringing other patents or other intellectual property rights of Third Parties. AFECTA MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY SUBJECT MATTER DEFINED BY THE CLAIMS OF THE AFECTA PATENT RIGHTS OR AFECTA INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 4

DATA, DEVELOPMENT AND COMMERCIALIZATION

4.1 As soon as practicable after the Effective Date and from time to time thereafter, Afecta shall provide Supernus in a timely manner with copies of all data and information generated in connection with any Development Plans, including without limitation all related Afecta Intellectual Property, that is necessary for Supernus to develop and commercialize the Afecta Licensed Product under this Agreement.

4.2 **Development and Commercialization.** Supernus, in its sole discretion, shall have the right to make all decisions relating to the development and commercialization of the Afecta Licensed Product including, but not limited to, all decisions relating to the research, pre-clinical, and clinical development of the Afecta Licensed Products and the promotion, advertising, marketing and pricing of the Afecta Licensed Product. Supernus shall use its commercially reasonable efforts to actively develop and market the Afecta Licensed Product in the Territory. Notwithstanding the foregoing, Supernus at its sole discretion will consult with Afecta and seek its input before making its final decisions relating to the development and commercialization of the Afecta Licensed Product.

4.3. **Reports.** Supernus shall deliver to Afecta, on a quarterly basis, in a mutually agreed format, written project updates on Supernus development activities for the Afecta Licensed Product.

4.4 **Regulatory Filings.** Supernus shall, at its own cost, retain sole responsibility for the preparation, filing, prosecution and maintenance of all filings and applications for all regulatory approvals relating to the Afecta Licensed Product. Supernus shall solely in its direction manage all applications, requests for authorization, submissions of information and data and for all interactions with the FDA or applicable governing health authority for the purpose of attempting to obtain registration of the Afecta Licensed Products within the Territory. Supernus shall solely and exclusively own all regulatory applications, approvals, data and Afecta Licensed Product registrations obtained by Supernus or its Affiliates with respect to the Afecta Licensed Product, including retaining control and ownership of each Drug Master File related to the Afecta Licensed Product.

4.5 **Afecta Assistance.** Afecta shall provide Supernus with reasonable assistance in any IND, NDA or other regulatory filings and meetings worldwide relating to the Afecta Licensed Product. Supernus shall have the right to reference all related data and Afecta Intellectual Property to the extent necessary to support its worldwide regulatory filings and compliance program.

ARTICLE 5

CONSIDERATION

5.1. **License Fee Payments.** In consideration for the grant of the rights and licenses set forth in this Agreement and the Notice Letter dated March 14, 2007, in addition to the other payments set forth in Article 5 of this Agreement and the $[**] payment already made by Supernus to Afecta, Supernus shall pay to Afecta $[**] upon the successful completion of the First Efficacy Trial.

5.1.1 **Change License Fee Payments.** Following execution by Supernus of this Agreement, it is possible that based on certain research and exploratory activities that Supernus may conduct or as a result of regulatory approvals or disapprovals unknown to Supernus at this time, Supernus may opt to use the Afecta Licensed Product in a manner that qualifies the licensed Afecta Product as Afecta Filed Product or as Afecta IP Product (as defined in the Option Agreement). If Supernus makes such a decision, Supernus will pay to Afecta [**] payment equal to [**] in accordance with the terms of the Option Agreement. Thereafter, Supernus shall pay Afecta all future considerations as set forth in the Option Agreement

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applicable to the determined category of the Afecta Licensed Product in accordance with the terms of this Agreement.

5.2. Royalties.

5.2.1. Net Sales. In consideration for the grant of the rights and licenses set forth in Section 2.1, in addition to the other payments set forth in this Article 5, Supernus shall pay to Afecta in immediately available funds royalties on Net Sales in accordance with the following schedule: If the Afecta Licensed Product is categorized as an Afecta IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is categorized as an Afecta Filed Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis. If the Afecta Licensed Product is categorized as an Afecta Pre IP Product, Supernus shall pay Afecta [**]% of Net Sales on a quarterly basis.

5.2.2. Participation in Development Costs. Afecta may elect to participate in the Development Cost or to decline participation in the Development Costs within 120 days of the licensing of the Afecta Licensed Product to Supernus. To the extent, Afecta agrees to participate in Development Costs prior to completion of the first Phase II study of the Afecta Licensed Product, then Afecta's share of Net Sales set forth in 5.2.1 shall increase in accordance with the schedule below depending upon the amount Afecta contributes toward the payment of Development Costs ("Pre-Phase II Participation").

In the event that Afecta contributes less than [**]% in the Pre-Phase II Participation or does not participate until after completion of Phase II ("Post Phase II Participation") Afecta's share of Net Sales shall be the higher of: (i) [**] or (ii) that described in Article 5.2.1. herein.

Percent of Total Development Costs Contributed by Afecta	Percent of Licensed Product Net Sales Payable to Afecta		
	Afecta IP Product	Afecta Filed Product	Afecta Pre IP Product
<[**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
[**]% - [**]%	[**]%	[**]%	[**]%
>[**]%	[**]%	[**]%	[**]%

5.2.3. No Multiple Royalties. Royalties under this Section 5.2 shall be payable on an Afecta Licensed Product-by-Afecta Licensed Product basis, and shall be imposed only once with respect to any sale of the same unit of Afecta Licensed Product by Supernus or its sub-licensees, and no multiple

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royalties shall be payable by Supernus because any Afecta Licensed Product is covered by more than one of the Afecta Patent Rights or one or more claims of the Afecta Patent Rights.

5.2.4. Expiration or Reduction of Royalty Payments. Supernus' obligation to pay royalties to Afecta on a country-by-country basis in the Territory for the Afecta Licensed Product shall expire or be reduced upon the earlier of:

5.2.4.1. [**] or [**], or

5.2.4.2. [**], or

5.2.4.3. [**]. However, in the event Supernus or its Sublicensee continues to promote the Afecta Licensed Product when the Similar Product is: (i) an [**] and (ii) the [**] Supernus' obligation to pay royalties to Afecta shall be reduced to [**] of the applicable Afecta Pre-IP royalty rate specified in Article 5.2.2 and only for a period of time that does not extend the royalty obligation beyond what is contemplated under clause 5.2.4.2.

5.3. Payment of Royalties; Reports.

5.3.1. First Commercial Sale. Supernus shall report to Afecta the date of First Commercial Sale of the Afecta Licensed Product within thirty (30) days of such occurrence.

5.3.2. Royalty Statements. Supernus shall deliver to Afecta, within sixty (60) days after the end of each calendar quarter, a statement setting forth the Net Sales of Afecta Licensed Products during such calendar quarter (including the country of manufacture and an itemized calculation of the amount of Net Sales in the United States, its territories and possessions) and the royalties due hereunder. Each such statement shall be accompanied by a remittance of the royalties in United States Dollars due for such calendar quarter.

5.3.3. Manner of Payment. All payments hereunder shall be in United States dollars and shall be made by wire transfer to such bank account as may be designated in writing from time to time by Afecta.

5.3.4. Currency. If Net Sales are in a currency other than United States Dollars, the Net Sales, for the purpose of calculating payments hereunder shall be determined in the applicable foreign currency and then converted into United States Dollars at the end of each calendar quarter using an exchange rate equal to the [**] by the Federal Reserve Bank of New York (available on Bloomberg L. P. and Reuters).

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5.3.5. **Taxes.** All taxes levied on account of royalties payable to Supernus hereunder shall be paid by Supernus. In the event laws or regulations require withholding of taxes from any payment of royalties, the taxes will be deducted by Supernus from the royalty payment and will be paid by Supernus to the proper taxing authority. Supernus will furnish Afecta with the copies of all official receipts for such taxes. In the event of any such withholding, the Parties agree to confer regarding other measures to minimize such withholding.

5.3.6. **Overdue Payments.** Any overdue payments under this Agreement, including without limitation, royalty payments made hereunder after the date such payment is due, shall bear interest at [**] as of the date such payment was due (the "Interest Rate"). The Interest Rate shall be calculated based on a 360-day year from the date payment was due until received by Afecta.

ARTICLE 6

RECORDS; AUDIT

6.1 **Record Retention.** Supernus shall keep complete and accurate records in sufficient detail to permit Afecta to confirm the accuracy of reported net sales and royalties hereunder, including without limitation, Development Costs, general accounting ledgers, invoice/sale registers, original invoices and shipping documents, tax returns, inventory and manufacturing records, sublicense and distributor agreements and price lists, product catalogs and other marketing materials. Such records shall be retained by Supernus for at least the longer of one (1) year after completion of the audit thereof (if an audit has been requested) or three (3) years following the calendar year in which any such payments were made hereunder. Such records shall be made available within 30 days of Afecta's request without cost to Afecta.

6.2 **Royalty Audit.** Once per each twelve-month period from the Effective Date, Supernus agrees to make its records for payment of royalties due available for examination by Afecta during normal business hours. Afecta shall have the option to engage, at its own expense, an independent certified public accountant reasonably acceptable to Supernus to examine, in confidence, Supernus' records as may be necessary to determine the correctness of any payment of royalties hereunder made by Supernus. The report of such accountant shall be limited to a certificate verifying any report made or payment submitted by Supernus during such period but may include, in the event the accountant shall be unable to verify the correctness of any such payment, information relating to why such payment is unverifiable. All information contained in any such certificate shall be deemed to be the Confidential Information of Supernus hereunder. If any audit performed under this Section 6.2 shall indicate that any payment due hereunder was underpaid, Supernus shall promptly pay the amount of any underpayment. If any audit performed under this Section 6.2 shall indicate that any payment hereunder was in error to Afecta's detriment by more than [**] percent for any annual period, Supernus shall pay the cost of the audit.

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ARTICLE 7

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

7.1. **Patent and Intellectual Property Rights Maintenance.** During the term of this Agreement, Afecta, using its sole business judgment, shall have the right to maintain the Afecta Patent Rights or Afecta Intellectual Property Rights. Afecta shall consult with Supernus and keep Supernus regularly advised of Afecta's strategies, plans, progress and results of any such maintenance. If Afecta elects not to maintain Afecta Patent Rights or any intellectual property within Afecta Intellectual Property Rights then Afecta shall notify Supernus of such decision on a timely basis, and Supernus may elect to maintain on behalf of Afecta, such patent or intellectual property rights upon providing written notice of such election to Afecta. Supernus shall consult with Afecta and keep Afecta regularly advised of Supernus' strategies, plans, progress and results of any such maintenance action on behalf of Afecta. Such costs incurred by Supernus relating to maintenance of such patent and/or intellectual property rights on behalf of Afecta, including attorney fees, shall be deducted from the Royalty Payments due to Afecta under Section 5.2.

7.2. **Infringement of Third Party Rights.**

7.2.1. **Notice of Infringement.** In the event of a Party becoming aware that the exercise of either Party's rights and obligations under this Agreement are infringing, or may infringe, the intellectual property rights of a Third Party in any country in the Territory, it will promptly notify the other Party in writing and provide the other Party with such details of the Third Party's relevant intellectual property rights and the extent of any infringement as are known to it. Any defense of potential lawsuits brought on by a Third Party will be carried out as described in Sections 7.2.2 and 7.2.3 below.

7.2.2. **Afecta Licensed Product.** Subject to Section 7.2.3, if the Third Party claim is specifically related to the Afecta Licensed Product, Supernus will defend any suit resulting directly from such claim. Afecta hereby agrees to be joined in such suit, should Afecta be found to be an indispensable party to the proper defense of such suit. Afecta may choose to obtain its own counsel for such litigation.

7.2.3. **Afecta Invention.** If the Third Party claim is related solely to the Afecta Invention, and not to the Afecta Licensed Product, Afecta will defend such suit or claim. Supernus hereby agree to be joined in such suit, should Supernus be found to be an indispensable party to the proper defense of such suit. Supernus may choose to obtain its own counsel for such litigation.

7.2.4. **Change to Royalty Payments.** Royalty Payments due to Afecta under Article 5 with respect to Afecta Licensed Product sold in such country as there is Third Party infringement will be reduced: (i) if Supernus is required, by a final court order from which no appeal can be taken, to obtain license from a Third Party under any patent covering the Afecta Licensed Product, which would be infringed by the manufacture, use, offer for sale, sale or import of the Afecta Licensed Product by Supernus, its Affiliates, Subcontractors, or Sublicensees, or (ii) if Supernus in the exercise of its reasonable judgment, believes that a license from such Third Party, is necessary. If the Royalty Payments required to be made under Article 5 for any country are reduced as provided hereunder, they will be reduced, in such country, by an amount equal to all considerations actually paid by Supernus to

such Third Party under such license with respect to such country unless such license requirement or infringement is predicated on Supernus Formulations or Supernus Intellectual Property Rights.

7.3. Infringement of Afecta Patents or Supernus Patents.

7.3.1. Notice of Third Party Infringement. In the event that either Party becomes aware of any Third Party infringement or suspected infringement of any Afecta Patents or Supernus Patents used in connection with the Afecta Licensed Product, it will promptly notify the other Party in writing and provide it with such details of the Third Party infringement as are known to it.

7.3.2. Necessary Steps. The Parties shall, after receipt of notice referred to in Section 7.3.1, promptly discuss the infringement and, to the extent necessary, attempt to agree on the necessary steps to be taken to prevent, terminate, or otherwise address such Third Party infringement.

7.3.3. Action After No Agreement. If within twenty (20) days of the date of the notice referred to in Section 7.3.1, the Parties have not agreed upon an appropriate course of action then the following shall apply:

7.3.3.1. If the patent is an Afecta Patent or a Supernus Patent that contains one or more claims specifically directed to the Afecta Licensed Product or the manufacture, use or sale thereof then Supernus shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Supernus shall provide Afecta with prior notice of the initiation of any such action or proceedings and shall keep Afecta informed of any significant developments. In the event that Supernus has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement and the patent is an Afecta Patent, then Afecta may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement; and

7.3.3.2. If the patent is an Afecta Patent not covered by Section 7.3.3.1 above, then Afecta shall have the right, but not the obligation, to commence, any action or proceedings, negotiate a license or take such other steps as are necessary to terminate or prevent the Third Party infringement. Afecta shall provide Supernus with prior notice of the initiation of any such action or proceedings and shall keep Supernus informed of any significant developments. In the event that Afecta has not commenced any action or proceedings to terminate or prevent such infringement, within one hundred twenty (120) days after having become aware of such potential infringement, then Supernus may at its reasonable discretion take such action as is reasonably necessary and appropriate to terminate or prevent such infringement.

7.3.4. **Prior Written Consent.** The Party controlling the action or proceedings shall not settle the action or proceedings or otherwise consent to an adverse judgment that diminishes the rights or interests of the other Party without the prior written consent of that Party, such consent not to be unreasonably withheld or delayed.

7.3.5. **Cooperation.** Each Party shall use reasonable efforts to cooperate, at its own expense, with the other Party's requests and, to the extent possible, provide or procure the provision of such reasonable assistance in commencing and prosecuting any such action or any proceedings.

7.3.6. **Award of Damages.** Any award of damages or other amount received by either Party as a result of a successful action, proceedings or settlement negotiations under Article 7 shall be divided between the Parties as follows:

7.3.6.1. The Party that initiated, prosecuted or maintained the defense of the action or proceedings shall recoup all of its costs (including any attorneys' and expert fees) incurred in connection with the action or proceedings;

7.3.6.2. after deducting the costs and expenses identified in 7.3.6.1 the other Party shall, to the extent possible, recover its costs and expenses (including any attorneys' and expert fees) incurred in connection with the action or proceedings; and

7.3.6.3. thereafter, any remaining recovery shall be disbursed to Supernus and shall be treated as Net Sales for purposes of this Agreement.

7.4. **Afecta's Ownership in Intellectual Property.** Subject to the exclusive license(s) to Afecta Licensed Product granted to Supernus in accordance with the terms and conditions of this Agreement, Afecta shall retain all right, title and interest in and to Afecta Patent Rights and Afecta Intellectual Property Rights that existed prior to the Effective Date of the Notice Letter but excluding data to the extent that it relates solely to Supernus Patent Rights, Supernus' Intellectual Property or Supernus Formulations. At Afecta's request, Supernus will sign any documents and do all such things as Afecta may deem reasonably necessary to vest such rights in Afecta, so long as such things do not interfere with Supernus' exclusive option granted and exclusive license rights granted to it under this Agreement.

7.5. **Supernus' Ownership in Intellectual Property.** Supernus shall retain all right, title and interest to all in and to Supernus Patent Rights, Supernus Intellectual Property Rights and Supernus Formulations that existed prior to the Effective Date of this Agreement and shall become the owner of all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products, but excluding data to the extent that it relates solely to Afecta Patent Rights, or Afecta Intellectual Property Rights. At Supernus' request, Afecta will sign any documents and do all such things as Supernus may deem reasonably necessary to vest such rights in Supernus.

7.6. **Invention Ownership.** Subject to the exclusive license rights granted under this Agreement, Supernus shall have the sole and exclusive ownership of any Supernus Invention and Afecta shall have the sole and exclusive ownership of any Afecta Invention or Afecta Products.

7.7. **Execution of Documents.** Each party shall sign such documents and do such things, or procure the signing of such documents or the doing of such things, as is reasonably necessary to vest the relevant Intellectual Property Rights in the other party.

7.8. **Filing of Patent Applications.** In the event a party decides to file a patent application for an invention covering the Afecta Licensed Product, it will give reasonable advance notice in writing of its intent to file, and will provide a draft of the application to the other party at least 20 days prior to filing. Except as provided below, the respective inventing party shall, in respect of a sole Invention (i) exclusively control the preparation, filing and prosecution of any patent applications directed to such party's sole Invention; (ii) exclusively be responsible for all related fees, costs, and expenses associated with such party's sole Invention; and (iii) exclusively control and pay for the maintenance of any patents resulting there from.

7.9. **Supernus' Inventions.** Supernus shall exclusively control the preparation, filing, prosecution and maintenance of any patent applications in respect of Supernus Inventions. Supernus will provide Afecta with copies of all relevant documents relating to Supernus Inventions that relate to all data generated after execution of the Notice Letter to the extent that it pertains to or was generated in connection with the Afecta Licensed Products but excluding data to the extent that it relates solely to Supernus Inventions held by Supernus prior to the Notice Letter or relates solely to Supernus Formulations so that Afecta may be informed and apprised of the continuing prosecution of patent applications in connection with the Afecta Licensed Products. Afecta agrees to cooperate and work together in good faith with Supernus' filing such patent applications.

ARTICLE 8

CONFIDENTIALITY

8.1. **Confidentiality.** For the term of this Agreement and any extensions and for a period of [**] thereafter, each Party agrees to keep confidential and not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement, any Confidential Information disclosed to it by the other Party, except that each Party shall not be prevented from disclosing information:

8.1.1. which it can demonstrate by written records was previously known to it;

8.1.2. which is, or becomes in the future, public knowledge through no fault or omission attributable to the receiving Party;

8.1.3. which is lawfully obtained without restriction by the receiving party from sources independent of the disclosing Party without breach of a confidentiality obligation; or

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8.1.4. which was independently discovered or developed by the disclosing Party without access to or the use of the other Party's Confidential Information, as can be documented by written records created at the time of such independent discovery or development.

8.2. **This Agreement.** The Parties agree that the material terms of the Agreement shall be considered Confidential Information of both Parties. Notwithstanding the foregoing, (i) the Parties shall be permitted to disclose in filings with the Securities Exchange Commission ("SEC") those terms of this Agreement required to be disclosed under law or regulation; provided that the Parties shall consult with one another concerning which terms of this Agreement shall be requested to be redacted in any SEC filings, and provided however, that in the event of a filing each party shall seek confidential treatment in its SEC filings for the financial terms of this Agreement (ii) each Party shall have the right to disclose in confidence the terms of the Agreement to parties retained by such Party to perform legal, accounting or similar services and who have a need to know such terms in order to provide such services and (iii) at the request of either Party, the Parties shall mutually agree on a press release to be issued upon execution of this Agreement or reasonably soon thereafter.

8.3. **Authorized Disclosure.**

8.3.1. **Disclosable Information.** Each Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following:

8.3.1.1. Enforcing and or defending rights or obligations under this Agreement; and

8.3.1.2. Complying with any court order;

provided however that the Party required to or intending to disclose the other Party's Confidential Information under this Section 8.3 shall have first given prompt notice to the other Party to enable it to seek any available exemptions from or limitations on such disclosure, and shall reasonably cooperate in such efforts by the other Party.

8.3.2. **Advance Notice of Disclosure**. Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to this Section 8.3, it will give reasonable advance notice to the other Party of such disclosure and use reasonable commercial efforts to secure confidential treatment of such information. In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder.

ARTICLE 9

INDEMNIFICATION

9.1 Indemnification by Supernus.

9.1.1. Scope. Supernus shall indemnify, defend and hold harmless Afecta, its officers, directors, employees, stockholders, agents and representatives (collectively, "Afecta Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the research, development, marketing, design, manufacture, distribution, use and/or sale of Afecta Licensed Products by, on behalf of, or under authority of, Supernus or its sub-licensees; or Supernus Patent Rights or Supernus Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Afecta Indemnitee shall be entitled to indemnification under this Section 9.01 against any Losses arising out of such Afecta Indemnitee's negligence or willful misconduct.

9.1.2. Notification of Claim. Each Afecta Indemnitee shall notify Supernus in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Supernus' indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Supernus shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Afecta Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Supernus' indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Afecta Indemnitee after the assumption of the defense by Supernus. If Supernus does not assume the defense of the Claim, the Afecta Indemnitee may defend the Claim, at Supernus' expense; provided that the Afecta Indemnitee shall not settle or compromise the Claim without the consent of Supernus, which consent shall not be unreasonably withheld. The Afecta Indemnitee shall cooperate with Supernus and will make available to Supernus all pertinent information under the Afecta Indemnitee's control.

9.2 Indemnification by Afecta.

9.2.1. Scope. Afecta shall indemnify, defend and hold harmless Supernus, its officers, directors, employees, stockholders, agents and representatives (collectively, "Supernus Indemnitees") from any and all third party losses, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), arising out of or relating to the warranties and representations made by Afecta in the Agreement; or Afecta Patent Rights or Afecta Intellectual Property Rights infringing any United States or foreign country patent, copyright or trade secret of any third party. Notwithstanding the foregoing, no Supernus Indemnitee shall be entitled to indemnification under this Section 9.2 against any Losses arising out of such Supernus Indemnitee's negligence or willful misconduct.

9.2.2. Notification of Claim. Each Supernus Indemnitee shall notify Afecta in writing promptly upon becoming aware of any pending or threatened claim, suit, proceeding or other action ("Claim") to which such indemnification may apply. Failure to provide such notice shall constitute a waiver of Afecta's indemnity obligations hereunder if and to the extent that Supernus is materially damaged thereby. Afecta shall have the right to assume and control the defense of the Claim at its own expense. If the right to assume and control the defense is exercised, the Supernus Indemnitee shall have the right to participate in, but not control, such defense at its own expense, and Afecta's indemnity obligations shall be deemed not to include attorneys' fees and litigation expenses incurred by the Supernus Indemnitee after the assumption of the defense by Afecta. If Afecta does not assume the defense of the

Claim, the Supernus Indemnitee may defend the Claim, at Afecta's expense; provided that the Supernus Indemnitee shall not settle or compromise the Claim without the consent of Afecta, which consent shall not be unreasonably withheld. The Supernus Indemnitee shall cooperate with Afecta and will make available to Afecta all pertinent information under the Supernus Indemnitee's control.

9.3. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY PROVIDED HEREIN.

9.4. Insurance. Each party shall maintain, through self-insurance or commercially-placed insurance, adequate coverage for the indemnification obligations set forth herein, consistent with pharmaceutical industry practices and mutually acceptable to both parties.

ARTICLE 10

TERMINATION

10.1. Term. The exclusive licenses granted to Supernus hereunder shall commence at the Date of the Notice Letter in accordance with the terms of this Agreement and shall automatically expire with regard to each Licensed Product after six months from the discontinuation of the commercial sale and collection of revenues generated by the Afecta Licensed Product on a country-by-country basis.

10.2. Termination by Supernus. Supernus may terminate, in whole or in part, any of the licenses granted by Afecta to Supernus with 30 days' prior written notice to Afecta. All licenses so terminated shall revert back to Afecta in accordance with Section 2.2. Termination of a specific license shall not affect Supernus' exclusive option rights to other Afecta Products or other Afecta Licensed Products licensed to Supernus.

10.3. Termination for Discontinuation of Development. Subject to the Force Majeure provision set forth herein in Section 11.3, in the event that Supernus and its sub-licensees have discontinued all development and commercialization activities relating to a specific Afecta Licensed Product for a period of [**] this Agreement as it relates to that specific Afecta Licensed Product shall terminate and all licenses under the Afecta Patent Rights granted to Supernus and its sub-licensees hereunder in connection with that specific Afecta Licensed Product only shall revert to Afecta thirty (30) days thereafter in accordance with Section 2.2. All other licenses granted hereunder not affected by the discontinuance of all development and commercialization in connection with a specific Afecta Licensed Product shall remain in good standing.

10.4. Termination for Default. In the event of a Default by Supernus in its capacity as a Licensee under this Agreement, Afecta may terminate the license for the specified Afecta Licensed Product in any specified country subject to the Default granted to Supernus hereunder by written notice to Supernus,

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and upon Supernus' receipt of such notice, said license granted to Supernus shall revert immediately to Afecta. All other licenses granted hereunder not affected by the Default shall remain in good standing. In the event of a Default by Afecta under this Agreement, the License to Supernus will become irrevocable and fully paid.

10.5. Insolvency or Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by the Parties are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that each Party, in its capacity as a licensee of such rights under this Agreement, shall retain all licenses granted to it hereunder and may fully exercise all of its rights and elections under the United States Bankruptcy Code, subject to payment to the other Party of any royalties or other payments due pursuant to Article 5. The Parties further agree that, in the event of commencement of a bankruptcy proceeding by or against either Party under the United States Bankruptcy Code, the Party hereto which is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property, and all embodiments of such intellectual property, and same, if not already in its possession, shall be promptly delivered to it (i) upon any such commencement of a bankruptcy proceeding upon its written request therefore, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Agreement, or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefore by any non-subject Party.

10.6 Surviving Obligations. The provisions of Articles 3, 6, 7, 8, 9 and Sections 10.4, 10.7, 11.1, 11.5, 11.10, 11.11 and 11.14 shall survive any termination or expiration of this Agreement. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration.

10.7. Effects of Termination. Upon termination of this Agreement in its entirety or otherwise with respect to rights in any Afecta Licensed Product in accordance with this Article 10, Supernus and its sub-licensees shall thereupon have the right to sell that amount of any such Afecta Licensed Product that Supernus and its sub-licensees then have on hand, provided however, that with respect to any such Afecta Licensed Product for which any payment is due under Article 5 hereof, Supernus shall make such payment to Afecta as required therein.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1. Supernus Arrangement with Shire.

Certain Arrangements of Supernus with Shire; Third Party Beneficiary Rights, (a) Afecta acknowledges that Supernus has certain contractual agreements with subsidiaries of Shire plc ("**Shire**") pursuant to which (i) Supernus has granted to Shire and its subsidiaries an irrevocable,

exclusive license, including the right to sue, in intellectual property rights (including without limitation patents, patent applications and know-how) owned by Supernus to research, develop, formulate, test, design, have manufactured, manufacture, use, offer to sell, sell, distribute, import and export any pharmaceutical product containing at least one of the Compounds (as defined below) as an active ingredient anywhere in the world and (ii) Supernus has agreed not to engage, directly or indirectly, including as a principal or for its own account or solely or jointly with others or in cooperation with a third party, or as a licensor of intellectual property, in any research, formulation development, testing, manufacture, offer for sale, sale, distribution, importation, exportation, design, technology assessment or oral bioavailability screening or enhancement that relates, in whole or in part, to any of the Compounds in any field of use, or otherwise aid or assist any third party in connection with any of the foregoing. For purposes hereof, **"Compounds"** means any and all of: (A) (1) (+)-alpha-Methylbenzeneethanamine, also known as "amphetamine", (II) carbamazepine (5H-Dibenz{b,f}azepine-5-carboxyamide), (III) guanfacine (N-(Aminoiminomethyl)-2,6-dichlorobenzeneacetamide), (IV) lanthanum, and (V) mesalamine (5-Amino-2-hydroxybenzoic acid), (B) any isomers, salts, solvates, hydrates, polymorphs, esters, prodrugs, or metabolites of clause (A), and (C) any compound involving forming or breaking a bond or bonds with any of clause (A) or (B) where at least one prophylactic, therapeutic or diagnostic indication of such compound and/or its metabolite is substantially the same as that of any of clause (A) or (B), but excluding 10,11-Dihydro-10-oxo-5H-debenz[b,f]azepine-5-carboxamide, also known as "oxcarbazepine".

(b) Afecta hereby agrees that it shall not use any of the services or Confidential Information provided to it, or work performed on its behalf, by Supernus pursuant to this Agreement, or the results therefrom, or any intellectual property rights licensed to it by Supernus in any activity that is outside the Purpose and, in particular, in any activity that, directly or indirectly, relates, in whole or in part, to any of the Compounds in any field of use. The provisions of this Section 11 (i) are intended to benefit, and shall be enforceable by, Shire and its subsidiaries, (ii) shall survive any termination or expiration of this Agreement and (iii) shall not be amended or waived, in whole or in part, without the prior written consent of Shire. Supernus has agreed to provide Shire with a list of its customers's names from time to time for monitoring purposes and Afecta hereby agrees to its name being provided to Shire. Shire has agreed to keep the list and the terms of this Agreement confidential in accordance with the terms of a confidentiality agreement with Supernus, except to the extent reasonably necessary for Shire to investigate any alleged violation of, or to enforce its rights under, the provisions of this Section 11. Afecta acknowledges that Supernus has agreed with Shire that if Shire or any of its subsidiaries in its sole discretion believes that there may be, or may have been, a breach or threatened breach of the provisions of this Section 11, at the written request of Shire, Supernus shall provide Shire and its subsidiaries with an executed copy of this Agreement, and Afecta hereby consents to Supernus providing such copy to Shire or any of its subsidiaries.

(c) In the event Afecta breaches or threatens to breach the provisions of this Section 11, should the breach or threatened breach relate directly or indirectly to any activities relating to any of the Compounds then, in addition to any rights that Supernus may have against Afecta, Afecta acknowledges and agrees that Shire or any of its subsidiaries shall have the right to bring a suit, action or proceeding against Afecta for any and all damages suffered or incurred by Shire and its subsidiaries as a result of Afecta's breach or threatened breach, whether or not Supernus is a party to the suit, action or proceeding. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is successful, Shire shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all

such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Shire may be entitled. If any legal action or other proceeding is brought by Shire for the enforcement of this Section 11, and such action is unsuccessful, Afecta shall be entitled to recover its reasonable attorney's fees, court costs and reasonable expenses, even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which Afecta may be entitled. Afecta further acknowledges that a breach or threatened breach of these provisions may cause irreparable harm to Shire and its subsidiaries and that the remedy or remedies at law for any such breach or threatened breach may be inadequate. Afecta agrees that, in the event of any such breach or threatened breach, in addition to all other available remedies they may have available to them, Shire and its subsidiaries shall have the right to obtain equitable relief.

(d) Afecta agrees that Shire and its subsidiaries shall not be liable for any claim or counterclaim (equitable, statutory, contractual or otherwise) that could be asserted by Afecta against Supernus and that no such claims or counterclaims shall be asserted against Shire or any of its subsidiaries. Afecta further agrees to waive against Shire and its subsidiaries any such claims or counterclaims (equitable, statutory, contractual or otherwise) and also agrees that in any action by Shire or any of its subsidiaries it will not assert and will waive any defense, bar or other similar matter (equitable, statutory, contractual or otherwise) based on or relating to the actions, inactions or status of Supernus. To the extent that the assertion of any such claims, counterclaims, defenses, bars or similar matters is compulsory, Supernus may be joined in the action and such claims, counterclaims, defenses, bars or other matters asserted against Supernus (but only against Supernus) and Supernus hereby agrees to such joinder.

(e) The provisions of this Section 11 shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State. Each of the parties hereto acknowledges and agrees that this Agreement has been entered into in express reliance upon 6 Del. C. § 2708 and hereby waives, to the fullest extent permitted by law, any and all objections to the laws of the State of Delaware governing this Agreement.

(f) Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Delaware and of the Federal courts sitting in the State of Delaware any Delaware State or Federal court sitting in New Castle County, Delaware and any appropriate appellate courts therefrom in any suit, action or proceeding arising out of or relating to the provisions of this Section 11 and irrevocably consents to the jurisdiction of such courts and any appropriate appellate courts therefrom in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in ay such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto irrevocably and unconditionally agrees that (i) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and to notify the other party of the name and address of such agent and (ii) to the fullest extent permitted by law, service of process may also be made on such party by prepaid certified mail with a validated proof of mailing receipt constituting evidence of valid service, and that service made pursuant to (i) or (ii) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the

State of Delaware, each party that has not as of the date hereof already duly appointed such an agent does hereby appoint Capitol Services, Inc, as such agent.

(g) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE PROVISIONS OF THIS SECTION 11.1.

11.2 Assignment. Neither this Agreement nor any interest hereunder shall be assignable by either Party without the prior written consent of the other Party; provided that either Party may assign this Agreement and all of its rights and obligations hereunder, without such consent, to an entity which acquires all or substantially all of the product rights to which this Agreement pertains, whether by merger, consolidation, reorganization, acquisition, sale, license or otherwise. This Agreement shall be binding upon the successors and permitted assigns of the Parties, and the name of a Party appearing herein shall be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 11.2 shall be void. Nothing herein shall preclude Supernus from sublicensing its exclusive licensing rights.

11.3. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

11.4. Force Majeure. Neither Party shall be liable to the other for loss or damages, nor shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure, if the Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled, provided however, that such affected Party commences and continues to take reasonable and diligent actions to cure such cause.

11.5. Notices. All notices and other communications required by this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided however, that notices of a change of address shall be effective only upon receipt thereof):

If to Supernus, addressed to:

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

With a copy to:
[**]

If to Afecta addressed to:

[**]

With copy to;
[**]

11.6. Amendment. No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

11.7. Waiver. No provision of the Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

11.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

11.9. Descriptive Headings. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

11.10. Governing Law. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Delaware, without reference to the conflicts of law principles thereof, and the Parties hereby submit to the exclusive jurisdiction of the Delaware courts, both state and federal.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

11.11. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. Invalidity, non-enforceability or expiration of any or all of the Afecta Patent Rights or Afecta Intellectual Property rights as it relates to an Afecta Licensed Product shall not affect Supernus' license rights in and to the remaining Afecta Patent Rights or Intellectual Property Rights as it related to the other Afecta Licensed Products.

11.12. Entire Agreement of the Parties. This Agreement (including all Exhibits attached hereto, which are incorporated herein by reference) constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, representations, promises, understandings and agreements, whether oral or written, between the Parties respecting the subject matter thereof.

11.13. Dispute Resolution. The Parties agree that in the event of a dispute between them arising from, concerning or in any way relating to this Agreement, the Parties shall undertake good faith efforts to resolve any such dispute in good faith. In the event the Parties shall be unable to resolve any such dispute, the matter shall be first referred to the general counsel for each Party for further review and resolution and, if necessary, then to the chief executive officer of each Party. If after such efforts the Parties are unable to resolve such dispute, a Party may seek any remedy available under applicable law.

11.14. Independent Contractors. The relationship between Afecta and Supernus created by this Agreement is one of independent contractors, and neither Party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

11.15. Use of Name. No right, express or implied, is granted to either Party by this Agreement to use in any manner any trademark or trade name of the other Party, including the names "Supernus" and "Afecta", without the prior written consent of the owning Party.

11.16. Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their respective duly authorized officers.

SUPERNUS PHARMACEUTICALS, INC.	**AFECTA PHARMACEUTICALS, INC.**
BY: /s/ Jack Khattar	**BY:** /s/ Bruce Kovacs, M.D.
TITLE: President & CEO	**TITLE:** President

Exhibit A

AFECTA PATENT RIGHTS

AFECTA ISSUED PATENTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit B
NOTICE LETTER

THIS NOTICE LETTER is issued as of March 14, 2007 by Supernus Pharmaceuticals, Inc. ("Supernus") to Afecta Pharmaceuticals, Inc. ("Afecta").

RECITALS:

WHEREAS, Supernus and Afecta are parties to the Exclusive Option and License Agreement dated April 27, 2006 ("the Agreement");

WHEREAS, Afecta has granted Supernus an exclusive option to select from time to time Afecta Products in the Field with the right to exclusively license those Afecta Products selected on the terms and conditions set forth in the Agreement;

WHEREAS, in accordance with the terms of the Agreement, Afecta has offered an Afecta Pre-IP Product and Supernus has completed the Due Diligence Period;

NOW THEREFORE, in accordance with the terms of the Agreement, Supernus hereby notifies Afecta by way of this Notice Letter ("Notice Letter") of its intention to obtain a worldwide exclusive license to the Afecta Product as identified herein as molindone and salts, racemic mixtures, isomers, derivatives, or analogues thereof. By issuance of this Notice Letter by Supernus, and by its receipt by Afecta, the License Grant defined in Section 2.2 of the Agreement and Consideration as defined for an Afecta Pre-IP Product in Article 5 of the Agreement becomes fully effective and such Afecta Product becomes an Afecta Licensed Product.

Following execution by Supernus of this Notice Letter, it is possible that based on certain research and exploratory activities that Supernus may conduct or as a result of regulatory approvals or disapprovals unknown to Supernus at this time, Supernus may decide to use the Afecta Product in a manner that qualifies the Afecta Pre-IP Product as Afecta Filed Product or as Afecta IP Product as of the date of the Notice Letter. If Supernus makes such a decision, Supernus will pay to Afecta [**] equal to [**] per the terms of the Agreement. Thereafter, Supernus shall pay Afecta all future considerations as set forth in the Agreement applicable to the determined category of the Afecta Licensed Product.

Supernus Pharmaceuticals, Inc		**Afecta Pharmaceuticals, Inc**	
By:	/s/ Jack Khattar	**By:**	/s/ Bruce Kovacs, M.D.
Title:	President & CEO	**Title:**	President

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit C

Supernus Patent Rights

SUPERNUS ISSUED PATENTS

Title	Country	Patent Numbers	Date Issued
[**]	[**]	[**]	[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit 10.16

INDENTURE

dated as of April 15, 2008

by and between

TCD ROYALTY SUB LLC,
a Delaware limited liability company,
as issuer of the Notes described herein,

and

U.S. BANK NATIONAL ASSOCIATION,
as initial trustee of the Notes described herein

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INDENTURE

This INDENTURE, dated as of April 15, 2008, is by and between TCD ROYALTY SUB LLC, a Delaware limited liability company, as issuer of the Notes described herein, and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as initial trustee of the Notes described herein.

GRANTING CLAUSE

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Notes by the Noteholders, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure (i) the prompt payment of the principal of, Premium (if any) and interest on, and all other amounts due with respect to, the Notes from time to time Outstanding hereunder, including any break funding costs and interest rate swap breakage costs, (ii) the payment of any fees, expenses or other amounts that the Issuer is obligated to pay under or in respect of the Notes, this Indenture or any other Transaction Document to which the Issuer is a party, (iii) the payment and performance of all the obligations of the Issuer in respect of any amendment, modification, extension, renewal or refinancing of the Notes and (iv) the performance and observance by the Issuer of all the agreements, covenants and provisions expressed herein and in the Notes for the benefit of the Noteholders (collectively, the "Secured Obligations") and for the uses and purposes and subject to the terms and provisions hereof, the Issuer does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm unto the Trustee, its successors and assigns, for the security and benefit of the Noteholders from time to time of the Notes, a first priority security interest in all right, title and interest of the Issuer in, to and under the following described property, rights and privileges (such property, rights and privileges, including all other property hereafter specifically subjected to the lien of this Indenture or any indenture supplemental hereto, being the "Collateral" and, collectively, including all other property, rights and privileges hereafter specifically subjected to the lien of this Indenture or any indenture supplemental hereto, are included within and defined as the "Indenture Estate"), to wit:

(1) the Purchased Assets;

(2) the Purchase and Sale Agreement, the Residual License Agreements, the Servicing Agreement and all other Transaction Documents, License Agreements and other agreements to which the Issuer is a party, including those relating to the rights of the Issuer in respect of the sale, transfer, conveyance, assignment, contribution, grant and servicing of the Purchased Assets;

(3) (A) all Accounts established under this Indenture at any time, (B) all amounts from time to time credited to such Accounts, (C) all cash, financial assets and other investment property, instruments, documents, chattel paper, general intangibles, accounts and other property from time to time credited to such Accounts or representing investments and reinvestments of amounts credited to such Accounts and (D) all interest, principal payments, dividends and other distributions payable on or with respect to, and all proceeds of, (i) all property so credited or representing such investments and reinvestments and (ii) such Accounts;

(4) all of the Issuer's rents, issues, profits, revenues and other income of the property subjected or required to be subjected to the lien of this Indenture;

(5) all other property and assets of the Issuer with respect to which a security interest can be created under Article 9 of the UCC, including all goods, deposit accounts, investment property, financial assets, letter-of-credit rights, supporting obligations, commercial tort claims, accounts, contract rights, general intangibles and all other cash (except (i) to the extent permitted to be distributed by the Issuer to the Parent pursuant to Section 3.7(b) or Section 3.8 and (ii) proceeds from any Notes issued in accordance with and pursuant to this Indenture except for amounts to be used for Redemption of the Notes prior to such Redemption);

(6) all rights of the Issuer (contractual and otherwise) constituting, arising under, connected with or in any way related to any or all of the foregoing property;

(7) all books, records, ledger cards, files, correspondence, computer programs, tapes, disks and related data processing software (owned by the Issuer) that at any time evidence or contain information relating to any of the foregoing property or are otherwise necessary or helpful in the collection thereof or realization thereupon;

(8) all documents of title, policies and certificates of insurance, securities, chattel paper and other documents or instruments evidencing or pertaining to any of the foregoing property of the Issuer; and

(9) all proceeds and products of any and all of the foregoing property;

BUT SUBJECT TO all of the terms and conditions of this Indenture.

HABENDUM CLAUSE

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Trustee, its successors and assigns, in trust for the benefit and security of the Noteholders from time to time of each class of the Notes, without any priority of any one class of Notes over any other class of Notes by reason of difference in time of issuance or otherwise, except as expressly provided herein, and for the uses and purposes and subject to the terms and provisions set forth in this Indenture.

PROVIDED, HOWEVER, that, notwithstanding any of the foregoing provisions or anything to the contrary herein, so long as no Event of Default shall have occurred and be continuing, the Issuer shall have the right, to the exclusion of the Trustee and the Noteholders, to exercise in the Issuer's name all rights and powers of the Issuer under the Purchase and Sale Agreement, the Residual License Agreements, the Servicing Agreement and any other agreement to which the Issuer is or may be a party or third party beneficiary (including the License Agreements), except as otherwise set forth in any such agreement, and SUBJECT TO all of the terms and conditions of this Indenture.

It is hereby further agreed that any and all property described or referred to in the Granting Clause that is hereafter acquired by the Issuer shall ipso facto, and without any other conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to

the Security Interest herein granted as fully and completely as though specifically described herein, but nothing contained in this paragraph shall be deemed to modify or change the obligations of the Issuer contained in the foregoing paragraphs.

The Issuer does hereby ratify and confirm this Indenture and the other Transaction Documents to which it is a party and, subject to the other terms of this Indenture, does hereby agree that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the assignment hereunder or of any of the rights created by any thereof.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Issuer shall remain liable under the Transaction Documents and any other contracts and agreements included in the Collateral to the extent set forth therein and shall remain obligated to perform all of the duties and obligations of the Issuer thereunder to the same extent as if this Indenture had not been executed in accordance with and pursuant to the terms and provisions thereof, the exercise by the Trustee of any of its rights hereunder shall not release the Issuer from any of its duties or obligations under any such Transaction Documents or other contracts or agreements included in the Collateral, and, prior to the foreclosure of the lien of this Indenture under Section 4.3, the Trustee and the Noteholders shall have no obligation or liability under any thereof by reason of or arising out of this Indenture or the assignment hereunder, nor shall the Trustee or the Noteholders be required or obligated in any manner to perform or fulfill any obligations or duties of the Issuer under or pursuant to any Transaction Document or any other contract or agreement included in the Collateral or, except as herein expressly provided, to make any payment, make any inquiry as to the nature or sufficiency of any payment received by it, present or file any claim or take any action to collect or enforce any claim for payment assigned hereunder or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times; provided, however, that, in exercising any right of the Issuer under any Transaction Document or any other contract or agreement included in the Collateral, the Trustee and the Noteholders shall be bound by, and shall comply with, the provisions thereof applicable to the Issuer in respect of the exercise of such right and the confidentiality provisions set forth therein to the extent permitted by Applicable Law.

IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

ARTICLE I
GENERAL

Section 1.1 Rules of Construction and Defined Terms. The rules of construction set forth in Annex A shall apply to this Indenture and are hereby incorporated by reference into this Indenture as if set forth fully in this Indenture. Capitalized terms used but not otherwise defined in this Indenture shall have the respective meanings given to such terms in Annex A, which is hereby incorporated by reference into this Indenture as if set forth fully in this Indenture. Not all terms defined in Annex A are used in this Indenture.

Section 1.2 Compliance Certificates and Opinions. Upon any application or request by the Issuer to the Trustee to take any action under any provision of this Indenture, the Issuer

shall furnish to the Trustee an Officer's Certificate stating that, in the opinion of the signer thereof in his or her capacity as such, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that, in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 5.3) or any indenture supplemental hereto shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions in this Indenture relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such individual in his or her capacity as such, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.3 Acts of Noteholders.

(a) Any direction, consent, waiver or other action provided by this Indenture in respect of the Notes of any class to be given or taken by Noteholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent or proxy duly appointed in writing, and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee or to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Noteholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose under this Indenture and conclusive in favor of the Trustee or the Issuer, if made in the manner provided in this Section 1.3(a).

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or such other officer and, where such execution is by an officer of a corporation or association, trustee of a trust or member of a partnership, on behalf of such corporation, association, trust or partnership, such certificate or affidavit shall also

constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other reasonable manner that the Trustee deems sufficient.

(c) In determining whether the Noteholders have given any direction, consent, request, demand, authorization, notice, waiver or other Act (a "Direction") under this Indenture, Notes owned by the Issuer, the Parent or any Affiliate of any such Person shall be disregarded and deemed not to be Outstanding for purposes of any such determination. In determining whether the Trustee shall be protected in relying upon any such Direction, only Notes that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Notwithstanding the foregoing, (i) if any such Person owns 100% of the Notes of any class Outstanding, such Notes shall not be so disregarded as aforesaid, and (ii) if any amount of Notes of such class so owned by any such Person have been pledged in good faith, such Notes shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Issuer, the Parent or an Affiliate of any such Person.

(d) The Issuer may, at its option, by delivery of Officer's Certificate(s) to the Trustee, set a record date other than the Record Date to determine the Noteholders in respect of the Notes of any class entitled to give any Direction in respect of such Notes. Such record date shall be the record date specified in such Officer's Certificate, which shall be a date not more than 30 days prior to the first solicitation of Noteholders in connection therewith. If such a record date is fixed, such Direction may be given before or after such record date, but only the Noteholders of the applicable class at the close of business on such record date shall be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes of such class have authorized, agreed or consented to such Direction, and for that purpose the Outstanding Notes of such class shall be computed as of such record date; provided, that no such Direction by the Noteholders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than one year after the record date.

(e) Any Direction or other action by the Noteholder of any Note shall bind the Noteholder of every Note issued upon the transfer thereof, in exchange therefor or in lieu thereof, whether or not notation of such action is made upon such Note, and any Direction or other action by the Beneficial Holder of any Beneficial Interest in any Note shall bind any transferee of such Beneficial Interest.

ARTICLE II
THE NOTES

Section 2.1 Amount of Notes; Terms; Form; Execution and Delivery.

(a) The Outstanding Principal Balance of any class of Notes that may be authenticated and delivered from time to time under this Indenture shall not exceed, with respect to the Original Class A Notes, the initial Outstanding Principal Balance for the Original Class A Notes set forth in the definition thereof or, with respect to any Class B Notes or any class of Refinancing Notes, the Outstanding Principal Balance authorized in the Manager Resolution or

indenture supplemental hereto establishing such Class B Notes or Refinancing Notes; provided, that (i) any Refinancing Notes shall be issued in accordance with Section 2.15 and (ii) any Class B Notes shall be issued in accordance with Section 2.16.

(b) There shall be issued, authenticated and delivered on the Closing Date and on the date of issuance of any Class B Notes or any Refinancing Notes to each of the Noteholders Notes in the principal amounts and maturities and bearing the interest rates, in each case in registered form and, in the case of the Original Class A Notes, substantially in the form set forth in Exhibit A or, in the case of any Class B Notes or any Refinancing Notes, substantially in the form set forth in any indenture supplemental hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements typewritten, printed, lithographed or engraved thereon, as may, consistently herewith, be prescribed by the Trustee. The Trustee shall authenticate Notes and make Notes available for delivery only upon the written order of the Issuer signed by a Responsible Officer of the Issuer. Such order shall specify the aggregate principal amount of Notes to be authenticated, the date of issue, whether they are to be issued as Global Notes or Definitive Notes and delivery instructions.

Definitive Notes of each class shall be typewritten, printed, lithographed or engraved or produced by any combination of these methods, as determined by the Trustee. Any Notes offered and sold to Institutional Accredited Investors that are not QIBs that are not offered and sold in offshore transactions in reliance on Regulation S shall be issued initially in the form of Definitive Notes.

Any Notes offered and sold to QIBs or sold in reliance on Rule 144A shall be issued initially in the form of one or more permanent Global Notes in registered form, substantially in the form set forth in the applicable Exhibit to this Indenture or in any indenture supplemental hereto (each, a "144A Global Note"), registered in the name of the nominee of DTC, deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of each 144A Global Note may from time to time be increased or decreased by adjustments made on the books and records of the Registrar, as hereinafter provided.

Any Notes offered and sold to Institutional Accredited Investors in offshore transactions in reliance on Regulation S shall be issued initially in the form of one or more temporary global Notes in registered form substantially in the form set forth in the applicable Exhibit to this Indenture or in any indenture supplemental hereto (each, a "Temporary Regulation S Global Note"), registered in the name of the nominee of DTC, deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. At any time following the applicable Regulation S Global Note Exchange Date, upon receipt by the Trustee and the Issuer of a certificate substantially in the form of Exhibit F, executed by Euroclear or Clearstream, as the case may be, together with copies of certificates from Euroclear or Clearstream, as the case may be, certifying that it has received certification of non-U.S. beneficial ownership of a Temporary Regulation S Global Note (or portion thereof) with respect to any Notes to be exchanged, one or more permanent Global Notes for such Notes in registered form substantially in the form set forth in the applicable Exhibit to this Indenture or in any

indenture supplemental hereto (each, a "Permanent Regulation S Global Note" and, together with each Temporary Regulation S Global Note, the "Regulation S Global Notes") duly executed by the Issuer and authenticated by the Trustee as hereinafter provided shall be deposited with the Trustee, as custodian for DTC, and the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Temporary Regulation S Global Note of such class in an amount equal to the principal amount of such Temporary Regulation S Global Note exchanged. Until the Regulation S Global Note Exchange Date with respect to any Temporary Regulation S Global Note, Beneficial Interests in such Temporary Regulation S Global Note may be held only through Agent Members acting for and on behalf of Euroclear and Clearstream.

Notes, if so provided herein or in any indenture supplemental hereto, shall be issued in the form of permanent certificated Notes in registered form in substantially the form set forth in this Section 2.1(b) (collectively with any definitive, fully registered Notes issued pursuant to Section 2.10(b), the "Definitive Notes").

(c) Interest shall accrue on any class of Fixed Rate Notes from the date of issuance of such Fixed Rate Notes and shall be computed for each Interest Accrual Period on the basis of a 360-day year consisting of twelve 30-day months on the Outstanding Principal Balance of such Notes. Interest shall accrue on any class of Floating Rate Notes from the date of issuance of such Floating Rate Notes and shall be computed for each Interest Accrual Period on the basis of a 360-day year and the actual number of days elapsed in such Interest Accrual Period on the Outstanding Principal Balance of such Notes. If any interest payment is not made when due on a Payment Date, the unpaid portion of such interest payment will accrue interest at the rate then applicable to the Notes, compounded quarterly, until paid in full.

(d) On the date of any Refinancing, the Issuer shall issue and deliver, as provided in Section 2.15, an aggregate principal amount of Refinancing Notes having the maturities and bearing the interest rates and such other terms authorized by one or more Manager Resolutions or in any indenture supplemental hereto providing for the issuance of such Refinancing Notes or specified in the form of such Refinancing Notes, in each case in accordance with Section 2.15.

(e) On the date of any Class B Issuance, the Issuer shall issue and deliver, as provided in Section 2.16, an aggregate principal amount of Class B Notes having the maturities and bearing the interest rates and such other terms authorized by one or more Manager Resolutions or in any indenture supplemental hereto providing for the issuance of such Class B Notes or specified in the form of such Class B Notes, in each case in accordance with Section 2.16.

(f) The Notes shall be executed on behalf of the Issuer by the manual or facsimile signature of the Manager or any individual authorized to do so by the Manager.

(g) Each Note bearing the manual or facsimile signature of any individual who at the time such Note was executed was authorized to execute such Note by the Manager shall bind the Issuer, notwithstanding that any such individual has ceased to hold such authority thereafter but prior to the authentication and delivery of such Notes or any payment thereon.

(h) At any time and from time to time after the execution of any Notes, the Issuer may deliver such Notes to the Trustee for authentication and, subject to the provisions of Section 2.1(i), the Trustee shall authenticate such Notes by manual or facsimile signature upon receipt by it of a written order of the Issuer. The Notes shall be authenticated on behalf of the Trustee by any Responsible Officer of the Trustee.

(i) No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless it shall have been executed on behalf of the Issuer as provided in Section 2.1(f) and authenticated by or on behalf of the Trustee as provided in Section 2.1(h). Such signatures shall be conclusive evidence that such Note has been duly executed and authenticated under this Indenture. Each Note shall be dated the date of its authentication.

Section 2.2 Restrictive Legends. Each Note (and all Notes issued in exchange therefor or upon registration of transfer or substitution thereof) shall bear the following legend on the face thereof (the "Private Placement Legend"):

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, NOR IS SUCH REGISTRATION CONTEMPLATED. NEITHER THIS NOTE NOR ANY INTEREST HEREIN MAY BE ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION UNDER THE SECURITIES ACT OR AN EXEMPTION FROM SUCH REGISTRATION THEREUNDER AND ANY OTHER APPLICABLE SECURITIES LAW REGISTRATION REQUIREMENTS. EACH PERSON WHO ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE (1) REPRESENTS THAT (A) IT IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND, IF SUBSEQUENT TO THE INITIAL ACQUISITION HEREOF, IS PURCHASING THIS NOTE IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IT IS AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR"), HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF THE PURCHASE OF THIS NOTE AND IS ABLE AND PREPARED TO BEAR THE ECONOMIC RISK OF INVESTING IN AND HOLDING THIS NOTE, (C) IT IS AN INSTITUTIONAL ACCREDITED INVESTOR THAT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT OR (D) IT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THIS NOTE AFTER THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), (2) AGREES THAT IT WILL NOT OFFER, SELL OR

OTHERWISE TRANSFER THIS NOTE OR AN INTEREST HEREIN, EXCEPT (A) TO THE ISSUER OR A SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT IS PURCHASING THIS NOTE OR AN INTEREST HEREIN, AS THE CASE MAY BE, FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT OR (D) TO AN INSTITUTIONAL ACCREDITED INVESTOR OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT (IF AVAILABLE), OR UNLESS CONSENTED TO BY THE ISSUER IN ITS SOLE DISCRETION AND SUCH OFFER, SALE OR OTHER TRANSFER OCCURS FOLLOWING (X) THE DATE THAT IS ONE YEAR (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR ANY PREDECESSOR OF THIS NOTE) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE "RESALE RESTRICTION TERMINATION DATE") AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED, THAT THE ISSUER AND THE TRUSTEE SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (2) (C) OR (D) OF THIS PARAGRAPH TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THE TERMS "OFFSHORE TRANSACTION", "UNITED STATES" AND "U.S. PERSON" HAVE THE RESPECTIVE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE REFERRED TO HEREINAFTER CONTAINS A PROVISION REQUIRING THE REGISTRAR APPOINTED THEREUNDER TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.

Each Note shall also bear the following legend on the face thereof:

BY ITS PURCHASE AND ACCEPTANCE OF THIS NOTE, EACH PURCHASER WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) NO PLAN ASSETS HAVE BEEN USED

TO PURCHASE THIS NOTE OR (II) TO THE EXTENT THAT PLAN ASSETS ARE USED TO PURCHASE THIS NOTE, THE USE OF PLAN ASSETS TO PURCHASE AND HOLD THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION. "PLAN ASSETS" HAS THE MEANING GIVEN TO IT BY SECTION 3(42) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA") AND REGULATIONS OF THE U.S. DEPARTMENT OF LABOR.

THIS NOTE MAY NOT BE RESOLD OR TRANSFERRED EXCEPT AS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER, AND, IN ADDITION, EACH PERSON WHO ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE AGREES THAT IT SHALL CAUSE ANY PROPOSED TRANSFEREE TO EXECUTE A RESALE CONFIDENTIALITY AGREEMENT IN THE FORM ATTACHED AS EXHIBIT B TO SUCH INDENTURE AND DELIVER SUCH RESALE CONFIDENTIALITY AGREEMENT TO THE REGISTRAR (AS DEFINED IN SUCH INDENTURE) AND FURTHER AGREES TO OTHERWISE COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH IN SUCH INDENTURE, INCLUDING SECTION 2.11 THEREOF, AND FURTHER ACKNOWLEDGES AND AGREES TO THE PROVISIONS SET FORTH IN SECTION 2.5 OF SUCH INDENTURE.

Each Global Note shall also bear the following legend on the face thereof:

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.11 OF THE INDENTURE REFERRED TO HEREINAFTER.

Each Temporary Regulation S Global Note shall also bear the following legend on the face thereof:

THIS NOTE IS A TEMPORARY REGULATION S GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER AND IS SUBJECT TO RESTRICTIONS ON THE TRANSFER AND EXCHANGE THEREOF AND ON THE PAYMENT OF INTEREST THEREON AS SPECIFIED IN THE INDENTURE REFERRED TO HEREINAFTER.

Section 2.3 Registrar and Paying Agent.

(a) With respect to each class of Notes, there shall at all times be maintained an office or agency in the location set forth in Section 12.5 where the Notes of such class may be presented or surrendered for registration of transfer or for exchange (including any additional registrar, each, a "Registrar") and for payment thereof (including any additional paying agent, each, a "Paying Agent") and where notices and demands to or upon the Issuer in respect of such Notes may be served. The Trustee shall be the initial Paying Agent and Registrar, and the Issuer shall not be permitted to act as a Paying Agent or a Registrar. The Issuer shall cause each Registrar to keep a register of such class of Notes for which it is acting as Registrar and of their transfer and exchange (the "Register"). Written notice of the location of each such other office or agency and of any change of location thereof shall be given by the Trustee to the Issuer and the Noteholders of such class of Notes. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office.

(b) Each Authorized Agent shall be a bank, trust company or corporation organized and doing business under the laws of the U.S., any state or territory thereof or of the District of Columbia, with a combined capital and surplus of at least $75,000,000 (or having a combined capital and surplus in excess of $5,000,000 and the obligations of which, whether now in existence or hereafter incurred, are fully and unconditionally Guaranteed by a bank, trust company or corporation organized and doing business under the laws of the U.S., any state or territory thereof or of the District of Columbia and having a combined capital and surplus of at least $75,000,000) and shall be authorized under the laws of the U.S., any state or territory thereof or the District of Columbia to exercise corporate trust powers, subject to supervision by federal or state authorities (such requirements, the "Eligibility Requirements"). Each Registrar other than the Trustee shall furnish to the Trustee, at least five Business Days prior to each Payment Date, and at such other times as the Trustee may request in writing, a copy of the Register maintained by such Registrar.

(c) Any Person into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of any Authorized Agent (including the administration of the fiduciary relationship contemplated by this Indenture), shall be the successor of such Authorized Agent hereunder, if such successor corporation is otherwise

eligible under this Section 2.3, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor Person.

(d) Any Authorized Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Issuer may, and at the request of the Trustee shall, at any time terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent and to the Trustee. Upon the resignation or termination of an Authorized Agent or if at any time any such Authorized Agent shall cease to be eligible under this Section 2.3 (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed by the Trustee), the Issuer shall promptly appoint one or more qualified successor Authorized Agents, reasonably satisfactory to the Trustee, to perform the functions of the Authorized Agent that has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section 2.3. The Issuer shall give written notice of any such appointment made by it to the Trustee, and in each case the Trustee shall mail notice of such appointment to all Noteholders of the related class of Notes as their names and addresses appear on the Register for such class of Notes.

(e) The Issuer agrees to pay, or cause to be paid, from time to time to each Authorized Agent reasonable compensation for its services and to reimburse it for its reasonable expenses to be agreed to pursuant to separate agreements with each such Authorized Agent.

Section 2.4 Paying Agent to Hold Money in Trust. The Trustee shall require each Paying Agent other than the Trustee to agree in writing that all moneys deposited with any Paying Agent for the purpose of any payment on the Notes shall be deposited and held in trust for the benefit of the Noteholders entitled to such payment, subject to the provisions of this Section 2.4. Moneys so deposited and held in trust shall constitute a separate trust fund for the benefit of the Noteholders with respect to which such money was deposited.

The Trustee may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, direct any Paying Agent to pay to the Trustee all sums held in trust by such Paying Agent, and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Section 2.5 Method of Payment.

(a) On each Payment Date, the Trustee shall, or shall instruct a Paying Agent to, pay, to the extent of the Available Collections Amount for such Payment Date and any funds withdrawn from the Interest Reserve Account or the Capital Account by the Trustee pursuant to Section 3.8, to the Noteholders all interest, principal and Premium, if any, on each class of Notes in the amounts determined by the Calculation Agent pursuant to Section 3.5; provided, that payment on a Temporary Regulation S Global Note shall be made to the Noteholder thereof only in conformity with Section 2.5(c) and payment on any Note may be deferred as provided in Section 2.5(d). Each payment on any Payment Date other than the final payment with respect to any class of Notes shall be made by the Trustee or Paying Agent to the Noteholders as of the Record Date for such Payment Date. The final payment with respect to any class of Notes, however, shall be made only upon presentation and surrender of such Note by the Noteholder or its agent at an office or agency of the Trustee or Paying Agent in New York City.

(b) At such time, if any, as the Notes of any class are issued in the form of Definitive Notes, payments on a Payment Date shall be made by check mailed to each Noteholder of a Definitive Note on the applicable Record Date at its address appearing on the Register maintained with respect to such class of Notes or, alternatively, upon application in writing to the Trustee, not later than the applicable Record Date, by a Noteholder, subject to Section 2.5(d), any such payments shall be made by wire transfer to an account designated by such Noteholder at a financial institution in New York City; provided, that, in each case, the final payment for any class of Notes shall be made only upon presentation and surrender of the Definitive Notes of such class by the Noteholder or its agent at an office or agency of the Trustee or Paying Agent in New York City. Payments in respect of the Notes represented by a Global Note (including principal, Premium, if any, and interest) shall be made by wire transfer of immediately available funds to the account specified by DTC at a financial institution in New York City.

(c) The beneficial owner of a Temporary Regulation S Global Note may arrange to receive payments through Euroclear or Clearstream on such Temporary Regulation S Global Note only after delivery by such beneficial owner to Euroclear or Clearstream, as the case may be, of a written certification substantially in the form of Exhibit G and upon delivery by Euroclear or Clearstream, as the case may be, to the Paying Agent of a certification or certifications substantially in the form of Exhibit H. No interest shall be paid to any beneficial owner and no interest shall be paid to Euroclear or Clearstream on such beneficial owner's interest in a Temporary Regulation S Global Note unless Euroclear or Clearstream, as the case may be, has provided such a certification to the Paying Agent with respect to such interest.

(d) Not later than five Business Days prior to each Payment Date or any other date on which a Distribution Report is to be distributed to Noteholders and Beneficial Holders pursuant to Section 2.13(a), the Registrar shall use commercially reasonable efforts to (i) prepare a list (the "Approved Holder List") of each Noteholder and Beneficial Holder as of the related Record Date that has executed and delivered to the Registrar a Confidentiality Agreement, (ii) obtain from DTC a list (the "DTC List") of the Agent Members holding Beneficial Interests in the Notes as of such Record Date, (iii) obtain from each such Agent Member as of such Record Date the corresponding Beneficial Holders of the Beneficial Interests held by each such Agent Member set forth on the DTC List as of such Record Date and prepare a list thereof and of the Beneficial Interests owned by each such Beneficial Holder (the "Actual Beneficial Holder List"), (iv) prepare a list (the "Escrow List"), if necessary, that identifies any differences between (x) the Noteholders and Beneficial Holders listed on the Approved Holder List and (y)(A) the Noteholders of Definitive Notes set forth in the Register and (B) the Beneficial Holders listed on the Actual Beneficial Holder List (or those Beneficial Holders that the Registrar actually knows have not executed and delivered to the Registrar Confidentiality Agreements), in each case as of such Record Date, and (v) provide the Approved Holder List, the DTC List, the Actual Beneficial Holder List and any Escrow List to the Issuer, the Servicer and the Trustee. Each Noteholder, Agent Member and Beneficial Holder hereby agrees, acknowledges and consents that (I) with respect to a Noteholder of any Notes (other than DTC or its nominee) that as of such Record Date has not executed and delivered to the Registrar a Confidentiality Agreement and, therefore, is listed on the Escrow List, the Trustee promptly (but in no event less than three Business Days prior to the applicable Payment Date) shall use commercially reasonable efforts to notify such Noteholder of such failure and, on the applicable Payment Date, cause any

payment of principal, Premium, if any, or interest on such Notes to be paid directly to the Escrow Account and (II) with respect to a Beneficial Holder of any Beneficial Interest in a Note that as of such Record Date has not executed and delivered to the Registrar a Confidentiality Agreement and, therefore, is listed on the Escrow List, the Trustee promptly (but in no event less than three Business Days prior to the applicable Payment Date) shall use commercially reasonable efforts to cause the Beneficial Interest of such Beneficial Holder to be transferred into the name of the Trustee (including the Trustee acting as an Agent Member with respect to such Beneficial Interests) and shall use commercially reasonable efforts to cause any payment of principal, Premium, if any, or interest on such Notes or Beneficial Interests received on such Payment Date to be deposited into the Escrow Account upon receipt thereof; provided, that the Record Date with respect only to such Beneficial Holder shall be changed to the Business Day immediately prior to the related Payment Date. Upon receipt by the Trustee and the Issuer of written notice from the Registrar that the applicable Noteholder or Beneficial Holder has executed and delivered to the Registrar a Confidentiality Agreement, the Trustee will distribute such amounts, without interest, from the Escrow Account to the Trustee for distribution to each such Noteholder or Beneficial Holder, but prior to the receipt thereof the Trustee shall be authorized to treat such purported Noteholder or Beneficial Holder as not being a Noteholder or Beneficial Holder, as the case may be, for purposes of this Indenture.

(e) To the extent that the full amount of any interest due on the Class A Notes is not paid in full on any Payment Date and funds are deposited into the Collection Account following such Payment Date but prior to the third Business Day prior to the immediately succeeding Calculation Date, notwithstanding anything to the contrary in this Indenture, the Trustee shall use such funds to pay to the Noteholders of record the overdue interest together with Additional Interest on such overdue interest on or before the third Business Day after such funds are deposited; provided, that all Expenses with respect to such preceding Payment Date contemplated by Section 3.7(a)(i) shall have been paid. With each such payment the Trustee shall furnish a brief statement to Noteholders eligible to receive Distribution Reports in accordance with this Indenture indicating the aggregate amount of funds received and the balance of overdue interest (and interest thereon) to which the payment is being applied. Subject to Section 2.5(d), any such payment shall be made to the Noteholders of record as of the third Business Day preceding the date of each such payment. Any funds that are deposited on or after the third Business Day prior to the immediately succeeding Calculation Date shall be held in the Collection Account and applied in accordance with this Indenture on the next succeeding Payment Date.

Section 2.6 Minimum Denominations. Each class of Notes shall be issued in minimum denominations of $250,000 or integral multiples of $1,000 in excess thereof.

Section 2.7 Transfer and Exchange; Cancellation. The Notes are issuable only in fully registered form without coupons. A Noteholder or a Beneficial Holder may transfer a Note or a Beneficial Interest therein only by written application to the Registrar stating the name of the proposed transferee and otherwise complying with the terms of this Indenture, including the requirement for the execution and delivery of a Confidentiality Agreement by such proposed transferee to the Registrar relating to such transfer as set forth in Section 2.11(j). No such transfer shall be effected until, and such proposed transferee shall succeed to the rights of a Noteholder or a Beneficial Holder only upon, final acceptance and registration of the transfer by

the Registrar and confirmation by the Registrar pursuant to Section 2.11(j) that such Noteholder or such Beneficial Holder has executed and delivered an appropriate Confidentiality Agreement to the Registrar.

Prior to the due presentment for registration of transfer of a Note and satisfaction of the requirements specified in the last sentence of the preceding paragraph, the Issuer and the Trustee may deem and treat the applicable registered Noteholder as the absolute owner and holder of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes and shall not be affected by any notice to the contrary. The Registrar (if different from the Trustee) shall promptly notify the Trustee in writing and the Trustee shall promptly notify the Issuer of each request for a registration of transfer of a Note by furnishing the Issuer a copy of such request.

Furthermore, any Noteholder of a Global Note shall, by acceptance of such Global Note, agree that, subject to Section 2.10(b) and Section 2.11, transfers of Beneficial Interests in such Global Note may be effected only through a book-entry system maintained by the Noteholder of such Global Note (or its agent) and that ownership of a Beneficial Interest in such Global Note shall be required to be reflected in a book-entry system. When Notes are presented to the Registrar with a request to register the transfer or to exchange them for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including, in the case of a transfer, that such Notes are duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and Registrar duly executed by the Noteholder thereof or by an attorney who is authorized in writing to act on behalf of the Noteholder). To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Notes at the Registrar's request. Except as set forth in Section 2.8 and Section 2.9, no service charge shall be made for any registration of transfer or exchange or redemption of the Notes.

The Registrar shall not be required to exchange or register the transfer of any Notes as above provided during the 15-day period preceding the Final Legal Maturity Date of any such Notes or during a 15-day period preceding the first mailing of any notice of Redemption or Refinancing of Notes to be redeemed or refinanced. The Registrar shall not be required to exchange or register the transfer of any Notes that have been selected, called or are being called for Redemption or Refinancing except, in the case of any Notes where written notice has been given that such Notes are to be redeemed in part, the portion thereof not so to be redeemed.

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Trustee and no one else shall cancel and destroy in accordance with its customary practices in effect from time to time (subject to the record retention requirements of the Exchange Act) any such Notes, together with any other Notes surrendered to it for registration of transfer, exchange or payment. The Issuer may not issue new Notes (other than Refinancing Notes issued in connection with any Refinancing) to replace Notes it has redeemed, paid or delivered to the Trustee for cancellation.

Section 2.8 Mutilated, Destroyed, Lost or Stolen Notes. If any Note shall become mutilated, destroyed, lost or stolen, the Issuer shall, upon the written request of the Noteholder thereof and presentation of the Note or satisfactory evidence of destruction, loss or theft thereof

to the Trustee or Registrar and a confirmation by the Registrar to the Trustee that such Noteholder (or Beneficial Holder of the Beneficial Interest therein) has executed and delivered to the Registrar a Confidentiality Agreement, issue, and the Trustee shall authenticate and the Trustee or Registrar shall deliver in exchange therefor or in replacement thereof, a new Note, payable to such Noteholder in the same principal amount, of the same maturity, with the same payment schedule, bearing the same interest rate and dated the date of its authentication. If the Note being replaced has become mutilated, such Note shall be surrendered to the Trustee or the Registrar and forwarded to the Issuer by the Trustee or such Registrar. If the Note being replaced has been destroyed, lost or stolen, the Noteholder thereof shall furnish to the Issuer, the Trustee and the Registrar (a) such security or indemnity as may be required by the Issuer, the Trustee and the Registrar to save each of them harmless (an unsecured indemnity from any QIB being satisfactory security or indemnity) and (b) evidence satisfactory to the Issuer, the Trustee and the Registrar of the destruction, loss or theft of such Note and of the ownership thereof (an affidavit from any QIB being satisfactory evidence). The Noteholders will be required to pay any Tax or other governmental charge imposed in connection with such exchange or replacement and any other expenses (including the fees and expenses of the Trustee and the Registrar) connected therewith.

Section 2.9 Payments of Transfer Taxes. Upon the transfer of any Note or Notes pursuant to Section 2.7, the Issuer or the Trustee may require from the party requesting such new Note or Notes payment of a sum to reimburse the Issuer or the Trustee for, or to provide funds for the payment of, any transfer Tax or similar governmental charge payable in connection therewith.

Section 2.10 Book-Entry Provisions.

(a) Global Notes shall (i) be registered in the name of DTC or a nominee of DTC, (ii) be delivered to the Trustee as custodian for DTC and (iii) bear the Private Placement Legend. In accordance with the requirements of DTC, the Issuer will cause the Trustee to authenticate an additional Global Note or additional Global Notes in the appropriate principal amount such that no Global Note may exceed an aggregate principal amount of $500,000,000 at any time.

Members of, or participants in, DTC ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by DTC, or the Trustee as its custodian, or under such Global Note, and DTC may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever.

Whenever notice or other communication to the Noteholders of any class of Global Notes is required under this Indenture, unless and until Definitive Notes shall have been issued pursuant to Section 2.10(b), the Trustee shall give all such notices and communications specified herein to be given to Noteholders of such class of Global Notes to DTC and/or the Agent Members, and shall make available additional copies as requested by such Agent Members, subject to the limitations on distribution contained in Section 2.13.

Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices governing the exercise of the rights of a Noteholder under any Global Note. Neither the Issuer nor the Trustee shall be liable for any delay by DTC in identifying the Agent Members in respect of the Global Notes, and the Issuer and the Trustee may conclusively rely on, and shall be fully protected in relying on, instructions from DTC for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of any Global Notes to be issued).

(b) Transfers of a Global Note shall be limited to transfers of such Global Note in whole, but not in part, to DTC, its successors or their respective nominees. Interests of Agent Members in a Global Note may be transferred in accordance with the rules and procedures of DTC and the provisions of Section 2.11. Except as set forth in Section 2.11(a), Definitive Notes shall be issued to the individual Agent Members or Beneficial Holders or their nominees in exchange for their Beneficial Interests in a Global Note with respect to any class of Notes only if (i) the Issuer advises the Trustee in writing that DTC is no longer willing or able to properly discharge its responsibilities as depositary with respect to such class of Notes and the Trustee or the Issuer is unable to appoint a qualified successor within 90 days of such notice, (ii) the Issuer, at its option, elects to terminate the book-entry system through DTC or (iii) during the occurrence of an Event of Default with respect to such class of Notes, Noteholders of a majority of the Outstanding Principal Balance of such class of Notes advise the Issuer, the Trustee and DTC through the Agent Members in writing that the continuation of a book-entry system through DTC (or a successor thereto) is no longer in the best interests of the Noteholders of such class. Upon the occurrence of any event described in the immediately preceding sentence, the Trustee shall notify all affected Noteholders of such class, through DTC, of the occurrence of such event and of the availability of Definitive Notes of such class; provided, however, that in no event shall the Temporary Regulation S Global Note be exchanged for Definitive Notes prior to the later of (x) the Regulation S Global Note Exchange Date and (y) the date of receipt by the Issuer of any certificates determined by it to be required pursuant to Rule 903 or 904 under the Securities Act. Upon surrender to the Trustee of the Global Notes of such class held by DTC, accompanied by registration instructions from DTC for registration of Definitive Notes, the Issuer shall issue and the Trustee shall authenticate and deliver the Definitive Notes of such class to the Agent Members and Beneficial Holders of such class or their nominees in accordance with the instructions of DTC.

None of the Issuer, the Registrar, the Paying Agent or the Trustee shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such registration instructions. Upon the issuance of Definitive Notes of such class, the Trustee shall recognize the Persons in whose name the Definitive Notes are registered in the Register as Noteholders hereunder. Neither the Issuer nor the Trustee shall be liable if the Trustee or the Issuer is unable to locate a qualified successor to DTC.

Definitive Notes of any class will be freely transferable and exchangeable for Definitive Notes of the same class at the office of the Trustee or the office of the Registrar upon compliance with the requirements set forth herein. In the case of a transfer of only part of a holding of Definitive Notes, a new Definitive Note shall be issued to the transferee in respect of the part

transferred and a new Definitive Note in respect of the balance of the holding not transferred shall be issued to the transferor and may be obtained at the office of the applicable Registrar.

(c) Any Beneficial Interest in one of the Global Notes as to any class that is transferred to a Person who takes delivery in the form of an interest in another Global Note will, upon transfer, cease to be an interest in such Global Note and become an interest in such other Global Note and, accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to Beneficial Interests in such other Global Note for as long as it remains such an interest.

(d) Any Definitive Note delivered in exchange for an interest in a Global Note pursuant to Section 2.10(b) shall bear the Private Placement Legend applicable to a Global Note.

Section 2.11 Special Transfer Provisions.

(a) The following provisions shall apply with respect to any proposed transfer of a Beneficial Interest in a 144A Global Note or a Permanent Regulation S Global Note or a proposed transfer of a Definitive Note to any Institutional Accredited Investor that is not a QIB (excluding Non-U.S. Persons) prior to the Resale Restriction Termination Date:

(i) The Registrar shall register the transfer of any Definitive Note if the proposed transferee has delivered to the Registrar (A) a certificate substantially in the form of Exhibit J (such certificate also to be delivered to the Issuer), (B) if requested by the Issuer or the Trustee, an Opinion of Counsel acceptable to the Issuer that such transfer is in compliance with the Securities Act and (C) a Confidentiality Agreement duly executed by such transferee.

(ii) If the proposed transferor is an Agent Member holding a Beneficial Interest in a 144A Global Note or a Permanent Regulation S Global Note, upon receipt by the Registrar of (A) the documents required by Section 2.11(a)(i), including the Confidentiality Agreement, and (B) instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the 144A Global Note or the Permanent Regulation S Global Note, as the case may be, in an amount equal to the principal amount of the Beneficial Interest in the Global Note to be transferred, and the Issuer shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Notes of like tenor and amount.

(b) The following provisions shall apply with respect to any proposed transfer of a Beneficial Interest in a 144A Global Note or a Permanent Regulation S Global Note or a proposed transfer of a Definitive Note to a QIB (excluding Non-U.S. Persons) prior to the Resale Restriction Termination Date:

(i) If the Note to be transferred consists of (A) Definitive Notes, the Registrar shall reflect the transfer on its books and records if such transfer is being made by a proposed transferor who has delivered such Note and checked the box provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a

transferee who has signed the certification provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that (w) it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account are QIBs within the meaning of Rule 144A, (x) it is or such QIBs are aware that the sale to it or them is being made in reliance on Rule 144A and acknowledge that it has or they have received such information regarding the Issuer as it has or they have requested pursuant to Rule 144A or has or have determined not to request such information, (y) it is or such QIBs are aware that the transferor is relying upon the foregoing representations in order to claim the exemption from registration provided by Rule 144A and (z) it has and all such QIBs have duly executed and delivered to the Registrar a Confidentiality Agreement or (B) a Beneficial Interest in a 144A Global Note, the transfer of such Beneficial Interest may be effected only through the book-entry system maintained by DTC and to the extent provided in the agreement with DTC, and, in each case, each transferee has delivered to the Registrar a Confidentiality Agreement duly executed by such transferee.

(ii) If the proposed transferee is an Agent Member, and the Note to be transferred is a Definitive Note, upon receipt by the Registrar of the documents referred to in Section 2.11(b)(i), including the Confidentiality Agreement, and instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount at maturity of the 144A Global Note in an amount equal to the principal amount at maturity of the Definitive Note to be transferred, and the Trustee shall cancel the Definitive Note so transferred (upon written direction from the Registrar if different from the Trustee).

(iii) If the proposed transferee is an Agent Member, and the Note to be transferred is represented by a Beneficial Interest in a Permanent Regulation S Global Note, upon receipt by the Registrar of the documents referred to in Section 2.11(b)(i), including the Confidentiality Agreement, and instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Permanent Regulation S Global Note in an amount equal to the principal amount of the Beneficial Interest in the Permanent Regulation S Global Note to be transferred, and the Registrar shall reflect on its books and records an increase in the principal amount of the 144A Global Note in an amount equal to such transferred amount.

(c) With respect to any proposed transfer of a Beneficial Interest in a Temporary Regulation S Global Note to an Institutional Accredited Investor prior to the Resale Restriction Termination Date, the Registrar shall reflect on its books and records the transfer of such Beneficial Interest (A) if the proposed transferee is a Non-U.S. Person, the proposed transferor has delivered to the Registrar a certificate substantially in the form of Exhibit I (such certificate also to be delivered to the Issuer) and the proposed transferee has duly executed and delivered to the Registrar a Confidentiality Agreement (in which case the transferee will receive a corresponding Beneficial Interest in the Temporary Regulation S Global Note) or (B) if the proposed transferee is a QIB and the proposed transferor has checked the box provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has

signed the certification provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that (w) it is purchasing the Note (or the Beneficial Interest therein) for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account are QIBs within the meaning of Rule 144A, (x) it is or such QIBs are aware that the sale to it or them is being made in reliance on Rule 144A and acknowledge that it has or they have received such information regarding the Issuer as it has or they have requested pursuant to Rule 144A or has or have determined not to request such information, (y) it is or such QIBs are aware that the transferor is relying upon the foregoing representations in order to claim the exemption from registration provided by Rule 144A and (z) it has and all such QIBs have duly executed and delivered to the Registrar a Confidentiality Agreement (in which case the Registrar shall reflect on its books and records the date and an increase in the principal amount of the 144A Global Note of the relevant class, in an amount equal to the principal amount of the Temporary Regulation S Global Note (or the Beneficial Interest therein) of such class to be transferred, and the Trustee shall decrease the amount of the Temporary Regulation S Global Note of such class (upon written direction from the Registrar if different from the Trustee)).

(d) Except as set forth in Section 2.11(c), prior to the Resale Restriction Termination Date, the following provisions shall apply with respect to any transfer of a Note (or a Beneficial Interest therein) to a Non-U.S. Person:

(i) Except as set forth in Section 2.11(c), prior to the applicable Regulation S Global Note Exchange Date, the Registrar shall not register or reflect on its books and records any proposed transfer of a Note (or a Beneficial Interest therein) to a Non-U.S. Person.

(ii) The Registrar shall register or reflect on its books and records, as the case may be, any proposed transfer of a Note (or a Beneficial Interest therein) to any Non-U.S. Person that is an Institutional Accredited Investor if the Note to be transferred is a Definitive Note or a Beneficial Interest in a 144A Global Note, upon receipt of a certificate substantially in the form of Exhibit I from the proposed transferor and a Confidentiality Agreement duly executed and delivered to the Registrar by such Non-U.S. Person that is an Institutional Accredited Investor.

(iii) (A) If the proposed transferor is an Agent Member holding a Beneficial Interest in a 144A Global Note, upon receipt by the Registrar of (x) the documents, if any, required by Section 2.11(d)(ii) and (y) instructions in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the 144A Global Note in an amount equal to the principal amount of the Beneficial Interest in such 144A Global Note to be transferred, and (B) if the proposed transferee is an Agent Member, upon receipt by the Registrar of instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Permanent Regulation S Global Note of the relevant class in an amount equal to the principal amount of the Beneficial Interest in such 144A Global Note or any Definitive Notes issued in exchange for such Beneficial Interest in such 144A Global Note to be transferred, and the Trustee shall cancel the Definitive Note, if any, so

transferred or decrease the amount of the 144A Global Note (upon written direction from the Registrar if different from the Trustee).

(e) With respect to any proposed transfer of any Note (or a Beneficial Interest therein) after the Resale Restriction Termination Date, the Registrar shall reflect the transfer of such Note or Beneficial Interest on its books and records (along with any appropriate increase or decrease in the principal amount at maturity of any Global Note upon receipt by the Registrar of instructions given in accordance with DTC's and the Registrar's procedures) if the proposed transferee has duly executed and delivered to the Registrar a Confidentiality Agreement.

(f) Upon the transfer, exchange or replacement of Notes bearing the Private Placement Legend, the Registrar shall deliver only Notes that bear the Private Placement Legend.

(g) By its acceptance of any Note bearing the Private Placement Legend, each Noteholder of such Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Private Placement Legend and agrees that it will transfer such Note (or the Beneficial Interest therein) only as provided in this Indenture and in accordance with the Private Placement Legend. The Registrar shall not register or reflect on its books and records a transfer of any Note (or any Beneficial Interest therein) unless such transfer complies with the restrictions on transfer of such Note set forth in this Indenture and in accordance with the Private Placement Legend. In connection with any transfer of Notes (or Beneficial Interests therein), each Noteholder (or Beneficial Holder) agrees by its acceptance of the Notes (or Beneficial Interests therein) to furnish the Trustee the certifications and legal opinions (if requested and required pursuant hereto) described herein to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act; provided, that the Trustee shall not be required to determine (but may rely on a determination made by the Issuer with respect to) the sufficiency of any such legal opinions.

(h) The Notes shall be issued pursuant to an exemption from registration under the Securities Act. The Issuer agrees that it will not at any time (i) apply to list, list or list upon notice of issuance, (ii) consent to or authorize an application for the listing or the listing of, or (iii) enable or authorize the trading of, the Notes on an established securities market, including (w) a national securities exchange registered under the Exchange Act or exempted from registration because of the limited volume of transactions, (x) a foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the Exchange Act applicable to exchanges described in Section 2.11(h)(w), (y) a regional or local exchange or (z) an over-the-counter market, as the term "established securities market" and the terms in this Section 2.11(h) are defined for purposes of Section 7704 of the Code.

(i) The Trustee shall retain copies of all letters, notices and other written communications received pursuant to Section 2.10 or this Section 2.11. The Issuer shall have the right to inspect and make copies of all such letters, notices, Confidentiality Agreements or other written communications at any reasonable time upon the giving of reasonable written notice to the Trustee.

(j) Each Noteholder, Agent Member and Beneficial Holder agrees, by acceptance of any Note or any Beneficial Interest therein, that it will not take any action to transfer any Note (or any Beneficial Interest therein) to a proposed transferee without causing such proposed transferee to execute and deliver to the Registrar an appropriate Confidentiality Agreement relating to such transfer as set forth in this Section 2.11. After the Closing Date with respect to the Original Class A Notes (or the date of issuance with respect to any Class B Notes or any Refinancing Notes), forms of Confidentiality Agreements will be available to Noteholders, Agent Members and Beneficial Holders and proposed transferees of the Notes (or the Beneficial Interests therein) from the Registrar, initially at the Corporate Trust Office. Each such Confidentiality Agreement shall be delivered to the Registrar promptly upon execution by the parties thereto and the Registrar shall record the receipt of such Confidentiality Agreement. The Registrar shall promptly, but in any event no later than two Business Days after receipt of any such executed Confidentiality Agreement, furnish a copy of such executed Confidentiality Agreement to the Trustee, the Issuer and the Servicer and shall maintain a list of proposed transferees (including Noteholders and Beneficial Holders) who have furnished such executed Confidentiality Agreements, whether or not such proposed transferees purchase any Notes (or any Beneficial Interests therein), and make such list available for inspection at the request of the Trustee, the Issuer or the Servicer.

(k) Notwithstanding any other provision contained in this Indenture to the contrary, any Noteholder or Beneficial Holder may assign a security interest in, or pledge, all or any portion of the Notes (or any interest therein) held by it to a lender or a trustee or collateral agent (or other similar representative) under any indenture, loan agreement or similar agreement to which such Noteholder or Beneficial Holder is party in support of any obligations of such Noteholder or Beneficial Holder to a holder or holders of securities or other obligations issued by such Noteholder or Beneficial Holder; provided, that no such assignment or pledge shall release the assigning or pledging Noteholder or Beneficial Holder from its obligations hereunder; provided, further, that any assignee or pledgee shall be required to execute and deliver to the Registrar an appropriate Confidentiality Agreement as a condition of such assignment or pledge.

Section 2.12 Temporary Definitive Notes. Pending the preparation of Definitive Notes of any class, the Issuer may execute and the Trustee may authenticate and deliver temporary Definitive Notes of such class that are printed, lithographed, typewritten or otherwise produced, in any denomination, containing substantially the same terms and provisions as are set forth in the applicable Exhibit or in any indenture supplemental hereto, except for such appropriate insertions, omissions, substitutions and other variations relating to their temporary nature as the Manager executing such temporary Definitive Notes may determine, as evidenced by his or her execution of such temporary Definitive Notes.

If temporary Definitive Notes of any class are issued, the Issuer shall cause such Definitive Notes of such class to be prepared without unreasonable delay. After the preparation of Definitive Notes of such class, the temporary Definitive Notes shall be exchangeable for Definitive Notes upon surrender of such temporary Definitive Notes at the Corporate Trust Office, without charge to the Noteholder thereof. Upon surrender for cancellation of any one or more temporary Definitive Notes of any class, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor Definitive Notes of like class, in authorized denominations and in the same aggregate principal amounts. Until so exchanged, such

temporary Definitive Notes shall in all respects be entitled to the same benefits under this Indenture as Definitive Notes.

Section 2.13 Statements to Noteholders.

(a) On each Payment Date and any other date for distribution of any payments with respect to any class of Notes then Outstanding, the Trustee shall deliver a report, covering the information set forth in Exhibit D and prepared by the Servicer, giving effect to such payments (each, a "Distribution Report"), to (i) each Noteholder and Beneficial Holder included on the Approved Holder List, (ii) the Issuer, (iii) the Calculation Agent and (iv) the Parent, and to no other Person. Each Noteholder and Beneficial Holder shall be entitled to receive the Distribution Report only if such Noteholder or Beneficial Holder has executed and delivered to the Registrar a Confidentiality Agreement.

(b) Each Distribution Report provided to each Noteholder and Beneficial Holder by the Trustee for each Payment Date pursuant to Section 2.13(a), commencing July 15, 2008, shall be accompanied by (i) a statement prepared by the Servicer setting forth an analysis of the Collection Account activity for the period commencing on the day next following the preceding Calculation Date and ending on the Calculation Date relating to such Payment Date, (ii) such information, if any, that the Parent shall have provided to the Trustee pursuant to Section 6.3 of the Purchase and Sale Agreement during the Interest Accrual Period then ended and (iii) the information, if any, that the Issuer shall have provided to the Trustee pursuant to Section 5.3 (or the Servicer shall have provided to the Trustee pursuant to Section 3.1 of the Servicing Agreement) during the Interest Accrual Period then ended.

(c) After the end of each calendar year but not later than the latest date permitted by law, the Trustee shall (or shall instruct any Paying Agent to) furnish to each Person who at any time during such calendar year was a Noteholder of any class of Notes a statement (for example, a Form 1099 or any other means required by law) prepared by the Trustee containing the sum of the amounts determined pursuant to the information covered by Exhibit D with respect to the class of Notes for such calendar year or, in the event such Person was a Noteholder of any class of Notes during only a portion of such calendar year, for the applicable portion of such calendar year, and such other items as are readily available to the Trustee and that a Noteholder shall reasonably request as necessary for the purpose of such Noteholder's preparation of its U.S. federal income or other tax returns. So long as any of the Notes are registered in the name of DTC or its nominee, such report and such other items will be prepared on the basis of such information supplied to the Trustee by DTC and the Agent Members and will be delivered by the Trustee to DTC and by DTC to the applicable Beneficial Holders in the manner described above. In the event that any such information has been provided by any Paying Agent directly to such Person through other tax-related reports or otherwise, the Trustee in its capacity as Paying Agent shall not be obligated to comply with such request for information.

(d) At such time, if any, as the Notes of any class are issued in the form of Definitive Notes, the Trustee shall prepare and deliver the information described in Section 2.13(c) to each Noteholder of a Definitive Note of such class for the relevant period of registered ownership of such Definitive Note as appears on the books and records of the Trustee, subject to

confirmation that each such Noteholder has executed and delivered to the Registrar a Confidentiality Agreement.

(e) The Trustee shall be at liberty to sanction any method of giving notice to the Noteholders of any class if, in its opinion, such method is reasonable, having regard to the number and identity of the Noteholders of such class and/or to market practice then prevailing, is in the best interests of the Noteholders of such class, and any such notice shall be deemed to have been given on such date as the Trustee may approve; provided, that notice of such method is given to the Noteholders of such class in such manner as the Trustee shall require.

Section 2.14 CUSIP, CINS, ISIN and Private Placement Numbers. The Issuer in issuing the Notes may use CUSIP, CINS, ISIN, private placement or other identification numbers (if then generally in use), and, if so, the Trustee shall use such CUSIP, CINS, ISIN, private placement or other identification numbers, as the case may be, in notices of redemption or exchange as a convenience to Noteholders; provided, that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption or exchange and that reliance may be placed only on the other identification numbers printed on the Notes; provided, further, that failure to use CUSIP, CINS, ISIN, private placement or other identification numbers in any notice of redemption or exchange shall not affect the validity or sufficiency of such notice.

Section 2.15 Refinancing Notes.

(a) Subject to Section 2.15(b), Section 2.15(c) and Section 2.15(d), the Issuer may issue Refinancing Notes pursuant to this Indenture for the purpose of refinancing all of the Outstanding Principal Balance of any class of Notes (including a refinancing of Refinancing Notes). Each refinancing of any class of Notes with the proceeds of an offering of Refinancing Notes (a "Refinancing") shall be authorized pursuant to one or more Manager Resolutions. Each Refinancing Note shall be designated generally as a Note for all purposes under this Indenture, with such further designations added or incorporated in such title as specified in the related Manager Resolution or in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes, as the case may be. The Refinancing Notes shall be issued on the Payment Date on which the Redemption in whole of the class of Notes being refinanced is to occur as provided in Section 3.11.

(b) A Refinancing of any class of Notes shall be effected as a Redemption pursuant to Section 3.10, provided that a Refinancing of the Original Class A Notes shall be effected as an Optional Redemption pursuant to Section 3.10(b). On the date of any Refinancing, the Issuer shall issue and sell an aggregate principal amount of Refinancing Notes (when added to the Available Collections Amount and any funds in the Interest Reserve Account, the Redemption Account or the Capital Account used or to be used in connection with such Refinancing) not less than the amount sufficient to pay in full the applicable Redemption Price of the Notes being refinanced in whole thereby plus the Refinancing Expenses relating thereto. The proceeds of each sale of Refinancing Notes shall be used to the extent necessary to make the deposit required by Section 3.11 and to pay such Refinancing Expenses. Subject to Section 3.11(b), once a notice of a Redemption in respect of any Refinancing is published in

accordance with Section 3.11(a), each class of Notes to which such notice applies shall become due and payable on the Refinancing Date stated in such notice at their Redemption Price.

(c) Each Refinancing Note shall contain such terms as may be established in or pursuant to the related Manager Resolution (subject to Section 2.1) or in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes to the extent permitted below. Prior to the issuance of any Refinancing Notes, any or all of the following, as applicable, with respect to the related issue of Refinancing Notes shall have been determined by the Issuer and set forth in such Manager Resolution and in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes, as the case may be:

(i) the class of Notes to be refinanced by such Refinancing Notes;

(ii) the aggregate principal amount of each class of Refinancing Notes that may be issued in respect of such Refinancing;

(iii) the proposed date of such Refinancing;

(iv) the Final Legal Maturity Date of each class of such Refinancing Notes;

(v) the rate at which such Refinancing Notes shall bear interest or the method by which such rate shall be determined;

(vi) the denomination or denominations in which any class of such Refinancing Notes shall be issuable;

(vii) whether such Refinancing Notes will be subject to redemption pursuant to Section 3.10(c);

(viii) whether any such Refinancing Notes are to be issuable initially in temporary or permanent global form and, if so, whether beneficial owners of interests in any such permanent global Refinancing Note may exchange such interests for Refinancing Notes of such class and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.7, and the circumstances under which and the place or places where any such exchanges may be made and the identity of any initial depositary therefor; and

(ix) any other terms, conditions, rights and preferences (or limitations on such rights and preferences) relating to the class of Refinancing Notes (which terms shall comply with Applicable Law and not violate any restrictions of this Indenture).

(d) If any of the terms of any issue of Refinancing Notes are established by action taken pursuant to one or more Manager Resolutions, such Manager Resolutions shall be delivered to the Trustee setting forth the terms of such Refinancing Notes.

Section 2.16 Class B Notes.

(a) Subject to Section 2.16(b), Section 2.16(c) and Section 2.16(d), the Issuer may issue Class B Notes pursuant to this Indenture (a "Class B Issuance") for any purpose, including, at the option of the Issuer, for the purpose of funding a redemption of the Class A Notes, in whole or in part. Each Class B Issuance shall be authorized pursuant to one or more Manager Resolutions. Each Class B Note shall be designated generally as a Note for all purposes under this Indenture. Each Class B Note shall have such further designations added or incorporated in such title as specified in the related Manager Resolution or in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes, as the case may be. There are no limitations on the use of proceeds from the issuance of such Class B Notes. If the proceeds of the Class B Notes are being used to redeem the Class A Notes, in whole or in part, the Class B Notes shall be issued on the Payment Date on which the Optional Redemption of the Class A Notes being refinanced is to occur as provided in Section 3.11.

(b) If the proceeds of the Class B Notes are being used to redeem any Class A Notes, such redemption shall be effected as an Optional Redemption pursuant to Section 3.10(b). On the date of any such Optional Redemption, the Issuer shall issue and sell an aggregate principal amount of Class B Notes in an amount not less than the amount sufficient to pay in full the applicable Redemption Price of the Notes being redeemed thereby plus the Transaction Expenses relating thereto. The proceeds of each sale of Class B Notes shall be used to make the deposit required by Section 3.11, to the extent applicable, to pay such Transaction Expenses and/or for such other purposes, if any, as shall be specified in the Manager Resolution authorizing the issuance of such Class B Notes. Subject to Section 3.11(b), once a notice of Redemption in respect of any Class B Issuance is published in accordance with Section 3.11(a), each class of Notes to which such notice applies shall become due and payable on the Redemption Date stated in such notice at their Redemption Price.

(c) Each Class B Note shall contain such terms as may be established in or pursuant to the related Manager Resolution (subject to Section 2.1) or in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes to the extent permitted herein, and shall be subordinate to the Class A Notes to the extent provided in this Indenture. Prior to the issuance of the Class B Notes, any or all of the following, as applicable, with respect to the related Class B Issuance shall have been determined by the Issuer and set forth in such Manager Resolution and in any indenture supplemental hereto or specified in the form of such Class B Notes, as the case may be, with respect to the Class B Notes to be issued:

(i) the aggregate principal amount of any such Class B Notes that may be issued;

(ii) the proposed date of such Class B Issuance;

(iii) the Final Legal Maturity Date of any such Class B Notes;

(iv) whether any such Class B Notes are to have the benefit of any reserve account and, if so, the amount and terms thereof;

(v) the rate at which such Class B Notes shall bear interest or the method by which such rate shall be determined;

(vi) the denomination or denominations in which such Class B Notes shall be issuable;

(vii) whether such Class B Notes will be subject to redemption pursuant to Section 3.10(c);

(viii) whether any such Class B Notes are to be issuable initially in temporary or permanent global form and, if so, whether beneficial owners of interests in any such permanent global Class B Note may exchange such interests for Class B Notes of like tenor and of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.7, and the circumstances under which and the place or places where any such exchanges may be made and the identity of any initial depositary therefor; and

(ix) any other terms, conditions, rights and preferences (or limitations on such rights and preferences) relating to Class B Notes (which terms shall comply with Applicable Law and not violate any restrictions of this Indenture).

(d) If any of the terms of any issue of Class B Notes are established by action taken pursuant to one or more Manager Resolutions, such Manager Resolutions shall be delivered to the Trustee setting forth the terms of such Class B Notes.

ARTICLE III
ACCOUNTS; PRIORITY OF PAYMENTS

Section 3.1 Establishment of Accounts.

(a) Pursuant to the terms of the Servicing Agreement, the Issuer will cause the Servicer, acting on behalf of the Issuer, to establish and maintain with the Operating Bank on its books and records in the name of the Issuer, subject to the Liens established under this Indenture, (i) a collection account (the "Collection Account"), (ii) if applicable, a redemption account (the "Redemption Account"), (iii) a capital contribution account (the "Capital Account"), (iv) if applicable, an escrow account (the "Escrow Account"), (v) an interest reserve account (the "Interest Reserve Account") and (vi) any additional accounts the establishment of which is set forth in a Manager Resolution delivered by the Issuer to the Servicer and the Trustee, in each case at such time as is set forth in this Section 3.1 or in such Manager Resolution. Each Account shall be established and maintained as an Eligible Account so as to create, perfect and establish the priority of the Liens established under this Indenture in such Account and all cash, Eligible Investments and other property from time to time deposited therein and otherwise to effectuate the Liens under this Indenture.

(b) The Trustee shall have sole dominion and control over the Accounts (including, among other things, the sole power to direct withdrawals or transfers from the Accounts and to direct the investment and reinvestment of funds in the Accounts, subject to Section 3.2). The Trustee shall make withdrawals and transfers from the Accounts in accordance with the terms of this Indenture based on the Relevant Information and as calculated by it pursuant to this Indenture. Each of the Issuer and the Trustee acknowledges and agrees that the Accounts are "deposit accounts" or "investment property" within the meaning of Section 9-102 of the UCC and that the Trustee has "control", for purposes of Section 9-314 of the UCC, of Accounts that are maintained with the Trustee as the Operating Bank. The Issuer agrees that, if any Account is established or maintained with any Operating Bank other than the Trustee, the Issuer shall cause (or direct the Servicer to cause) such Operating Bank to enter into an agreement with the Trustee, the Issuer and the Servicer pursuant to which such Operating Bank agrees to comply with any and all instructions of the Trustee directing the disposition, investment and reinvestment of funds in all Accounts maintained with such Operating Bank without the further consent of the Issuer or the Servicer, and the Issuer shall take such other actions as are reasonably required by the Trustee to establish its "control", for purposes of Section 9-314 of the UCC, over any such Accounts.

(c) If, at any time, any Account ceases to be an Eligible Account, the Issuer will cause the Servicer or an agent thereof, within ten Business Days, to establish a new Account meeting the conditions set forth in this Section 3.1 in respect of such Account and transfer any cash or investments in the existing Account to such new Account, and, from the date such new Account is established, it shall have the same designation as the existing Account. If the Operating Bank should change at any time, then the Issuer will cause the Servicer, acting on behalf of the Issuer, to thereupon promptly establish replacement Accounts as necessary at the successor Operating Bank and transfer the balance of funds in each Account then maintained at the former Operating Bank pursuant to the terms of the Servicing Agreement to such successor Operating Bank.

(d) The Issuer will cause the Servicer to establish and maintain the Collection Account at the Operating Bank not later than the Closing Date, and the Collection Account shall bear a designation clearly indicating that the funds or other assets deposited therein are held for the benefit of the Trustee. Except as expressly provided herein, all Collections shall be deposited in the Collection Account and transferred therefrom in accordance with the terms of this Indenture. No funds shall be deposited in the Collection Account that do not constitute Collections except as expressly provided in this Indenture without the prior written consent of the Trustee.

(e) Upon receipt of written notice of a Redemption of any class of Notes, the Issuer will cause the Servicer to establish and maintain a Redemption Account at the Operating Bank that shall bear a description clearly indicating that the funds or other assets deposited therein are held for the benefit of the Trustee, who shall hold such amounts for the benefit of the Noteholders of Notes that are the subject of such Redemption. All amounts received for the purpose of any such Redemption shall be deposited in such Redemption Account and shall be held in such Account until such amounts are applied to pay the Redemption Price of such Notes (together with related Expenses) and such Notes are cancelled by the Trustee.

(f) The Issuer will cause the Servicer to establish and maintain the Capital Account at the Operating Bank not later than the Closing Date, and the Capital Account shall bear a designation clearly indicating that the funds or other assets deposited therein are held for the benefit of the Trustee into which the Parent shall deposit any capital contributions made to the Issuer. All such capital contributions shall be held in such Account and transferred (i) to the Noteholders in payment of any Interest Amount in accordance with Section 3.8, (ii) to the Redemption Account only to the extent specifically provided for in any written notice of an Optional Redemption delivered to the Trustee pursuant to Section 3.10(b) and (iii) to the Parent only to the extent permitted by Section 3.8.

(g) Upon notice by the Trustee to the Servicer that any Noteholder, Agent Member or Beneficial Holder has not delivered a Confidentiality Agreement to the Registrar, the Issuer will cause the Servicer to establish and maintain an Escrow Account at the Operating Bank in the name of the Trustee that shall bear a designation clearly indicating that the funds or other assets deposited therein are held for the benefit of any such Noteholder, Agent Member or Beneficial Holder. All amounts withheld from such Noteholder, Agent Member or Beneficial Holder pursuant to Section 2.5(d) shall be deposited in such Escrow Account and shall be held in such Escrow Account until such amounts are distributed as provided in Section 2.5(d).

(h) The Issuer will cause the Servicer to establish and maintain the Interest Reserve Account at the Operating Bank not later than the Closing Date, and the Interest Reserve Account shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Trustee. Amounts shall be deposited into the Interest Reserve Account only pursuant to Section 3.3(a)(iii). All such amounts shall be held in such Interest Reserve Account and transferred to the Collection Account only pursuant to Section 3.8.

Section 3.2 Investments of Cash. The Issuer or the Servicer, on its behalf, shall direct the Trustee in writing to invest and reinvest the funds on deposit in the Accounts in Eligible Investments, to the extent such Eligible Investments are available to the relevant Operating Bank, and advise the Trustee in writing of any depository institution or trust company described in the proviso to the definition of Eligible Investments; provided, however, that, so long as an Event of Default has occurred and is continuing, the Trustee shall direct each Operating Bank to invest such amount in Eligible Investments described in clause (d) of the definition thereof from the time of receipt thereof until such time as such amounts are required to be distributed pursuant to the terms of this Indenture. In the absence of written direction delivered to the Trustee from the Issuer or the Servicer, the Trustee shall direct each Operating Bank to invest any funds in Eligible Investments described in clause (d) of the definition thereof. The Trustee shall direct each Operating Bank to make such investments and reinvestments in accordance with the terms of the following provisions:

(a) the Eligible Investments shall have maturities and other terms such that sufficient funds shall be available to make required payments pursuant to this Indenture on the Business Day immediately preceding the next occurring Payment Date after such investment is made;

(b) if any funds to be invested are received in the Accounts after 1:00 p.m., New York City time, on any Business Day, such funds shall, if possible, be invested in overnight Eligible Investments;

(c) all interest and earnings on Eligible Investments held in the Accounts shall be invested in Eligible Investments on an overnight basis and credited to the appropriate Account until the next Payment Date; and

(d) the Issuer acknowledges that regulations of the U.S. Comptroller of the Currency grant the Issuer the right to receive confirmations of security transactions as they occur. The Issuer specifically waives receipt of such confirmations to the extent permitted by Applicable Law and acknowledges that the Operating Bank will instead furnish periodic cash transaction statements that will detail all investment transactions as set forth in this Indenture.

Section 3.3 Closing Date Deposits; Withdrawals and Transfers.

(a) On the Closing Date, the Trustee shall, subject to the receipt of written direction from the Issuer upon receipt of the proceeds from the sale by the Issuer of the Notes, make the following payments from such proceeds in the amounts so directed by the Issuer:

(i) to such Persons as shall be specified by the Issuer, such Transaction Expenses as shall be due and payable in connection with the issuance and sale of the Notes;

(ii) to the Parent, in accordance with the Purchase and Sale Agreement, an amount equal to the Cash Purchase Price; and

(iii) to the Interest Reserve Account, $8,000,000.

(b) On the date of issuance of any Class B Notes or any Refinancing Notes, the Trustee shall, subject to the receipt of written direction from the Issuer upon receipt of the proceeds of the sale by the Issuer of such Notes, make such payments and transfers as shall be specified in this Indenture, the related Manager Resolution or any indenture supplemental hereto in respect of such Notes, copies of which Manager Resolution and indenture supplemental hereto shall be attached to such written direction.

(c) The Trustee shall hold all funds received on or prior to the Closing Date from the Note Purchasers in trust for the Note Purchasers pending completion of the closing of the transactions contemplated by the Note Purchase Agreements. Upon receipt by the Trustee of the aggregate Purchase Price from all Note Purchasers, the Trustee shall disburse the Purchase Price in accordance with this Section 3.3. If the aggregate Purchase Price shall not have been received by the Trustee by 3:30 p.m. (New York City time) on the Closing Date, or if the closing of the transactions contemplated by the Note Purchase Agreements shall not otherwise be capable of being consummated by 3:30 p.m. (New York City time) on the Closing Date, then each Note Purchaser who has paid its respective portion of the Purchase Price shall have the right to instruct the Trustee at or after 3:30 p.m. (New York City time) on the Closing Date to return such portion of the Purchase Price to such Note Purchaser prior to the close of business on the Closing Date or as soon thereafter as reasonably practicable.

Section 3.4 Capital Contributions. The Issuer will immediately forward any capital contributions received by it from the Parent for deposit in the Capital Account.

Section 3.5 Calculation Date Calculations.

(a) As soon as reasonably practicable after each Calculation Date (a "Relevant Calculation Date"), but in no event later than 12:00 noon (New York City time) on the second Business Day prior to the immediately succeeding Payment Date, the Calculation Agent shall, based on the Servicer Information received by the Calculation Agent, and based on information known to it or Relevant Information provided to it, make the following determinations and calculations (and each of the Trustee and the Issuer (for itself and on behalf of the Servicer) agrees to provide any Relevant Information reasonably requested by the Calculation Agent for the purpose of making such determinations and calculations):

(i) the Available Collections Amount for such Payment Date;

(ii) (x) the amount of Collections received during the period commencing on the day immediately following the Calculation Date that immediately preceded such Relevant Calculation Date and ending on such Relevant Calculation Date and (y) the amount, if any, to be transferred from the Interest Reserve Account as of the Relevant Calculation Date to the Collection Account on such Payment Date in accordance with Section 3.8;

(iii) the balance of funds on deposit in each Account other than the Collection Account on such Relevant Calculation Date and the amount of interest and earnings (net of losses and investment expenses), if any, on investments of funds on deposit therein from the day immediately following the Calculation Date that immediately preceded such Relevant Calculation Date and ending on such Relevant Calculation Date;

(iv) the balance of funds on deposit in the Collection Account on such Relevant Calculation Date and the amount of interest and earnings (net of losses and investment expenses), if any, on investments of funds on deposit therein from the day immediately following the Calculation Date that immediately preceded such Relevant Calculation Date and ending on such Relevant Calculation Date;

(v) all fees, costs and expenses (including reasonable attorneys' fees and legal expenses) of the Noteholders under this Indenture not previously reimbursed;

(vi) all other Expenses not previously reimbursed, in the amounts shown on all invoices attached to the Servicer Information received by the Calculation Agent for the reimbursement or payment of Expenses or Servicing Fees not previously paid or reimbursed;

(vii) the applicable interest rate on each class of Floating Rate Notes determined on the Reference Date for the Interest Accrual Period beginning on such Payment Date and the Interest Amount (including any Additional Interest) on each class of Floating Rate Notes and Fixed Rate Notes for such Payment Date;

(viii) if such Payment Date is a Redemption Date on which a Redemption of Notes is scheduled to occur, the amount necessary to pay the Redemption Price of the Notes to be repaid on such Redemption Date and the Redemption Premium, if any, to be paid as part of such Redemption Price;

(ix) the amount of the Parent Shortfall Payment, if any, to be made on such Payment Date, provided such payment is being made in accordance with Section 3.9;

(x) the difference, if any, between the Interest Amount due to the Noteholders of Class A Notes pursuant to Section 3.7(a)(iii) on such Payment Date and the portion of the Available Collections Amount available to pay such Interest Amount for such Payment Date (a "Shortfall"), taking into account any Parent Shortfall Payment determined pursuant to Section 3.5(a)(ix) and the payment of expenses described in Section 3.5(a)(v) and Section 3.5(a)(vi) payable on such Payment Date and, with respect to each Shortfall, the amount to be withdrawn from the Interest Reserve Account and/or the Capital Account, if any, determined as provided in Section 3.8;

(xi) the Outstanding Principal Balance of each class of Notes on such Payment Date immediately prior to any principal payment on such date and the amount of any principal payment to be made in respect of each class of Notes on such Payment Date, taking into account the other payments to be made on such Payment Date entitled to priority pursuant to Section 3.7;

(xii) the amounts, if any, distributable to the Issuer on such Payment Date pursuant to Section 3.7(a)(viii); and

(xiii) any other information, determinations and calculations reasonably required in order to give effect to the terms of this Indenture and the other Transaction Documents.

(b) Following the calculations and determinations by the Calculation Agent described in Section 3.5(a), and not later than 1:00 p.m., New York City time, on the second Business Day prior to the immediately succeeding Payment Date, the Calculation Agent shall provide to each of the Servicer, the Issuer and the Trustee a calculation report (a "Calculation Report") listing such determinations and calculations and the amount of the Available Collections Amount to be applied on such Payment Date to make each of the payments and transfers contemplated by Section 3.7(a) or Section 3.10(a), as applicable, setting forth the payments to be made in respect of the Notes, and any Parent Shortfall Payment due and payable on such date. The calculations set forth in each Calculation Report shall be conclusive and binding on each of the Issuer, the Servicer, the Trustee and each Noteholder, absent manifest error.

Section 3.6 Payment Date First Step Transfers. On each Payment Date, the Trustee shall transfer from any Account (other than the Collection Account and the Capital Account) to the Collection Account the amount of interest and earnings (net of losses and investment expenses), if any, earned as a result of investments of funds on deposit therein from the day

immediately following the Calculation Date that immediately preceded the Relevant Calculation Date and ending on the Relevant Calculation Date.

Section 3.7 Payment Date Second Step Withdrawals.

(a) On each Payment Date, after the applicable transfers provided for in Section 3.6 have been made and after the making of any Parent Shortfall Payment pursuant to Section 3.9, the Trustee shall distribute from the Collection Account the amounts set forth below in the order of priority set forth below but, in each case, only to the extent that all amounts then required to be paid ranking prior thereto have been paid in full:

(i) first, to the payment of all Expenses due and payable on such Payment Date in the amounts shown on all invoices attached to the Servicer Information received by the Trustee for the reimbursement or payment of Expenses not previously paid or reimbursed;

(ii) second, to the payment of the Servicing Fee for such Payment Date and any unpaid Servicing Fee in respect of prior Payment Dates;

(iii) third, to the Trustee for distribution to the Noteholders of the Class A Notes to the ratable payment of the Interest Amount then due and payable on the Class A Notes, taking into account any amounts paid pursuant to Section 3.8 on such Payment Date;

(iv) fourth, to the Trustee for distribution to the Noteholders of the Class A Notes, principal payments on the Class A Notes (without premium or penalty), allocated pro rata in proportion to the Outstanding Principal Balance of such Class A Notes held by such Noteholders, until the Outstanding Principal Balance of such Class A Notes has been paid in full;

(v) fifth, after the Class A Notes have been paid in full, to the Trustee for distribution to the Noteholders of the Class B Notes, if any, the Interest Amount on the Class B Notes in accordance with their terms;

(vi) sixth, after the Class A Notes have been paid in full, to the Trustee for distribution to the Noteholders of the Class B Notes, if any, payment of the principal amount of the Class B Notes in accordance with their terms until the Class B Notes have been paid in full;

(vii) seventh, after the Notes have been paid in full, to the ratable payment of all other obligations under this Indenture until all such amounts are paid in full; and

(viii) eighth, after the Notes have been paid in full, to the Issuer, all remaining amounts.

(b) To the extent the Issuer receives amounts from the Trustee from the Collection Account pursuant to Section 3.7(a)(viii), such amounts may be distributed by the

Issuer to the Parent (or as otherwise directed by the Parent or any Person designated by the Parent to give such directions) in its sole discretion.

(c) To the extent that any monies are deposited in the Collection Account to reimburse prior distributions in respect of a Parent Shortfall, such monies shall be paid to the Trustee on behalf of the Noteholders before making any other distributions pursuant to Section 3.7(a) to the extent that such monies otherwise would have been paid to such Noteholders on the prior respective Payment Date in accordance with this Section 3.7 in the absence of such Parent Shortfall.

Section 3.8 Interest Reserve Account and Capital Account; Shortfalls. If the Calculation Agent has determined that a Shortfall exists pursuant to the Calculation Report with respect to any Payment Date and there is a positive balance in the Interest Reserve Account on the Relevant Calculation Date immediately preceding such Payment Date, then on such Payment Date the Trustee shall withdraw from the Interest Reserve Account an amount equal to the lesser of the Shortfall and the balance in the Interest Reserve Account and distribute it to the Noteholders of the Class A Notes in payment of the Interest Amount; provided, that, if the amount available in the Interest Reserve Account (if any) is less than the amount of such Shortfall and there is a positive balance in the Capital Account on the Relevant Calculation Date immediately preceding such Payment Date, then on such Payment Date the Trustee shall withdraw from the Capital Account an amount equal to the lesser of (i) the amount by which the Shortfall exceeds the amount, if any, withdrawn from the Interest Reserve Account and (ii) the balance in the Capital Account and distribute it to the Noteholders of the Class A Notes in payment of the Interest Amount; provided, further, that the Trustee shall (a) make such a withdrawal from the Capital Account in respect of not more than six Payment Dates in total prior to the Final Legal Maturity Date and in respect of not more than any three consecutive Payment Dates and (b) distribute any funds remaining in the Capital Account to the Parent in the event that withdrawals from the Capital Account have been made in respect of six Payment Dates.

On July 15, 2010, any funds remaining in the Interest Reserve Account (after any application of the prior paragraph on the July 15, 2010 Payment Date) shall be transferred to the Collection Account and included in the Available Collections Amount and applied as provided in Section 3.7.

Section 3.9 Parent Shortfall. If, no later than ten Business Days prior to any Calculation Date, the Trustee receives written notice of the existence of a Parent Shortfall, the Trustee shall promptly (but in no event later than the next succeeding Business Day following receipt of such written notice) notify the Servicer, the Parent and the Issuer of such existence of a Parent Shortfall. Upon the Issuer or the Parent receiving notification of the same, or upon the Issuer or the Parent otherwise becoming aware of a Parent Shortfall, the Issuer shall cause the Servicer, no later than such Calculation Date, to confirm the amount of any such Parent Shortfall in writing to the Trustee, with a copy to the Issuer and the Parent. Unless the Trustee shall have received prior to the related Payment Date (i) written notification from the Parent or the Servicer certifying that any such Parent Shortfall has been cured in full or (ii) written notice from the Trustee that at least two-thirds of the Outstanding Principal Balance of the Senior Class of Notes has indicated that such payment shall not be made on such Payment Date, then prior to making any other distributions pursuant to Section 3.7 or Section 3.8, the Trustee shall make a Parent

Shortfall Payment to the relevant counterparty on such Payment Date in the amount of such Parent Shortfall from the Collection Account; provided, that if the relevant counterparty shall refuse to accept such payment, then such funds shall be returned to the Collection Account for distribution in accordance with this Indenture.

Section 3.10 Redemptions.

(a) On any Payment Date on which any class of Notes is to be the subject of a Redemption, in whole or in part, the Trustee shall distribute the amounts in the applicable Redemption Account as provided herein and in the applicable Manager Resolution, including:

(i) to the extent Class B Notes or Refinancing Notes were issued for the purpose of funding such Redemption, paying to such Persons as shall be specified by the Issuer such Transaction Expenses as shall be due and payable in connection with the issuance and sale of the applicable Class B Notes or Refinancing Notes;

(ii) after application of Section 3.7 and Section 3.8, remitting to the Noteholders of such class of Notes, in accordance with the Manager Resolution authorizing such Redemption, an amount equal to the Redemption Price plus Premium, if any, allocated, in the event of a Redemption of such Notes in part, pro rata in proportion to the Outstanding Principal Balance of such Notes held by such Noteholders; and

(iii) making such other distributions and payments as shall be authorized and directed by the Manager Resolution and indentures supplemental hereto executed in connection with such Redemption.

(b) Subject to the provisions of Section 3.10(c) and Section 3.11, on any Payment Date, to the extent that any class of Notes will remain Outstanding on such Payment Date after application of Section 3.7 and Section 3.8, the Issuer may elect to redeem such class of Notes, in whole, but not in part, out of the proceeds of the Refinancing Notes and any funds in the Interest Reserve Account or the Capital Account in the case of a Refinancing of such class of Notes, or, in whole or in part, out of amounts available in the Redemption Account for such purpose, if any, including the proceeds of any Class B Notes (but excluding in the case of a Redemption in part any funds in the Interest Reserve Account or the Capital Account), in each case, at the Redemption Price (any such redemption, an "Optional Redemption"). The Issuer shall give written notice of any such Optional Redemption to the Trustee and the Servicer not later than five Business Days prior to the date on which notice is to be given to Noteholders in accordance with Section 3.11(a) (unless the Trustee and the Servicer agree to waive or limit the requirement for such notice). Such written notice to the Trustee shall include a copy of the Manager Resolution authorizing such Optional Redemption and shall set forth the relevant information regarding such Optional Redemption, including the information to be included in the notice given pursuant to Section 3.11(a).

(c) An indenture supplemental hereto providing for the issuance of any Class B Notes or Refinancing Notes may authorize one or more redemptions, in whole or in part, of such Notes, on such terms and subject to such conditions as shall be specified in such indenture supplemental hereto; provided, that, while any Class A Notes are Outstanding, such Class B

Notes may only be redeemed by the Issuer with proceeds from Refinancing Notes in respect of such Class B Notes or capital contributions from the Parent.

Section 3.11 Procedure for Redemptions.

(a) The Trustee (or the Servicer acting as its agent (or any authorized agent of the Servicer)) shall give written notice in respect of any Redemption of any class of Notes under Section 3.10 to each Noteholder of such Notes at least 30 days but not more than 60 days before such Redemption Date. Each notice in respect of a Redemption given pursuant to this Section 3.11(a) shall state (A) the expected applicable Redemption Date, (B) the arrangements for making payments in respect of such Redemption, (C) the projected Redemption Price of the Notes to be redeemed, (D) in the case of a Redemption of the Notes of any class in part, the portion of the Outstanding Principal Balance of the Notes that is expected to be redeemed, (E) that Notes to be redeemed in a Redemption in whole must be surrendered (which action may be taken by any Noteholder or its authorized agent) to the Trustee to collect the Redemption Price on such Notes and (F) that, unless the Issuer fails to pay the Redemption Price, interest on Notes called for Redemption in whole shall cease to accrue on and after the Redemption Date. If mailed in the manner herein provided, the notice shall be conclusively presumed to have been given whether or not the Noteholder receives such notice.

(b) If, at the time of the mailing of any notice in respect of a Redemption, the Issuer shall not have irrevocably directed the Trustee to apply funds then on deposit with the Trustee or held by the Issuer and available to be used for such Redemption to redeem all of the Notes called for Redemption, such notice, at the election of the Issuer, may state that it is conditional and subject to the receipt of the redemption moneys in an amount sufficient to pay the principal of and premium, if any, and interest on the Notes being redeemed by the Trustee on or before the Redemption Date and that such notice shall be of no force and effect unless such moneys are so received on or before such Redemption Date.

(c) If notice in respect of a Redemption for any Notes shall have been given as provided in Section 3.11(a) and such notice shall not contain the language permitted at the Issuer's option under Section 3.11(b), such Notes shall become due and payable on the Redemption Date at the Corporate Trust Office at the applicable Redemption Price, and, unless there is a default in the payment of the applicable Redemption Price, interest on such Notes shall cease to accrue. Upon presentation and surrender of such Notes at the Corporate Trust Office, such Notes shall be paid and redeemed at the applicable Redemption Price. On or before any Redemption Date in respect of such a Redemption, the Issuer shall, to the extent an amount equal to the Redemption Price of such Notes (and any Refinancing Expenses relating thereto as of the Redemption Date) is not then held by the Issuer or on deposit in the Redemption Account, deposit or cause to be deposited in the Redemption Account an amount in immediately available funds equal to such amount.

(d) If notice in respect of a Redemption for any Notes shall have been given as provided in Section 3.11(a) and such notice shall contain the language permitted at the Issuer's option under Section 3.11(b), such Notes shall become due and payable on the Redemption Date at the Corporate Trust Office at the applicable Redemption Price and interest on such Notes shall cease to accrue; provided, that, in each case, the Issuer shall have deposited with the Trustee or a

Paying Agent on or prior to 11:00 a.m. (New York City time) on the Redemption Date an amount sufficient to pay the Redemption Price. Upon the Issuer making such deposit and presentation and surrender of such Notes at the Corporate Trust Office, such Notes shall be paid and redeemed at the applicable Redemption Price. If the Issuer shall not make such deposit on or prior to 11:00 a.m. (New York City time) on the Redemption Date, the notice in respect of Redemption shall be of no force and effect, and the principal on such Notes or specified portions thereof shall continue to bear interest as if such notice in respect of Redemption had not been given.

(e) All Notes that are redeemed will be surrendered to the Trustee for cancellation and may not be reissued or resold.

ARTICLE IV
DEFAULT AND REMEDIES

Section 4.1 Events of Default. Each of the following events or occurrences shall constitute an "Event of Default" hereunder with respect to any class of Notes (except for clauses (a), (b), (c) and (d) below in which the potential events or occurrences that would constitute an Event of Default are specific to certain classes of Notes, in which case such Event of Default shall be constituted only with respect to such classes of Notes (and not all classes of Notes)), and each such Event of Default shall be deemed to exist and continue so long as, but only so long as, it shall not have been waived or remedied, as applicable:

(a) failure to pay interest on the Class A Notes due on any Payment Date (other than the Final Legal Maturity Date or any Redemption Date) within five days of such Payment Date, but only to the extent of the Available Collections Amount available for interest payments pursuant to the priority of payments in Section 3.7, any funds in the Interest Reserve Account and any capital contributed to the Issuer by the Parent as described in Section 3.1(f) and available for interest payments pursuant to Section 3.8;

(b) (i) failure to pay interest on the Class A Notes due on any Payment Date (other than the Final Legal Maturity Date, any Redemption Date or as set forth in Section 4.1(a)) in full by the next succeeding Payment Date, together with Additional Interest on any interest not paid on the Payment Date on which it was originally due, and (ii) in the case of any class of Notes other than the Class A Notes, except as provided in the related Manager Resolution or any indenture supplemental hereto providing for the issuance of such Notes pursuant to Section 2.15 or Section 2.16, failure to pay interest on any Notes of such class on the Payment Date that such interest is due;

(c) (i) failure to pay principal and Premium, if any, and accrued and unpaid interest on any Notes of such class on the applicable Final Legal Maturity Date or (ii) subject to Section 3.11(b), failure to pay the Redemption Price when due on any Redemption Date for such class;

(d) failure to pay any other amount when due and payable in connection with such class of Notes and the continuance of such default for a period of 30 or more days after written notice thereof is given to the Issuer by the Trustee;

(e) (i) failure by the Issuer to comply in any material respect with any of the covenants set forth in Section 5.2 (other than Section 5.2(k)), Section 5.3(a), Section 5.3(b) or Section 5.3(c), and written notice thereof being given to the Issuer by the Trustee at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes; or (ii) failure by the Issuer to comply in any material respect with any of the other covenants, obligations, conditions or provisions binding on it under this Indenture or the Notes (other than a payment default for which provision is made in Section 4.1(a), Section 4.1(b), Section 4.1(c) or Section 4.1(d)) if (in the case of this Section 4.1(e)(ii) only) such failure continues for a period of 30 days or more after written notice thereof has been given to the Issuer by the Trustee at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes;

(f) the Issuer becomes subject to a Voluntary Bankruptcy or an Involuntary Bankruptcy;

(g) any judgment or order for the payment of money in excess of $1,000,000 shall be rendered against the Issuer and either (i) enforcement proceedings have been commenced by any creditor upon such judgment or order or (ii) there is any period of ten consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(h) the Issuer becomes an investment company required to be registered under the Investment Company Act of 1940, as amended;

(i) the Parent shall have failed to perform in any material respect any of its covenants under Article II, Article VI, Article VII, Article VIII or Article IX of the Purchase and Sale Agreement or Article II, Article III, Article V, Article VI, Article X, Article XII, Article XVII, Article XVIII, Article XIX or Article XXIV of the Pledge and Security Agreement;

(j) the Interim Sublicense has terminated pursuant to either Residual License Agreement; or

(k) any withdrawal or revocation by the U.S. Food and Drug Administration of approvals to sell either of the Products in the United States for efficacy or safety reasons that has, or would reasonably be expected to have, a material adverse effect on repayment of the Notes.

Section 4.2 Acceleration, Rescission and Annulment.

(a) If an Event of Default with respect to the Notes (other than an Acceleration Default) occurs and is continuing, the Senior Trustee may, and, upon the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, shall, give an Acceleration Notice to the Issuer. Upon delivery of such an Acceleration Notice (and so long as such Acceleration Notice has not been rescinded and annulled pursuant to this Indenture), the Outstanding Principal Balance of the Notes and all accrued and unpaid interest thereon shall be immediately due and payable. At any time after the Senior Trustee or such Noteholders have so declared the Outstanding Principal Balance of the Notes to be immediately due and payable, and prior to the exercise of any other remedies pursuant to this Article IV, the Senior Trustee, upon the Direction of Noteholders of a majority of the Outstanding Principal

Balance of the Senior Class of Notes, shall, subject to Section 4.5(a), by written notice to the Issuer, rescind and annul such declaration and thereby annul its consequences if (i) there has been paid to or deposited with the Trustee an amount sufficient to pay all overdue installments of interest on the Notes, and the principal of, and Premium, if any, on the Notes that would have become due otherwise than by such declaration of acceleration, (ii) the rescission would not conflict with any judgment or decree and (iii) all other Defaults and Events of Default, other than non-payment of interest on and principal and Premium, if any, of the Notes that have become due solely because of such declaration of acceleration, have been cured or waived. If an Acceleration Default occurs, the Outstanding Principal Balance of the Notes and all accrued and unpaid interest thereon shall automatically become immediately due and payable without any further action by any party.

(b) Notwithstanding this Section 4.2, Section 4.3 and Section 4.12, after the occurrence and during the continuation of an Event of Default, no Noteholders of any class of Notes other than the Senior Class of Notes shall be permitted to give or direct the giving of an Acceleration Notice, or to exercise any remedy in respect of such Event of Default, and no Person other than the Senior Trustee, at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, may give an Acceleration Notice or exercise any such remedy.

(c) Within 30 days after the occurrence of an Event of Default in respect of any class of Notes, the Trustee shall give to the Noteholders notice, transmitted by mail, of all uncured or unwaived Defaults known to it on such date; provided, that the Trustee may withhold such notice with respect to a Default (other than a payment default with respect to interest, principal or Premium, if any) if it determines in good faith that withholding such notice is in the interest of the affected Noteholders.

Section 4.3 Other Remedies. Subject to the provisions of this Indenture, if an Event of Default shall have occurred and be continuing, then the Senior Trustee may, but only at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, Premium, if any, or interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture, the Servicing Agreement or the Pledge and Security Agreement, including any of the following, to the fullest extent permitted by law, subject to the receipt of such Direction:

(a) The Senior Trustee may obtain the appointment of a Receiver of the Indenture Estate as provided in Section 12.7 and the Issuer consents to and waives any right to notice of any such appointment.

(b) The Senior Trustee may, without notice to the Issuer and at such time as the Senior Trustee in its sole discretion may determine, exercise any or all of the Issuer's rights in, to and under or in any way connected with or related to any or all of the Indenture Estate, including (i) demanding and enforcing payment and performance of, and exercising any or all of the Issuer's rights and remedies with respect to the collection, enforcement or prosecution of, any or all of the Indenture Estate (including the Purchased Assets and the Issuer's rights under the Purchase and Sale Agreement), in each case by legal proceedings or otherwise, (ii) settling,

adjusting, compromising, extending, renewing, discharging and releasing any or all of, and any legal proceedings brought to collect or enforce any or all of, the Purchased Assets and otherwise under the Transaction Documents and (iii) preparing, filing and signing the name of the Issuer on (A) any proof of claim or similar document to be filed in any bankruptcy or similar proceeding involving the Indenture Estate (including the Purchased Assets) and (B) any notice of lien, assignment or satisfaction of lien, or similar document in connection with the Indenture Estate (including the Purchased Assets).

(c) The Senior Trustee may, without notice except as specified herein, sell or cause the sale of all or any part of the Indenture Estate in one or more parcels at public or private sale, at any of the Senior Trustee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Senior Trustee may deem commercially reasonable, provided, that, so long as the License Agreements remain in force, the Senior Trustee shall make any such sale only to a Person that is a Permitted Holder. The Issuer agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to the Issuer of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Senior Trustee shall not be obligated to make any sale of all or any part of the Indenture Estate regardless of notice of sale having been given. The Senior Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(d) The Senior Trustee may, instead of exercising the power of sale conferred upon it by Section 4.3 (c) and Applicable Law, proceed by a suit or suits at law or in equity to foreclose the Security Interest and sell all or any portion of the Indenture Estate under a judgment or a decree of a court or courts of competent jurisdiction, provided, that, so long as the License Agreements remain in force, the Senior Trustee shall make any such foreclosure sale only to a Person that is a Permitted Holder.

(e) The Senior Trustee may require the Issuer to, and the Issuer hereby agrees that it shall at its expense and upon request of the Senior Trustee, forthwith assemble all or part of the Indenture Estate as directed by the Senior Trustee and make it available to the Senior Trustee at a place to be designated by the Senior Trustee that is reasonably convenient to both parties.

(f) In addition to the rights and remedies provided for in this Indenture, the Senior Trustee may exercise in respect of the Indenture Estate all the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected property included in the Indenture Estate) and under all other Applicable Law; provided, that, so long as the License Agreements remain in force, the Senior Trustee shall cause any sale of the Collateral to be made only to a Person that is a Permitted Holder.

(g) The Senior Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding.

Section 4.4 Limitation on Suits. Without limiting the provisions of Section 4.9 and the final sentence of Section 12.4, no Noteholder shall have any right to institute any proceeding,

judicial or otherwise, with respect to this Indenture, the Pledge and Security Agreement or the Notes, for the appointment of a receiver or trustee or for any other remedy hereunder, unless:

(a) such Noteholder is a holder of the Senior Class of Notes and has previously given written notice to the Senior Trustee of a continuing Event of Default;

(b) the Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes make a written request to the Senior Trustee to pursue a remedy hereunder;

(c) such Noteholder or Noteholders offer to the Senior Trustee an indemnity reasonably satisfactory to the Senior Trustee against any costs, expenses and liabilities to be incurred in complying with such request;

(d) the Senior Trustee does not comply with such request within 60 days after receipt of the request and the offer of indemnity; and

(e) during such 60-day period, Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes do not give the Senior Trustee a Direction inconsistent with such request.

No one or more Noteholders may use this Indenture to affect, disturb or prejudice the rights of another Noteholder or to obtain or seek to obtain any preference or priority not otherwise created by this Indenture and the terms of the Notes over any other Noteholder or to enforce any right under this Indenture, except in the manner herein provided.

Section 4.5 Waiver of Existing Defaults.

(a) The Senior Trustee, upon the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, by written notice to the Issuer may waive any existing Default (or Event of Default) hereunder and its consequences, except a Default (or Event of Default) (i) in the payment of the interest on, principal of, and Premium, if any, on any Note or (ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of the Noteholder of each Note affected thereby. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default (or Event of Default) or impair any right consequent thereon.

(b) Any written waiver of a Default or an Event of Default given by the Senior Trustee to the Issuer in accordance with the terms of this Indenture shall be binding upon the Senior Trustee and the other parties hereto. Unless such writing expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence that gave rise to the Default or Event of Default so waived and not to any other similar event or occurrence that occurs subsequent to the date of such waiver.

Section 4.6 Restoration of Rights and Remedies. If the Senior Trustee or any Noteholder of the Senior Class of Notes has instituted any proceeding to enforce any right or

remedy under this Indenture, and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Senior Trustee or such Noteholder, then in every such case the Issuer, the Senior Trustee and the Noteholders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Senior Trustee and the Noteholders shall continue as though no such proceeding has been instituted.

Section 4.7 Remedies Cumulative. Each and every right, power and remedy herein given to the Trustee specifically or otherwise in this Indenture shall be cumulative and shall, to the extent permitted by law, be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any Default on the part of the Issuer or to be an acquiescence.

Section 4.8 Authority of Courts Not Required. The parties hereto agree that, to the greatest extent permitted by law, the Trustee shall not be obliged or required to seek or obtain the authority of, or any judgment or order of, the courts of any jurisdiction in order to exercise any of its rights, powers and remedies under this Indenture, and the parties hereby waive any such requirement to the greatest extent permitted by law.

Section 4.9 Rights of Noteholders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Noteholder to receive payment of interest on, principal of, or Premium, if any, on any Note on or after the respective due dates therefor expressed in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Noteholder.

Section 4.10 Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of any Noteholder allowed in any judicial proceedings relating to any obligor on the Notes, its creditors or its property.

Section 4.11 Undertaking for Costs. All parties to this Indenture agree, and each Noteholder by its acceptance hereof shall be deemed to have agreed, that, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defense made by the party litigant. This Section 4.11 does not apply to a suit instituted by the Trustee, a suit instituted by any Noteholder for the enforcement of the payment of interest, principal, or Premium, if any, on any Note on or after the respective due dates expressed in such Note or a

suit by a Noteholder or Noteholders of at least 10% of the Outstanding Principal Balance of the Notes.

Section 4.12 Control by Noteholders. Subject to this Article IV and to the rights of the Trustee hereunder, Noteholders of a majority of the Outstanding Principal Balance of the Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust, right or power conferred on the Trustee under any Transaction Document; provided, that:

(a) such Direction shall not be in conflict with any rule of law or with this Indenture and would not involve the Trustee in personal liability or expense;

(b) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Noteholders of such class not taking part in such Direction; and

(c) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such Direction.

Section 4.13 Senior Trustee. The Trustee irrevocably agrees (and the Noteholders (other than the Noteholders represented by the Senior Trustee) shall be deemed to agree by virtue of their purchase of the Notes) that the Senior Trustee shall have all of the rights granted to it under this Indenture, including the right to direct the Trustee to take certain action as provided for in this Indenture, and the Trustee hereby agrees to act in accordance with each such authorized direction of the Senior Trustee.

Section 4.14 Application of Proceeds. All cash proceeds received by the Senior Trustee in respect of any sale of, collection from or other realization upon all or any part of the Indenture Estate shall be deposited in the Collection Account and distributed as provided in Article III. Any surplus of such cash proceeds held and remaining after payment in full of all Secured Obligations shall be paid over to the Issuer or whomsoever may be lawfully entitled to receive such surplus as provided in Section 3.7. Any amount received for any sale or sales conducted in accordance with the terms of Section 4.3 shall to the extent permitted by Applicable Law be deemed conclusive and binding on the Issuer and the Noteholders.

Section 4.15 Waivers of Rights Inhibiting Enforcement. The Issuer waives (a) any claim that, as to any part of the Indenture Estate, a private or public sale, should the Senior Trustee elect so to proceed, is, in and of itself, not a commercially reasonable method of sale for such part of the Indenture Estate, (b) the right to assert in any action or proceeding between it and the Senior Trustee offsets or counterclaims that it may have, (c) except as otherwise provided in any of the Transaction Documents, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE OR JUDICIAL HEARING IN CONNECTION WITH THE TRUSTEE'S TAKING POSSESSION OR DISPOSITION OF ANY OF THE INDENTURE ESTATE, INCLUDING ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT THAT THE ISSUER WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE U.S. OR OF ANY STATE, AND ALL OTHER REQUIREMENTS AS TO THE TIME, PLACE AND TERMS OF SALE OR OTHER REQUIREMENTS WITH RESPECT TO THE

ENFORCEMENT OF THE TRUSTEE'S RIGHTS HEREUNDER, (d) all rights of redemption, appraisement, valuation, stay and extension or moratorium and (e) except as otherwise provided in any of the Transaction Documents, all other rights the exercise of which would, directly or indirectly, prevent, delay or inhibit the enforcement of any of the rights or remedies under this Indenture or the absolute sale of the Indenture Estate, now or hereafter in force under any Applicable Law, and the Issuer, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws and rights.

Section 4.16 Security Interest Absolute. All rights of the Trustee and security interests hereunder, and all obligations of the Issuer hereunder, shall be absolute and unconditional irrespective of, and the Issuer hereby irrevocably waives any defenses it may now have or may hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any of the Transaction Documents or any other agreement or instrument relating thereto (other than against the Trustee);

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Transaction Documents or any other agreement or instrument relating thereto;

(c) any taking, exchange, surrender, release or non-perfection of any Collateral or any other collateral, or any release or amendment or waiver of or consent to any departure from any guaranty, for all or any of the Secured Obligations;

(d) any manner of application of any Collateral or any other collateral, or proceeds thereof, to all or any of the Secured Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Secured Obligations or any other obligations of the Issuer under or in respect of the Transaction Documents or any other assets of the Issuer;

(e) any change, restructuring or termination of the limited liability company structure or existence of the Issuer;

(f) the failure of any other Person to execute this Indenture or any other agreement or the release or reduction of liability of the Issuer or other grantor or surety with respect to the Secured Obligations; or

(g) any other circumstance (including any statute of limitations except as related to Section 8.3) or any existence of or reliance on any representation by the Trustee that might otherwise constitute a defense available to, or a discharge of, the Issuer.

ARTICLE V
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 Representations and Warranties. The Issuer represents and warrants to the Trustee as follows:

(a) The Issuer is a limited liability company created under the laws of the State of Delaware, is duly qualified to do business and is in good standing in each jurisdiction where such qualification is required and has full power and authority to conduct its business and to execute, deliver and perform this Indenture, each other instrument to be delivered by it pursuant to this Indenture and each other Transaction Document to which it is a party, and the Issuer is not in liquidation or bankruptcy and has not become subject to a Voluntary Bankruptcy or an Involuntary Bankruptcy.

(b) The Issuer has not engaged in any activities since its organization (other than those incidental to its organization and permitted by the Issuer Organizational Documents, the execution and performance of the Transaction Documents to which it is a party and the activities referred to in or contemplated by such agreements), and the Issuer has not paid any dividends or made any similar distributions since its organization.

(c) The creation of the Notes and the issuance, execution and delivery, and the compliance by the Issuer with the terms, of the Notes and each of the other Transaction Documents to which it is a party:

(i) do not at the Closing Date conflict with, result in a breach of any of the terms or provisions of or constitute a default under the Issuer Organizational Documents or with any judgment, order or decree of any Governmental Authority having jurisdiction over the Issuer, its assets or its properties or, except where it would not have or would not be reasonably likely to have a Material Adverse Effect, with any Applicable Law; and

(ii) do not at the Closing Date violate, or constitute a default under, any deed, indenture, agreement or other instrument or obligation to which the Issuer is a party or by which it or any part of its assets, property or revenues are bound.

(d) The creation, execution and issuance of the Notes, the execution and delivery by the Issuer of the Transaction Documents executed by it and the performance by the Issuer of its obligations hereunder and thereunder and the arrangements contemplated hereby and thereby to be performed by it have been duly authorized, executed and delivered by the Issuer.

(e) This Indenture constitutes, and the other Transaction Documents to which it is a parry, when executed and delivered and, in the case of the Notes, when issued and authenticated, will constitute, valid, legally binding and (subject to general equitable principles, and laws relating to insolvency, liquidation, reorganization and other laws of general application relating to creditors' rights or claims or to laws of prescription or the concepts of materiality, reasonableness, good faith and fair dealing) enforceable obligations of the Issuer.

(f) On the Closing Date, there exists no Event of Default nor any event that, had the Notes already been issued, would constitute a Default or an Event of Default.

(g) On the Closing Date, subject to the Liens created in favor of the Trustee and except for any other Permitted Liens, there exists no Lien over the assets of the Issuer.

(h) All consents, approvals, authorizations or other orders of all Governmental Authorities required (excluding any required by the other parties to the Transaction Documents) for or in connection with the execution, delivery and performance of the Transaction Documents by the Issuer and the issuance and performance of the Notes and the offering of the Notes by the Issuer have been obtained and are in full force and effect and are not contingent upon fulfillment of any condition. No consent of any Governmental Authority or any other party (including directors, officers, members, managers or creditors of the Issuer) is required that has not been obtained for the pledge by the Issuer of the Collateral pursuant to this Indenture.

(i) Assuming the accuracy of the representations and warranties of the Note Purchasers in Section 4.2 of each Note Purchase Agreement and after giving effect to the offering and sale of the Original Class A Notes and the purchase by the Issuer of the Purchased Assets, the Issuer is not required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(j) There is no action, suit, investigation or proceeding pending or, to the knowledge of the Issuer, threatened against the Issuer before any Governmental Authority that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Indenture and the other Transaction Documents to which the Issuer is a party.

(k) The Issuer has no Subsidiaries.

(l) The Issuer is the sole legal and beneficial owner of the Purchased Assets and the other assets and properties constituting the Collateral, free and clear of any Liens other than Permitted Liens.

(m) Under the laws of the State of Delaware, the laws of the State of New York and U.S. federal law in force at the Closing Date, it is not necessary that this Indenture or any other Transaction Document (other than evidences and perfection of the Liens) be filed, recorded or enrolled by the Issuer with any court or other Governmental Authority in any such jurisdictions or that any stamp, registration or similar Tax be paid by the Issuer on or in relation to this Indenture or any of the other Transaction Documents (other than filings of Uniform Commercial Code financing statements set forth in Exhibit E and the various consents and agreements, if any, pursuant hereto).

(n) The filings of financing statements under the UCC and other recordings, if any, in the appropriate offices therefor and any other actions required to perfect a security interest in favor of the Trustee in the Collateral, including the Purchased Assets sold, transferred, conveyed, assigned, contributed and granted on the Closing Date pursuant to the Purchase and Sale Agreement, have been or shall have been duly made by the Closing Date, and, subject to the terms and provisions of this Indenture, the Issuer has or shall have the same rights as the Parent has or would have with respect to the Purchased Assets (if the Parent were still the owner of such Purchased Assets) against Counterparties. No other security agreement, financing statement or other public notice with respect to all or any part of the Collateral (other than any of the foregoing that is referenced in Exhibit B to the Purchase and Sale Agreement or Exhibit E to this Indenture or otherwise names the Trustee as secured party) is on file or of record in any public

office that perfects a valid security interest therein. This Indenture creates a valid security interest in the Collateral securing the payment of the Secured Obligations.

(o) The Issuer has determined, and by virtue of its entering into the transactions contemplated hereby and its authorization, execution and delivery of this Indenture and the other Transaction Documents to which it is party, that its incurrence of Indebtedness and any other liability hereunder or thereunder or contemplated hereby or thereby (i) is in its own best interests, (ii) does not leave it unable to pay its debts as they become due in the ordinary course of business, (iii) will not leave it with existing debts that cannot be paid from the present saleable value of its property and (iv) will not render it insolvent within the meaning of Section 101(32) of the Bankruptcy Code or Section 271 of the New York Debtor and Creditor Law.

(p) No material adverse change in the business, condition (financial or otherwise), performance or properties of the Issuer has occurred since its date of formation.

(q) The Issuer has never filed any tax return or report under any name other than its exact legal name. The Issuer is an entity that is disregarded as separate from the Parent for U.S. federal income tax purposes.

(r) No step has been taken or is intended by the Issuer or, so far as it is aware, any other Person for the winding-up, liquidation, dissolution, administration, merger or consolidation or for the appointment of a receiver or administrator of the Issuer or all or any of its assets.

(s) The Issuer has not assigned or pledged any of its right, title or interest in the Collateral to anyone other than the Trustee.

(t) The representations and warranties made by the Issuer in any of the other Transaction Documents to which it is a party are true and accurate as of the date made.

Section 5.2 Covenants. The Issuer covenants with the Trustee that, so long as any Notes are Outstanding, it will perform and comply with each of the following covenants and not engage in any activity prohibited by this Indenture without the prior written consent of the Trustee pursuant to Section 9.1 or Section 9.2, as applicable, authorizing the Issuer not to perform any such covenants or to engage in any such activity prohibited by this Indenture, in each case on such terms and conditions, if any, as shall be specified in such prior written consent:

(a) Except as expressly permitted by any Transaction Document or License Agreement, the Issuer shall not take any action, whether orally or in writing, that would amend, waive, modify, supplement, restate, cancel or terminate, or discharge or prejudice the validity or effectiveness of, this Indenture, the Notes, the Pledge and Security Agreement, the Purchase and Sale Agreement, the Residual License Agreements or the Servicing Agreement, or permit any party to any such document to be released from such obligations.

(b) The Issuer shall not, directly or indirectly, (i) declare or pay any dividend or make any distribution on its Capital Securities, whether in cash, property, securities or a combination thereof, to the Parent or any other owner of a beneficial interest in the Issuer or

otherwise with respect to any ownership of its Capital Securities, except that the Issuer may distribute to the Parent (x) all or any portion of any amounts transferred to the Issuer pursuant to Section 3.7(a)(viii) or (y) any proceeds from an issuance of Notes in accordance with this Indenture, (ii) purchase, redeem, retire or otherwise acquire for value any issued Capital Securities of the Issuer or any of its Affiliates, (iii) make any payment of principal, interest or Premium, if any, on the Notes or make any voluntary or optional redemption, repurchase, defeasance or other acquisition or retirement for value of, or make any deposit (including the payment of amounts into a sinking fund or other similar fund) with respect to, Indebtedness of the Issuer other than as expressly permitted by the Notes and this Indenture or (iv) make any loan or advance to a Person, any purchase or other acquisition of any beneficial interest, Capital Securities, warrants, rights, options, obligations or other securities of such Person, any capital contribution to such Person or any other investment in such Person (other than Eligible Investments and investments permitted under Section 5.2(f) or otherwise as expressly permitted by the Notes and this Indenture).

(c) The Issuer shall not (and shall not consent to the Parent taking any action that would) incur or suffer to exist any Lien over or with respect to any of the Issuer's assets, other than (i) any Permitted Lien or (ii) any security interest created or required to be created hereunder, including in connection with the issuance of any Class B Notes and any Refinancing Notes.

(d) The Issuer shall not incur, create, issue, assume, Guarantee or otherwise become liable for or with respect to, or become responsible for, the payment or performance of, contingently or otherwise, whether present or future (in any such case, to "Incur"), Indebtedness; provided, however, that the Issuer may Incur Indebtedness in respect of the Original Class A Notes, any Class B Notes and any Refinancing Notes issued in accordance with this Indenture.

(e) The Issuer shall not liquidate or dissolve, consolidate with, merge with or into, or sell, convey, transfer, lease or otherwise dispose of the Purchased Assets or all or any material portion of its other property and assets to, or purchase or otherwise acquire all or substantially all of the assets of, any other Person, or permit any other Person to merge with or into, or consolidate or otherwise combine with, the Issuer.

(f) The Issuer shall not, directly or indirectly, issue, deliver or sell, or consent to issue, deliver or sell, any actual, contingent, future or executory membership interests, limited liability company interests, beneficial interests or other equity or ownership interests (however designated, whether voting or non-voting), except for any additional Capital Securities of the Issuer issued to the Parent, provided that such additional Capital Securities are pledged to the Trustee pursuant to the Pledge and Security Agreement, and except for any membership interests issued to the Independent Member pursuant to the Issuer Organizational Documents, and provided further that the Issuer shall not accept any capital contributions from the Parent after the Closing Date except for contributions of funds deposited into the Capital Account, which may be used only as provided in Section 3.1(f).

(g) Except as otherwise provided in the Issuer Organizational Documents, the Issuer shall not engage in any business or activity other than purchasing, holding and pledging the Purchased Assets and the licenses granted by the Residual License Agreements, collecting

the Royalty Payments and the Replacement Royalty Payments, if any, issuing the Notes, exercising its rights under the Residual License Agreements and remaining a party to the Transaction Documents and License Agreements.

(h) The Issuer shall not, directly or indirectly, enter into, renew or extend any transaction (including the purchase, sale, lease or exchange of property or assets, or the rendering of any service) with any Affiliate of the Issuer, except for the Transaction Documents and License Agreements as in effect on the Closing Date.

(i) The Issuer shall not take any action to become subject to a Voluntary Bankruptcy or an Involuntary Bankruptcy. The Issuer shall provide promptly the Trustee with written notice of the institution of any proceeding by or against the Issuer seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property. The Issuer shall not, without an affirmative written resolution adopted by all of the Members, take any action to waive, repeal, amend, vary, supplement or otherwise modify any provision of any of the Issuer Organizational Documents that requires unanimous written consent of the Members. The Issuer shall comply with, and cause compliance with, the Issuer Organizational Documents.

(j) The Issuer shall not take any action to waive, repeal, amend, vary, supplement or otherwise modify the Issuer Organizational Documents in a manner that would adversely affect (x) the rights, remedies, privileges or preferences of any Noteholder or (y) the Collateral (including the Purchased Assets) or the Issuer Pledged Collateral.

(k) The Issuer shall duly and punctually pay the principal, Premium, if any, and interest on the Notes in accordance with the terms of this Indenture and the Notes; provided, that the Issuer shall be in compliance with this covenant with respect to any Payment Date (other than the Final Legal Maturity Date or any Redemption Date subject to Section 3.11(b)) if any such interest in excess of the portion of the Available Collections Amount available to pay such interest on the relevant Payment Date and funds in the Interest Reserve Account and the Capital Account are paid in full not later than the immediately succeeding Payment Date (together with Additional Interest thereon).

(1) The Issuer shall not employ any employees other than as required by any provisions of local law; provided, that the Members, the Manager and Service Providers shall not be deemed to be employees for purposes of this Section 5.2(1).

(m) During any period in which the Issuer is not subject to Section 13 or 15(d) of the Exchange Act, the Issuer shall make available to any Noteholder or Beneficial Holder in connection with any sale of any or all of its Notes and any prospective purchaser of such Notes from such Noteholder or Beneficial Holder the information required by Rule 144A(d)(4) under the Securities Act.

(n) The Issuer shall not assign, amend, modify, supplement or restate any License Agreement, breach any of the provisions of any License Agreement, enter into any new agreement in respect of the Purchased Assets or the Licensed Products (in respect of the Field) or exercise or waive any right or option, fail to exercise any right or option or grant any consent in respect of the Purchased Assets, the Licensed Products (in respect of the Field) or the License Agreements in any manner that would, in each case, materially adversely affect the Issuer, the Issuer's rights under the Purchase and Sale Agreement or the Residual License Agreements or the rights and interests of the Trustee and the Noteholders with respect thereto or conflict with or cause an event of default under, or breach of, this Indenture, any other Transaction Document or any License Agreement.

(o) The Issuer shall not terminate (or consent to any termination of) any License Agreement in whole or in part.

(p) The Issuer shall at all times enforce its rights and remedies under the Purchase and Sale Agreement, the Residual License Agreements, the Servicing Agreement and the License Agreements in a timely and commercially reasonable manner; provided, that, following the occurrence and continuation of an Event of Default, the Issuer shall give notice to the Trustee on behalf of the Noteholders of any contemplated enforcement of such rights and remedies and will follow any Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes.

(q) The Issuer shall maintain its existence separate and distinct from any other Person in all material respects, including taking the following actions, as appropriate:

(i) maintaining in full effect its existence, rights and franchises as a Delaware limited liability company and obtaining and preserving its qualification to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of this Indenture and each other instrument or agreement necessary or appropriate to properly administer this Indenture and permit and effectuate the transactions contemplated hereby and thereby;

(ii) maintaining its own deposit accounts, separate from those of the Parent, any of its directors or officers and their respective Affiliates;

(iii) conducting no material transactions between the Issuer and any of its Affiliates, other than entering into and performing the Transaction Documents to which it is party;

(iv) allocating fairly and reasonably the cost of any shared overhead expenses, including office space, with the Parent, any of its directors or officers or any of their respective Affiliates;

(v) conducting its affairs separately from those of the Parent, any of its directors or officers or any of their respective Affiliates and maintaining accurate and separate books, records and accounts and financial statements, including in connection with the purchase of the Purchased Assets from the Parent; it being agreed that

performance under the Transaction Documents will not result in the Issuer's contravening this Section 5.2(q)(v);

(vi) acting solely in its own name and not that of any other Person, including the Parent, any of its directors or officers or any of their respective Affiliates, and at all times using its own stationery, invoices and checks separate from those of the Parent, any of its directors or officers or any of their respective Affiliates;

(vii) not holding itself out as having agreed to pay or guarantee, or as otherwise being liable for, the obligations of the Parent, any of its directors or officers or any of their respective Affiliates;

(viii) insuring that any financial reports prepared by the Issuer disclose the effects of the sale of the Purchased Assets from the Parent and any of its Affiliates in compliance with GAAP;

(ix) maintaining all of its assets in its own name and not commingling its assets with those of any other Person except as required under the Transaction Documents;

(x) paying its own operating expenses and other liabilities out of its own funds;

(xi) paying all Taxes owed by it;

(xii) observing all formalities required by the Issuer Organizational Documents;

(xiii) maintaining adequate capital for its normal business obligations;

(xiv) not acquiring obligations of the Parent, any of its directors or officers or any of their respective Affiliates except as required under the Transaction Documents;

(xv) holding itself out to the public as a legal entity separate and distinct from any other Person, including the Parent or any Affiliate of the Parent;

(xvi) correcting any known misunderstanding regarding its separate identity;

(xvii) not forming, acquiring or holding any subsidiaries; and

(xviii) not sharing any common logo with or identifying itself as a department or division of the Parent, any of its directors or officers or any of their respective Affiliates.

(r) The Issuer will not enter into any agreement prohibiting the ability of the Trustee or any Noteholder to amend or otherwise modify any Transaction Document; provided,

that the foregoing prohibition shall not apply to restrictions contained in any Transaction Document.

(s) The Issuer will not change, amend or alter its exact legal name at any time except following 30 days' notice given by the Issuer to the Trustee.

(t) The Issuer will not assign or pledge, so long as the assignment hereunder shall remain in effect and has not been terminated pursuant to Section 11.1, any of its right, title or interest in the Collateral hereby assigned to anyone other than the Trustee.

(u) The Issuer agrees that, at any time and from time to time, at the Issuer's expense and upon the Trustee's written request, the Issuer will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents, and take all further action, that may be necessary in the reasonable discretion of the Trustee, in order to perfect the security interest in the Collateral and to carry out the provisions of this Indenture or to enable the Trustee to exercise and enforce its rights and remedies hereunder with respect to any Collateral. The Issuer also agrees that, at any time and from time to time, at the Issuer's expense, the Issuer will file (or cause to be filed) such UCC continuation statements and such other instruments or notices as may be necessary, including UCC financing statements or amendments thereto, that the Trustee may reasonably request in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Trustee hereby. With respect to the foregoing and the grant of the security interest hereunder, the Issuer hereby authorizes the Trustee to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Issuer where permitted by Applicable Law. The Issuer agrees that a carbon, photographic or other reproduction of any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by Applicable Law. The Issuer hereby authorizes the Trustee to file financing statements describing as the collateral covered thereby "all of the debtor's personal property or assets" or words to that effect, notwithstanding that such wording may be broader in scope than the Collateral described in this Indenture.

(v) The Issuer will maintain in the Borough of Manhattan, The City of New York, an office or agency of the Trustee, Registrar and Paying Agent where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer, exchange or purchase and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. Each of the Corporate Trust Office and each office or agency of the Trustee in the Borough of Manhattan, The City of New York shall initially be one such office or agency for all of the aforesaid purposes. The Issuer shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee). If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 12.5. The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the

Issuer of its

obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes.

(w) The Issuer shall maintain its status as an entity that is disregarded as separate from the Parent for U.S. federal income tax purposes.

Section 5.3 Reports and Other Deliverables by the Issuer.

(a) The Issuer shall furnish to the Trustee, within 120 days after the end of each fiscal year commencing with the fiscal year ending December 31, 2008, a certificate from a Responsible Officer of the Issuer as to his or her knowledge of the Issuer's compliance with all of its obligations under this Indenture (it being understood that, for purposes of this Section 5.3, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture but shall reflect any interest paid on the Original Class A Notes by the next succeeding Payment Date as contemplated by the proviso to Section 5.2(k) as have been timely paid).

(b) The Issuer shall deliver written notice to the Trustee of the occurrence of (i) any Default or Event of Default under this Indenture and (ii) any of the events described in Section 6.3(d) of the Purchase and Sale Agreement promptly and in any event within five Business Days of a Responsible Officer or the Manager becoming aware of such Default, Event of Default, event or situation.

(c) The Issuer shall promptly (and in any event within five Business Days of receipt thereof) provide to the Servicer and the Trustee copies of all materials that the Issuer receives from the Parent pursuant to Section 6.3 of the Purchase and Sale Agreement or otherwise in respect of the License Agreements.

(d) Within 120 days after the beginning of each fiscal year commencing with the fiscal year beginning January 1, 2009, the Issuer shall furnish to the Trustee an opinion of its legal counsel, which opinion shall state whether there are any actions to be taken, including any financing statements to be filed in any office, within the period of 12 full consecutive calendar months following the date of such opinion in order to continue the perfection of the security interests granted under the Transaction Documents or to continue the effectiveness of any financing statements filed in connection with the License Agreements as of the date hereof.

ARTICLE VI
THE TRUSTEE

Section 6.1 Acceptance of Trusts and Duties. Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; provided, that, to the extent those duties are qualified, limited or otherwise affected by the provisions of any other Transaction Document, the Trustee shall be required to perform those duties only as so qualified, limited or otherwise affected. The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture) and as set forth herein. The Trustee accepts the trusts

hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture) and agrees to receive and disburse all moneys received by it in accordance with the terms hereof. The Trustee in its individual capacity shall not be answerable or accountable under any circumstances except for its own willful misconduct or negligence or breach of any of its representations or warranties set forth herein, and the Trustee shall not be liable for any action or inaction of the Issuer or any other parties to any of the Transaction Documents. Any amounts received by or due to the Trustee under this Indenture, including the fees, out-of-pocket expenses and indemnities of the Trustee, shall be Expenses of the Issuer.

The Issuer does hereby constitute and appoint the Trustee the true and lawful attorney of the Issuer, irrevocably, granted for good and valuable consideration and coupled with an interest and with full power of substitution, and with full power (in the name of the Issuer or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies (in each case including insurance and requisition proceeds) due and to become due under or arising out of any Transaction Document and all other property that now or hereafter constitutes part of the Indenture Estate, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings that the Trustee may deem to be necessary or advisable in the premises; provided, that the Trustee shall not exercise any such rights except upon the occurrence and during the continuance of an Event of Default hereunder in accordance with Section 4.3.

Section 6.2 Copies of Documents and Other Notices.

(a) The Trustee, upon written request, shall furnish to each requesting Noteholder or Beneficial Holder included on the Approved Holder List and the Servicer, promptly upon receipt thereof, duplicates or copies of all reports, Notices, requests, demands, certificates, financial statements and other instruments furnished to the Trustee under or in connection with this Indenture.

(b) The Trustee shall furnish to Noteholders and Beneficial Holders included on the Approved Holder List and the Servicer promptly after receipt thereof any reports or notices received from any of the Issuer, the Parent or Counterparties, including (i) the report of any audit contemplated by Section 3.1(b) or 3.1(c) of the Servicing Agreement, (ii) notice of any dispute between the Parent and any other party to any of the License Agreements in respect of any License Agreement as contemplated by Section 6.1(h) of the Purchase and Sale Agreement and (iii) any notice contemplated by Section 6.1 of either Residual License Agreement.

Section 6.3 Representations and Warranties. The Trustee does not make and shall not be deemed to have made any representation or warranty as to the validity, legality or enforceability of this Indenture, the Notes or any other document or instrument or as to the correctness of any statement contained in any thereof, except that the Trustee in its individual capacity hereby represents and warrants as follows:

(a) The Trustee is a national banking association and is validly existing and in good standing under the laws of the United States, and is duly authorized and licensed under applicable law to conduct its business as presently conducted.

(b) The Trustee has all requisite right, power and authority to execute and deliver this Indenture and its related documents and to perform all of its duties as Trustee hereunder and thereunder.

(c) The execution and delivery by the Trustee of this Indenture and the other Transaction Documents to which it is a party, and the performance by the Trustee of its duties hereunder and thereunder, have been duly authorized by all necessary corporate proceedings, and no further approvals or filings, including any governmental approvals, are required for the valid execution and delivery by the Trustee, or the performance by the Trustee, of this Indenture and such other Transaction Documents to which it is a party.

(d) The execution, delivery and performance by the Trustee of this Indenture and the other Transaction Documents to which it is a party (i) to the best of the Trustee's knowledge and without independent inquiry or investigation into the facts thereto, do not violate any provision of any Applicable Law and (ii) do not violate any provision of its corporate charter or by-laws.

(e) The execution, delivery and performance by the Trustee of this Indenture and the other Transaction Documents to which it is a party, to the best of the Trustee's knowledge and without independent inquiry or investigation into the facts thereto, do not require the authorization, consent or approval of, the giving of notice to, the filing or registration with, or the taking of any action in respect of, any Governmental Authority.

(f) The Trustee has duly executed and delivered this Indenture and each other Transaction Document to which it is a party, and each of this Indenture and each such other Transaction Document constitutes the legal, valid and binding obligation of the Trustee in accordance with its terms, except as (i) such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting the enforcement of creditors' rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

Section 6.4 Reliance; Agents; Advice of Counsel. The Trustee shall incur no liability to anyone acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Trustee may accept a copy of a resolution of, in the case of the Issuer, the Manager and, in the case of any other party to any Transaction Document, the governing body of such Person, certified in an accompanying Officer's Certificate as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Trustee shall be entitled to receive and may for all purposes hereof conclusively rely on a certificate, signed by an officer of any duly authorized Person, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. To the extent not otherwise specifically provided herein, the Trustee shall assume, and shall be fully protected in assuming, that the Issuer is authorized by its constitutional documents to enter into this Indenture and to take all action permitted to be taken by it pursuant to the provisions hereof and shall not be required to inquire into the authorization

of the Issuer with respect thereto. To the extent not otherwise specifically provided herein, the Trustee shall furnish to the Servicer upon written request such information and copies of such documents as the Trustee may have and as are necessary for the Servicer to perform its duties under Article II and Article III or otherwise.

The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the Direction of the Noteholders in accordance with Section 4.12 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust, right or power conferred upon the Trustee, under any Transaction Document.

The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder or under any other Transaction Document either directly or by or through agents or attorneys or a custodian or nominee, and the Trustee shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent, attorney, custodian or nominee appointed with due care by it hereunder.

The Trustee may consult with counsel as to any matter relating to this Indenture or any other Transaction Document and any Opinion of Counsel or any advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or any other Transaction Document, or to institute, conduct or defend any litigation hereunder or in relation hereto, at the request, order or Direction of any of the Noteholders, pursuant to the provisions of this Indenture or any other Transaction Document, unless such Noteholders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby.

The Trustee shall not be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any other Transaction Document, or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Indenture or any other Transaction Document shall in any event require the Trustee to perform, or be responsible or liable for the manner of performance of, any obligations of the Issuer or the Servicer under this Indenture or any of the other Transaction Documents.

The Trustee shall not be liable for any Losses or Taxes (except for Taxes relating to any compensation, fees or commissions of any entity acting in its capacity as Trustee hereunder) or in connection with the selection of Eligible Investments or for any investment losses resulting from Eligible Investments.

When the Trustee incurs expenses or renders services in connection with an Acceleration Default, such expenses (including the fees and expenses of its counsel) and the compensation for

such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors' rights generally.

The Trustee shall not be charged with knowledge of an Event of Default unless a Responsible Officer of the Trustee obtains actual knowledge of such event or has received written notice of such event at its Corporate Trust Office from the Issuer, the Servicer or Noteholders of not less than 10% of the Outstanding Principal Balance of the Notes.

The Trustee shall have no duty to monitor the performance of the Issuer, the Servicer or any other party to the Transaction Documents, nor shall it have any liability in connection with the malfeasance or nonfeasance by such parties.

Whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder or under any other Transaction Document, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a certificate signed by a Responsible Officer of the Issuer and delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture or any other Transaction Document upon the faith thereof.

Except as provided expressly hereunder, the Trustee shall have no obligation to invest and reinvest any cash held in the Accounts in the absence of timely and specific written investment direction by or on behalf of the Issuer. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Issuer to provide timely written investment direction.

When the Trustee incurs expenses after the occurrence of a Default specified in Section 4.1 with respect to the Issuer, if the surviving entity has failed to honor such obligation, the expenses are intended to constitute expenses of administration under any insolvency law or under the Bankruptcy Code.

Section 6.5 Not Acting in Individual Capacity. The Trustee acts hereunder solely as trustee unless otherwise expressly provided, and all Persons, other than the Noteholders to the extent expressly provided in this Indenture, having any claim against the Trustee by reason of the transactions contemplated hereby shall look, subject to the lien and priorities of payment as provided herein or in any other Transaction Document, only to the property of the Issuer for payment or satisfaction thereof.

Section 6.6 Compensation of Trustee. The Trustee agrees that it shall have no right against the Noteholders or, except as provided in Section 3.7(a), the property of the Issuer, for any fee as compensation for its services hereunder. The Issuer shall pay to the Trustee from time to time such compensation as is agreed between the two parties. The compensation shall be paid to the Trustee as provided in Section 3.5(a) and Section 3.7(a).

Section 6.7 Notice of Defaults. As promptly as practicable after, and in any event within 30 days after, the occurrence of any Default hereunder, the Trustee shall transmit by mail to the Issuer, the Servicer and the Noteholders of the related class, in accordance with Section 313(c) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), notice of such Default hereunder actually known to a Responsible Officer of the Trustee, unless such Default shall have been cured or waived; provided, however, that, except in the case of a Default on the payment of the interest, principal or Premium, if any, on any Note, the Trustee shall be fully protected in withholding such notice if and so long as a trust committee of Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Noteholders of the related class.

Section 6.8 May Hold Notes. The Trustee, any Paying Agent, the Registrar or any of their Affiliates or any other agent in their respective individual or any other capacity may become the owner or pledgee of the Notes and, subject to Sections 310(b) and 311 of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), may otherwise deal with the Issuer with the same rights it would have if it were not the Trustee, Paying Agent, Registrar or such other agent.

Section 6.9 Corporate Trustee Required; Eligibility. There shall at all times be a Trustee that shall be eligible to act as a trustee under Section 310(a) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture) and shall meet the Eligibility Requirements. If such corporation publishes reports of conditions at least annually, pursuant to law or to the requirements of any federal, state, foreign, territorial or District of Columbia supervising or examining authority, then, for the purposes of this Section 6.9, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of conditions so published.

In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.9 to act as Trustee, the Trustee shall resign immediately as Trustee in the manner and with the effect specified in Section 7.1.

Section 6.10 Reports by the Trustee. Within 60 days after May 15 of each year commencing with the first full calendar year following the issuance of any class of Notes, the Trustee shall, if required by Section 313(a) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), transmit to the Noteholders of each class, as provided in Section 313(c) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), a brief report describing, among other things, any changes in eligibility and qualifications of the Trustee and any Class B Issuance.

Section 6.11 Calculation Agent. The Trustee shall act as the Calculation Agent hereunder. Subject to the approval of the Issuer and Noteholders of a majority of the Outstanding Principal Balance of the Notes, another Person may become the Calculation Agent on such terms as shall be approved by them. To the extent not otherwise specifically provided herein, the Trustee shall furnish to the Calculation Agent, and the Calculation Agent shall furnish to the Trustee, upon written request such information and copies of such documents as the Trustee or the Calculation Agent may have and as are necessary for the Calculation Agent and the Trustee to perform their respective duties under Article III or otherwise.

Section 6.12 Pledge and Security Agreement and Other Transaction Documents. The Trustee shall enter into the Pledge and Security Agreement with the Parent on the Closing Date and shall hold the collateral pledged thereunder as part of the Collateral and the Indenture Estate for purposes of this Indenture. The provisions of this Article VI shall apply to the Trustee's exercise of rights and remedies under the Pledge and Security Agreement, mutatis mutandis. In addition, the Trustee shall enter into such other Transaction Documents on the Closing Date to which it is party.

Section 6.13 Custody of the Collateral. The Trustee shall hold such of the Indenture Estate as consists of instruments, deposit accounts, negotiable documents, money, goods, letters of credit and advices of credit in the State of New York. The Trustee shall hold such of the Indenture Estate as constitutes investment property through a securities intermediary, which securities intermediary shall agree with the Trustee that (a) such investment property shall at all times be credited to a securities account of the Trustee, (b) such securities intermediary shall treat the Trustee as entitled to exercise the rights that comprise each financial asset credited to such securities account, (c) all property credited to such securities account shall be treated as a financial asset, (d) such securities intermediary shall comply with entitlement orders originated by the Trustee without the further consent of any other Person, (e) such securities intermediary will not agree with any Person other than the Trustee to comply with entitlement orders originated by such other Person, (f) such securities account and the property credited thereto shall not be subject to any lien, security interest or right of set-off in favor of such securities intermediary or anyone claiming through it (other than the Trustee) and (g) such agreement shall be governed by the laws of the State of New York. Except as permitted by this Section 6.13 or as otherwise permitted by any Transaction Document, the Trustee shall not hold any part of the Indenture Estate through an agent or a nominee.

Section 6.14 Preservation and Disclosure of Noteholder Lists. The Registrar shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Noteholders received by it, including the Approved Holder List. At any time when a default or an Event of Default has occurred and is continuing, in case either (a) three or more Noteholders that have executed and delivered to the Registrar a Confidentiality Agreement or (b) one or more Noteholders of at least 25% of the Outstanding Principal Balance of the Senior Class of Notes that have executed and delivered to the Registrar a Confidentiality Agreement (in each case, "Applicants") apply in writing to the Registrar and furnish to the Registrar reasonable proof that each such Applicant has owned a Note for a period of at least three months preceding the date of such application, and such application states that the Applicants desire to communicate with other Noteholders with respect to their rights under this Indenture or under the Notes and such application is accompanied by a copy of the form of proxy or other communication that such Applicants propose to transmit, then the Registrar shall, within five Business Days after the receipt of such application, inform such Applicants as to the approximate number of Noteholders whose names and addresses appear in such information and as to the approximate cost of mailing to such Noteholders the form of proxy or other communication, if any, specified in such application. The Registrar shall, upon the written request of such Applicants, mail to each Noteholder whose name and address appears in such information a copy of the form of proxy or other communication that is specified in such request, with reasonable promptness after a tender to the Registrar of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing. Each and every

Noteholder, by receiving and holding the same, agrees with the Issuer and the Registrar that neither the Registrar nor any agent of the Issuer or the Registrar shall be held accountable by reason of mailing any material pursuant to a request made under this Section 6.14.

Section 6.15 Audit Rights. At the Direction of Noteholders of at least 25% of the Outstanding Principal Balance of the Senior Class of Notes, the Senior Trustee shall instruct the Servicer on behalf of the Issuer to exercise the Issuer's rights (if currently exercisable) pursuant to Section 7.1 of the Indevus License Agreement and Section 6.1 of the CollaGenex License Agreement to have the books and records of Counterparties audited by a certified public accountant or other Person permitted by the License Agreements.

Section 6.16 Compliance with Applicable Anti-Terrorism and Anti-Money Laundering Regulations. In order to comply with Applicable Laws in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering, the Trustee is required to obtain, verify and record certain information relating to Persons that maintain a business relationship with the Trustee. Accordingly, the Issuer agrees to provide to the Trustee upon its request from time to time such identifying information and documentation as may be available for the Issuer in order to enable the Trustee to comply with such Applicable Laws.

Section 6.17 Jurisdiction of Trustee. Each of the Issuer and the Trustee agrees that the State of New York shall be the Trustee's jurisdiction for purposes of Sections 8-110, 9-304 and 9-305 of the UCC.

ARTICLE VII
SUCCESSOR TRUSTEES

Section 7.1 Resignation and Removal of Trustee. The Trustee may resign as to all or any of the classes of Notes at any time without cause by giving at least 30 days' prior written notice to the Issuer, the Servicer and the Noteholders. Noteholders of a majority of the Outstanding Principal Balance of any class of Notes may at any time remove the Trustee as to such class without cause, with the consent of the Issuer (such consent not to be unreasonably withheld) if no Event of Default shall have occurred and be continuing, by an instrument in writing delivered to the Issuer, the Servicer and the Trustee being removed. In addition, the Issuer may remove the Trustee as to any class of Notes if (a) such Trustee fails to comply with Section 310 of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture) after written request therefor by the Issuer or the Noteholders of the related class who have been bona fide Noteholders for at least six months, (b) such Trustee fails to comply with Section 7.2(d) or any other provision hereof, (c) such Trustee is adjudged a bankrupt or an insolvent, (d) a receiver or public officer takes charge of such Trustee or its property or (e) such Trustee becomes incapable of acting. References to the Trustee in this Indenture include any successor Trustee as to all or any of the classes of Notes appointed in accordance with this Article VII. Any resignation or removal of the Trustee pursuant to this Section 7.1 shall not be effective until a successor Trustee shall have been duly appointed and vested as Trustee pursuant to Section 7.2.

Section 7.2 Appointment of Successor.

(a) In the case of the resignation or removal of the Trustee as to any class of Notes under Section 7.1, the Issuer shall promptly appoint a successor Trustee as to such class. Every successor Trustee (i) shall be a national or state bank or trust company that is authorized by law to perform all the duties imposed upon it by this Indenture and to exercise corporate trust powers and (ii) shall have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least $50,000,000 as set forth in its (or its related bank holding company's) most recent published annual report of condition. If a successor Trustee as to any class of Notes shall not have been appointed and accepted its appointment hereunder within 60 days after the Trustee gives notice of resignation as to such class, the retiring Trustee, the Issuer, the Servicer or a majority of the Outstanding Principal Balance of such class of Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee as to such class.

(b) Any successor Trustee as to any class of Notes, however appointed, shall execute and deliver to the Issuer, the Servicer and the predecessor Trustee as to such class an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of such predecessor Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named the Trustee as to such class herein; provided, that, upon the written request of such successor Trustee, such predecessor Trustee shall, upon payment of all amounts due and owing to it, execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights, powers and trusts of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver and pay over to such successor Trustee all moneys or other property then held by such predecessor Trustee hereunder solely for the benefit of such class of Notes.

(c) If a successor Trustee is appointed with respect to one or more (but not all) classes of the Notes, the Issuer, the predecessor Trustee and each successor Trustee with respect to each class of Notes shall execute and deliver an indenture supplemental hereto that shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the classes of Notes as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the Notes hereunder by more than one Trustee.

(d) Each Trustee shall be an Eligible Institution and shall meet the Eligibility Requirements, if there be such an institution willing, able and legally qualified to perform the duties of a Trustee hereunder.

(e) Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person to which all or substantially all of the corporate trust business of the Trustee (including the administration of the trust created by this Indenture) may be transferred, shall, subject to the terms of Section 7.2(c), be the Trustee under this Indenture without the execution or filing of any paper with any party hereto or any

further act on the part of any party hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

ARTICLE VIII
INDEMNITY

Section 8.1 Indemnity. The Issuer shall indemnify and defend the Trustee (and its officers, directors, managers, employees and agents) for, and hold it harmless from and against, and reimburse the Trustee for, any loss, liability or expense incurred by it without bad faith, negligence or willful misconduct on its part in connection with the acceptance or administration of this Indenture and its performance of its duties under this Indenture and the Notes or any other Transaction Document, including the costs and expenses of defending itself against any claim or liability and of complying with any process served upon it or any of its officers in connection with the exercise or performance of any of its powers or duties, and hold it harmless against any loss, liability or reasonable expense incurred without bad faith, negligence or willful misconduct on its part, arising out of or in connection with actions taken or omitted to be taken in reliance on any Officer's Certificate furnished hereunder, or the failure to furnish any such Officer's Certificate required to be furnished hereunder. The Trustee shall notify the Issuer promptly of any claim asserted against the Trustee for which it may seek indemnity; provided, however, that failure to provide such notice shall not invalidate any right to indemnity hereunder. The Issuer shall defend any such claim and the Trustee shall cooperate in the defense thereof. The Trustee may have separate counsel and the Issuer shall pay the reasonable fees and expenses of one separate outside counsel for the Trustee. The Issuer need not pay for any settlements made without its consent; provided, that such consent shall not be unreasonably withheld or delayed. The Issuer need not reimburse any expense or provide any indemnity against any loss, liability or expense incurred by the Trustee through bad faith, negligence or willful misconduct.

Section 8.2 Noteholders' Indemnity. The Trustee shall be entitled, subject to such Trustee's duty during a Default to act with the standard of care required under this Indenture, to be indemnified by the Noteholders of any class of Notes before proceeding to exercise any right or power under this Indenture or any other Transaction Document at the request or Direction of such Noteholders.

Section 8.3 Survival. The provisions of Section 8.1 and Section 8.2 shall survive the termination of this Indenture or the earlier resignation or removal of the Trustee until the latest date permitted by Applicable Law.

ARTICLE IX
MODIFICATION

Section 9.1 Modification with Consent of Noteholders. With the consent of Noteholders of a majority of the Outstanding Principal Balance of the Notes (voting or acting as a single class), the Trustee may amend or modify this Indenture, the Notes, the Pledge and Security Agreement, the Purchase and Sale Agreement, the Bill of Sale, the Residual License Agreements or the Servicing Agreement to the extent the Trustee is a party or to consent to the amendment or modification of the Pledge and Security Agreement, the Purchase and Sale

Agreement, the Bill of Sale, the Residual License Agreements or the Servicing Agreement (or the waiver of any provision thereof). However, no such amendment, modification, consent or waiver may, without the consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby:

(a) reduce the percentage of Noteholders of any such class of Notes required to take or approve any action hereunder or thereunder;

(b) reduce the amount or change the time of payment of any amount owing or payable with respect to any such class of Notes or change the rate of interest or change the manner of calculation of interest payable with respect to any such class of Notes;

(c) alter or modify in any respect the provisions of this Indenture with respect to the Collateral or the Issuer Pledged Collateral for the Notes, the provisions of the Pledge and Security Agreement with respect to the Issuer Pledged Collateral for the Notes or the manner of payment or the order of priorities in which payments or distributions hereunder will be made as between the Noteholders of such Notes and the Issuer or as among the Noteholders; or

(d) consent to any assignment of the Issuer's rights to a party other than the Trustee for the benefit of the Noteholders;

provided, that the Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, by written notice to the Trustee, may waive any Default or Event of Default pursuant to Section 4.5.

It shall not be necessary for the consent of the Noteholders under this Section 9.1 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof. Any such modification approved by the required Noteholders of any class of Notes will be binding on the Noteholders of the relevant class of Notes and each party to this Indenture.

After an amendment under this Section 9.1 becomes effective, the Issuer or, at the direction of the Issuer, the Trustee shall mail to the Noteholders a notice briefly describing such amendment. Any failure of the Issuer or the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment.

After an amendment under this Section 9.1 becomes effective, it shall bind every Noteholder, whether or not notation thereof is made on any Note held by such Noteholder.

Section 9.2 Modification Without Consent of Noteholders. The Trustee may agree, without the consent of any Noteholder, to amend or modify this Indenture, the Notes, the Pledge and Security Agreement, the Purchase and Sale Agreement, the Bill of Sale, the Residual License Agreements or the Servicing Agreement to the extent the Trustee is a party or to consent to the amendment or modification of the Pledge and Security Agreement, the Purchase and Sale Agreement, the Bill of Sale, the Residual License Agreements or the Servicing Agreement (or the waiver of any provision thereof) to:

(a) establish the terms of any Refinancing Notes or Class B Notes pursuant to Section 2.15 and Section 2.16, respectively;

(b) evidence the succession of a successor to the Trustee, the removal of the Trustee or the appointment of any separate or additional trustee or trustees and to define the rights, powers, duties and obligations conferred upon any such separate trustee or trustees or co-trustees;

(c) correct, confirm or amplify the description of any property at any time subject to the lien of this Indenture or to convey, transfer, assign, mortgage or pledge any property to or with the Trustee;

(d) cure any ambiguity in or correct or supplement any defective or inconsistent provision of this Indenture, the Notes, the Pledge and Security Agreement, the Purchase and Sale Agreement, the Bill of Sale, the Residual License Agreements or the Servicing Agreement, in any manner that will not adversely affect the interests of the Noteholders in any material respect as confirmed in an Officer's Certificate of the Issuer;

(e) grant or confer upon the Trustee for the benefit of the Noteholders any additional rights, remedies, powers, authority or security that may be lawfully granted or conferred and that are not contrary or inconsistent with this Indenture;

(f) add to the covenants or agreements to be observed by the Issuer, which are not contrary to this Indenture, or to add Events of Default for the benefit of the Noteholders;

(g) comply with the requirements of the SEC or any regulatory body or any Applicable Law; or

(h) effect any indenture supplemental hereto or any other amendment, modification, supplement, waiver or consent with respect to this Indenture, the Notes, the Pledge and Security Agreement, the Purchase and Sale Agreement, the Bill of Sale, the Residual License Agreements or the Servicing Agreement; provided, that such indenture supplemental hereto, amendment, modification, supplement, waiver or consent will not adversely affect the interests of the Noteholders in any material respect as confirmed in an Officer's Certificate of the Issuer.

After an amendment under this Section 9.2 becomes effective, the Issuer or, at the direction of the Issuer, the Trustee shall mail to the Noteholders a notice briefly describing such amendment. Any failure of the Issuer or the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment.

After an amendment under this Section 9.2 becomes effective, it shall bind every Noteholder, whether or not notation thereof is made on any Note held by such Noteholder.

Section 9.3 Subordination; Priority of Payments. The subordination provisions contained in Article X may not be amended or modified without the consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby. In no event

shall the provisions set forth in Section 3.7 relating to the priority of payment of Expenses be amended or modified.

Section 9.4 Execution of Amendments by Trustee. In executing, or accepting the additional trusts created by, any amendment or modification to this Indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such amendment that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.5 Conformity with Trust Indenture Act. Every indenture supplemental hereto pursuant to this Article IX shall conform to the requirements of the Trust Indenture Act as then in effect (as if the Trust Indenture Act applied to this Indenture).

ARTICLE X
SUBORDINATION

Section 10.1 Subordination of the Notes.

(a) Each of the Issuer and the Trustee (on behalf of the Noteholders) covenants and agrees, and each Noteholder, by its acceptance of a Note, covenants and agrees, that the Notes of each class will be issued subject to the provisions of this Article X. Each Noteholder, by its acceptance of a Note, further agrees that all amounts payable on any Note will, to the extent and in the manner set forth in this Article X and Section 3.7, be subordinated in right of payment to the prior payment in full of all Expenses payable to the Service Providers pursuant to this Indenture and the other Transaction Documents. Each Noteholder of a Class B Note, by its acceptance of a Class B Note, further agrees that all amounts payable on any Class B Note will, to the extent and in the manner set forth in this Article X and Section 3.7, be subordinated in right of payment to the payment in full of the Class A Notes. Any claim to payment so stated to be subordinated is referred to as a "Subordinated Claim"; each claim to payment to which another claim to payment is a Subordinated Claim is referred to as a "Senior Claim" with respect to such Subordinated Claim.

(b) If, prior to the payment in full of all Senior Claims then due and payable, the Trustee or any Noteholder of a Subordinated Claim shall have received any payment or distribution in respect of such Subordinated Claim in excess of the amount to which such Noteholder was then entitled under Section 3.7, then such payment or distribution shall be received and held in trust by such Person and paid over or delivered to the Trustee for application as provided in Section 3.7.

(c) If any Service Provider, the Trustee or any Noteholder of any Senior Claim receives any payment in respect of any Senior Claim that is subsequently invalidated, declared preferential, set aside and/or required to be repaid to a trustee, receiver or other party, then, to the extent such payment is so invalidated, declared preferential, set aside and/or required to be repaid, such Senior Claim shall be revived and continue in full force and effect and shall be entitled to the benefits of this Article X, all as if such payment had not been received.

(d) The Trustee (on its own behalf and on behalf of the Noteholders) and the Issuer each confirm that the payment priorities specified in Section 3.7 shall apply in all circumstances.

(e) Each Noteholder, by its acceptance of a Note, authorizes and expressly directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article X, and appoints the Trustee its attorney-in-fact for such purposes, including, in the event of any dissolution, winding-up, liquidation or reorganization of the Issuer (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors or otherwise), any actions tending towards liquidation of the property and assets of the Issuer or the filing of a claim for the unpaid balance of its Notes in the form required in those proceedings.

(f) If payment on the Notes is accelerated as a result of an Event of Default, the Issuer shall promptly notify the holders of the Senior Claims of such acceleration.

(g) After all Senior Claims are paid in full and until the Subordinated Claims are paid in full, and to the extent that such Senior Claims shall have been paid with funds that would, but for the subordination pursuant to this Article X, have been paid to and retained by such holders of Subordinated Claims, the holders of Subordinated Claims shall be subrogated to the rights of holders of Senior Claims to receive payments applicable to Senior Claims. A payment made under this Article X to holders of Senior Claims that otherwise would have been made to the holders of Subordinated Claims is not, as between the Issuer and the holders of Subordinated Claims, a payment by the Issuer.

(h) No right of any holder of any Senior Claim to enforce the subordination of any Subordinated Claim shall be impaired by an act or failure to act by the Issuer or the Trustee or by any failure by either the Issuer or the Trustee to comply with this Indenture.

(i) Each Noteholder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Claim, whether such Senior Claim was created or acquired before or after the issuance of such Noteholder's claim, to acquire and continue to hold such Senior Claim, and such holder of any Senior Claim shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold such Senior Claim. Each holder of a Subordinated Claim agrees to comply with the provisions of Article IV.

ARTICLE XI
DISCHARGE OF INDENTURE

Section 11.1 Discharge of Indenture.

(a) When (i) all outstanding Secured Obligations have been satisfied and the Issuer delivers to the Trustee all Outstanding Notes (other than Notes replaced pursuant to Section 2.8) for cancellation or (ii) all Outstanding Notes have become due and payable, whether at maturity or as a result of the mailing of a notice of an Optional Redemption pursuant to Section 3.10(b) or any other Redemption pursuant to Section 3.10(c), in each case that is subject

to Section 3.11(c), and the Issuer irrevocably deposits in the Redemption Account funds sufficient to pay all remaining Expenses accrued and payable through such date and to pay all principal of and interest and premium (if any) on Outstanding Notes at maturity or upon redemption all Outstanding Notes, including interest and any Premium thereon to maturity or the Redemption Date (other than Notes replaced pursuant to Section 2.8), and if in either case the Issuer pays all other sums payable hereunder by the Issuer, then this Indenture shall, subject to Section 11.1(b), cease to be of further effect and the security interest granted to the Trustee hereunder in the Collateral and the Indenture Estate shall terminate. The Trustee shall acknowledge satisfaction and discharge of this Indenture, and file all UCC termination statements and similar documents prepared by the Issuer, on demand of the Issuer accompanied by an Officer's Certificate and an Opinion of Counsel, at the cost and expense of the Issuer, to the effect that any conditions precedent to a discharge of this Indenture have been met.

(b) Notwithstanding Section 11.1(a), the Issuer's obligations in Section 8.1 and the Trustee's obligations in Section 12.13 shall survive the satisfaction and discharge of this Indenture until the latest date permitted by Applicable Law.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Right of Trustee to Perform. If the Issuer for any reason fails to observe or punctually to perform any of its obligations to the Trustee, whether under this Indenture, under any of the other Transaction Documents or otherwise, the Trustee shall have the power (but shall have no obligation), on behalf of or in the name of the Issuer or otherwise, to perform such obligations or cause performance of such obligations and to take any steps that the Trustee may, in its absolute discretion, consider appropriate with a view to remedying, or mitigating the consequences of, such failure by the Issuer, in which case the reasonable expenses of the Trustee, including the fees and expenses of its counsel, incurred in connection therewith shall be payable by the Issuer under Section 8.1; provided, that no exercise or failure to exercise this power by the Trustee shall in any way prejudice the Trustee's other rights under this Indenture or any of the other Transaction Documents.

Section 12.2 Waiver. Any waiver by any party of any provision of this Indenture or any right, remedy or option hereunder shall only prevent and estop such party from thereafter enforcing such provision, right, remedy or option if such waiver is given in writing and only as to the specific instance and for the specific purpose for which such waiver was given. The failure or refusal of any party hereto to insist in any one or more instances, or in a course of dealing, upon the strict performance of any of the terms or provisions of this Indenture by any party hereto or the partial exercise of any right, remedy or option hereunder shall not be construed as a waiver or relinquishment of any such term or provision, but the same shall continue in full force and effect. No failure on the part of the Trustee to exercise, and no delay on its part in exercising, any right or remedy under this Indenture will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Indenture are cumulative and not exclusive of any rights or remedies provided by law.

Section 12.3 Severability. In the event that any provision of this Indenture or the application thereof to any party hereto or to any circumstance or in any jurisdiction governing this Indenture shall, to any extent, be invalid or unenforceable under any applicable statute, regulation or rule of law, then such provision shall be deemed inoperative to the extent that it is invalid or unenforceable, and the remainder of this Indenture, and the application of any such invalid or unenforceable provision to the parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall the same affect the validity or enforceability of this Indenture. The parties hereto further agree that the holding by any court of competent jurisdiction that any remedy pursued by the Trustee hereunder is unavailable or unenforceable shall not affect in any way the ability of the Trustee to pursue any other remedy available to it.

Section 12.4 Restrictions on Exercise of Certain Rights. The Trustee and, during the continuance of a payment Default with respect to the Senior Class of Notes, the Senior Trustee, except as otherwise provided in Section 4.4, may sue for recovery or take any other steps for the purpose of recovering any of the obligations hereunder or any other debts or liabilities whatsoever owing to it by the Issuer. Each of the Noteholders shall at all times be deemed to have agreed by virtue of the acceptance of the Notes that only the Trustee and, during the continuance of a payment Default with respect to the Senior Class of Notes, the Senior Trustee, except as provided in Section 4.4, may take any steps for the purpose of procuring the appointment of an administrative receiver, examiner, receiver or similar officer or the making of an administration order or for instituting any bankruptcy, reorganization, arrangement, insolvency, winding-up, liquidation, composition, examination or any like proceedings under Applicable Law.

Section 12.5 Notices. All Notices shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, (d) on the date transmitted by legible telecopier transmission with a confirmation of receipt or (e) in the case of reports under Article III and any other report that is of a routine nature, on the date sent by first class mail or overnight courier or transmitted by legible telecopier transmission, in all cases, with a copy emailed to the recipient at the applicable address, addressed to the recipient as follows:

if to the Issuer, to:

TCD Royalty Sub LLC
c/o Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Jack Khattar
Telephone: 301-838-2670
Facsimile: 301-424-1364
Email: jkhattar@supernus.com

if to the Parent or the Servicer, to:

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Jack Khattar
Telephone: 301-838-2670
Facsimile: 301-424-1364
Email: jkhattar@supernus.com

if to the Trustee, the Registrar, the Paying Agent or the Calculation Agent, to:

U. S. Bank National Association
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (TCD Royalty Sub LLC)
Telephone: 617-603-6553
Facsimile: 617-603-6683

A copy of each notice given hereunder to any party hereto shall also be given to each of the other parties hereto. Each party hereto may, by notice given in accordance herewith to each of the other parties hereto, designate any further or different address to which subsequent Notices shall be sent; provided, however, in the case of Counterparties, such notice may be given by the Servicer.

Section 12.6 Assignments. This Indenture shall be a continuing obligation of the Issuer and shall (a) be binding upon the Issuer and its successors and assigns and (b) inure to the benefit of and be enforceable by the Trustee and by its successors, transferees and assigns. The Issuer may not assign any of its obligations under this Indenture or delegate any of its duties hereunder.

Section 12.7 Application to Court. The Trustee may at any time after the service of an Acceleration Notice apply to any court of competent jurisdiction for an order that the terms of this Indenture be carried into execution under the direction of such court and for the appointment of a Receiver of the Collateral or any part thereof and for any other order in relation to the administration of this Indenture as the Trustee shall deem fit, and it may assent to or approve any application to any court of competent jurisdiction made at the instigation of any of the Noteholders and shall be indemnified by the Issuer against all costs, charges and expenses incurred by it in relation to any such application or proceedings.

Section 12.8 GOVERNING LAW. THIS INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Section 12.9 Jurisdiction.

(a) Each of the parties hereto agrees that the U.S. federal and State of New York courts located in the Borough of Manhattan, The City of New York shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Indenture and, for such purposes, submits to the jurisdiction of such courts. Each of the parties hereto waives any objection that it might now or hereafter have to the U.S. federal or State of New York courts located in the Borough of Manhattan, The City of New York being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Indenture and agrees not to claim that any such court is not a convenient or appropriate forum. Each of the parties hereto has irrevocably designated, appointed and empowered the respective Persons named in Exhibit C as its designee, appointee and agent to receive, accept and acknowledge for and on its behalf, and its properties, assets and revenues, service of any and all legal process, summons, notices and documents that may be served in any suit, action or proceeding brought against such party in any United States or state court arising out of or relating to this Indenture or the Notes. If for any reason any such designee, appointee and agent hereunder shall cease to be available to act as such, such party agrees to designate a new designee, appointee and agent in the Borough of Manhattan, The City of New York on the terms and for the purposes of this Section 12.9 satisfactory to such other party. Each party further hereby irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents in any suit, action or proceeding against such party by serving a copy thereof upon the relevant agent for service of process referred to in this Section 12.9 (whether or not the appointment of such agent shall for any reason prove to be ineffective or such agent shall accept or acknowledge such service) or by mailing copies thereof by registered or certified mail, postage prepaid, to such party at its address specified in or designated pursuant to this Indenture. Each party agrees that the failure of any such designee, appointee and agent to give any notice of such service to it shall not impair or affect in any way the validity of such service or any judgment rendered in any action or proceeding based thereon. Nothing herein shall in any way be deemed to limit the ability of the Issuer or the Trustee and the Noteholders, as the case may be, to serve any such legal process, summons, notices and documents in any other manner permitted by Applicable Law or to obtain jurisdiction over such party or bring suits, actions or proceedings against such party in such other jurisdictions, and in such manner, as may be permitted by Applicable Law.

(b) The submission to the jurisdiction of the courts referred to in Section 12.9(a) shall not (and shall not be construed so as to) limit the right of the Trustee to take proceedings against the Issuer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

(c) Each of the parties hereto hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Indenture to the giving of any relief or the issue of any process in connection with such action or proceeding, including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment that may be made or given in such action or proceeding.

(d) If, for the purpose of obtaining a judgment or order in any court, it is necessary to convert a sum due hereunder to any Noteholder from U.S. dollars into another currency, the Issuer has agreed, and each Noteholder by holding a Note will be deemed to have agreed, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, such Noteholder could purchase U.S. dollars with such other currency in the Borough of Manhattan, The City of New York on the Business Day preceding the day on which final judgment is given.

(e) The obligation of the Issuer in respect of any sum payable by it to a Noteholder shall, notwithstanding any judgment or order in a currency other than U.S. dollars (the "Judgment Currency"), be discharged only to the extent that, on the Business Day following receipt by such Noteholder of such security of any sum adjudged to be so due in the Judgment Currency, such Noteholder may in accordance with normal banking procedures purchase U.S. dollars with the Judgment Currency. If the amount of U.S. dollars so purchased is less than the sum originally due to such Noteholder in the Judgment Currency (determined in the manner set forth in Section 12.9(d)), the Issuer agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Noteholder against such loss, and, if the amount of the U.S. dollars so purchased exceeds the sum originally due to such Noteholder, such Noteholder agrees to remit to the Issuer such excess, provided that such Noteholder shall have no obligation to remit any such excess as long as the Issuer shall have failed to pay such Noteholder any obligations due and payable under the Notes of such Noteholder, in which case such excess may be applied to such obligations of the Issuer under such Notes in accordance with the terms thereof. The foregoing indemnity shall constitute a separate and independent obligation of the Issuer and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid.

(f) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE OR ANY MATTER ARISING HEREUNDER.

Section 12.10 Counterparts. This Indenture may be executed in one or more counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

Section 12.11 Table of Contents and Headings. The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.12 Trust Indenture Act. This Indenture shall not be qualified under the Trust Indenture Act and shall not be subject to the provisions of the Trust Indenture Act, although it shall incorporate such provisions for ease of reference.

Section 12.13 Confidential Information. The Trustee, in its individual capacity and as Trustee, agrees and acknowledges that all information (including Confidential Information) provided to the Trustee by the Parent may be considered to be proprietary and confidential information of Counterparties. The Trustee agrees to take all reasonable precautions necessary

to keep such information confidential, which precautions shall be no less stringent than those that the Trustee employs to protect its own confidential information. The Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Trustee's rights and the performance of its obligations under this Indenture, any such information without the prior written consent of Counterparties. In addition, the Trustee agrees to be bound by the provisions of Section 11 of the Indevus License Agreement and Section 10 of the CollaGenex License Agreement to the extent it receives confidential information of Counterparties pursuant to Section 5.3 of this Indenture or Section 3.1 of the Servicing Agreement. The Trustee shall limit access to such information received hereunder to (a) its directors, officers, managers and employees and (b) its legal advisors, to each of whom disclosure of such information is necessary for the purposes described above; provided, however, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 12.13.

The Trustee agrees that Counterparties do not have any responsibility whatsoever for any reliance on such information by the Trustee or by any Person to whom such information is disclosed in connection with this Indenture, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, the Trustee agrees that no Counterparty makes any representation or warranty whatsoever to it with respect to such information or its suitability for such purposes. The Trustee further agrees that it shall not acquire any rights against Counterparties or any employee, officer, director, manager, representative or agent of Counterparties (together with Counterparties, "Confidential Parties") as a result of the disclosure of such information to the Trustee or to any Noteholder or Beneficial Holder and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

In the event the Trustee is required to disclose any such information received hereunder in order to comply with any laws, regulations or court orders, it may disclose such information only to the extent necessary for such compliance; provided, however, that it shall give Counterparties and the Issuer reasonable advance written notice of any such court proceeding in which such disclosure may be required pursuant to a court order so as to afford Counterparties a full and fair opportunity to oppose the issuance of such order and to appeal therefrom and shall cooperate reasonably with Counterparties in opposing such order and in securing confidential treatment of any such information to be disclosed and/or obtaining a protective order narrowing the scope of such disclosure.

The Trustee agrees that each Counterparty is an express third-party beneficiary of the provisions of this Section 12.13.

Each of the Calculation Agent, the Paying Agent and the Registrar agrees to be bound by this Section 12.13 to the same extent as the Trustee.

Section 12.14 Limited Recourse. Each of the parties hereto accepts that the enforceability against the Issuer of the obligations of the Issuer hereunder and under the Notes shall be limited to the assets of the Issuer, whether tangible or intangible, real or personal (including the Collateral) and the proceeds thereof. Once all such assets have been realized upon and such assets (and proceeds thereof) have been applied in accordance with Article III, any

outstanding obligations of the Issuer shall be extinguished. Each of the parties hereto further agrees that it shall take no action against any employee, director, officer or administrator of the Issuer, the Parent or the Trustee in relation to this Indenture; provided, that nothing herein shall limit the Issuer (or its permitted successors or assigns, including any party hereto that becomes such a successor or assign) from pursuing claims, if any, against any such person. The provisions of this Section 12.14 shall survive termination of this Indenture; provided, further, that the foregoing shall not in any way limit, impair or otherwise affect any rights of the Trustee or the Noteholders to proceed against any such Person (a) for intentional and willful fraud or intentional and willful misrepresentations on the part of or by such Person or (b) for the receipt of any distributions or payments to which the Issuer or any successor in interest is entitled, other than distributions expressly permitted pursuant to this Indenture and the other Transaction Documents.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Indenture to be duly executed, all as of the date first written above.

TCD ROYALTY SUB LLC,
as Issuer

By: Supernus Pharmaceuticals, Inc., its Manager

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President & CEO

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Alison D. B. Nadeau
Name: Alison D. B. Nadeau
Title: Vice President

ANNEX A
RULES OF CONSTRUCTION AND DEFINED TERMS

Unless the context otherwise requires, in this Annex A and each Transaction Document (or other document) to which this Annex A is attached:

(a) A term has the meaning assigned to it and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

(b) Unless otherwise defined, all terms used herein or therein that are defined in the UCC shall have the meanings stated in the UCC.

(c) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words in the singular shall include the plural, and vice versa.

(d) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without limitation".

(e) References to an agreement or other document include references to such agreement or document as amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof and include any Annexes, Exhibits and Schedules attached thereto, and the provisions thereof apply to successive events and transactions.

(f) References to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor.

(g) References to any Person shall be construed to include such Person's successors and permitted assigns.

(h) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(i) The words "hereof", "herein", "hereunder" and similar terms when used in this Annex A or any Transaction Document (or other document) shall refer to this Annex A or such Transaction Document (or other document) as a whole and not to any particular provision hereof or thereof, and Article, Section, Annex, Schedule and Exhibit references herein and therein are references to Articles and Sections of, and Annexes, Schedules and Exhibits to, the relevant Transaction Document (or other document) unless otherwise specified.

(j) In the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

(k) References to a class of Notes shall be to the Original Class A Notes, to the Class B Notes or to a class of Refinancing Notes, as applicable.

(l) References to the Notes include the terms and conditions in the relevant Transaction Document (or other document) applicable to the Notes, and any reference to any amount of money due or payable by reference to the Notes shall include any sum covenanted to be paid by the Issuer under the relevant Transaction Document (or other document) in respect of the Notes.

(m) References to any action, remedy or method of judicial proceeding for the enforcement of the rights of creditors or of security shall be deemed to include, in respect of any jurisdiction other than the State of New York, references to such action, remedy or method of judicial proceeding for the enforcement of the rights of creditors or of security available or appropriate in such jurisdiction as shall most nearly approximate such action, remedy or method of judicial proceeding described or referred to in the relevant Transaction Document (or other document).

(n) Where any payment is to be made, any funds are to be applied or any calculation is to be made under any Transaction Document (or other document) on a day that is not a Business Day, unless any Transaction Document (or other document) otherwise provides, such payment shall be made, such funds shall be applied and such calculation shall be made on the next succeeding Business Day, and payments shall be adjusted accordingly, including interest unless otherwise specified; provided, however, that no interest shall accrue in respect of any payments made on Fixed Rate Notes on that next succeeding Business Day.

(o) References to any Calculation Date or Relevant Calculation Date, in each case that would be prior to the first Calculation Date that follows the Closing Date, shall be deemed to refer to the Closing Date.

"144 A Global Note" has the meaning set forth in Section 2.1(b) of the Indenture.

"Acceleration Default" means any Event of Default of the type described in Section 4.1(f) of the Indenture.

"Acceleration Notice" means a written notice given after the occurrence and continuation of an Event of Default to the Issuer by the Senior Trustee pursuant to Section 4.2 of the Indenture, declaring all Outstanding principal of and accrued and unpaid interest on the Notes to be immediately due and payable.

"Accounts" means the Collection Account, any Redemption Account, any Escrow Account, the Capital Account, the Interest Reserve Account and any other account established pursuant to Section 3.1 of the Indenture.

"Act" has the meaning set forth in Section 1.3(a) of the Indenture.

"Actual Beneficial Holder List" has the meaning set forth in Section 2.5(d) of the Indenture.

"Additional Interest" means, with respect to the Notes, interest accrued on the amount of any interest and Premium, if any, in respect of such Notes that is not paid when due at the Stated Rate of Interest of such Notes for each Interest Accrual Period until any such unpaid interest or Premium is paid in full, compounded quarterly on each Payment Date, to the fullest extent permitted by Applicable Law.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director, officer or manager of such Person. For purposes of this definition, "control" of a Person means the possession, directly or indirectly, of the power (a) to vote 10% or more of the Capital Securities (on a fully diluted basis) of such Person having ordinary voting power for the election of directors, managing members or general partners (as applicable) or (b) to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative to the foregoing.

"Agent Members" has the meaning set forth in Section 2.10(a) of the Indenture.

"Applicable Law" means, with respect to any Person, all laws, rules, regulations and orders of Governmental Authorities applicable to such Person or any of its properties or assets.

"Applicable Treasury Rate" for any Redemption Date means the interest rate (expressed as a semiannual decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield) determined on the fourth Business Day prior to such Redemption Date to be the per annum rate equal to the semiannual yield to maturity for United States Treasury securities maturing on the Average Life Date of the Original Class A Notes as of such Redemption Date and trading in the public securities markets either (a) as determined by interpolation between the most recent weekly average yield to maturity for two series of United States Treasury securities trading in the public securities markets, (i) one maturing as close as possible to, but earlier than,

the Average Life Date of the Original Class A Notes and (ii) the other maturing as close as possible to, but later than, the Average Life Date of the Original Class A Notes, in each case as published in the most recent H.15 (519) or (b) if a weekly average yield to maturity for United States Treasury securities maturing on the Average Life Date of the Original Class A Notes is reported in the most recent H.15 (519), such weekly average yield to maturity as published in such H.15 (519).

"Applicants" has the meaning set forth in Section 6.14 of the Indenture.

"Approved Holder List" has the meaning set forth in Section 2.5(d) of the Indenture.

"Authorized Agent" means, with respect to the Notes, any authorized Calculation Agent, Paying Agent or Registrar acting as such for the Notes.

"Available Collections Amount" means, for any Payment Date, the sum of (a) the amount on deposit in the Collection Account as of the Calculation Date immediately preceding such Payment Date and (b) the amount of any net investment income on amounts on deposit in the Accounts (other than the Capital Account) as of such Calculation Date.

"Average Life Date" of the Original Class A Notes means the date that follows the applicable Redemption Date by a period equal to the Remaining Weighted Average Life of the Original Class A Notes.

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Base Case Amortization Schedule" means the base case amortization schedule set forth under "The Notes and the Indenture—The Notes and Payment—Payments on the Notes—Base Case Amortization Schedule" in the Private Placement Memorandum.

"Beneficial Holder" means any Person that holds a Beneficial Interest in any Global Note through an Agent Member.

"Beneficial Interest" means any beneficial interest in any Global Note, whether held directly by an Agent Member or held indirectly through an Agent Member's beneficial interest in such Global Note.

"Bill of Sale" means the Bill of Sale, dated as of the Closing Date, executed by the Parent and the Issuer, substantially in the form of Exhibit A to the Purchase and Sale Agreement.

"Business Day" means (a) any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Applicable Law to remain closed or a day on which the Corporate Trust Office is closed for business and (b) for purposes of calculating amounts at the London interbank offered rate and related calculations relative to the making, continuing, prepaying or repaying of Indebtedness in respect thereof, any day that is a Business Day described in clause (a) that is also a day on which dealings in U.S. dollars are carried on in the London interbank market.

"Calculation Agent" means U.S. Bank National Association and any successor appointed pursuant to Section 6.11 of the Indenture.

"Calculation Date" means, for any Payment Date, the fifth Business Day immediately preceding such Payment Date.

"Calculation Report" has the meaning set forth in Section 3.5(b) of the Indenture.

"Capital Account" has the meaning set forth in Section 3.1(a) of the Indenture.

"Capital Securities" means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued after the Closing Date, including common shares, ordinary shares, preferred shares, membership interests or share capital in a limited liability company or other Person, limited or general partnership interests in a partnership, beneficial interests in trusts or any other equivalent of such ownership interest or any options, warrants and other rights to acquire such shares or interests, including rights to allocations and distributions, dividends, redemption payments and liquidation payments.

"Cash Purchase Price" has the meaning set forth in Section 3.1(a) of the Purchase and Sale Agreement.

"Change of Control" means, with respect to the Parent (or any parent entity of the Parent), any transaction of merger, consolidation or amalgamation with, or, in the case of clause (b) below, a sale of all or substantially all of the assets of the Parent (or such parent entity) to, any other Person (a) if the Parent (or such parent entity) is the continuing or surviving entity or (b) if the Parent (or such parent entity) is not the continuing or surviving entity but the continuing or surviving entity shall have assumed all of the obligations of the Parent under the Transaction Documents to which the Parent is a party immediately prior to such transaction.

"Class A Notes" means the Original Class A Notes and any Refinancing Notes issued to refinance the foregoing.

"Class B Issuance" has the meaning set forth in Section 2.16(a) of the Indenture.

"Class B Notes" means the Class B Notes, if any, issued in such form as shall be authorized by a Manager Resolution or any indenture supplemental to the Indenture in respect thereof pursuant to Section 2.16 of the Indenture and any Refinancing Notes issued to refinance the foregoing.

"Clearstream" means Clearstream Banking, a French société anonyme.

"Closing Date" means the date on which the conditions set forth in Section 4.1 of the Purchase and Sale Agreement are satisfied, the sale, transfer, conveyance, assignment, contribution and granting of the Purchased Assets to the Issuer pursuant to Article II of the Purchase and Sale Agreement are effective and the Original Class A Notes are issued, which date shall be April 15, 2008.

"Code" means the Internal Revenue Code of 1986 and the regulations thereunder.

"CollaGenex" means CollaGenex Pharmaceuticals, Inc., a Delaware corporation.

"CollaGenex Field" means prescription products containing as the active ingredient doxycycline and indicated for the treatment of periodontitis, acne, rosacea and/or dry eye.

"CollaGenex License Agreement" means that certain Development and Licensing Agreement dated as of June 10, 2002 between the Parent and CollaGenex, as amended by an Amendment dated May 4, 2004 between the Parent and CollaGenex, a Second Amendment dated as of February 28, 2007 by and between the Parent and CollaGenex and a Third Amendment dated as of February 28, 2008 by and between the Parent and CollaGenex, and as supplemented by that certain letter agreement dated December 18, 2006 executed by CollaGenex and accepted and acknowledged by the Parent and that certain Consent Agreement dated February 28, 2008 executed by CollaGenex and the Parent.

"CollaGenex Licensed Patents" means Licensed Patents (as defined in the CollaGenex License Agreement).

"CollaGenex Licensed Products" means Licensed Product (as defined in the CollaGenex License Agreement).

"CollaGenex Residual License Agreement" means that certain CollaGenex Residual License Agreement dated as of the Closing Date between the Parent and the Issuer.

"Collateral" has the meaning set forth in the Granting Clause of the Indenture.

"Collection Account" has the meaning set forth in Section 3.1(a) of the Indenture.

"Collections" means, without duplication, (a) Royalty Payments and Replacement Royalty Payments, (b) any net investment income on amounts on deposit in the Accounts (other than the Capital Account) and (c) any other amounts received by the Issuer (other than the proceeds of any Notes and capital contributions from the Parent).

"Confidential Information" means, collectively, (i) the information contemplated by Section 11 of the Indevus License Agreement and Section 10 of the CollaGenex License Agreement, (ii) any materials containing or based on any of the foregoing (including any financial models based thereon) and (iii) any portions of any of the foregoing.

"Confidentiality Agreement" means, with respect to Noteholders or Beneficial Holders at the Closing Date with respect to the Original Class A Notes (or, with respect to any Class B Notes or any Refinancing Notes, the date of issuance of such Class B Notes or Refinancing Notes), a confidentiality agreement for the benefit of the Issuer provided to the Registrar on or prior to the Closing Date (or such date of issuance), and otherwise means a resale confidentiality agreement for the benefit of the Issuer substantially in the form of Exhibit B to the Indenture.

"Confidential Parties" has the meaning set forth in Section 12.13 of the Indenture.

"Corporate Trust Office" means the office of the Trustee in the city at which at any particular time the Trustee's duties under the Transaction Documents shall be principally administered and, on the Closing Date, shall be One Federal Street, 3rd Floor, Boston, Massachusetts 02110, Attention: Corporate Trust Services.

"Counterparties" means, collectively, Indevus and CollaGenex.

"Counterparty" means each of Indevus and CollaGenex.

"Default" means a condition, event or act that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Definitive Notes" has the meaning set forth in Section 2.1(b) of the Indenture.

"Direction" has the meaning set forth in Section 1.3(c) of the Indenture.

"Distribution Report" has the meaning set forth in Section 2.13(a) of the Indenture.

"Dollar" or the sign "$" means lawful money of the United States.

"DTC" means The Depository Trust Company, its nominees and their respective successors.

"DTC List" has the meaning set forth in Section 2.5(d) of the Indenture.

"Eligibility Requirements" has the meaning set forth in Section 2.3(b) of the Indenture.

"Eligible Account" means a trust account maintained on the books and records of an Eligible Institution in the name of the Trustee.

"Eligible Institution" means any bank organized under the laws of the U.S. or any state thereof or the District of Columbia (or any domestic branch of a foreign bank), which at all times has either (a) a long-term unsecured debt rating of at least A2 by Moody's and A by S&P or (b) a certificate of deposit rating of at least P-1 by Moody's and A-1 by S&P.

"Eligible Investments" means, in each case, book-entry securities, negotiable instruments or securities represented by instruments in bearer or

registered form that evidence:

(a) direct obligations of, and obligations fully Guaranteed as to timely payment of principal and interest by, the U.S. or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the U.S. (having original maturities of no more than 365 days or such lesser time as is required for the distribution of funds);

(b) demand deposits, time deposits or certificates of deposit of the Operating Bank or of depositary institutions or trust companies organized under the laws of the U.S. or any state thereof or the District of Columbia (or any domestic branch of a foreign bank) (i) having original maturities of no more than 365 days or such lesser time as is

required for the distribution of funds; provided, that, at the time of investment or contractual commitment to invest therein, the short-term debt rating of such depositary institution or trust company shall be at least P-1 by Moody's and A-1 by S&P or (ii) having maturities of more than 365 days and, at the time of the investment or contractual commitment to invest therein, a rating of at least A2 by Moody's and A by S&P;

(c) corporate or municipal debt obligations (i) having remaining maturities of no more than 365 days or such lesser time as is required for the distribution of funds and having, at the time of the investment or contractual commitment to invest therein, a rating of at least P-1 or A2 by Moody's and A-1 or A by S&P or (ii) having remaining maturities of more than 365 days and, at the time of the investment or contractual commitment to invest therein, a rating of at least A2 by Moody's and A by S&P;

(d) investments in money market funds (including funds in respect of which the Trustee or any of its Affiliates is investment manager or otherwise) having a rating of at least A2 by Moody's and Am by S&P; or

(e) notes or bankers' acceptances (having original maturities of no more than 365 days or such lesser time as is required for the distribution of funds) issued by any depositary institution or trust company referred to in clause (b) above;

provided, however, that no investment shall be made in any obligations of any depositary institution or trust company that is identified in a written notice to the Trustee from the Issuer or the Servicer as having a contractual right to set off and apply any deposits held, or other indebtedness owing, by the Issuer to or for the credit or the account of such depositary institution or trust company, unless such contractual right by its terms expressly excludes all Eligible Investments.

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business that is treated as a single employer with the Issuer or the Parent under Section 414 of the Code.

"Escrow Account" has the meaning set forth in Section 3.1(a) of the Indenture.

"Escrow List" has the meaning set forth in Section 2.5(d) of the Indenture.

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"Event of Default" has the meaning set forth in Section 4.1 of the Indenture.

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended.

"Execution Date" has the meaning set forth in the preamble to each Residual License Agreement.

"Expenses" means any reasonable out-of-pocket fees, costs or expenses of the Issuer, including the fees, expenses and indemnities of the Service Providers (provided that, with respect to the Servicer, such expenses shall only be reasonable out-of-pocket expenses), the fees and out-of-pocket expenses of counsel to the Trustee and the Issuer incurred after the Closing Date in connection with the transactions contemplated by the Transaction Documents, the fees and expenses of any nationally recognized independent public accounting firm engaged as auditors of the Issuer, any expenses incurred in connection with the exercise of audit rights at the direction of the Issuer or at the Direction of the Noteholders and any payments by the Issuer to third parties in respect of obligations for which indemnification payments have been received from the Parent; provided, however, that, except as expressly provided in the Indenture, Expenses shall not include the Servicing Fee, any Transaction Expenses, any amounts payable on the Notes, any fees, costs or expenses relating to the Class B Notes or any other amounts ranking pari passu with or junior to interest payable on the Class A Notes in the priority of payments set forth under Section 3.7 of the Indenture.

"Expiration Date" means the earlier of (a) the date as of which all Secured Obligations to Noteholders are satisfied or (b) the cancellation or termination of the Indenture for any other reason under the terms thereof.

"Field" means the Indevus Field or the CollaGenex Field, as the case may be.

"Final Legal Maturity Date" means, with respect to (a) the Original Class A Notes, April 15, 2024, and (b) with respect to any Class B Notes or Refinancing Notes, the date specified in the indenture supplemental to the Indenture providing for their issuance; provided, that the Final Legal Maturity Date with respect to any Class B Notes where the proceeds thereof are not used to redeem or refinance all of the Outstanding Class A Notes shall be no earlier than April 15, 2024.

"Fixed Rate Notes" means (i) the Original Class A Notes and (ii) any Class B Notes or Refinancing Notes issued with a fixed rate of interest.

"Floating Rate Notes" means any Class B Notes or Refinancing Notes issued with a floating or variable rate of interest.

"GAAP" means generally accepted accounting principles in effect in the U.S. from time to time.

"Global Notes" means any 144A Global Note and Regulation S Global Note.

"Governmental Authority" means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority (including supranational authority), instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or

otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation of such other Person or (b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" when used as a verb has a corresponding meaning.

"H.15 (519)" means the weekly statistical release designated as such, or any successor publication, published by the Board of Governors of the Federal Reserve System, and the most recent H.15 (519) is the H.15 (519) published prior to the close of business on the fourth Business Day prior to the applicable Redemption Date.

"Incur" has the meaning set forth in Section 5.2(d) of the Indenture.

"Indebtedness" means, with respect to any Person at any date of determination (without duplication), (a) all indebtedness of such Person for borrowed money or other similar monetary obligations, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person as an account party in respect of letters of credit or other similar instruments (including reimbursement obligations with respect thereto), (d) all the obligations of such Person to pay the deferred and unpaid purchase price of property or services, which purchase price is due more than 90 days after the date of purchasing such property or service or taking delivery and title thereto or the completion of such services, and payment deferrals arranged primarily as a method of raising funds to acquire such property or service, (e) all monetary obligations of such Person and its Subsidiaries under any leasing or similar arrangement that have been (or, in accordance with GAAP, should be) classified as capitalized leases, (f) all Guarantees of such Person in respect of any of the foregoing, (g) all monetary obligations of such Person with respect to any interest rate hedge, cap, floor, swap, option or other interest rate hedge agreement, (h) all Indebtedness (as defined in clauses (a) through (g) of this definition) of other Persons secured by a lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person, and (i) all Indebtedness (as defined in clauses (a) through (g) of this definition) of other Persons Guaranteed by such Person.

"Indemnified Amounts" has the meaning set forth in Section 8.1 of the Purchase and Sale Agreement.

"Indemnified Party" has the meaning set forth in Section 8.1 of the Purchase and Sale Agreement.

"Indemnitee" has the meaning set forth in Section 19.1 of the Pledge and Security Agreement.

"Indemnitees" has the meaning set forth in Section 19.1 of the Pledge and Security Agreement.

"Indenture" means that certain indenture, dated as of the Closing Date, between the Issuer and the Trustee.

"Indenture Estate" has the meaning set forth in the Granting Clause of the Indenture.

"Independent Consultant" means L.E.K. Consulting LLC.

"Independent Consultant's Report" means the report of the Independent Consultant included in the Private Placement Memorandum as Appendix A.

"Independent Member" means a Member who is not at the time of such Person's admission to the Issuer, who is not and who has not been at any time during the preceding five years: (a) a director, manager, officer or employee of the Issuer (other than in the capacity of Independent Member) or any Affiliate of the Issuer (other than in the capacity of Independent Member); (b) a Person related to any officer, director, manager or employee of the Issuer (other than in the capacity of Independent Member) or any Affiliate of the Issuer (other than in the capacity of Independent Member); (c) a holder (directly or indirectly) of any Voting Securities of the Issuer or any Affiliate of the Issuer (other than in the capacity of Independent Member); (d) a Person related to a holder (directly or indirectly) of any Voting Securities of the Issuer or any Affiliate of the Issuer (other than in the capacity of Independent Member); (e) a purchaser, customer or any other Person who derives any of its revenues from interactions with the Issuer or any Affiliate of the Issuer or a family member of such purchaser, customer or other Person; or (f) a trustee in bankruptcy or other insolvency proceeding for, or a reorganization of, the Parent or any Subsidiary or Affiliate of the Parent.

"Indevus" means Indevus Pharmaceuticals, Inc., a Delaware corporation.

"Indevus Field" means all pharmaceutical uses of trospium chloride, the chemical compound whose specific chemical name is 3-alpha-benziloyloxynortropane-8-sprio-1'-pyrrolidinium chloride, or any other trospium salt, alone or in combination with other active ingredients.

"Indevus License Agreement" means that certain Development and License Agreement dated as of March 11, 2003 between the Parent and Indevus, as supplemented by that certain Consent and Agreement dated March 7, 2008 executed by Indevus and the Parent.

"Indevus Licensed Patents" means Licensed Patents (as defined in the Indevus License Agreement).

"Indevus Licensed Products" means Licensed Product(s) (as defined in the Indevus License Agreement).

"Indevus Residual License Agreement" means that certain Indevus Residual License Agreement dated as of the Closing Date between the Parent and the Issuer.

"Institutional Accredited Investor" means a Person that is an accredited investor as that term is defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Interest Accrual Period" means the period beginning on (and including) the Closing Date (or, with respect to any Class B Notes or any Refinancing Notes, the date of issuance of such Class B Notes or Refinancing Notes) and ending on (but excluding) the first Payment Date

thereafter and each successive period beginning on (and including) a Payment Date and ending on (but excluding) the next succeeding Payment Date; provided, however, that the final Interest Accrual Period shall end on but exclude the final Payment Date (or, if earlier, with respect to any class of Notes repaid in full, the date such class of Notes is repaid in full).

"Interest Amount" means, with respect to the Outstanding Principal Balance of any class of Notes, on any Payment Date, the amount of accrued and unpaid interest at the Stated Rate of Interest with respect to the Outstanding Principal Balance of such class of Notes on such Payment Date (including any Additional Interest, if any), determined in accordance with the terms thereof (including interest accruing after the commencement of a proceeding in bankruptcy, insolvency or similar law, whether or not permitted as a claim under such law).

"Interest Reserve Account" has the meaning set forth in Section 3.1(a) of the Indenture.

"Interim Period" has the meaning set forth in Section 2.3(a) of each Residual License Agreement.

"Interim Sublicense" has the meaning set forth in Section 2.3(a) of each Residual License Agreement.

"Involuntary Bankruptcy" means, without the consent or acquiescence of the Issuer, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against the Issuer, or, without the consent or acquiescence of the Issuer, the entering of an order appointing a trustee, custodian, receiver or liquidator of the Issuer, or of all or any substantial part of the property of the Issuer, in each case where such petition or order shall remain unstayed or shall not have been stayed or dismissed within 90 days from entry thereof.

"Issuer" means TCD Royalty Sub LLC, a Delaware limited liability company, as issuer of the Notes pursuant to the Indenture.

"Issuer Organizational Documents" means the certificate of formation of the Issuer dated as of February 19, 2008 and the limited liability company agreement of the Issuer dated as of the Closing Date.

"Issuer Pledged Collateral" has the meaning set forth in Section 2.1 of the Pledge and Security Agreement.

"Issuer Pledged Equity" has the meaning set forth in Section 2.1(a) of the Pledge and Security Agreement.

"Issuer Royalties" has the meaning set forth in Section 3.3 of each Residual License Agreement.

"Issuer Sublicense" has the meaning set forth in Section 2.4 of each Residual License Agreement.

"Judgment Currency" has the meaning set forth in Section 12.9(e) of the Indenture.

"Knowledge" means the actual knowledge of (a) Jack Khattar, President and Chief Executive Officer of the Parent, (b) David Theil, Chief Financial Officer of the Parent, and (c) Padmanabh Bhatt, Ph.D., Vice President—Pharmaceutical Sciences of the Parent.

"License Agreements" means each of the Indevus License Agreement and the CollaGenex License Agreement.

"License Effective Date" has the meaning set forth in Section 2.1 of each Residual License Agreement.

"License Royalties" has the meaning set forth in Section 3.2 of each Residual License Agreement.

"License Term" means the period starting from the License Effective Date and ending on the Expiration Date. The License Term for the Subject Licensed Patents will end at the earlier of the Expiration Date or the last to expire of any valid claim in the Subject Licensed Patents.

"Licensed IP" means the SLI Intellectual Property and the SLI Technology.

"Licensed Products" means the Indevus Licensed Products and the CollaGenex Licensed Products and, for the avoidance of doubt, includes the Products.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property or other priority or preferential arrangement of any kind or nature whatsoever, in each case to secure payment of a debt or performance of an obligation, including any conditional sale, any sale with recourse against the Issuer or any agreement to give any security interest.

"Loss" means any loss, cost, charge, expense, interest, fee, payment, demand, liability, claim, action, proceeding, penalty, fine, damages, judgment, order or other sanction, other than Taxes.

"Manager" means the manager of the Issuer.

"Manager Resolution" means a copy of a resolution certified by a Responsible Officer of the Issuer as having been duly adopted by the Manager and being in full force and effect on the date of such certification.

"Material Adverse Effect" means a material adverse effect on (i) the ability of the Parent, the Issuer or the Servicer, as the case may be, to perform its obligations under any of the Transaction Documents or the License Agreements, in each case to which it is a party, (ii) the validity or enforceability of any of the License Agreements or the rights or remedies of the Issuer under any of such License Agreements or (iii) the value of the Purchased Assets or the value of the Residual License Agreements or the ability of the Issuer to perform any of its obligations under the Transaction Documents.

"Member" means a member of the Issuer.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto or, if such corporation or its successor shall for any reason no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized statistical rating organization (within the meaning ascribed thereto by the Exchange Act) designated by the Issuer.

"Non-U.S. Person" means a person who is not a U.S. person within the meaning of Regulation S.

"Noteholder" means any Person in whose name a Note is registered from time to time in the Register for such Note.

"Note Purchase Agreement" means that certain note purchase agreement dated the Closing Date among the Issuer, the Parent and the Purchaser party thereto.

"Note Purchase Agreements" means, collectively, each Note Purchase Agreement and the Other Agreements.

"Note Purchasers" has the meaning set forth in Section 1.1 of the Note Purchase Agreement.

"Notes" means the Original Class A Notes, any Class B Notes and any Refinancing Notes.

"Notices" means notices, demands, certificates, requests, directions, instructions and communications.

"Officer's Certificate" means a certificate signed by, with respect to the Issuer, a Responsible Officer of the Issuer and, with respect to any other Person, any officer, director, manager, trustee or equivalent representative of such Person.

"Operating Bank" means U.S. Bank National Association or any other Eligible Institution at which the Accounts are held; provided, that (a) upon the resignation or removal and the replacement of the Trustee pursuant to the terms of the Indenture, the successor trustee appointed thereunder shall be the Operating Bank, and (b) if at any time the Operating Bank ceases to be an Eligible Institution, a successor shall be appointed by the Servicer on behalf of the Trustee and all Accounts shall thereafter be transferred to and be maintained at such successor in the name of the Trustee and such successor shall thereafter be the "Operating Bank".

"Opinion of Counsel" means a written opinion signed by legal counsel, who may be an employee of or counsel to the Issuer or the Parent, that meets the requirements of Section 1.2 of the Indenture.

"Optional Redemption" has the meaning set forth in Section 3.10(b) of the Indenture.

"Original Class A Notes" means the TCD PhaRMA[SM] Secured 16% Notes due 2024 of the Issuer in the initial Outstanding Principal Balance of $75,000,000, substantially in the form of Exhibit A to the Indenture.

"Other Agreements" has the meaning set forth in Section 3.1 of the Note Purchase Agreement.

"Other Note Purchasers" has the meaning set forth in Section 3.1 of the Note Purchase Agreement.

"Other Prices" has the meaning set forth in Section 3.1 of the Note Purchase Agreement.

"Outstanding" means (a) with respect to the Notes of any class at any time, all Notes of such class theretofore authenticated and delivered by the Trustee except (i) any such Notes cancelled by, or delivered for cancellation to, the Trustee, (ii) any such Notes, or portions thereof, for the payment of principal of and accrued and unpaid interest on which moneys have been distributed to Noteholders by the Trustee and any such Notes, or portions thereof, for the payment or redemption of which moneys in the necessary amount have been deposited in the Redemption Account for such Notes; provided, that, if such Notes are to be redeemed prior to the maturity thereof in accordance with the requirements of Section 3.10 of the Indenture, written notice of such Redemption shall have been given and not rescinded as provided in Section 3.11 of the Indenture, or provision satisfactory to the Trustee shall have been made for giving such written notice, and, if Redemption does not occur, then this clause (ii) ceases to apply as of the Payment Date that was supposed to be the date of Redemption, and (iii) any such Notes in exchange or substitution for which other Notes, as the case may be, have been authenticated and delivered, or which have been paid pursuant to the terms of the Indenture (unless proof satisfactory to the Trustee is presented that any of such Notes is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Issuer), and (b) when used with respect to any other evidence of Indebtedness, at any time, any principal amount thereof then unpaid and outstanding (whether or not due or payable).

"Outstanding Principal Balance" means, with respect to any Note or other evidence of Indebtedness Outstanding, the total principal amount of such Note or other evidence of Indebtedness unpaid and Outstanding at any time, as determined in the case of the Notes in the information to be provided to the Servicer and the Trustee by the Calculation Agent pursuant to Section 3.5(b) of the Indenture.

"Parent" means Supernus Pharmaceuticals, Inc., a Delaware corporation (as successor-in-interest to Shire Laboratories Inc., a Delaware corporation).

"Parent Organizational Documents" means the amended and restated certificate of incorporation of the Parent dated February 3, 2006 and the by-laws of the Parent dated as of March 30, 2005.

"Parent Shortfall" means the amount, if any, payable by the Parent to the applicable Counterparty pursuant to the License Agreements that is due and payable but that has not been paid by the Parent.

"Parent Shortfall Payment" means any payment made by the Trustee in respect of any Parent Shortfall.

"Parent Sublicense" has the meaning set forth in Section 2.3(b) of each Residual License Agreement.

"Paying Agent" has the meaning set forth in Section 2.3(a) of the Indenture.

"Payment Date" means each January 15, April 15, July 15 and October 15, commencing on July 15, 2008 and including the Final Legal Maturity Date; provided, that, if any such date would otherwise fall on a day that is not a Business Day, the Payment Date falling on such date shall be the first following day that is a Business Day; provided, further, that, if any such following Business Day would occur in the succeeding month, then the Payment Date shall be the first Business Day preceding such date.

"Permanent Regulation S Global Note" has the meaning set forth in Section 2.1(b) of the Indenture.

"Permitted Holder" means (a) the Parent, (b) the Issuer and (c) any Person that has executed a Confidentiality Agreement and delivered such Confidentiality Agreement to the Registrar in accordance with the terms of the Indenture.

"Permitted Lien" means (a) any lien for Taxes, assessments and governmental charges or levies not yet due and payable or which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the relevant Person, (b) any Lien created in favor of the Trustee and (c) any other Lien expressly permitted under the Transaction Documents.

"Person" means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other legal entity, including public bodies, whether acting in an individual, fiduciary or other capacity.

"Placement Agent" means Morgan Stanley & Co. Incorporated.

"Plan" means any employee benefit plan (within the meaning of Section 3(3) of ERISA) or other plan or arrangement, whether or not subject to ERISA, that is (or within the preceding six years has been) maintained, or to which contributions are (or within the preceding six years have been) required to be made by the Issuer, the Parent or any ERISA Affiliate or with respect to which the Issuer, the Parent or any ERISA Affiliate may have any liability.

"Plan Assets" has the meaning given to such term by Section 3(42) of ERISA and regulations issued by the U.S. Department of Labor.

"Pledge and Security Agreement" means that certain pledge and security agreement dated as of the Closing Date made by the Parent to the Trustee.

"Premium" means, with respect to any Note on any Redemption Date, any Redemption Premium, if applicable, or, with respect to any Redemption Date, the portion of the Redemption Price of the Notes being redeemed in excess of the Outstanding Principal Balance of the Notes being redeemed.

"Price" has the meaning set forth in Section 3.1 of the Note Purchase Agreement.

"Private Placement Legend" has the meaning set forth in Section 2.2 of the Indenture.

"Private Placement Memorandum" means the private placement memorandum of the Issuer for the Original Class A Notes dated April 9, 2008.

"Proceeds" shall have the meaning assigned to such term under the UCC and, in any event, shall include (a) any and all proceeds of any guarantee, insurance or indemnity payable from time to time to the Parent with respect to any of the Issuer Pledged Collateral, (b) any and all payments (in any form whatsoever) made or due and payable from time to time to the Parent in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Issuer Pledged Collateral by any Governmental Authority (or any Person acting under color of Governmental Authority) and (c) any and all other amounts from time to time paid or payable with respect to or in connection with any of the Issuer Pledged Collateral.

"Products" means Sanctura® XR, a once daily oral formulation of trospium chloride indicated for the treatment of an overactive bladder, and Oracea®, a once-daily oral formulation of doxycycline indicated for the treatment of inflammatory lesions (papules and pustules) or rosacea in adult patients.

"Purchase and Sale Agreement" means that certain purchase and sale agreement dated as of the Closing Date between the Parent and the Issuer.

"Purchased Assets" means the assets sold, transferred, conveyed, assigned, contributed and granted by the Parent to the Issuer pursuant to the Purchase and Sale Agreement and the Bill of Sale, which shall consist of (x) the Parent's right, title and interest in, to and under the License Agreements to (i) receive or retain all Royalty Payments, (ii) receive the quarterly reports produced by Counterparties pursuant to the License Agreements in respect of sales of the Licensed Products in the Territory, (iii) audit the records of Counterparties in respect of such sales pursuant to the License Agreements and receive an audit report summarizing the results of any such audit and (iv) make indemnification claims against Counterparties pursuant to the License Agreements, and the proceeds of and the rights to enforce each of the foregoing, and (y) any Replacement Royalty Payments.

"Purchase Price" has the meaning set forth in Section 3.1 of the Note Purchase Agreement.

"Purchaser" has the meaning set forth in Section 1.1 of the Note Purchase Agreement.

"QIB" means a qualified institutional buyer within the meaning of Rule 144A.

"Receiver" means any Person or Persons appointed as (and any additional Person or Persons appointed or substituted as) administrative receiver, receiver, manager or receiver and manager.

"Record Date" means, with respect to each Payment Date, the close of business on the fifteenth day preceding such Payment Date and, with respect to the date on which any Direction is to be given by the Noteholders, the close of business on the last Business Day prior to the solicitation of such Direction.

"Redemption" means any Optional Redemption and any other redemption of Notes described in Section 3.10(c) of the Indenture.

"Redemption Account" has the meaning set forth in Section 3.1(a) of the Indenture.

"Redemption Date" means the date, which shall in each case be a Payment Date, on which Notes are redeemed pursuant to a Redemption.

"Redemption Premium" means, in the case of any Class B Notes or Refinancing Notes, the amount, if any, specified in the Manager Resolution or indenture supplemental to the Indenture to be paid in the event of a Redemption of such Class B Notes or Refinancing Notes separately from the Redemption Price.

"Redemption Price" means (a) in respect of an Optional Redemption of the Original Class A Notes (i) on any Payment Date on or prior to April 15, 2010, the greater of (x) the Outstanding Principal Balance of the Original Class A Notes being redeemed and (y) the present value, discounted at the Applicable Treasury Rate plus 1.0%, of such principal payment amounts and interest at the Stated Rate of Interest on the Outstanding Principal Balance of the Original Class A Notes (assuming the principal balances are achieved at the times and in the amounts set forth in the Base Case Amortization Schedule) plus, in each case, the accrued and unpaid interest to the Redemption Date on the Original Class A Notes that are being redeemed or (ii) on any Payment Date after April 15, 2010, an amount equal to the product of (x) the applicable Class A Redemption Percentage as set forth below and (y) the Outstanding Principal Balance of the Original Class A Notes that are being redeemed on such Payment Date, plus the accrued and unpaid interest to the Redemption Date on the Original Class A Notes that are being redeemed:

Payment Dates Between Indicated Payment Dates	Class A Redemption Percentage
From July 15, 2010 to and including April 15, 2011	108.00%
From July 15, 2011 to and including April 15, 2012	104.00%
From July 15, 2012 and thereafter	100.00%

and (b) in respect of any Class B Notes or Refinancing Notes, the redemption price, if any, plus the accrued and unpaid interest to the Redemption Date on the Class B Notes or Refinancing Notes, as the case may be, established by or pursuant to a Manager Resolution or in any indenture supplemental to the Indenture providing for the issuance of such Notes or designated

as such in the form of such Notes (any such Redemption Price in respect of any Class B Notes or Refinancing Notes may include a Redemption Premium, and such Manager Resolution or indenture supplemental to the Indenture may specify a separate Redemption Premium).

"Reference Date" means, with respect to each Interest Accrual Period, the day that is two Business Days prior to the Payment Date on which such Interest Accrual Period commences; provided, however, that the Reference Date with respect to the initial Interest Accrual Period means the date that is two Business Days prior to the Closing Date (or, with respect to any Class B Notes or any Refinancing Notes, the date that is two Business Days prior to the date of issuance of such Class B Notes or Refinancing Notes).

"Refinancing" has the meaning set forth in Section 2.15(a) of the Indenture.

"Refinancing Date" means the date, which shall in each case be a Payment Date, on which the Original Class A Notes, the Refinancing Notes, if any, or the Notes of any other class are redeemed in whole, in each case with the proceeds of Refinancing Notes as provided in Section 2.15 of the Indenture.

"Refinancing Expenses" means all Transaction Expenses incurred in connection with an offering and issuance of Refinancing Notes.

"Refinancing Notes" means any class of Notes issued by the Issuer under the Indenture at any time and from time to time after the Closing Date pursuant to Section 2.15 of the Indenture, the proceeds of which are used to repay all of the Outstanding Principal Balance of a class of Notes.

"Register" has the meaning set forth in Section 2.3(a) of the Indenture.

"Registrar" has the meaning set forth in Section 2.3(a) of the Indenture.

"Regulation S" means Regulation S under the Securities Act.

"Regulation S Global Note Exchange Date" means the date of exchange of any Temporary Regulation S Global Note for any Permanent Regulation S Global Note, which date shall be 40 days after the Closing Date (or, with respect to any Class B Notes or any Refinancing Notes, 40 days after the date of issuance of such Class B Notes or Refinancing Notes).

"Regulation S Global Notes" has the meaning set forth in Section 2.1(b) of the Indenture.

"Relevant Calculation Date" has the meaning set forth in Section 3.5(a) of the Indenture.

"Relevant Information" means any information provided to the Trustee, the Calculation Agent or the Paying Agent in writing by any Service Provider retained from time to time by the Issuer pursuant to the Transaction Documents.

"Remaining Weighted Average Life" means, with respect to the Original Class A Notes on any Redemption Date, (a) the sum of the products of (i) each principal payment amount on the Original Class A Notes payable on each subsequent Payment Date (assuming the principal

balances are achieved at the times and in the amounts set forth in the Base Case Amortization Schedule) multiplied by (ii) the number of days remaining from the applicable Redemption Date until such subsequent Payment Date divided by (b) the Outstanding Principal Balance of the Original Class A Notes on such Redemption Date.

"Replacement Royalty Payments" means, in the event that either License Agreement terminates and the Parent, using commercially reasonable efforts, is able to commercialize the relevant Licensed Products either by itself or in an arrangement with one or more third parties in further licensing of the related Licensed IP (or any portion thereof), as such rights may revert back to the Parent under and subject to the terms and conditions of the relevant License Agreement, in the Indevus Field or the CollaGenex Field, as the case may be, in the Territory, any royalties and other payments, net of customary deductions, that may arise from such use of the Licensed IP (or any portion thereof) to develop, have developed, make, have made, use, have used, market, have marketed, commercialize, have commercialized, offer for sale, sell, have sold, import and have imported the relevant Licensed Products in the Indevus Field or the CollaGenex Field, as the case may be, including all royalties or other payments payable by the Parent or any other Person to the Issuer pursuant to the Residual License Agreements. Notwithstanding the foregoing, if a License Agreement terminates and the Parent commercializes the relevant Licensed Product by itself, either directly or through any contract sales force, then Replacement Royalty Payments shall only be an amount equivalent to the royalty that would have been payable by the relevant Counterparty, net of all deductions and adjustments, if such License Agreement (as of the date of such termination) were still in effect and such commercialization was effected by such Counterparty.

"Resale Restriction Termination Date" has the meaning set forth in the Private Placement Legend.

"Residual License" has the meaning set forth in Section 2.2 of each Residual License Agreement.

"Residual License Agreements" means the Indevus Residual License Agreement and the CollaGenex Residual License Agreement.

"Responsible Officer" means (a) with respect to the Trustee, any officer within the Corporate Trust Office, including any principal, vice president, managing director, director, manager, associate or other officer of the Trustee customarily performing functions similar to those performed by any of the above-designated officers and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject, (b) with respect to the Issuer, any officer of the Manager or person designated by the board of directors of the Manager as a Responsible Officer for purposes of the Transaction Documents, and (c) with respect to the Parent, an officer of the Parent.

"Reverted IP" means the SLI Intellectual Property, with respect to the Indevus Residual License Agreement, and the SLI Technology, with respect to the CollaGenex Residual License Agreement, in each case, as may be reverted back to the Parent as of the Termination Date under the terms of the Subject License Agreement, subject to any Surviving Rights. For the avoidance

of doubt, the term "Reverted IP" shall not include any technology or intellectual property right of the Parent not expressly licensed or sublicensed to the Subject Counterparty (including any reserved rights of the Parent) under the terms and conditions of the Subject License Agreement, whether existing prior to or developed or acquired after the effective date of the Subject License Agreement.

"Royalty Payments" means all royalties and other income, payments and reimbursements paid, owed, accrued or otherwise required to be paid by Counterparties to the Parent or the Issuer, as the case may be, pursuant to, and subject to the terms and conditions of, the License Agreements, any amounts payable to or retained by the Parent under the License Agreements in respect of third party infringement (after taking into account and first deducting costs and expenses of the Parent and Counterparties in prosecuting such infringement), and any additional payments or consideration paid to the Parent or the Issuer, as the case may be, in connection with any amendment, restatement, supplement, modification, waiver or replacement of the License Agreements.

"Rule 144A" means Rule 144A under the Securities Act.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto or, if such division or its successor shall for any reason no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized statistical rating organization (within the meaning ascribed thereto by the Exchange Act) designated by the Issuer.

"Sale Price" has the meaning set forth in Section 2.2(b) of the Purchase and Sale Agreement.

"SEC" means the U.S. Securities and Exchange Commission.

"Secured Obligations" has the meaning set forth in the Granting Clause of the Indenture.

"Securities Act" means the U.S. Securities Act of 1933, as amended.

"Security Interest" means the security interest granted or expressed to be granted in the Collateral pursuant to the Granting Clause of the Indenture and in the Issuer Pledged Equity pursuant to the Pledge and Security Agreement.

"Senior Claim" has the meaning set forth in Section 10.1(a) of the Indenture.

"Senior Class of Notes" means (a) so long as any Class A Notes are Outstanding, the Class A Notes, or (b) if no Class A Notes are Outstanding, the Class B Notes.

"Senior Trustee" means the Trustee, acting in its capacity as the trustee of the Senior Class of Notes.

"Service Providers" means the Servicer, the Trustee, the Independent Member, the Calculation Agent, the Paying Agent, the Registrar, the Operating Bank and any Person that becomes the Servicer, the Trustee, the Independent Member, the Calculation Agent, the Paying

Agent, the Registrar or the Operating Bank in accordance with the terms of the applicable agreement and, subject to the written approval of the Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, any other Person designated as a Service Provider by the Issuer.

"Servicer" means the Parent, acting in its capacity as servicer pursuant to the Servicing Agreement (or any other Person appointed by the Issuer to succeed the Parent as such or any successor thereto).

"Servicer Information" means, with respect to any Calculation Date, the written information provided by the Servicer under Section 3.1(c) of the Servicing Agreement with respect to such Calculation Date.

"Servicer Termination Event" means any one of the following events:

(i) the Servicer shall fail to pay any amount when due under the Servicing Agreement and such failure shall continue unremedied for five Business Days;

(ii) the Servicer shall fail to deliver the Distribution Report and the other required accompanying materials with respect to any Payment Date in accordance with the provisions of the Servicing Agreement within five Business Days of the date such Distribution Report and the other required accompanying materials are required to be delivered under the Servicing Agreement;

(iii) the Servicer shall fail to carry out its obligations under Section 3.1(c)(ii) of the Servicing Agreement that shall have or reasonably be expected to have a material adverse effect on the Noteholders;

(iv) the Servicer shall fail to carry out its obligations under Section 3.1(c)(v) of the Servicing Agreement in a commercially reasonable manner;

(v) the Servicer shall fail to carry out its obligations under Section 3.1(c)(viii), Section 3.1 (c)(ix) or Section 3.1(c)(x) of the Servicing Agreement;

(vi) the Servicer shall fail to observe or perform in any material respect any of the covenants or agreements on the part of the Servicer contained in the Servicing Agreement (other than for which provision is made in clauses (i) through (v) above) and such failure shall continue unremedied for a period of 30 days after the date on which (A) the Servicer shall have obtained knowledge of such failure or (B) written notice of such failure requiring the same to be remedied shall have been given to the Servicer by the Trustee, in each case that continues to materially adversely affect the Noteholders for such period;

(vii) a court having jurisdiction in the premises enters a decree or order for (i) relief in respect of the Servicer under any Applicable Law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization, examination, relief of debtors or other similar law in effect now or after the Closing Date, (ii) appointment of a receiver, liquidator, examiner, assignee, custodian, trustee, sequestrator or similar official

of the Servicer or (iii) the winding-up or liquidation of the affairs of the Servicer and, in each case, such decree or order shall remain unstayed or such writ or other process shall not have been stayed or dismissed within 90 days from entry thereof;

(viii) the Servicer (i) commences a voluntary case under any Applicable Law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization, examination, relief of debtors or other similar law in effect now or after the Closing Date, or consents to the entry of an order for relief in any involuntary case under any such law, (ii) consents to the appointment of or taking possession by a receiver, liquidator, examiner, assignee, custodian, trustee, sequestrator or similar official of the Servicer or for all or substantially all of the property and assets of the Servicer or (iii) effects any general assignment for the benefit of creditors;

(ix) the Servicer's business activities are terminated by any Governmental Authority;

(x) a material adverse change occurs in the financial condition or operations of the Servicer that is reasonably likely to have a Material Adverse Effect;

(xi) an Event of Default shall have occurred, other than an Event of Default solely caused by the Trustee, the Calculation Agent, the Paying Agent or the Registrar failing to perform any of its respective obligations under the Indenture or any other Transaction Document; or

(xii) the Parent sells, transfers, conveys, assigns, contributes or grants a majority of the Capital Securities of the Issuer to another Person or Persons.

"Services" means the services to be performed by the Servicer pursuant to the Servicing Agreement.

"Servicing Agreement" means the servicing agreement dated as of the Closing Date between the Issuer and the Parent.

"Servicing Fee" has the meaning set forth in Section 2.1 of the Servicing Agreement.

"Shortfall" has the meaning set forth in Section 3.5(a)(x) of the Indenture.

"SLI Intellectual Property" has the meaning set forth in the Indevus License Agreement.

"SLI Technology" has the meaning set forth in the CollaGenex License Agreement.

"Stated Rate of Interest" means, with respect to any class of the Notes for any Interest Accrual Period, the interest rate set forth in such class of Notes for such Interest Accrual Period.

"Subject Counterparty" means CollaGenex, with respect to the CollaGenex Residual License Agreement, and Indevus, with respect to the Indevus Residual License Agreement.

"Subject Field" means the CollaGenex Field, with respect to the CollaGenex Residual License Agreement, and the Indevus Field, with respect to the Indevus Residual License Agreement.

"Subject License Agreement" means the CollaGenex License Agreement, with respect to the CollaGenex Residual License Agreement, and the Indevus License Agreement, with respect to the Indevus Residual License Agreement.

"Subject Licensed Patents" means the CollaGenex Licensed Patents, with respect to the CollaGenex Residual License Agreement, and the Indevus Licensed Patents, with respect to the Indevus Residual License Agreement.

"Subject Products" means the CollaGenex Licensed Products, with respect to the CollaGenex Residual License Agreement, and the Indevus Licensed Products, with respect to the Indevus Residual License Agreement.

"Subordinated Claim" has the meaning set forth in Section 10.1(a) of the Indenture.

"Subsidiary" means, with respect to any Person, any other Person of which more than 50% of the outstanding Voting Securities of such other Person (irrespective of whether at the time Capital Securities of any other class or classes of such other Person shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more other Subsidiaries of such Person or by one or more other Subsidiaries of such Person.

"Surviving Rights" means any residual or surviving rights of the Subject Counterparty or its then existing sublicensees (including any affiliates or subcontractors of the Subject Counterparty) under the terms and conditions of the Subject License Agreement after termination of the Subject License Agreement, including any wind-down rights provided thereunder.

"Taxes" means (i) any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind (together with any and all interest, penalties, loss, damage, liability, expense, additions to tax and additional amounts or costs incurred or imposed with respect thereto) now or hereafter imposed, levied, collected, withheld or otherwise assessed by the U.S. or by any state, local, foreign or other Governmental Authority (or any subdivision or agency thereof) or other taxing authority, including taxes or other charges on or with respect to income, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth and similar charges and taxes or other charges in the nature of excise, deduction, withholding, ad valorem, stamp, transfer, value added, taxes on goods and services, escheat, gains taxes, license, registration and documentation fees, customs duties, tariffs and similar charges, (ii) liability for such a tax that is imposed by reason of U.S. Treasury Regulation Section 1.1502-6 or similar provision of law and (iii) liability for the payment of any amounts as a result of any express or implied obligation to indemnify any other Person with respect to the payment of any amounts described in clause (i) or clause (ii).

"Temporary Regulation S Global Note" has the meaning set forth in Section 2.1(b) of the Indenture.

"Termination Date" means any date on which the Subject License Agreement has been terminated under the terms thereof.

"Territory" means worldwide.

"Transaction Documents" means the Indenture, the Notes, the Purchase and Sale Agreement, the Bill of Sale, the Residual License Agreements, the Servicing Agreement, the Pledge and Security Agreement and the Note Purchase Agreements, and each other agreement pursuant to which the Trustee (or its agent) is granted a Lien to secure the obligations under the Indenture or the Notes.

"Transaction Expenses" means the out-of-pocket expenses payable by the Issuer in connection with (a) the issuance of the Original Class A Notes, including placement fees, any initial fees payable to Service Providers and the fees and expenses of Pillsbury Winthrop Shaw Pittman LLP, counsel to the Noteholders in connection with the offering and issuance of the Original Class A Notes, as set forth in the Note Purchase Agreements and (b) the offering and issuance of any Class B Notes or any Refinancing Notes, to the extent specified in the Manager Resolution authorizing such offering and issuance.

"Trustee" means U.S. Bank National Association, a national banking association, as initial trustee of the Notes under the Indenture, and any successor appointed in accordance with the terms of the Indenture.

"Trustee Closing Account" means the account of the Issuer maintained with the Trustee at U.S. Bank National Association, ABA No. , Account No. , Ref. TCD Royalty Collection Acct., Attention: Josh Tripi.

"Trust Indenture Act" means the U.S. Trust Indenture Act of 1939, as amended.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that, if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the Liens granted to the Trustee pursuant to the applicable Transaction Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of New York, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Transaction Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

"U.S." or "United States" means the United States of America, its 50 states, each territory thereof and the District of Columbia.

"U.S. Person" means a U.S. person within the meaning of Regulation S.

"U.S. Treasury" means the U.S. Department of the Treasury.

"Voluntary Bankruptcy" means (i) an admission in writing by the Issuer of its inability to pay its debts generally or a general assignment by the Issuer for the benefit of creditors, (ii) the filing of any petition or answer by the Issuer seeking to adjudicate itself as bankrupt or insolvent,

or seeking for itself any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of the Issuer or its debts under any law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization, examination, relief of debtors or other similar law now or hereafter in effect, or seeking, consenting to or acquiescing in the entry of an order for relief in any case under any such law, or the appointment of or taking possession by a receiver, trustee, custodian, liquidator, examiner, assignee, sequestrator or other similar official for the Issuer or for any substantial part of its property, or (iii) corporate or other entity action taken by the Issuer to authorize any of the actions set forth above.

"Voting Securities" means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

EXHIBIT A

FORM OF ORIGINAL CLASS A NOTE

[INSERT THE APPLICABLE LEGEND(S) SET FORTH IN SECTION 2.2]

TCD ROYALTY SUB LLC

TCD PhaRMA[SM] Secured 16% Notes Due 2024

Class A

No. CUSIP:

U.S.$75,000,000

TCD ROYALTY SUB LLC, a limited liability company organized under the laws of the State of Delaware (herein referred to as the "Issuer"), for value received, hereby promises to pay to CEDE & CO., or registered assigns, the principal amount set forth on Schedule I hereto on or before April 15, 2024 (the "Final Legal Maturity Date") and to pay interest quarterly in arrears on the Outstanding Principal Balance hereof at a rate per annum equal to 16% (the "Stated Rate of Interest"), from the date hereof until the Outstanding Principal Balance hereof is paid or duly provided for, which interest shall be due and payable on each Payment Date; provided, that, with respect to any Payment Date (other than the Final Legal Maturity Date or any Redemption Date), any such interest in excess of the portion of the Available Collections Amount available to pay such interest on such Payment Date and funds in the Interest Reserve Account and the Capital Account (and available for interest payments pursuant to Section 3.8 of the Indenture (as defined below)) shall be payable in full not later than the immediately succeeding Payment Date (together with Additional Interest on the amount of unpaid interest from the Payment Date on which it was due until the date on which it is paid, compounded quarterly on each Payment Date). Interest on this Note in each Interest Accrual Period shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. If this Note is issued in the form of a Global Note, in accordance with the requirements of DTC, the Issuer will cause the Trustee to authenticate an additional Note or additional Notes in the appropriate principal amount such that neither this Note nor any other such Note may exceed an aggregate principal amount of U.S.$500,000,000 at any time.

This Note is a duly authorized issue of Notes of the Issuer, designated as its "TCD PhaRMA[SM] Secured 16% Notes Due 2024", issued under the Indenture dated as of April 15, 2008 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Indenture"), between the Issuer and U.S. Bank National Association, as trustee (including any successor appointed in accordance with the terms of the Indenture, the "Trustee"). The Indenture also provides for the issuance of Refinancing Notes and Class B Notes. All capitalized terms used in this Note and not defined herein shall have the respective meanings assigned to such terms in the Indenture. Reference is made to the Indenture and all indentures supplemental thereto for a statement of the respective rights and obligations thereunder of the Issuer, the Trustee and the Noteholders. This Note is subject to all terms of the Indenture.

The Issuer will pay the Outstanding Principal Balance of this Note on or prior to the Final Legal Maturity Date on the Payment Dates specified in the Indenture, subject to the availability of the Available Collections Amount therefor after making payments entitled to priority under Section 3.7 of the Indenture.

The indebtedness evidenced by the Original Class A Notes is, to the extent and in the manner provided in the Indenture, senior in right of payment to the right of payment of the Class B Notes, and this Note is issued subject to such provisions. The maturity of this Note is subject to acceleration upon the occurrence and during the continuance of the Events of Default specified in the Indenture.

The Issuer may redeem all or part of the Outstanding Principal Balance of this Note prior to the Final Legal Maturity Date on the Payment Dates, in the amounts and under the circumstances specified in the Indenture.

Any amount of Premium or interest on this Note that is not paid when due shall, to the fullest extent permitted by Applicable Law, bear interest ("Additional Interest") at an interest rate per annum equal to the Stated Rate of Interest from the date when due until such amount is paid or duly provided for, compounded quarterly and payable on the next succeeding Payment Date, subject to the availability of the Available Collections Amount therefor after making payments entitled to priority under Section 3.7 of the Indenture.

This Note is and will be secured by the Collateral and the Issuer Pledged Equity pledged as security therefor as provided in the Indenture and the Pledge and Security Agreement, respectively.

Subject to and in accordance with the terms of the Indenture, there will be distributed quarterly from the Collection Account on each Payment Date commencing on July 15, 2008, to the Person in whose name this Note is registered at the close of business on the Record Date with respect to such Payment Date, in the manner specified in Section 3.7 of the Indenture, such Person's pro rata share (based on the aggregate percentage of the Outstanding Principal Balance of the Original Class A Notes held by such Person) of the aggregate amount distributable to all Noteholders of Original Class A Notes on such Payment Date.

All amounts payable in respect of this Note shall be payable in U.S. dollars in the manner provided in the Indenture to the Noteholder hereof on the Record Date relating to such payment. The final payment with respect to this Note, however, shall be made only upon presentation and surrender of this Note by the Noteholder or its agent at an office or agency of the Trustee or Paying Agent in New York City. At such time, if any, as this Note is issued in the form of one or more Definitive Notes, payments on a Payment Date shall be made by check mailed to each Noteholder of such a Definitive Note on the applicable Record Date at its address appearing on the Register maintained with respect to the Original Class A Notes or, alternatively, upon application in writing to the Trustee or other Paying Agent, not later than the applicable Record Date, by a Noteholder, any such payments shall be made by wire transfer to an account designated by such Noteholder at a financial institution in New York City; provided, that, in each case, the final payment with respect to any such Definitive Note shall be made only upon presentation and surrender of such Definitive Note by the Noteholder or its agent at an office or

agency of the Trustee or Paying Agent in New York City. Notwithstanding the foregoing, payments in respect of this Note issued in the form of a Global Note (including principal, Premium, if any, and interest) shall be made by wire transfer of immediately available funds to the account specified by DTC. Any reduction in the Outstanding Principal Balance of this Note (or any one or more predecessor Original Class A Notes) effected by any payments made on any Payment Date shall be binding upon all future Noteholders of this Note and of any Original Class A Note issued upon the registration of transfer of, in exchange or in lieu of or upon the refinancing of this Note, whether or not noted hereon.

The Noteholder of this Note agrees, by acceptance hereof, to pay over to the Trustee any money (including principal, Premium, if any, and interest) paid to it in respect of this Note in the event that the Trustee, acting in good faith, determines subsequently that such monies were not paid in accordance with the priority of payment provisions of the Indenture or as a result of any other mistake of fact or law on the part of the Trustee in making such payment.

This Note is issuable only in registered form. A Noteholder or Beneficial Holder may transfer this Note or a Beneficial Interest herein only by delivery of a written application to the Registrar stating the name of the proposed transferee, a Confidentiality Agreement duly executed and delivered to the Registrar by such transferee and otherwise complying with the terms of the Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Noteholder only upon, final acceptance and registration of the transfer by the Registrar in the Register. When this Note is presented to the Registrar with a request to register the transfer or to exchange it for an equal principal amount of Original Class A Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including, in the case of a transfer, that such Note is duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and Registrar duly executed by the Noteholder thereof or by an attorney who is authorized in writing to act on behalf of the Noteholder and that the transferee has executed and delivered to the Registrar a Confidentiality Agreement). No service charge shall be made for any registration of transfer or exchange of this Note, but the party requesting such new Original Class A Note or Original Class A Notes may be required to pay a sum sufficient to cover any transfer Tax or similar governmental charge payable in connection therewith.

Prior to the registration of transfer of this Note, the Issuer and the Trustee may deem and treat the Person in whose name this Note (as of the day of determination or as of such other date as may be specified in the Indenture) is registered as the absolute owner and Noteholder hereof for the purpose of receiving payment of all amounts payable with respect to this Note and for all other purposes, and neither the Issuer nor the Trustee shall be affected by notice to the contrary.

The Indenture permits the amendment or modification of the Indenture and the Original Class A Notes by the Issuer with the consent of the Noteholders of a majority of the Outstanding Principal Balance of all Notes (voting or acting as a single class). However, no amendment or modification of the Indenture or the Original Class A Notes may, without the consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby, (i) reduce the percentage of Noteholders of any such class of Notes required to take or approve any action under the Indenture, (ii) reduce the amount or change the time of payment of any amount owing or payable with respect to any such class of Notes or change the rate of interest or

change the manner of calculation of interest payable with respect to any such class of Notes, (iii) alter or modify the provisions with respect to the Collateral for the Notes or the manner of payment or the order of priorities in which payments or distributions under the Indenture will be made as between the Noteholders of such Notes and the Issuer or as among the Noteholders or (iv) consent to any assignment of the Issuer's rights to a party other than the Trustee for the benefit of the Noteholders. Any such amendment or modification shall be binding on every Noteholder hereof, whether or not notation thereof is made upon this Note.

The subordination provisions contained in Article X of the Indenture may not be amended or modified without the consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby.

The Indenture also contains provisions permitting the Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, on behalf of the Noteholders of all of the Original Class A Notes, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver shall be conclusive and binding upon all present and future Noteholders of this Note and of any Original Class A Note issued upon the registration of transfer of, in exchange or in lieu of or upon the refinancing of this Note, whether or not notation of such consent or waiver is made upon this Note.

The Original Class A Notes are issuable only in registered form in denominations as provided in the Indenture, subject to certain limitations therein set forth.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Unless the certificate of authentication hereon has been executed by the Trustee whose name appears below by manual or facsimile signature, this Note shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Issuer has caused this Note to be signed manually or by facsimile by its duly authorized Manager.

Date: April 15, 2008

TCD ROYALTY SUB LLC

By: Supernus Pharmaceuticals, Inc., its Manager

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Note is one of the TCD PhaRMA[SM] Secured 16% Notes Due 2024 designated above and referred to in the within-mentioned indenture.

Date: April 15, 2008

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s), assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

(Please print or typewrite name and address including zip code of assignee)

the within Note and all rights thereunder, hereby irrevocably constituting and appointing attorney to transfer said Note on the books of the Issuer with full power of substitution in the premises.

Date Signature of Transferor

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

[THE FOLLOWING PROVISIONS TO BE INCLUDED ON ALL NOTES]

In connection with any transfer of the within-mentioned Note, the undersigned confirms without utilizing any general solicitation or general advertising that:

[Check One]

☐ (a) the within-mentioned Note is being transferred in compliance with the exemption from registration under the Securities Act provided by Rule 144A thereunder

☐ (b) the within-mentioned Note is being transferred other than in accordance with clause (a) above and documents are being furnished that comply with the conditions of transfer set forth in the within-mentioned Note and the Indenture

If neither of the foregoing boxes is checked, the Trustee or other Registrar shall not be obligated to register the within-mentioned Note in the name of any Person other than the Noteholder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.11 of the Indenture shall have been satisfied.

Date

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

TO BE COMPLETED BY PURCHASER IF CLAUSE (a) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing the within-mentioned Note for its own account or an account with respect to which it exercises sole investment discretion and that each of it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A and has executed and delivered to the Registrar a Confidentiality Agreement.

Dated: _____

_____
Executive Officer

SCHEDULE I

TCD ROYALTY SUB LLC
TCD PhaRMA[SM] Secured 16% Notes Due 2024

No.

Date	Principal Amount	Notation Explaining Principal Amount Recorded	Authorized Signature of Trustee or Custodian

EXHIBIT B

FORM OF RESALE CONFIDENTIALITY AGREEMENT

No.

TCD Royalty Sub LLC
c/o Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850

, 20

RESALE CONFIDENTIALITY AGREEMENT

In connection with our possible interest in the purchase of the TCD PhaRMA[SM] Secured 16% Notes due 2024 (the "Notes") issued by TCD Royalty Sub LLC, a Delaware limited liability company (the "Company") (the "Transaction"), we have requested a copy of the Private Placement Memorandum, dated April 9, 2008, relating to the Notes (the "Private Placement Memorandum"). In addition to receiving the Private Placement Memorandum, we may also request that you or your directors, officers, managers, members, partners, employees, affiliates, assigns, representatives (including, without limitation, financial advisors, attorneys and accountants), investors, agents or similar persons (collectively, "your Representatives") furnish us or our directors, officers, managers, members, partners, employees, affiliates, assigns, representatives (including, without limitation, financial advisors, attorneys and accountants), investors, agents or similar persons (collectively, "our Representatives") with certain information relating to the Company, the Transaction and the rights acquired by the Company from Supernus Pharmaceuticals, Inc., a Delaware corporation (the "Parent"). All such information (whether written or oral, and whether tangible or electronic) furnished on or after the date hereof by you or your Representatives to us or our Representatives, including, without limitation, the Private Placement Memorandum, and any materials containing, based on or derived from any such information (including, without limitation, any financial models or other analyses, compilations, forecasts, studies or other documents based thereon) prepared by us or our Representatives in connection with our or our Representatives' review of, or our interest in, the Transaction is hereinafter referred to as the "Information". The term Information will not, however, include information that (i) is already known by us at the time such information is disclosed unless such information was disclosed to us under a confidentiality agreement with you that was entered into in connection with our earlier consideration of the Notes, (ii) is or thereafter becomes available in the public domain, other than by breach by us or our Representatives of our obligations hereunder, (iii) is obtainable by us from another source without, to our knowledge, breach of such source's obligations of confidentiality to you or (iv) is independently developed by our Representatives who have not had access to such information.

As a condition to receiving the Information, we hereby agree as follows:

1. We and our Representatives hereby agree (i) to keep the Information confidential, (ii) that the Information will be used solely for the purpose of evaluating, entering into, monitoring or enforcing the Transaction and (iii) not to, without your prior written consent,

disclose any Information in any manner whatsoever; provided, however, that we may reveal the Information to (a) our Representatives who need to know the Information for the purpose of evaluating, entering into, monitoring or enforcing the Transaction or (b) third parties in order to comply with any applicable law, rule, regulation or legal process or pursuant to requests of governmental authorities or regulatory agencies having oversight over us or our Representatives, and only after compliance with paragraph 3 below, provided, that all of such persons listed in clause (a) above shall agree to keep such information confidential, and only to use such information, on reasonable and customary terms that are substantially the same as the terms we are subject to, and, provided, further, that we shall be wholly responsible for the full compliance of such confidentiality agreement by any of the persons listed in clause (a) above to which we disclosed Information. Notwithstanding and without limitation of the foregoing, we and our Representatives agree not to reveal Information to advisors who are principally engaged in the business of investment banking, capital markets or securitization of financial assets without the prior written consent of your Representative, Morgan Stanley & Co. Incorporated ("Morgan Stanley").

2. We and our Representatives agree, whether or not the Transaction is consummated, not to (except as required by applicable law, rule, regulation or legal process or pursuant to requests of governmental authorities or regulatory agencies having oversight over us or our Representatives, and only after compliance with paragraph 3 below), without your prior written consent, disclose to any person the fact that the Information or the Transaction exists or has been made available, that we are considering the Transaction, or that discussions or negotiations are taking or have taken place concerning the Transaction or any term, condition or other fact relating to the Transaction or such discussions or negotiations, including, without limitation, the status thereof.

3. In the event that we or any of our Representatives are required by applicable law, rule, regulation or legal process or pursuant to requests of governmental authorities or regulatory agencies having oversight over us or our Representatives to disclose any of the Information, we agree to use commercially reasonable efforts to notify you promptly (unless such notice is not permitted by applicable law, rule or regulation) so that you may seek, at your own expense, a protective order or other appropriate remedy or, in your sole discretion, waive compliance with the terms of this Resale Confidentiality Agreement. In the event that no such protective order or other remedy is obtained, or that you do not waive compliance with the terms of this Resale Confidentiality Agreement, we agree to furnish only that portion of the Information that we are advised by counsel (which may be internal counsel) is legally required and will exercise all commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

4. If we determine not to proceed with the Transaction or we cease to have an interest arising from the Transaction, we will promptly inform you of that decision or event and, in that case, and at any time upon your request or the request of any of your Representatives, we and our Representatives agree to (i) promptly deliver to you all copies of the Information in our possession (except as described in the following proviso), (ii) promptly destroy all copies of any written Information (whether in tangible or electronic form, or otherwise) that we and our Representatives have created, including, without limitation, any notes we have taken on any discussions with you or your Representatives, and upon your request such destruction shall be

certified in writing (including, without limitation, via email) to you by an authorized officer supervising such destruction (provided in each case that an appropriate person within our organization may retain one copy of the Information, subject to the provisions of this Resale Confidentiality Agreement, if required to comply with internal record retention policies or regulatory considerations, in which case, regardless of paragraph 13 below, the confidentiality provisions of this Resale Confidentiality Agreement will continue to apply to such Information for so long as it is retained by such person or any other of our Representatives) and (iii) certify that clauses (i) and (ii) above have been complied with. Any oral Information will continue to be subject to the terms of this Resale Confidentiality Agreement.

5. We acknowledge that you have not updated, and have no obligation to update, the Private Placement Memorandum in any respect for events, developments or circumstances (including, without limitation, the level of royalty payments for Sanctura® XR or Oracea® or the sales of Sanctura® XR or Oracea® compared to the sales forecasts contained in the Independent Consultant's Report included as Appendix A to the Private Placement Memorandum). We further acknowledge that neither you nor any of your Representatives, nor any of your or their respective officers, directors, managers, members, partners, employees, agents or controlling persons within the meaning of Section 20 of the Securities Exchange Act of 1934, as amended, makes any express or implied representation or warranty as to the accuracy or completeness of the Information, and we agree that no such person will have any liability relating to the Information or for any errors therein or omissions therefrom. We further agree that we are not entitled to rely on the accuracy or completeness of the Information.

6. We acknowledge that we are aware of the restrictions imposed by the United States securities laws on the purchase or sale of securities of an issuer or an affiliate or controlling person of the issuer while in possession of material, non-public information and on the communication of such information to any other person. We represent that we maintain effective internal procedures with respect to maintaining the confidentiality and use of the Information and that we will not use the Information for any purpose in violation of United States securities laws or any other applicable laws. We further represent that we are a qualified institutional buyer (as defined in Rule 144A under the Securities Act of 1933, as amended) or an institutional accredited investor (as defined in subparagraph (a) (1), (2), (3) or (7) of Rule 501 under the Securities Act of 1933, as amended).

7. We acknowledge that remedies at law may be inadequate to protect you against any actual or threatened breach of this Resale Confidentiality Agreement by us or our Representatives, and, without prejudice to any other rights and remedies otherwise available to you, we agree to permit you to seek the granting of injunctive relief in your favor without proof of actual damages.

8. We acknowledge and agree that each of the Parent, Indevus Pharmaceuticals, Inc., CollaGenex Pharmaceuticals, Inc. and Morgan Stanley is a third party beneficiary of this Resale Confidentiality Agreement and shall have the right to enforce any provision of this Resale Confidentiality Agreement.

9. We agree that no failure or delay by you in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise

thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. This Resale Confidentiality Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. This Resale Confidentiality Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of law thereof (other than the provisions of Section 5-1401 of the General Obligations Law of the State of New York).

12. This Resale Confidentiality Agreement contains the entire agreement between you and us concerning the confidentiality of the Information, and no modifications of this Resale Confidentiality Agreement or waiver of the terms and conditions hereof will be binding upon you or us, unless approved in writing by each of you and us.

13. This Resale Confidentiality Agreement will terminate (i) if we do not proceed with the Transaction, 24 months after the date hereof, and (ii) if we do proceed with the Transaction, 24 months from the date we cease to have an interest arising from the Transaction, whether through a sale of our interest, the maturity or repayment of our interest or otherwise.

14. If we propose to purchase, transfer, sell or otherwise dispose of any of our interest at any time, we agree to (i) abide by any transfer restrictions described in the Private Placement Memorandum, (ii) inform any proposed transferee of such interest of any such transfer restrictions, including, without limitation, any requirement that such proposed transferee enter into a resale confidentiality agreement with the Company, and (iii) not furnish any Information to such proposed transferee. We acknowledge that the servicer for the Transaction shall be responsible for the delivery of all Information to any such prospective transferee following execution by such prospective transferee of an appropriate resale confidentiality agreement with the Company.

15. This Resale Confidentiality Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

Please confirm your agreement with the foregoing by signing and returning to the undersigned the duplicate copy of this Resale Confidentiality Agreement enclosed herewith. **In accordance with Section 2.11(j) of the Indenture dated as of April 15, 2008 (the "Indenture"), made by and between you and U.S. Bank National Association, as trustee, we will provide a fully executed copy of this Resale Confidentiality Agreement to the Registrar (as defined in the Indenture) promptly after executing this Resale Confidentiality Agreement.**

Very truly yours,

_____

[Please insert prospective purchaser's name on line above]

By: _____

Name:
Title:
Address:

EXHIBIT C

AGENTS FOR SERVICE OF PROCESS

Party	Jurisdiction	Appointed Agent
TCD Royalty Sub LLC	Delaware	ATA Corporate Services LLC

EXHIBIT D

COVERAGE OF DISTRIBUTION REPORT

(i) With respect to the current Payment Date, (A) the balances on deposit in the Collection Account and any other Account established under the Indenture on the Calculation Date immediately preceding the prior Payment Date (or, with respect to the first Payment Date, on the Closing Date) (the "Preceding Calculation Date"), (B) the aggregate amounts of deposits into and withdrawals from the Collection Account and any other Account established under the Indenture from but excluding the Preceding Calculation Date to and including the Calculation Date immediately preceding the Payment Date (the "Current Calculation Date") and (C) the balances on deposit in the Collection Account and any other Account established under the Indenture on the Current Calculation Date.

(ii) Analysis of Collection Account activity from the Preceding Calculation Date to the Current Calculation Date

Balance on the Preceding Calculation Date

Collections from but excluding the Preceding Calculation Date to and including the Current Calculation Date ("Current Collections")

Aggregate Note payments from but excluding the Preceding Calculation Date to and including the Current Calculation Date, including pursuant to Section 2.5(e)

Expense payments payable on the Current Calculation Date ("Current Expenses") Balance on the Current Calculation Date

(iii) Amount, if any, to be transferred from the Interest Reserve Account to the Collection Account on the current Payment Date

(iv) Payments on the current Payment Date

Current Expenses
Servicing Fee
Interest Amount
Additional Interest, if any
Principal payments, if any

(v) Outstanding Principal Balance

Opening Outstanding Principal Balance
Principal payments, if any, made on the current Payment Date
Closing Outstanding Principal Balance

(vi) Amount distributed to the Issuer from the Collection Account, if any, with respect to the current Payment Date

(vii) A withholding obligation may be included

(viii) Appropriate modifications will be made to contemplate any Refinancing Notes and/or Class B Notes

EXHIBIT E

UCC FINANCING STATEMENTS

1. A Form UCC-1 Financing Statement will be filed with the Secretary of State of the State of Delaware naming the Issuer as debtor and the Trustee as secured party.

EXHIBIT F

FORM OF CERTIFICATE OF EUROCLEAR OR CLEARSTREAM FOR PERMANENT REGULATION S GLOBAL NOTE

, 20

U.S. Bank National Association,
as Trustee
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (TCD Royalty Sub LLC)

TCD Royalty Sub LLC
c/o Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Jack Khattar

Re: TCD Royalty Sub LLC (the "Issuer")

Ladies and Gentlemen:

This letter relates to U.S.$ principal amount of TCD PhaRMA[SM] Secured 16% Notes Due 2024 of the Issuer (the "Notes") represented by a Note that bears a legend (the "Legended Note") outlining restrictions upon transfer of such Legended Note. Pursuant to Section 2.1 of the Indenture dated as of April 15, 2008 (the "Indenture") relating to the Notes and certain other classes of notes of the Issuer, we hereby certify that we are (or we will hold such securities on behalf of) an Institutional Accredited Investor (as defined in the Indenture) outside the United States to whom the Notes may be transferred in accordance with Rule 904 of Regulation S promulgated under the U.S. Securities Act of 1933, as amended ("Regulation S"). Accordingly, you are hereby requested to exchange the Legended Note for a Permanent Regulation S Global Note (as defined in the Indenture) representing an identical principal amount of Notes, all in the manner provided for in the Indenture.

Each of you is entitled to rely upon this letter and is irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby. Certain terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Euroclear Bank S.A./N.V.][Clearstream Banking]

By: _____
Authorized Signatory

EXHIBIT G

FORM OF CERTIFICATE OF BENEFICIAL OWNER OF TEMPORARY REGULATION S GLOBAL NOTE

Euroclear Bank S.A./N.V.
[Address]

AND/OR

Clearstream Banking
[Address]

Re: TCD Royalty Sub LLC (the "Issuer")

Reference is hereby made to the Indenture, dated as of April 15, 2008 (the "Indenture"), made by and between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to U.S.$ principal amount of TCD PhaRMA[SM] Secured 16% Notes Due 2024 that are held in the form of a Beneficial Interest in the Temporary Regulation S Global Note (CUSIP No.) through DTC by the undersigned (the "Holder") in the name of . The Holder of such Temporary Regulation S Global Note hereby requests the receipt of payments due and payable [on the applicable Payment Date] pursuant to Section 2.5 of the Indenture.

The Holder hereby represents and warrants that it (i) is an Institutional Accredited Investor, (ii) is not a U.S. Person, (iii) does not hold the above-referenced Temporary Regulation S Global Note for the account or benefit of a U.S. Person (other than a distributor) and (iv) has executed and delivered to the Registrar a Confidentiality Agreement. Certain terms in this certificate not otherwise defined in the Indenture have the meanings given to them in Regulation S.

This certificate and the statements contained herein are made for your benefit and the benefit of the Paying Agent.

[Name of Holder]

By: _____
Name:
Title:

EXHIBIT H

FORM OF CERTIFICATE OF EUROCLEAR OR CLEARSTREAM FOR PAYMENTS

U.S. Bank National Association,
as Paying Agent
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (TCD Royalty Sub LLC)

Re: TCD Royalty Sub LLC (the "Issuer")

Reference is hereby made to the Indenture, dated as of April 15, 2008 (the "Indenture"), made by and between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to U.S.$ principal amount of TCD PhaRMA[SM] Secured 16% Notes Due 2024 that are held in the form of a Beneficial Interest in the Temporary Regulation S Global Note (CUSIP No.) through DTC by the undersigned (the "Holder") in the name of . Certain Holders of the Beneficial Interests in such Temporary Regulation S Global Note have requested the receipt of payments due and payable [on the applicable Payment Date] pursuant to Section 2.5 of the Indenture.

We have received from such Holders certifications to the effect that they (i) are Institutional Accredited Investors, (ii) are not U.S. Persons, (iii) do not hold the above-referenced Temporary Regulation S Global Note for the account or benefit of U.S. Persons (other than distributors) and (iv) have executed and delivered to the Registrar a Confidentiality Agreement. Certain terms in this certificate not otherwise defined in the Indenture have the meanings given to them in Regulation S.

Accordingly, the Holders of the Beneficial Interests in the Temporary Regulation S Global Note are entitled to receive interest, principal and premium, if any, in accordance with the terms of the Indenture in the amount of U.S.$.

[Clearstream Banking][Euroclear Bank S.A./N.V.]

By: _____
Name:
Title:

EXHIBIT I

FORM OF CERTIFICATE OF PROPOSED TRANSFEROR

, 20

U.S. Bank National Association,
as Registrar
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (TCD Royalty Sub LLC)

TCD Royalty Sub LLC
c/o Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Jack Khattar

Re: TCD Royalty Sub LLC (the "Issuer")

Ladies and Gentlemen:

In connection with our proposed sale of U.S.$ aggregate principal amount of TCD PhaRMA[SM] Secured 16% Notes Due 2024 of the Issuer (the "Notes"), we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended ("Regulation S") and, accordingly, we represent that:

(1) the offer of the Notes was not made to a person in the U.S.;

(2) at the time the buy order was originated, the transferee was an institutional accredited investor (as defined in subparagraph (a) (1), (2), (3) or (7) of Rule 501 under the U.S. Securities Act of 1933, as amended) outside the U.S. or we and any person acting on our behalf reasonably believed that the transferee was an institutional accredited investor outside the U.S.;

(3) no directed selling efforts have been made by us in the U.S. in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the U.S. Securities Act of 1933; and

(5) the transferee has entered into the confidentiality agreement required in connection with the purchase of the Notes.

Each of you is entitled to rely upon this letter and is irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby. Certain terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____
Authorized Signatory

EXHIBIT J

FORM OF CERTIFICATE OF CERTAIN PROPOSED INSTITUTIONAL ACCREDITED INVESTOR TRANSFEREES

, 20

U.S. Bank National Association,
as Registrar
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (TCD Royalty Sub LLC)

TCD Royalty Sub LLC
1550 East Gude Drive
Rockville, Maryland 20850
Attention: Jack Khattar

Ladies and Gentlemen:

In connection with our proposed purchase of Notes (the "Notes") of TCD Royalty Sub LLC (the "Issuer"), we confirm that:

1. We have duly executed and delivered to the Registrar (as defined in that certain Indenture dated as of April 15, 2008 (the "Indenture") between the Issuer and U.S. Bank National Association, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof) a Resale Confidentiality Agreement and have subsequently received a copy of the Private Placement Memorandum dated April 9, 2008 (the "Private Placement Memorandum") relating to the Notes and such other information as we deem necessary in order to make our investment decision. We acknowledge that we have read and agreed to the matters stated in the section entitled "Transfer Restrictions" of such Private Placement Memorandum and the restrictions on duplication and circulation of such Private Placement Memorandum.

2. We understand that any subsequent transfer of the Notes is subject to certain restrictions and conditions set forth in the Private Placement Memorandum under "Transfer Restrictions" and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes except in compliance with, such restrictions and conditions and the U.S. Securities Act of 1933, as amended (the "Securities Act").

3. We understand that the offer and sale of the Notes have not been registered under the Securities Act, that the Notes will only be in the form of definitive physical certificates and that the Notes may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that, if we should sell any Notes in the future, we will do so only (1) (A) to the Issuer or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a qualified institutional buyer (as defined therein), (C) to an institutional accredited investor (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) ("Institutional

Accredited Investor") that, prior to such transfer, furnishes to the Trustee (as defined in the Indenture) a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Notes (the form of which letter can be obtained from the Trustee) and an opinion of counsel acceptable to the Issuer that such transfer is in compliance with the Securities Act, (D) to an Institutional Accredited Investor in an offshore transaction in compliance with Rule 904 of Regulation S under the Securities Act or (E) to an Institutional Accredited Investor after the relevant time period referred to in Rule 144 under the Securities Act expires, and we further agree to provide to any entity purchasing any of the Notes from us a notice advising such purchaser that resales of the Notes are restricted as stated herein and (2) in each case, in accordance with any applicable securities laws of any state in the U.S. or any other applicable jurisdiction and in accordance with the legend to be set forth in the Notes, which will reflect the substance of this paragraph.

4. We understand that, on any proposed resale of any Notes, we will be required to furnish to the Issuer and the Trustee such certifications, legal opinions and other information as the Issuer and the Trustee may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that a resale confidentiality agreement is required under the Indenture to be executed and delivered by any proposed transferee to whom we wish to sell any Notes.

5. We are an Institutional Accredited Investor and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are able to bear the economic risks of our or their investment.

6. We are acquiring the Notes purchased by us for our own account or for one or more accounts (each of which is an Institutional Accredited Investor) as to each of which we exercise sole investment discretion.

7. We are not acquiring the Notes with a view to distribution thereof or with any present intention of offering or selling the Notes, except as permitted above, provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control.

You, the Issuer and the Trustee are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

By: _____
Name:
Title

Exhibit 10.17

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "**Agreement**") dated as of January 26, 2011 (the "**Effective Date**") among **OXFORD FINANCE CORPORATION**, a Delaware corporation with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 ("**Oxford**"), as collateral agent (in such capacity, the "**Collateral Agent**"), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender (each a "**Lender**" and collectively, the "**Lenders**"), and **SUPERNUS PHARMACEUTICALS, INC.**, a Delaware corporation with offices located at 1550 East Gude Drive, Rockville, Maryland 20850 ("**Borrower**"), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

1.1 Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 14. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to "Dollars" or "$" are United States Dollars, unless otherwise noted.

2. LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loans.

(a) Availability. (i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate amount up to Fifteen Million Dollars ($15,000,000) according to each Lender's Term A Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term A Loan**", and collectively as the "**Term A Loans**"). After repayment, no Term A Loan may be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, solely upon request of the Borrower during the Second Draw Period, to make term loans to Borrower in an aggregate amount up to Ten Million Dollars ($10,000,000) according to each Lender's Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term B Loan**", and collectively as the "**Term B Loans**"; each Term A Loan or Term B Loan is hereinafter referred to singly as a "**Term Loan**" and the Term A Loans and the Term B Loans are hereinafter referred to collectively as the "**Term Loans**"). After repayment, no Term B Loan may be re-borrowed.

(b) Repayment. (i) Borrower shall make monthly payments of interest only commencing on the first (1st) Payment Date following the Funding Date of the Term A Loans, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term A Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty (30) months. All unpaid principal and accrued and unpaid interest with respect to the Term A Loans is due and payable in full on the Maturity Date. The Term A Loans may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(ii) Borrower shall make monthly payments of interest only commencing on the first (1st) Payment Date following the Funding Date of the Term B Loans, and continuing on the Payment Date of each

successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term B Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty (30) months. All unpaid principal and accrued interest with respect to the Term B Loans is due and payable in full on the Maturity Date. The Term B Loans may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other sums, that shall have become due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loan(s).

(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least thirty (30) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other sums, that shall have become due and payable, including Lenders' Expenses, if any, and interest at the Default Rate with respect to any past due amounts.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the day on which the Term Loan is made, and shall accrue on a Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percentage points (5.00%) above the rate that is otherwise applicable thereto (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a 360-day year consisting of twelve (12) months of thirty (30) days.

(d) Debit of Accounts. Collateral Agent and each Lender may debit the Designated Deposit Account and, if an Event of Default has occurred and is continuing, any of Borrower's deposit accounts, through automatic debit of such accounts, Automated Clearinghouse or other transfers, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. These debits shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all loan payments by Borrower hereunder shall be made to the respective Lender to which such payments are owed, in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly, in arrears, on the Payment Date of each month. Payments of principal and/or interest received after 11:00 a.m. Eastern time are

considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest made hereunder and pursuant to any other Loan Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

2.4 Secured Promissory Notes. Each Term Loan shall be evidenced by a Secured Promissory Note in the form attached as **Exhibit D** hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth herein. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender's Secured Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender's Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower hereunder or under any Secured Promissory Note to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

2.5 Fees. Borrower shall pay to Collateral Agent:

(a) Facility Fee. A fully earned, non refundable facility fee of Two Hundred Fifty Thousand Dollars ($250,000) to be shared between the Lenders pursuant to their respective Commitment Percentages; the Lenders hereby acknowledge and agree that Seventy Five Thousand Dollars ($75,000) of the facility fee was paid by Borrower prior to the Effective Date and shall be credited to each Lender as of the Effective Date;

(b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares; and

(d) Lenders' Expenses. All Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due; provided that Lenders shall not charge Lenders' Expenses after the Effective Date other than in connection with (x) matters which should have been but were not completed prior to the Effective Date; (y) waivers, consents, modifications, amendments and/or restatements initiated or otherwise requested by Borrower; and (z) the occurrence of an Event of Default.

2.6 Withholding. Payments received by Lenders from Borrower hereunder will be made free and clear of any withholding taxes. Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any such withholding or deduction from any such payment or other sum payable hereunder to Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Lenders with proof reasonably satisfactory to Lenders indicating that Borrower has made such withholding payment provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent shall consent to or shall have received, in form and substance satisfactory to Collateral Agent, such documents, and completion of such other matters, as Collateral Agent may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed signatures to the Loan Documents;

(b) duly executed signatures to the Warrants;

(c) duly executed signatures to Control Agreements with each domestic financial institution with which Borrower maintains bank and/or securities accounts;

(d) duly executed original Secured Promissory Notes in favor of each Lender according to its Term A Loan Commitment Percentage;

(e) the Operating Documents of Borrower and good standing certificates of Borrower certified by the Secretary of State of the State of Delaware and each state in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(f) the Perfection Certificate for Borrower and each Subsidiary of Borrower;

(g) duly executed signatures to an officer's certificate for Borrower, in a form acceptable to Collateral Agent;

(h) Collateral Agent shall have received certified copies, dated as of a recent date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(i) a landlord's consent executed in favor of Collateral Agent in respect of each of Borrower's leased locations;

(j) a copy of any applicable Registration Rights Agreement or Investors' Rights Agreement and any amendments thereto;

(k) a legal opinion of Borrower's counsel dated as of the Effective Date together with the duly executed signatures thereto;

(l) evidence satisfactory to Collateral Agent that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the benefit of the Lenders in accordance with their Pro Rata Share; and

(m) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

Signature pages for the documents required to be delivered pursuant to clauses (a) through (d), (f) through (i) and (k) above may be delivered to Collateral Agent in electronic form on the Closing Date, provided that the originals thereof are delivered to Collateral Agent within three (3) Business Days of the Closing Date.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt by Collateral Agent of an executed Payment/Advance Form in the form of **Exhibit B** attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, in all material respects on the date of the Payment/Advance Form and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) (i) there is no delay or rejection in the acceptance by the FDA of the New Drug Application filed with respect to SPN-538, and (ii) Borrower is continuing to pursue filing the New Drug Application with the FDA with respect to Epliga®; and

(d) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.3 Covenant to Deliver. Borrower agrees to deliver to Collateral Agent each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent of any such item shall not constitute a waiver by the Lenders of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic or facsimile notification, Borrower shall deliver to Lenders by electronic mail or facsimile a completed Payment/Advance Form executed by a Responsible Officer or his or her designee. Lenders may rely on any telephone notice given by a person whom Lenders believe is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to Borrower's Designated Deposit Account, an amount equal to its Term Loan Commitment.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Collateral Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this agreement to have priority to Collateral Agent's Lien. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower shall promptly notify Collateral Agent in a writing signed by Borrower of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral

Agent shall, at Borrower's sole cost and expense as soon as reasonably possible, but in no event later than thirty (30) days after such payment, release its Liens in the Collateral and all rights therein shall revert to Borrower.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Collateral Agent and, solely to the extent not performed by Collateral Agent, Lenders to file financing statements or take any other action required to prefect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's and each Lender's interest or rights hereunder, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower or any other Person, shall be deemed to violate the rights of Collateral Agent and Lenders under the Code. Such financing statements shall indicate the Collateral as described on Exhibit "A" hereto.

4.3 Pledge of Collateral. Borrower hereby pledges, assigns and grants to Collateral Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Effective Date, the certificate or certificates for the Shares will be delivered to Collateral Agent, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence of an Event of Default hereunder, Collateral Agent and/or Lender may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Collateral Agent and/or Lender and cause new certificates representing such securities to be issued in the name of Collateral Agent and/or Lender or their transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Shares. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows at all times (except as otherwise expressly provided):

5.1 Due Organization, Authorization: Power and Authority. Borrower and each of its Subsidiaries is duly existing and Borrower is in good standing (to the extent the concept of "good standing" exists under applicable law) in its jurisdiction of organization and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing (to the extent the concept of "good standing" exists under applicable law) in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to cause a Material Adverse Change. In connection with this Agreement, Borrower has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower (the "**Perfection Certificate**"). Borrower represents and warrants that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately set forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately set forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower has not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower or any Subsidiary is not now a Registered Organization but later becomes one, Borrower

shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, including the Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of its Subsidiaries or their respective properties is bound. Borrower is not in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to cause a Material Adverse Change.

5.2 Collateral.

(a) Borrower has good title to, has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and Borrower does not have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificate delivered to Collateral Agent in connection herewith with respect of which Borrower has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) As of the Effective Date, the Collateral is not in the possession of any third party bailee (such as a warehouse) except as disclosed in the Perfection Certificate, and, as of the Effective Date, no such third party bailee possesses components of the Collateral in excess of Three Hundred Thousand Dollars ($300,000). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificate on the Effective Date or as permitted pursuant to Section 7.2. In the event that Borrower, after the Effective Date, intends to store or otherwise deliver to a bailee any portion of the Collateral in excess of Three Hundred Thousand Dollars ($300,000), then Borrower will first receive the written consent of Collateral Agent and such bailee must execute and deliver a bailee agreement in form and substance reasonably satisfactory to Collateral Agent.

(c) All Inventory held and released for commercial sale by or for the benefit of Borrower is in all material respects of good and marketable quality, free from material defects.

(d) Borrower is the sole owner of the Intellectual Property it purports to own, except for non-exclusive licenses granted to its customers in the ordinary course of business. As of the Effective Date, to the best of Borrower's knowledge (i) each of Borrower's Patents is valid and enforceable and no part of Borrower's Intellectual Property has been judged invalid or unenforceable, in whole or in part, and (ii) as of the Effective Date, no claim has been made that any part of the Intellectual Property or any practice by Borrower violates the rights of any third party except to the extent such claim could not reasonably be expected to cause a Material Adverse Change. Except as noted on the Perfection Certificate, or in Section 6.04 of the Shire Agreement, as applicable, or with regard to TCD, Borrower is not a party to, nor is bound by, any material license or other agreement with respect to which Borrower is the licensee that (i) prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (ii) for which a default under or termination of which could interfere with Collateral Agent's and Lenders' right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and Lenders within ten (10) days of entering into or becoming bound by any such license or agreement (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Collateral Agent requests to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for (i) all such licenses or agreements to be deemed "Collateral" and for Collateral Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (ii)

Collateral Agent shall have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Collateral Agent's rights and remedies under this Agreement and the other Loan Documents.

5.3 Litigation. Except as disclosed on the Perfection Certificate, as of the Effective Date, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than Three Hundred Thousand Dollars ($300,000).

5.4 No Material Deterioration in Financial Condition; Financial Statements. As of the Effective Date, all consolidated financial statements for Borrower and its Subsidiaries delivered to Lenders fairly present, in all material respects the consolidated financial condition of Borrower and its Subsidiaries and the consolidated results of operations of Borrower and its Subsidiaries. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to Lenders.

5.5 Solvency. As of each Funding Date, the fair salable value of Borrower's assets (including goodwill minus disposition costs, but excluding TCD's assets) exceeds the fair value of its liabilities (excluding TCD's liabilities); Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.6 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. To the best of its knowledge, Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower nor, to the knowledge of Borrower, any of its Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. Neither Borrower nor, to the knowledge of Borrower, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

5.7 Subsidiaries; Investments. Borrower does not own any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower and its Subsidiaries have timely filed all required tax returns and reports, and Borrower and its Subsidiaries have timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and its Subsidiaries in all jurisdictions in which Borrower or its Subsidiaries are subject to taxes, including the United States, unless such taxes are being contested in accordance with the following sentence. Borrower and its Subsidiaries may defer payment of any contested taxes, provided that Borrower or such Subsidiary (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes

any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower or any of its Subsidiaries' prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower and its Subsidiaries have not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes.

5.10 Intentionally Omitted.

5.11 TCD Indebtedness. The obligations of TCD to the Note Holders is, and shall at all times during the term hereof continue to be, without recourse to Borrower.

5.12 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

6. AFFIRMATIVE COVENANTS

Borrower shall, and shall cause its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to cause a Material Adverse Change. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, the noncompliance with which could reasonably be expected to cause a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the benefit of the Lenders in accordance with their Pro Rata Share, in all of the Collateral. Borrower shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower.

6.2 Financial Statements, Reports, Certificates.

(a) Deliver to Lenders: (i) as soon as available, but no later than (i) forty-five (45) days after the last day of each January, and (ii) thirty (30) days after the last day of each month other than (x) January and (y) the last month of each fiscal quarter, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent; (ii) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the

financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion; provided that, prior to a Qualified Financing such financial statements may be delivered no later than one hundred twenty (120) days after the last day of Borrower's fiscal year; (iii) as soon as available after approval thereof by Borrower's Board of Directors, but no later than ten (10) days after the last day of each of Borrower's fiscal years, Borrower's financial projections for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual projections shall be set forth in a month-by-month format (such annual financial projections as originally delivered to Collateral Agent and the Lenders are referred to herein as the "**Annual Projections**"); (iv) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or holders of Subordinated Debt; (v) prompt notice of (A) any material change in the composition of the Intellectual Property, and (B) prompt notice of Borrower's knowledge of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property; (vi) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each deposit account or securities account maintained by Borrower or any Subsidiary, which account statements may be provided to Collateral Agent by Borrower or directly from the applicable bank(s), and (vii) other financial information as reasonably requested by Collateral Agent or any Lender.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than (i) forty-five (45) days after the last day of each January, and (ii) thirty (30) days after the last day of each month other than (x) January and (y) the last month of each fiscal quarter, deliver to Collateral Agent, (1) a duly completed Compliance Certificate signed by a Responsible Officer, and (2) an updated Schedule 1 to the landlord lien waiver among ARE-East Gude Lease, LLC, Borrower and the Lenders.

(c) Upon Borrower becoming subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address.

(d) Keep proper books of record and account in accordance with GAAP in all material respects, which shall be true, correct and complete in all material respects. Borrower shall allow, at the sole cost of Collateral Agent and Lenders (except while an Event of Default has occurred and is continuing), Collateral Agent and Lenders during regular business hours upon reasonable prior notice (except while an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than once every twelve months unless an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date or as may reasonably be established thereafter in connection with the commercialization of Borrower's products. Borrower must promptly notify Collateral Agent of all returns, recoveries, disputes and claims that involve more than Three Hundred Thousand Dollars ($300,000) individually or in the aggregate in any calendar year.

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.5 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Collateral Agent and Lenders may reasonably request.

Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent and Horizon Technology Finance Management LLC, as agent for Horizon ("HTFM"), as lender loss payees and waive subrogation against Collateral Agent and HTFM, and all liability policies shall show, or have endorsements showing, Collateral Agent and HTFM, as additional insureds. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall endeavor to give Collateral Agent and HTFM at least thirty (30) days notice before canceling, amending, or declining to renew its policy. At Collateral Agent's and/or HTFM's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's or HTFM's option, be payable to Collateral Agent and HTFM on behalf of the Lenders on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Collateral Agent and HTFM, Collateral Agent or HTFM may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or HTFM deems prudent.

6.6 Operating Accounts.

(a) Maintain all of Borrower's and all of its Subsidiaries' operating and other deposit accounts and securities accounts with the institutions identified on the Perfection Certificate, provided that all such accounts are subject to a Control Agreement in favor of Collateral Agent**.**

(b) Borrower and its Subsidiaries shall provide Collateral Agent and Lenders five (5) days' prior written notice before establishing any Collateral Account at or with any Person other than the institutions identified on the Perfection Certificate as of the Effective Date. In addition, for each Collateral Account that Borrower or any of its Subsidiaries any time maintains, Borrower shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's and Lenders' Lien in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without prior written consent of Collateral Agent and Lenders. The provisions of the previous sentence shall not apply to (x) TCD, except in the event TCD satisfies in full prior to the Maturity Date the full amount of the Indebtedness owing the Note Holders, or (y) deposit accounts exclusively used for (i) payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's or such Subsidiary's employees, (ii) sales taxes, or (iii) the SERP Accounts; in each case of (y), identified to Collateral Agent and Lenders by Borrower as such.

(c) Borrower and its Subsidiaries shall not maintain any Collateral Accounts except Collateral Accounts located in the United States in accordance with Sections 6.6(a) and (b).

6.7 Protection of Intellectual Property Rights. Borrower shall use commercially reasonable efforts to: (a) protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringements by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Lenders' written consent.

6.8 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Lenders, without expense to Collateral Agent or Lenders, Borrower and its officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or Lenders with respect to any Collateral or relating to Borrower.

6.9 Notices of Litigation and Default. Borrower will give prompt written notice to Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of Three Hundred Thousand Dollars ($300,000) or more or which could reasonably be expected to cause a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default

or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.10 Investments in Subsidiaries. Except for Permitted Investments, Borrower shall not, and shall not permit any Subsidiary to, contribute, assign or otherwise transfer assets to any Subsidiary or Subsidiaries. Without limiting the foregoing or any other provision of this Agreement, Borrower shall (x) not make any Investments in, or otherwise contribute, assign or transfer any assets to, TCD or Supernus Europe; or (y) cause Supernus Europe to not maintain assets of any value.

6.11 Creation/Acquisition of Subsidiaries. In the event Borrower or any Subsidiary creates or acquires any Subsidiary, Borrower and such Subsidiary shall promptly notify Lenders of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or Lenders to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on **Exhibit A** hereto); and Borrower shall grant and pledge to Collateral Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, and Lenders, a perfected security interest in the stock, units or other evidence of ownership of each such Subsidiary. Without limiting the foregoing, (x) Collateral Agent and Lenders reserve the right to add as a co-borrower and/or guarantor hereunder, in the reasonable discretion of Collateral Agent and Lenders, in consultation with Borrower, TCD, in the event TCD satisfies in full prior to the Maturity Date the full amount of the Indebtedness owing the Note Holders; and (y) upon the occurrence of an Event of Default, Borrower shall assign to Collateral Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, and Lenders, the Shares in and assets of Supernus Europe.

6.12 Further Assurances.

(a) Execute any further instruments and take further action as Lenders or Collateral Agent reasonably request to perfect or continue Collateral Agent's and Lenders' Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to cause a Material Adverse Change.

7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without Lenders' prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; (c) in connection with Permitted Liens and Permitted Investments; (d) of non-exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries in the ordinary course of business on commercially reasonable terms and approved by Borrower's Board of Directors; or (e) licenses for the use of the Intellectual Property of Borrower or its Subsidiaries in the ordinary course of business on commercially reasonable terms that are approved by Borrower's Board of Directors and which could not result in a legal transfer of title of the licensed property.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently (and in the manner) engaged in by Borrower or such Subsidiaries, as applicable, as of the Effective Date or reasonably related or incidental thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless a replacement for such Key Person, reasonably satisfactory to Lenders holding at least a majority of the aggregate outstanding principal balance of the Term Loans, is approved by Borrower's Board

of Directors and engaged by Borrower within three hundred sixty (360) days, or (ii) suffer or permit a Change in Control. Borrower shall not, without at least fifteen (15) days' prior written notice to Lenders: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Three Hundred Thousand Dollars ($300,000) in Borrower's assets or property), (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions.

(a) Sale of the Company. Merge or consolidate, or permit Borrower to merge or consolidate, with any other Person, pursuant to which Borrower owns less than 50% of the issued and outstanding stock subsequent to such transaction, or sell all or substantially all of the capital stock or assets of Borrower to any other Person, unless, and in any such event, Lenders' prior written consent shall not be required, the consideration received by Borrower or Borrower's shareholders, as the case may be, substantially consists of (i) cash, and the Obligations are indefeasibly paid in full contemporaneously with the consummation of such transaction or (ii) stock, and the acquiror has a market capitalization (or valuation, in the case of privately-held companies, based on their most recent round of financing) of at least $250 million prior to and after giving effect to the consummation of any such transaction and the acquiror has assumed in writing each of the Obligations of Borrower under the Loan Documents.

(b) Acquisitions. Acquire, or permit Borrower or any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person; provided however, that Borrower and its Subsidiaries may enter into such transactions without the prior consent of Lenders if, at consummation thereof, after giving effect to any such acquisition, Borrower has sufficient cash resources on hand to pay its projected expenses and all debt service when due for a period of twelve (12) months thereafter.

(c) Subsidiary Mergers. A Subsidiary may merge or consolidate into another Subsidiary so long as the surviving Subsidiary is a Borrower hereunder or into Borrower as long as Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness, provided that, Borrower may create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so without the prior consent of Lenders if the Obligations are indefeasibly repaid in full, in cash, from the proceeds of such Indebtedness (or such proceeds are treated in a manner otherwise agreed to by Lenders).

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this agreement to have priority to Collateral Agent's and Lenders' Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent and Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Distributions; Investments. (a) Pay any dividends (other than dividends payable solely in capital stock, which may be granted and paid without the prior consent of Lenders) or make any distribution or payment or redeem, retire or purchase any capital stock (provided that, Borrower may complete capital stock buybacks or repurchases of capital stock pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans without the prior written consent of Lenders provided that such repurchases or buybacks do not exceed Five Hundred Thousand

Dollars ($500,000) in the aggregate per fiscal year) or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to cause a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

7.11 Compliance with Anti-Terrorism Laws. Collateral Agent hereby notifies Borrower that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and their principals, which information includes the name and address of Borrower and its principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Borrower will not, and will not permit any Subsidiary or Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower shall immediately notify Collateral Agent if Borrower has knowledge that Borrower or any Subsidiary or Affiliate is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not and will not permit any Subsidiary or Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notices of Default), 6.10 (Investments in Subsidiaries) or 6.11 (Creation/Acquisition of Subsidiaries), or Borrower or violates any covenant in Section 7; or

(b) Borrower or any Subsidiary fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other material term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence and Borrower's knowledge (or, when Borrower reasonably should have known) thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under control of Borrower (including a Subsidiary (other than TCD)) on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's assets (other than TCD's assets) is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any part of its business;

8.5 Insolvency (a) Borrower (excluding TCD) is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower (excluding any proceeding brought against TCD) and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is a default in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Three Hundred Thousand Dollars ($300,000) or that could cause a Material Adverse Change.

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Three Hundred Thousand Dollars ($300,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any written representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing

delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such written representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower and any creditor of Borrower that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement; or

8.10 Governmental Approvals. As a result of Borrower's actions or omissions, any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal has, or could reasonably be expected to have, a Material Adverse Change.

8.11 Lien Priority. Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens.

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent, for so long as it is acting in such capacity, and/or Lenders may, and at the written direction of any Lender shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of the Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default Collateral Agent shall have the right, at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) subject to Section 6.04 of Shire Agreement, as applicable, foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of the Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent and/or Lenders consider advisable, notify any Person owing Borrower money of Collateral Agent's and Lenders' security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent and/or Lenders a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's and Lenders' rights or remedies;

(iii) subject to all applicable laws and regulations, ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent and Lenders are hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's or Lenders' exercise of their rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements inure to Collateral Agent for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books, for the purpose of making copies thereof, at the sole cost and expense of Borrower;

(vi) subject to Section 6.04 of Shire Agreement, as applicable, appoint a receiver to cease, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower; and

(vii) Subject to clauses 9.1(a) and (b), and subject to Section 6.04 of Shire Agreement, as applicable, exercise all rights and remedies available to Collateral Agent and Lenders under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent and Lenders shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "Exigent Circumstance" means any event or circumstance that, in the reasonable judgment of Collateral Agent or any Lender, imminently threatens the ability of Collateral Agent or any Lender to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent or any Lender, could reasonably be expected to result in a material diminution in value of the Collateral.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or

otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent or any Lender from or on behalf of Borrower of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent and Lenders shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent and and/or Lenders may deem advisable notwithstanding any previous application by Collateral Agent or any Lender, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the repayment of each Lender's portion of any Term Loan in accordance with their Pro Rata Share and the distribution of interest, fees and reimbursements paid or made by Borrower in accordance with their Pro Rata Share. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its Pro Rata Share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the payment of such scheduled payments in accordance with their Pro Rata Share, as instructed by Collateral Agent. Any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its Pro Rata Share, then the portion of such payment or distribution in excess of such Lender's Pro Rata Share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's and Lenders' security interest therein.

9.5 Liability for Collateral. So long as Collateral Agent and the Lenders comply with reasonable banking practices and all applicable laws and regulations regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Collateral Agent's or any Lenders' failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and Lenders and then is only effective for the specific instance and purpose for which it is given. Collateral Agent's and Lenders' rights and remedies under this Agreement and the other Loan Documents are cumulative. Collateral Agent and Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. Collateral Agent's or any Lenders' exercise of one right or remedy is not an election, and Collateral Agent's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or Lenders on which Borrower is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail (if an email address is specified herein) or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: Supernus Pharmaceuticals, Inc.

	1550 East Gude Drive Rockville, Maryland 20850 Attn: Russell (“Rip”) Wilson Fax: (301) 424-1364 Email: rwilson@supernus.com
with a copy to:	Saul Ewing, LLP 2600 Virginia Avenue, N.W. Washington, DC 20037 Attn: Mark I Gruhin Fax: (202) 295-6719 Email: mgruhin@saul.com
If to Collateral Agent:	Oxford Finance Corporation 133 North Fairfax Street Alexandria, Virginia 22314 Attention: General Counsel Fax: (703) 519-5225

If to Horizon:	Compass Horizon Funding Company LLC 76 Batterson Park Road Farmington, Connecticut 06032 Attention: Legal Department Fax: (860) 676-8655 Email: jay@horizontechfinance.com
with a copy to:	DLA Piper LLP (US) 4365 Executive Drive, Suite 1100 San Diego, California 92121-2133 Attn: Troy Zander Fax: (858) 638-5086 Email: troy.zander@dlapiper.com

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

New York law governs the Loan Documents without regard to principles of conflicts of law. Borrower**,** Lenders and Collateral Agent each submit to the exclusive jurisdiction of the State and Federal courts in the City of New York, Borough of Manhattan. NOTWITHSTANDING THE FOREGOING, COLLATERAL AGENT AND LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH COLLATERAL AGENT AND LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 9.1) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE COLLATERAL AGENT'S AND LENDERS' RIGHTS AGAINST BORROWER OR ITS PROPERTY, AND, IN CONNECTION WITH ANY SUCH ACTION, BORROWER MAY ASSERT CLAIMS AGAINST LENDER OR COLLATERAL AGENT IN SUCH JURISDICTION. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, first class, registered or certified mail return receipt requested, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT, AND LENDERS EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. Subject to Section 6.04 of the Shire Agreement, as applicable, this Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Collateral Agent's and Lenders' prior written consent (which may be granted or withheld in Collateral Agent's and Lenders' discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation**,** or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents to an Eligible Assignee. Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and

fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person from, following, or arising from transactions between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties**.**

12.6 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Lenders" or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all or any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment,

delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. (a) In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information but in no case less than a reasonable degree of care, provided that, disclosure of information may be made: (i) to the Lenders' and Collateral Agent's Subsidiaries or Affiliates; (ii) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall use commercially reasonable efforts to obtain such prospective transferee's or purchaser's agreement to the terms of this provision); (iii) as required by law, regulation, subpoena, or other order provided that, Lenders and Collateral Agent shall use commercially reasonable efforts to provide Borrower with notice of the required disclosure promptly upon receipt of the request and shall use commercially reasonable efforts to cooperate with Borrower in a reasonable manner to limit the scope of any such disclosure; (iv) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (v) as Lenders and/or Collateral Agent considers appropriate in exercising remedies under the Loan Documents; and (vi) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (A) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (B) is disclosed to the Lenders and/or Collateral Agent by a third party, provided that the Lenders and Collateral Agent have no reason to believe that such third party is itself bound by a confidentiality or nondisclosure agreement with disclosing party. Except to the extent expressly prohibited by this Section 12.9, Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis, so long as Collateral Agent does

not disclose Borrower's identity or the identity of any person associated with Borrower unless otherwise expressly permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

(b) In receiving any confidential information from Borrower, the Collateral Agent, the Lenders and each of their officers, directors, agents and employees acknowledges and agrees with Borrower to maintain in confidence such information obtained from Borrower during the term of this Agreement and to refrain from trading in the securities of Borrower, based upon the contents of such information, for so long as such information constitutes material non-public information.

12.10 Attorneys' Fees, Costs and Expenses. In any action or proceeding between Borrower and Collateral Agent and/or any Lender arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.11 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.12 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.13 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.14 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.15 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

12.16 Right of Set Off. Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

13. COLLATERAL AGENT

13.1 Appointment and Authorization of Collateral Agent. Each Lender hereby irrevocably appoints, designates and authorizes Collateral Agent to take such action on its behalf under the provisions of this

Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Collateral Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

13.2 Delegation of Duties. Collateral Agent may execute any of its duties under this Agreement or any other Loan Document by or through its, or its Affiliates', agents, employees or attorneys-in-fact and shall be entitled to obtain and rely upon the advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Collateral Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

13.3 Liability of Collateral Agent. Except as otherwise provided herein, no Collateral Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by Borrower or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Collateral Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Collateral Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of Borrower or any Affiliate thereof.

13.4 Reliance by Collateral Agent. Collateral Agent, as between Collateral Agent and Lenders, shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of all Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of all Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

13.5 Notice of Default. Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any default and/or Event of Default, unless Collateral Agent shall have received written notice from a Lender or Borrower, describing such default or Event of Default. Collateral Agent will notify the Lenders of its receipt of any such notice. Collateral Agent shall take such action with respect to an Event of Default as may be directed in writing by the Required Lenders in accordance with Article 9(a); provided, however, that while an Event of Default has occurred and is continuing, Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as Collateral Agent shall deem advisable or in the best interest of the Lenders, including without limitation, satisfaction of other security interests, liens or encumbrances on the Collateral not permitted under the Loan Documents, payment of taxes on behalf of Borrower, payments to landlords, warehouseman, bailees and other persons in possession of the Collateral and other actions to

protect and safeguard the Collateral, and actions with respect to insurance claims for casualty events affecting Borrower and/or the Collateral.

13.6 Credit Decision; Disclosure of Information by Collateral Agent. Each Lender acknowledges that no Collateral Agent-Related Person has made any representation or warranty to it, and that no act by Collateral Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of Borrower or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Collateral Agent-Related Person to any Lender as to any matter, including whether Collateral Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Collateral Agent that it has, independently and without reliance upon any Collateral Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and its respective Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Collateral Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Collateral Agent herein, Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any of its Affiliates which may come into the possession of any Collateral Agent-Related Person.

13.7 Indemnification of Collateral Agent. Whether or not the transactions contemplated hereby are consummated, each Lender shall, severally and pro rata based on its respective Pro Rata Share, indemnify upon demand each Collateral Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), and hold harmless each Collateral Agent-Related Person from and against any and all Claims (which shall not include legal expenses of Collateral Agent incurred in connection with the closing of the transactions contemplated by this Agreement) incurred by it; provided, however, that no Lender shall be liable for the payment to any Collateral Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a judgment by a court of competent jurisdiction to have resulted from such Collateral Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 13.7. Without limitation of the foregoing, each Lender shall, severally and pro rata based on its respective Pro Rata Share, reimburse Collateral Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Lenders' Expenses incurred after the closing of the transactions contemplated by this Agreement) incurred by Collateral Agent (in its capacity as Collateral Agent, and not as a Lender) in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Collateral Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 13.7 shall survive the payment in full of the Obligations, the termination of this Agreement and the resignation of Collateral Agent.

13.8 Collateral Agent in its Individual Capacity. With respect to its Credit Extensions, Oxford shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not Collateral Agent, and the terms "Lender" and "Lenders" include Oxford in its individual capacity.

13.9 Successor Collateral Agent. Collateral Agent may resign as Collateral Agent upon ten (10) days' notice to the Lenders. If Collateral Agent resigns under this Agreement, all Lenders shall appoint from among the Lenders (or the affiliates thereof) a successor Collateral Agent for the Lenders, which successor Collateral Agent shall (unless an Event of Default has occurred and is continuing) be subject to the approval of Borrower (which approval shall not be unreasonably withheld or delayed). If no successor Collateral Agent is appointed prior to the effective date of the resignation of Collateral Agent, Collateral Agent may appoint, after consulting with the

Lenders, a successor Collateral Agent from among the Lenders (or the affiliates thereof). Upon the acceptance of its appointment as successor Collateral Agent hereunder, the Person acting as such successor Collateral Agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the respective term "Collateral Agent" means such successor Collateral Agent and the retiring Collateral Agent's appointment, powers and duties in such capacities shall be terminated without any other further act or deed on its behalf. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this Article 13 and Sections 2.3(d) and 12.2 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement. If no successor Collateral Agent has accepted appointment as Collateral Agent by the date ten (10) days following a retiring Collateral Agent's notice of resignation, the retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Collateral Agent hereunder until such time, if any, as the Lenders appoint a successor agent as provided for above.

13.10 Collateral Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower, Collateral Agent (irrespective of whether the principal of any Loan, shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Collateral Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Credit Extensions and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Collateral Agent and their respective agents and counsel and all other amounts due the Lenders and Collateral Agent allowed in such judicial proceeding); and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Collateral Agent and, in the event that Collateral Agent shall consent to the making of such payments directly to the Lenders, to pay to Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Collateral Agent and its agents and counsel, and any other amounts due Collateral Agent under Section 2.3(d). To the extent that Collateral Agent fails timely to do so, each Lender may file a claim relating to such Lender's claim.

13.11 Collateral and Guaranty Matters. The Lenders irrevocably authorize Collateral Agent, at its option and in its discretion, to release any guarantor and any Lien on any Collateral granted to or held by Collateral Agent under any Loan Document (i) upon the date that all Obligations due hereunder have been fully and indefeasibly paid in full and no Term Loan Commitments or other obligations of any Lender to provide funds to Borrower under this Agreement remain outstanding, (ii) that is transferred or to be transferred as part of or in connection with any Transfer permitted hereunder or under any other Loan Document, or (iii) as approved in accordance with Section 12.6. Upon request by Collateral Agent at any time, all Lenders will confirm in writing Collateral Agent's authority to release its interest in particular types or items of Property, pursuant to this Section 13.11.

13.12 Cooperation of Borrower. If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) subject to Section 12.9, make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than once every twelve months unless an Event of Default has occurred and is continuing) and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9 Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs

which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

14. DEFINITIONS

14.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"**Account**" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"**Affiliate**" of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Agreement**" is defined in the preamble hereof.

"**Amortization Date**" is, (i) with respect to Term A Loan, March 1, 2012, and (ii) with respect to Term B Loan, the fourteenth (14th) Payment Date following the Funding Date of Term B Loan; provided that, in the event that Borrower consummates the Qualified Financing by April 30, 2011, the Amortization Date with respect to each Term Loan shall be extended by three (3) months.

"**Anti-Terrorism Laws**" means any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

"**Approved Fund**" means any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Basic Rate**" means with respect to a Term Loan, the per annum rate of interest (based on a year of 360 days) equal to the greater of (i) eleven percent (11.00%) and (ii) the sum of (a) the three (3) month U.S. LIBOR rate reported in the Wall Street Journal three (3) Business Days prior to the Funding Date of such Term Loan, plus (b) nine and three quarters percent (9.75%).

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

"**Borrower**" is defined in the preamble hereof.

"**Borrower's Books**" are all Borrower's books and records including ledgers, federal, and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

"**Cash Equivalents**" are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof; (b) commercial paper having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., and (c) certificates of deposit provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent; provided the same are permissible investments in accordance with the Investment Policy approved by Borrower's Board of Directors. For the avoidance of doubt, the direct purchase by Borrower, any guarantor, co-borrower, or any subsidiary of Borrower of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower, any guarantor, co-borrower, or any subsidiary of Borrower shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower and its Subsidiaries are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security.

"**Change in Control**" means any event, transaction, or occurrence as a result of which (a) any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of a Borrower, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of a Borrower, representing forty percent (40%) or more of the combined voting power of such Borrower's then outstanding securities; or (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of a Borrower (together with any new directors whose election by the Board of Directors of such Borrower was approved by a vote of not less than two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office

"**Claims**" are defined in Section 12.2.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Borrower described on **Exhibit A** and any and all other properties, rights and assets of Borrower granted by Borrower to Collateral Agent for the benefit of the Lenders in accordance with their Pro Rata Share or arising under the Code or other applicable law, now, or in the future.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account.

"**Collateral Agent**" means, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

"**Collateral Agent-Related Person**" means the Collateral Agent, together with its Affiliates, and the officers, directors, employees, agents, advisors, auditors and attorneys-in-fact of such Persons; provided, however, that no Collateral Agent-Related Person shall be an Affiliate of Borrower.

"**Commitment Percentage**" is set forth in Schedule 1.1, as amended from time to time.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"**Communication**" is defined in Section 10.

"**Compliance Certificate**" is that certain certificate in the form attached hereto as **Exhibit C**.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

"**Credit Extension**" is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower's benefit.

"**Default Rate**" is defined in Section 2.3(b).

"**Deposit Account**" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account**" is Borrower's deposit account, account number , maintained with State Street Bank & Trust Company.

"**Dollars**," "**dollars**" and "**$**" each mean lawful money of the United States.

"**Effective Date**" is defined in the preamble of this Agreement.

"**Eligible Assignee**" means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case of (iv) above, which either (A) has a rating of BBB or higher from Standard & Poor's Rating Group and a rating of Baa2 or higher from Moody's Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of $5,000,000,000, and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include (i) Borrower or any

of Borrower's Affiliates or Subsidiaries, (ii) unless an Event of Default has occurred and is continuing, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent or (iii) as long as the Shire Agreement remains in full force and effect, any party prohibited from receiving such assignment pursuant to the terms and conditions of the Section 6.04 of Shire Agreement, as applicable. Notwithstanding the foregoing, in connection with assignments by a Lender due to a forced divestiture at the request of any Governmental Authority, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party (provided that, in the event of any such forced divestiture, Shire shall have the right, but not the obligation, to satisfy in full all Obligations owing the Lenders).

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Event of Default**" is defined in Section 8.

"**Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

"**Final Payment Percentage**" is two and one half percent (2.50%).

"**Funding Date**" is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"**Indemnified Person**" is defined in Section 12.2.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Intellectual Property**" includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, and the goodwill of the business of any Person connected with and symbolized thereby, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"**Key Person**" means each of Borrower's (i) President and Chief Executive Officer, who is Jack Khattar as of the Effective Date, (ii) Vice President and Chief Financial Officer, who is Russell "Rip" Wilson as of the Effective Date, (iii) Vice President, Business Development, who is Woody Bryan as of the Effective Date, and (iv) Vice President, Pharmaceutical Sciences, who is Padmanabh Bhatt as of the Effective Date.

"**Lender**" is any one of the Lenders.

"**Lenders**" shall mean the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

"**Lenders' Expenses**" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"**Loan Documents**" are, collectively, this Agreement, the Warrants, the Perfection Certificate, each Compliance Certificate, any subordination agreements, any note, or notes or guaranties executed by Borrower, and any other present or future agreement between Borrower and/or any guarantor for the benefit of Lenders and Collateral Agent in connection with this Agreement, all as amended, restated, or otherwise modified.

"**Material Adverse Change**" is (a) a material impairment in the perfection or priority of Collateral Agent's and/or Lenders' Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise), taken as a whole, of Borrower (but excluding any

consideration of TCD or Supernus Europe); or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Maturity Date**" is, for each Term Loan, the date which is twenty-nine (29) months after the Amortization Date with respect to such Term Loan.

"**Note Holders**" means those certain note holders under those certain sixteen percent (16%) non-convertible, non-recourse, secured promissory notes due April 15, 2024.

"**Obligations**" are Borrower's obligation to pay when due any debts, principal, interest, Lenders' Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, whether under this Agreement, the Loan Documents (other than the Warrants), or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower's duties under the Loan Documents (other than the Warrants).

"**OFAC**" is the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operating Documents**" are, for any Person, such Person's formation documents, as certified by the Secretary of State of such Person's jurisdiction of organization on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Parent Pledge**" means the pledge or other security arrangement pursuant to which Borrower pledged to the trustee for the Note Holders Borrower's ownership interests in TCD.

"**Payment/Advance Form**" is that certain form attached hereto as **Exhibit B**.

"**Payment Date**" is the first (1st) calendar day of each calendar month.

"**Perfection Certificate**" is defined in Section 5.1.

"**Permitted Indebtedness**" is:

(a) Borrower's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;

(c) Subordinated Debt, including but not limited to a Subordinated Debt facility in an amount of at least Five Hundred Thousand Dollars ($500,000);

(d) unsecured Indebtedness to trade creditors and landlords incurred in the ordinary course of business, including, without limitation, clinical research organizations and other comparable service providers;

(e) Indebtedness secured by liens specified in clause (c) of the definition of "Permitted Liens" provided such Indebtedness shall not exceed Three Hundred Thousand Dollars ($300,000) in the aggregate principal amount outstanding at any one time;

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;

(g) Indebtedness represented by the Parent Pledge; and

(h) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"**Permitted Investments**" are:

(a) Investments shown on the Perfection Certificate and existing on the Effective Date;

(b) Investments in cash and Cash Equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower's business;

(d) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business; and

(e) Other Investments not otherwise prohibited herein, not exceeding Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate at any time.

"**Permitted Liens**" are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended , and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment or other assets subject to capital leases acquired or held by Borrower incurred for financing the acquisition of the Equipment or such assets subject to capital leases, or (ii) on existing Equipment or such assets subject to capital leases when acquired, in each case if the Lien is confined to the property and improvements and the proceeds of the Equipment or other assets subject to capital leases; provided that such Liens under this clause (c) (A) may have priority over liens granted to Collateral Agent hereunder to the extent provided under the Code so long as the Indebtedness secured by the Liens remain outstanding and (B) may secure Indebtedness of no more than Three Hundred Thousand Dollars ($300,000) in the aggregate principal amount outstanding at any one time;

(d) statutory Liens securing claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other Persons imposed without action of such parties, provided they have no priority over any of Collateral Agent's Lien and the aggregate amount of the obligations secured by such Liens does not any time exceed Two Hundred Thousand Dollars ($200,000);

(e) leases or subleases of real property granted in the ordinary course of business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or Intellectual Property) granted in the ordinary course of Borrower's business, if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest; and

(f) banker's liens, rights of setoff and Liens in favor of financial institutions incurred or made in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions to secure solely payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(g) Liens to secure payment of workers' compensation, employment insurance, pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(i) licenses permitted by Section 7.1 hereof; and

(j) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) and (c) above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Prepayment Fee**" means with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

(i) for a prepayment made on or after the Funding Date of such Term Loan through and prior to the Amortization Date, five percent (5.00%) of the principal amount of such Term Loan prepaid;

(ii) for a prepayment made after the Amortization Date through and including the date fifteen (15) months thereafter, two percent (2.00%) of the principal amount of the Term Loans prepaid; and

(iii) for a prepayment made thereafter, one percent (1.00%) of the principal amount of the Term Loans prepaid.

"**Pro Rata Share**" means, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

"**Qualified Financing**" means an initial public offering of Borrower's equity securities which yields net proceeds of at least Seventy Five Million Dollars ($75,000,000).

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made

"**Required Lenders**" means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an "**Original Lender**") have not assigned or transferred any of their interests in their respective Term Loans, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loans, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loans, Lenders holding, sixty-six percent (66%) or more of the aggregate outstanding principal balance of the Term Loans,

plus, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its respective Term Loan and (B) each assignee of an Original Lender provided such assignee was assigned or transferred and continues to hold 100% of the assigning Original Lender's interest in the Term Loans (in each case in respect of clauses (A) and (B) of this clause (ii), whether or not such Lender is included within the Lenders holding sixty-six percent (66%) of the Terms Loans); *provided*, *however*, that notwithstanding the foregoing, for purposes of Section 9.1(b) hereof, "Required Lenders" means (i) for so long as all Original Lenders retain 100% of their interests in their respective Term Loans, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loans, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loans, Lenders holding, sixty-six percent (66%) or more of the aggregate outstanding principal balance of the Term Loans, plus, in respect of this clause (ii), each Original Lender that has not assigned or transferred any portion of its respective Term Loan (in each case in respect of this clause (ii), whether or not such Original Lender is included within the Lenders holding sixty-six percent (66%) of the Term Loans). For purposes of this definition only, a Lender shall be deemed to include itself, and any Lender that is an Affiliate or Approved Fund of such Lender.

"**Requirement of Law**" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any Key Person, acting alone.

"**Second Draw Period**" means the period commencing on the Effective Date and ending on the earlier of (i) April 30, 2011 and (ii) the occurrence of an Event of Default; provided, however, that the Second Draw Period shall not commence if on the date of the request for the Term B Loan an Event of Default has occurred and is continuing.

"**Secured Promissory Note**" is defined in Section 2.4.

"**Secured Promissory Note Record**" is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**SERP Accounts**" means those certain Supplemental Executive Retirement Plan accounts maintained by Borrower for the benefit of Jack Khattar and Woody Bryan, with Kaplan Financial Group in which Borrower is not permitted to make any additional contributions.

"Shares" means one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower in any Subsidiary (other than TCD, except in the event TCD satisfies in full prior to the Maturity Date the full amount of the Indebtedness owing the Note Holders); provided that, in the event Borrower demonstrates to Collateral Agent's reasonable satisfaction, that a pledge of more than sixty five percent (65%) of the Shares of a Subsidiary of Borrower which is not an entity organized under the laws of the United States or any territory thereof, creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, "Shares" shall mean sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower in such Subsidiary.

"**Shire**" means, collectively, Shire Laboratories Inc. and Shire, PLC.

"**Shire Agreement**" means that certain Asset Purchase and Contribution Agreement, by and among Borrower and Shire dated as of December 22, 2005.

"**Subordinated Debt**" is indebtedness incurred by Borrower subordinated to all of Borrower's now or hereafter indebtedness to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form

and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

"**Subsidiary**" means, with respect to any Person, any Person of which more than 50.0% of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or one or more of Affiliates of such Person.

"**Supernus Europe**" means Supernus Europe Limited, an entity organized under the laws of England and Wales, and a wholly-owned Subsidiary of Borrower.

"**TCD**" means TCD Royalty Sub LLC, a Delaware corporation and wholly-owned Subsidiary of Borrower.

"**Term Loan**" is defined in Section 2.2(a)(ii) hereof.

"**Term A Loan**" is defined in Section 2.2(a)(i) hereof.

"**Term B Loan**" is defined in Section 2.2(a)(ii) hereof.

"**Term Loan Commitment**" means, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on **Schedule 1.1**. "**Term Loan Commitments**" means the aggregate amount of such commitments of all Lenders.

"**Transfer**" is defined in Section 7.1.

"**Warrants**" are those certain Warrants to Purchase Stock dated as of the Effective Date executed by Borrower in favor of Lenders.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

SUPERNUS PHARMACEUTICALS, INC.

By /s/ JACK KHATTAR
Name: Jack Khattar
Title: President and Chief Executive Officer

LENDERS AND COLLATERAL AGENT:

OXFORD FINANCE CORPORATION, as Collateral Agent and as a Lender

By: /s/ JOHN G. HENDERSON
Name: John G. Henderson
Title: Vice President & General Counsel

COMPASS HORIZON FUNDING COMPANY LLC, as a Lender

By: Horizon Technology Finance Corporation, its sole member

By: /s/ ROBERT D. POMEROY, JR.
Robert D. Pomeroy, Jr.
Its: Chief Executive Officer

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated April 28, 2010, in Amendment No. 1 to the Registration Statement (Form S-1) and related Prospectus of Supernus Pharmaceuticals, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

McLean, Virginia
February 3, 2011

Exhibit 24.2

POWER OF ATTORNEY

Dated as of February 2, 2011

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned, in his capacity as director of Supernus Pharmaceuticals, Inc. (the "Company"), hereby constitutes and appoints Jack Khattar and Russell Wilson, and each of them acting individually, as his true and lawful attorneys-in-fact and agents, with full power of each to act alone, with full powers of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign the Company's Registration Statement on Form S-1 (File No. 333-171375) relating to the Company's initial public offering of its shares of common stock and any and all amendments to said Registration Statement (including post-effective amendments and any related registration statements thereto filed pursuant to Rule 462 and otherwise), and file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or such person's or their substitutes, may lawfully do or cause to be done by virtue hereof.

This POWER OF ATTORNEY is coupled with an interest and shall be governed by, and construed in accordance with, the laws of the State of Delaware.

The undersigned has executed this POWER OF ATTORNEY as of the date set forth above.

/s/ JOHN M. SIEBERT, PH.D.
John M. Siebert, Ph.D.

[*Signature Page to Power of Attorney*]