FORM 8-K

Current report filing

Filing Date: **2013-01-23** | Period of Report: **2013-01-17**
SEC Accession No. 0001104659-13-003879

FILER

THERAVANCE INC
CIK:**1080014**| IRS No.: **943265960** | State of Incorp.:**DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **000-30319** | Film No.: **13541115**
SIC: **2834** Pharmaceutical preparations

Mailing Address
901 GATEWAY BLVD
S. SAN FRANCISCO CA
94080

Business Address
901 GATEWAY BLVD
SOUTH SAN FRANCISCO CA
94080
6508086000

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

Current Report Pursuant
to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event Reported): **January 17, 2013**

THERAVANCE, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**000-30319**	**94-3265960**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

901 Gateway Boulevard
South San Francisco, California 94080
(650) 808-6000
(Addresses, including zip code, and telephone numbers, including area code, of principal executive offices)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

Underwriting Agreement

On January 17, 2013, Theravance, Inc. (the "Company") entered into an Underwriting Agreement (the "Underwriting Agreement") with Merrill Lynch, Pierce, Fenner & Smith Incorporated, as the representative of the several underwriters listed therein (collectively, the "Underwriters"), relating to the sale of $250.0 million aggregate principal amount of its convertible subordinated notes due 2023 (the "Notes") and the grant to the Underwriters of an option, exercisable for up to 30 days, to purchase up to an additional $37.5 million aggregate principal amount of Notes. On January 18, 2013, the Underwriters exercised this option in full. The Underwriting Agreement contains other terms and conditions, including indemnification rights and obligations of the parties thereto, that are generally customary for transactions of this nature. The transactions contemplated by the Underwriting Agreement are expected to close on January 24, 2013, subject to customary closing conditions. The foregoing description of terms of the Underwriting Agreement is qualified in its entirety by reference to the Underwriting Agreement, which is filed as Exhibit 1.1 to this Current Report and is incorporated herein by reference.

The offering was made pursuant to the Company' s automatically effective Registration Statement on Form S-3 (No. 333-186058) filed with the Securities and Exchange Commission (the "SEC") on January 16, 2013, including a final prospectus dated January 17, 2013 filed with the SEC on January 18, 2013 pursuant to Rule 424(b) under the Securities Act of 1933, as amended.

Capped Call Confirmations

In connection with the offering of the Notes, the Company has also entered into capped call option transactions (the "Capped Call Transactions") with Bank of America, N.A. (the "Hedge Counterparty"). The aggregate cost of the Capped Call Transactions is $36.8 million. The Capped Call Transactions have a strike price of $27.79 per share of the Company' s common stock, which represents approximately a 32.5% premium to the closing price of the Company' s common stock price on January 17, 2013 and a cap price of $38 per share of the Company' s common stock, which represents approximately an 81.2% premium to the closing price of the Company' s common stock price on January 17, 2013. The Capped Call Transactions cover, subject to anti-dilution adjustments similar to those contained in the Notes, approximately 10.3 million shares of the Company' s common stock.

The Capped Call Transactions are expected generally to reduce the potential dilution upon conversion of the Notes in the event that the market price of the Company' s common stock, as measured under the terms of the Capped Call Transactions, is greater than the strike price of the Capped Call Transactions, which initially corresponds to the conversion price of the Notes, and is subject to customary anti-dilution adjustments.

However, upon conversion of a Note, the number of shares that the Company will be required to deliver will exceed the number of shares the Company is entitled to receive under the Capped Call Transactions by at least a number of shares with a value (determined in accordance with the Capped Call Transactions) of $1,000. Therefore, any conversion of Notes will cause dilution to the Company' s common stock, even after taking into account any shares received under the Capped Call Transactions. In addition, if the market price of the Company' s common stock, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions, the number of shares of common stock the Company would receive under the Capped Call Transactions would be less than the number of shares it would be required to deliver to converting holders minus a number of shares with a value (determined in accordance with the Capped Call Transactions) of $1,000, which would increase the net dilution to the Company' s common stock.

The Capped Call Transactions will be automatically exercised upon conversion of the Notes at maturity, subject to certain conditions. The Company will not be required to make any cash payments to the Hedge Counterparty or any of its affiliates upon the exercise of

such options, but will be entitled to receive from the Hedge Counterparty a number of shares of the Company' s common stock based on the amount by which the market price of the Company' s common stock, as measured under the terms of the Capped Call Transactions, is greater than the strike price of the Capped Call Transactions during a specified averaging period under the Capped Call Transactions. However, if the market price of the Company' s common stock, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions during such averaging period under the Capped Call Transactions, the number of shares of common stock the Company could expect to receive upon exercise of the Capped Call Transactions will be capped based on the amount by which the cap price exceeds the strike price of the Capped Call Transactions.

For any conversions of Notes prior to the close of business of the 95th scheduled trading day immediately preceding the maturity date, including without limitation upon an acquisition of the Company or similar business combination, a corresponding portion of the Capped Call Transactions will be terminated. Upon such termination, the portion of the Capped Call Transactions being terminated will be settled at fair value (subject to certain limitations), which the Company expects to receive from the Hedge Counterparty, and no payments will be due to the Hedge Counterparty.

The Capped Call Transactions are separate transactions entered into by us with the Hedge Counterparty, are not part of the terms of the Notes and will not change the holders' rights under the Notes.

The description of the Capped Call Transactions in this report is a summary and is qualified in its entirety by the terms of the form of Base Capped Call Transaction and Additional Capped Call Transaction filed as Exhibit 10.1 and 10.2, respectively, to this report.

Item 8.01. Other Events.

On January 17, 2013, Theravance issued a press release announcing the pricing of its offering of the Notes. A copy of Theravance' s press release is attached hereto as Exhibit 99.1.

On January 22, 2013, Theravance issued a press release announcing the Underwriters' exercise in full of their option to purchase additional Notes. A copy of Theravance' s press release is attached hereto as Exhibit 99.2.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
1.1	Underwriting Agreement dated January 17, 2013.
10.1	Base Capped Call Transaction dated January 17, 2013.
10.2	Additional Capped Call Transaction dated January 18, 2013.
99.1	Press Release of Theravance, Inc. dated January 17, 2013.
99.2	Press Release of Theravance, Inc. dated January 22, 2013.

SIGNATURE

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

THERAVANCE, INC.

Date: January 22, 2013

By: /s/ Michael W. Aguiar

Michael W. Aguiar
Chief Financial Officer

Exhibit 1.1

THERAVANCE, INC.

(a Delaware corporation)

2.125% Convertible Subordinated Notes due 2023

UNDERWRITING AGREEMENT

Dated: January 17, 2013

THERAVANCE, INC.

(a Delaware corporation)

2.125% Convertible Subordinated Notes due 2023

UNDERWRITING AGREEMENT

January 17, 2013

Merrill Lynch, Pierce, Fenner & Smith
Incorporated

as Representative of the several Underwriters

One Bryant Park
New York, New York 10036

Ladies and Gentlemen:

Theravance, Inc., a Delaware corporation (the "Company"), confirms its agreement with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and each of the other Underwriters, if any, named in Schedule A hereto (collectively, the "Underwriters," which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Merrill Lynch is acting as representative (in such capacity, the "Representative"), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective principal amounts set forth in said Schedule A of $250,000,000 aggregate principal amount of the Company' s 2.125% Convertible Subordinated Notes due 2023 (the "Initial Securities"), and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of an additional $37,500,000 aggregate principal amount of its 2.125% Convertible Subordinated Notes due 2023 (the "Option Securities" and, together with the Initial Securities, the "Securities"). The Securities are to be issued pursuant to an indenture dated on or about January 24, 2013 between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee").

In connection with the offering of Initial Securities, the Company and an affiliate of Merrill Lynch (the "Capped Call Counterparty") are entering into a capped call transaction pursuant to a capped call confirmation (the "Base Capped Call Confirmation"), dated the date hereof, and in connection with any issuance of Option Securities, the Company and the Capped Call Counterparty may enter into an additional capped call transaction pursuant to an additional capped call confirmation (the "Additional Capped Call Confirmation" and together with the Base Capped Call Confirmation, the "Capped Call Confirmations").

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representative deems advisable after this Agreement has been executed and delivered and the Indenture has been qualified under the Trust Indenture Act of 1939, as amended (together with the rules and regulations promulgated thereunder, the "1939 Act").

The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") an automatic shelf registration statement on Form S-3 (File No. 333-186058) covering

the public offering and sale of certain securities, including the Securities, under the Securities Act of 1933, as amended (the "1933 Act"), and the rules and regulations promulgated thereunder (the "1933 Act Regulations"), which automatic shelf registration statement became effective under Rule 462(e) under the 1933 Act Regulations ("Rule 462(e)"). Such registration statement, as of any time, means such registration statement as amended by any post-effective amendments thereto to such time, including the exhibits and any schedules thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B under the 1933 Act Regulations ("Rule 430B"), is referred to herein as the "Registration Statement;" provided, however, that the "Registration Statement" without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Securities, which time shall be considered the "new effective date" of such registration statement with respect to the Securities within the meaning of paragraph (f)(2) of Rule 430B, including the exhibits and schedules thereto as of such time, the documents incorporated or deemed incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to the Rule 430B. Each preliminary prospectus used in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as a "preliminary prospectus." Promptly after execution and delivery of this Agreement, the Company will prepare and file a final prospectus relating to the Securities in accordance with the provisions of Rule 424(b) under the 1933 Act Regulations ("Rule 424(b)"). The final prospectus, in the form first furnished or made available to the Underwriters for use in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as the "Prospectus." For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system ("EDGAR").

As used in this Agreement:

"Applicable Time" means 5:30 p.m., New York City time, on January 17, 2013 or such other time as agreed by the Company and Merrill Lynch.

"General Disclosure Package" means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time and the most recent preliminary prospectus (including any documents incorporated therein by reference) that is distributed to investors prior to the Applicable Time, all considered together.

"Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 of the 1933 Act Regulations ("Rule 433"), including without limitation any "free writing prospectus" (as defined in Rule 405 of the 1933 Act Regulations ("Rule 405")) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company' s records pursuant to Rule 433(g), or (iv) the Final Term Sheet (as defined below).

"Issuer General Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule B hereto.

"Issuer Limited Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" (or other references of like import) in the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, prior to the execution and delivery of this Agreement; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "1934 Act"), incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, at or after the execution and delivery of this Agreement.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company*. The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) Registration Statement and Prospectuses. The Company meets the requirements for use of Form S-3 under the 1933 Act. The Registration Statement is an "automatic shelf registration statement" (as defined in Rule 405) and the Securities have been and remain eligible for registration by the Company on such automatic shelf registration statement. Each of the Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company' s knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time of its effectiveness and at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act Regulations, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the 1933 Act Regulations. Each preliminary prospectus and the

Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus and the Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will

comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the "1934 Act Regulations").

(ii) Accurate Disclosure. Neither the Registration Statement nor any amendment thereto, at its effective time, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Date or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, at the time the Registration Statement became effective or when such documents incorporated by reference were filed with the Commission, as the case may be, when read together with the other information in the Registration Statement, the General Disclosure Package or the Prospectus, as the case may be, did not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(iii) The representations and warranties in this subsection shall not apply to (i) the Statement of Eligibility (Form T-1) of the Trustee under the 1939 Act or (ii) statements in or omissions from the Registration Statement (or any amendment thereto), the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through Merrill Lynch expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading "Underwriting−Commissions and Discounts," the information in the first and second paragraphs under the heading "Underwriting−Price Stabilization, Short Positions", the information under the heading "Underwriting−Capped Call Transactions" and the information under the heading "Underwriting−Electronic Offer, Sale and Distribution of Shares" in each case contained in the Prospectus (collectively, the "Underwriter Information").

(iv) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. Any offer that is a written communication relating to the Securities made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 under the 1933 Act Regulations ("Rule 163") and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

(v) Well-Known Seasoned Issuer. (A) At the original effectiveness of the Registration Statement, (B) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Securities in reliance on the exemption of Rule 163, and (C) as of the Applicable Time, the Company was and is a "well-known seasoned issuer" (as defined in Rule 405).

(vi) Company Not Ineligible Issuer. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

(vii) Independent Accountants. Ernst & Young LLP, which audited the financial statements and supporting schedules included in the Registration Statement or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus, are independent public accountants as required by the 1933 Act and the 1933 Act Regulations.

(viii) Financial Statements. The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the General Disclosure Package present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included or incorporated by reference in the Registration Statement.

(ix) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect"), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) except as described in the General Disclosure Package there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(x) Good Standing of the Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package or the Prospectus, and to enter into and perform its obligations under this Agreement, the Indenture, the Securities and the Capped Call Confirmations; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is

required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(xi) Subsidiaries. The only subsidiaries of the Company are the subsidiaries listed on Schedule C hereto which, considered in the aggregate as a single subsidiary, do not constitute a "significant subsidiary" as defined in Rule 1-02 of Regulation S-X.

(xii) Capitalization. The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement, the General Disclosure Package and the Prospectus in the column entitled "Actual" under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to agreements or employee benefit plans referred to in the Registration Statement, the General Disclosure Package or the Prospectus or pursuant to the exercise of convertible securities or options referred to in the Registration Statement, the General Disclosure Package or the Prospectus). The shares of issued and outstanding capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(xiii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xiv) Authorization of the Indenture. The Indenture has been duly authorized by the Company and duly qualified under the 1939 Act and, when duly executed and delivered by the Company and the Trustee, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xv) Authorization of Capped Call Confirmations. The Base Capped Call Confirmation has been, and any Additional Capped Call Confirmation on the date on which such agreement is entered into will have been, duly authorized, executed and delivered by the Company and, assuming due execution and delivery thereof by the Capped Call Counterparty, constitutes, or will constitute, as the case may be, a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xvi) Authorization of the Securities and the Common Stock. The Securities have been duly authorized and, at the Closing Time, will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization,

moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and will be in the form contemplated by, and entitled to the benefits of, the Indenture. The shares of common stock, par value $0.01 per

share, of the Company (the "Common Stock") issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon such conversion, will be validly issued and will be fully paid and non-assessable; no holder of such shares will be subject to personal liability by reason of being such a holder; and the issuance of such shares upon such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company.

(xvii) Description of the Securities, the Common Stock, the Indenture and the Capped Call Confirmations. The Securities, the Indenture and the Capped Call Confirmations will conform in all material respects to the respective statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus and the Securities and the Indenture will be in substantially the respective forms filed or incorporated by reference, as the case may be, as exhibits to the Registration Statement. The Common Stock conforms to all statements relating thereto contained or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus and such description conforms to the rights set forth in the instruments defining the same.

(xviii) Absence of Defaults and Conflicts. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its subsidiaries is subject (collectively, "Agreements and Instruments") except for such defaults that would not reasonably be expected to have a Material Adverse Effect; and the execution, delivery and performance of this Agreement, the Indenture, the Securities and the Capped Call Confirmations and the consummation of the transactions contemplated herein and in the Registration Statement, the General Disclosure Package and the Prospectus (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described in the Registration Statement, the General Disclosure Package and the Prospectus under the caption "Use of Proceeds," and the issuance of shares of Common Stock upon conversion of the Securities), and compliance by the Company with its obligations hereunder and under the Indenture, the Securities and the Capped Call Confirmations have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter or by-laws of the Company or any of its subsidiaries or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their material assets, properties or operations. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder' s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(xix) Absence of Labor Dispute. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers, customers or contractors, which, in either case, would result in a Material Adverse Effect.

(xx) Absence of Proceedings. There is no claim, action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which is required to be disclosed in the

Registration Statement, the General Disclosure Package or the Prospectus (other than as disclosed therein), or which would reasonably be expected to result in a Material Adverse Effect, or which would reasonably be expected to materially and adversely affect the performance by the Company of its obligations hereunder; the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective property or assets is the subject which are not described in the Registration Statement, the General Disclosure Package and the Prospectus, including ordinary routine litigation incidental to the business, would not reasonably be expected to result in a Material Adverse Effect.

(xxi) Accuracy of Exhibits. There are no contracts or documents which are required to be described in the Registration Statement, the General Disclosure Package or the Prospectus or the documents incorporated by reference therein or to be filed as exhibits thereto which have not been so described and filed as required.

(xxii) Possession of Intellectual Property. The Company owns, or otherwise possesses, sufficient rights to use all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary rights), trademarks, service marks, trade names or other intellectual property (collectively, "Intellectual Property") necessary to carry on the business of the Company as described in the Registration Statement, the General Disclosure Package or the Prospectus, except where the lack of such rights would not result, singly or in the aggregate, in a Material Adverse Effect. The Company has not received any notice, and is not otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property, or of any valid grounds for any bona fide claim that would render any of the Company' s Intellectual Property rights invalid or inadequate to protect the interests of the Company or its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in a Material Adverse Effect.

(xxiii) Absence of Manipulation. Neither the Company nor any Affiliate of the Company has taken, nor will the Company or any Affiliate take, directly or indirectly, any action which is designed to or which has constituted or which would be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xxiv) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder, the issuance of shares of Common Stock upon conversion of the Securities, the consummation of the transactions contemplated by this Agreement or consummation of the transactions contemplated by the Capped Call Confirmations, except such as have been already

obtained or as may be required under the 1933 Act or the 1933 Act Regulations, state securities laws or laws and regulations of jurisdictions outside the United States.

(xxv) Possession of Licenses and Permits. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses") issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business of the Company as described in the Registration Statement, the General Disclosure Package or the Prospectus, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect; the Company and its subsidiaries are in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect

would not, singly or in the aggregate, result in a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(xxvi) Title to Property. The Company and its subsidiaries have good and marketable title or have valid rights to lease or otherwise use all real and personal property that is material to the business of the Company, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (a) are described in the Registration Statement, the General Disclosure Package or the Prospectus or (b) do not, singly or in the aggregate, materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or its subsidiaries; and all of the leases and subleases material to the business of the Company and its subsidiaries, considered as one enterprise, and under which the Company or its subsidiaries holds properties described in the Registration Statement, the General Disclosure Package or the Prospectus, are in full force and effect, and neither the Company nor any of its subsidiaries has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or its subsidiaries under any of the leases or subleases mentioned above.

(xxvii) Payment of Taxes. All United States federal income tax returns of the Company and its subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The United States federal income tax returns of the Company through the fiscal year ended December 31, 2011 have been settled and no assessment in connection therewith has been made against the Company. The Company and its subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not result in a Material Adverse Effect, and has paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company and its subsidiaries, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company.

(xxviii) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the General Disclosure Package or the Prospectus and the consummation of the transactions contemplated by the Capped Call

Confirmations will not be required, to register as an "investment company" under the Investment Company Act of 1940, as amended (the "1940 Act").

(xxix) Environmental Laws. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus and except as would not, singly or in the aggregate, result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or

judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxx) Registration Rights. Except for such rights as have been satisfied or waived, there are no persons with registration rights or other similar rights to have any securities registered pursuant to the Registration Statement or otherwise registered by the Company under the 1933 Act.

(xxxi) ERISA. Except as set forth or incorporated by reference in the General Disclosure Package, neither the Company nor any of its subsidiaries has violated any provisions of the Employee Retirement Income Security Act of 1974, as amended, except for violations which, singly or in the aggregate, would not result in a Material Adverse Effect.

(xxxii) Compliance with Anti-Corruption Laws. Except as set forth or incorporated by reference in the General Disclosure Package, neither the Company, nor any of its subsidiaries, nor, to the knowledge of the Company, any director, officer or employee of the Company has (A) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (B) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds or (C) violated any provisions of the Foreign Corrupt Practices Act or the rules and regulations promulgated thereunder.

(xxxiii) Insurance. The Company and its subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks as the Company believes is reasonably prudent, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of its subsidiaries will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain

comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

(xxxiv) Accounting Controls and Disclosure Controls. The Company and each of its subsidiaries maintain a system of internal control over financial reporting sufficient to provide reasonable assurance that (1) transactions are executed in accordance with management' s general or specific authorizations; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management' s general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the General Disclosure Package, since the end of the Company' s most recent audited fiscal year, (I) the Company is not aware of any material weakness in the Company' s internal control over financial reporting (whether or not remediated) and (II) there has been no change in the Company' s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company' s internal control over financial reporting. The Company and its subsidiaries employ disclosure controls and procedures that are designed to reasonably assure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission' s rules and forms, and that material information regarding the Company and its subsidiaries is accumulated and communicated to the Company' s management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure.

(xxxv) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company' s directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxxvi) Pending Proceedings and Examinations. The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the 1933 Act, and the Company is not the subject of a pending proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities.

(xxxvii) Trials and Studies. Any clinical trials and human studies conducted by the Company and, to the knowledge of the Company, any clinical trials and human studies conducted on behalf of the Company or in which the Company has participated were and, if still pending, are being conducted in accordance with standard medical and scientific research procedures and any applicable rules, regulations and policies of the jurisdiction in which such trials and studies are being conducted, except where the failure to be so conducted would not reasonably be expected to have a Material Adverse Effect.

(xxxviii) Regulatory Compliance. The Company has operated and currently is in compliance with all applicable rules, regulations and policies of the FDA, except where the failure to so operate or be in compliance would not reasonably be expected to have a Material Adverse Effect.

(xxxix) Anti-Money Laundering Law Compliance. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as

amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Anti-Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xl) Sanctions Compliance. (i) The Company represents that neither the Company nor any of its subsidiaries (collectively, the "Entity") or, to the knowledge of the Entity, any director, officer, employee, agent, affiliate or representative of the Entity, is an individual or entity ("Person") that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury' s Office of Foreign Assets Control ("OFAC"), the United Nations Security Council ("UNSC"), the European Union ("EU"), Her Majesty' s Treasury ("HMT"), or other relevant sanctions authority (collectively, "Sanctions"), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, Libya, North Korea, Sudan and Syria).

(ii) The Entity represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) The Entity represents and covenants that it has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(b) *Officer's Certificates*. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representative or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) *Initial Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price set forth in Schedule A, the aggregate principal amount of Initial Securities set

forth in Schedule A, plus any additional principal amount of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject to such adjustments as the Representative in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(b) *Option Securities.* In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase the Option Securities, at the price set forth in Schedule A. The option hereby granted may be exercised for 30 days after the date hereof and may be exercised in whole or in part from time to time only for the purpose of covering overallotments which may be made in connection with the offering and distribution of the Initial Securities upon written notice by the Representative to the Company setting forth the amount of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representative, but shall not be later than seven full Business Days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the aggregate principal amount of Option Securities then being purchased which the amount of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the aggregate principal amount of Initial Securities, subject in each case to such adjustments as the Representative in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(c) *Payment*. Payment of the purchase price for, and delivery of, the Initial Securities shall be made at the offices of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, 1200 Seaport Boulevard, Redwood City, California, or at such other place as shall be agreed upon by the Representative and the Company at 9:00 A.M. (New York City time) on the third (or fourth, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) Business Day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten Business Days after such date as shall be agreed upon by the Representative and the Company (such time and date of payment and delivery being herein called the "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representative and the Company, on each Date of Delivery as specified in the notice from the Representative to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company, against delivery to the Representative for the respective accounts of the Underwriters of the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representative, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. Merrill Lynch, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(a) *Denominations; Registration*. The Initial Securities and the Option Securities, if any, shall be in such denominations ($1,000 or integral multiples thereof) and registered in such names as the Representative may request in writing at least two Business Days before the Closing Time or the relevant Date of Delivery, as the case may be. The global notes representing the Initial Securities and the Option

Securities, if any, will be made available for examination and packaging by the Representative in The City of New York not later than 10:00 A.M. (New York City time) on the Business Day prior to the Closing Time or the relevant Date of Delivery, as the case may be.

SECTION 3. Covenants of the Company. The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests*. The Company, subject to Section 3(b), will comply with the requirements of Rule 430B, and will notify the Representative immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus, including any document incorporated by reference therein or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment. The Company shall pay the required Commission filing fees relating to the Securities within the time required by, and otherwise in accordance with, the 1933 Act Regulations.

(b) *Continued Compliance with Securities Laws*. The Company will comply with the 1933 Act, the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the 1933 Act Regulations ("Rule 172"),

would be) required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly (A) give the Representative notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the General Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representative with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the

Company shall not file or use any such amendment or supplement to which the Representative or counsel for the Underwriters shall object unless the Company reasonably believes that the failure to file or use such amendment or supplement would constitute a violation of law or subject it to liability. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company has given the Representative notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the Applicable Time; the Company will give the Representative notice of its intention to make any such filing from the Applicable Time to the Closing Time and will furnish the Representative with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representative or counsel for the Underwriters shall reasonably object unless the Company reasonably believes that the failure to file or use such document would constitute a violation of law or subject it to liability.

(c) *Delivery of Registration Statements*. The Company has furnished or will deliver to the Representative and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also deliver to the Representative, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses*. The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act and the 1933 Act Regulations. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act or the 1933 Act Regulations, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Blue Sky Qualifications*. The Company will cooperate with the Underwriters to qualify the Securities and the shares of Common Stock issuable upon conversion of the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representative may designate and to maintain such qualifications in effect for a period of not less than one year from the date hereof; provided, however, that the Company shall not be obligated to file any general consent to

service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) *Rule 158*. The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its security holders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(g) *Use of Proceeds*. The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the General Disclosure Package and the Prospectus under "Use of Proceeds."

(h) *Listing*. The Company will use its best efforts to effect and maintain the listing of the Common Stock issuable upon conversion of the Securities on the Nasdaq Global Market.

(i) *Restriction on Sale of Securities*. During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representative, (i) directly or indirectly, offer pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any share of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to the (A) Securities to be sold hereunder, (B) the issuance and sale of common stock by the Company to GSK pursuant to GSK' s exercise of its pro rata rights following the end of each calendar quarter to purchase its pro rata portion of shares issued by the Company in the preceding quarter (other than the Securities), (C) any shares of Common Stock issued pursuant to outstanding options, restricted stock units ("RSUs") or other rights under the Company' s existing stock option plans or other employee benefit plans, in each case as described in the Registration Statement, the General Disclosure Package and the Prospectus, (D) any options to purchase shares of Common Stock, restricted stock awards or RSUs granted under the Company' s equity plans or other employee benefit plans, in each case as described in the Registration Statement, the General Disclosure Package and the Prospectus or as may be subsequently amended or adopted; provided that such options, restricted stock awards or RSUs shall not vest or become exercisable prior to the expiration of the lock-up period as described in Exhibit B hereto, except that ordinary course replenishment and promotion stock option grants, restricted stock awards and RSUs to be made monthly in January 2013, February 2013, March 2013 and April 2013 may vest on a monthly basis following their grant, (E) any shares of Common Stock issued by the Company upon the exercise of any other option or warrant, settlement of an RSU or the conversion of a security outstanding on the date hereof and referred to in the General Disclosure Package and the Prospectus or (F) any shares of Common Stock issued by the Company pursuant to the Company' s Employee Stock Purchase Plan as described in the Registration Statement, the General Disclosure Package and the Prospectus.

(j) *Reservation of Securities*. The Company will reserve and keep available at all times, free of preemptive of similar rights, a sufficient number of shares of Common Stock, for the purposes of enabling the Company to satisfy any obligations to issue Common Stock upon conversion of the Securities.

(k) *Reporting Requirements*. The Company, during the period when the Prospectus is required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations.

(l) *DTC*. The Company will cooperate with the Underwriters to permit the offered Securities to be eligible for clearance and settlement through the facilities of DTC.

(m) *Final Term Sheet; Issuer Free Writing Prospectuses.* The Company will prepare a final term sheet (the "Final Term Sheet"), in the form set forth in Schedule D hereto, reflecting the final terms

of the Securities, in form and substance satisfactory to the Representative, and shall file such Final Term Sheet as an "issuer free writing prospectus" pursuant to Rule 433 prior to the close of business two business days after the date hereof; provided that the Company shall furnish the Representative with copies of any such Final Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representative or counsel to the Underwriters shall object. The Company agrees that, unless it obtains the prior written consent of the Representative, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus," or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representative will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B-2 hereto and any "road show that is a written communication" within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representative. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representative as an "issuer free writing prospectus," as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representative and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

SECTION 4. Payment of Expenses.

(a) *Expenses*. The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, any Agreement among Underwriters, the Indenture, the Securities and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the Securities to the Underwriters and any Common Stock issuable upon conversion thereof, including any stock or other transfer taxes, any stamp or other duties payable upon the sale, issuance and delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company' s counsel, accountants and other advisors, (v) the qualification of the Securities and the Common Stock issuable upon conversion of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto, (vi) the printing and delivery to the Underwriters of copies of each preliminary prospectus, any Permitted Free Writing Prospectus and of the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (vii) the preparation, printing and delivery to the Underwriters of copies of the Blue Sky Survey and any supplement thereto, (viii) all fees and expenses of the Trustee and any expenses of any transfer agent or registrar for the Securities or the Common Stock issuable upon conversion of the Securities, (ix) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged with the Company' s consent in connection with the road show presentations, travel and lodging expenses of the officers of the Company and any such consultants,

(x) the fees and expenses incurred in connection with the inclusion of the Securities or the Common Stock issuable upon conversion of the Securities on the Nasdaq Global Market and (xi) the costs and expenses associated with the reforming of any contracts for sale of the Securities made by the Underwriters caused by a breach of the representation contained in the sixth paragraph of Section 1(a)(i). It is understood that, subject to this section, Section 4(b) and Section 6(a), the Underwriters will pay all of their costs and expenses, including fees and disbursements of their counsel, any travel and lodging expenses incurred by them in connection with any road show presentations and any advertising expenses connected with any offers they may make.

(b) *Termination of Agreement*. If this Agreement is terminated by the Representative in accordance with the provisions of Section 5, Section 9(a)(i), Section 9(a)(iii)(x) or Section 11 hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained in Section 1 hereof or in certificates of any officer of the Company delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder that are required to be performed or satisfied by it at or prior to the Closing Time, and to the following further conditions:

(a) *Effectiveness of Registration Statement; Filing of Prospectus; Payment of Filing Fee*. The Registration Statement has become effective and at the Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing information deemed to be a part thereof pursuant to Rule 430(B) shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) without reliance on Rule 424(b)(8) (or a post-effective amendment providing such information shall have been filed and become effective in accordance with the requirements of Rule 430B). The Company shall have paid the required Commission filing fees relating to the Securities in accordance with the 1933 Act Regulations.

(b) *Opinions of Counsel for Company*. At the Closing Time, the Representative shall have received opinions, dated as of the Closing Time, of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, and Shearman & Sterling LLP, each counsel for the Company, in form and substance reasonably satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letters for each of the Underwriters to the effect set forth in Exhibits A-1 and A-2 hereto, respectively, and to such further effect as counsel to the Underwriters may reasonably request.

(c) *Opinion of Counsel for Underwriters*. At the Closing Time, the Representative shall have received an opinion, dated as of the Closing Time, of Davis Polk & Wardwell LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters in form and substance reasonably satisfactory to the Underwriters.

(d) *Material Adverse Change; Officers' Certificate*. At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, and the Representative shall have received a certificate of the Chief Executive Officer or a Vice President of the

Company and of the Chief Financial Officer or Chief Accounting Officer of the Company, dated as of the Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties in Section 1(a) hereof are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all

agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or, to their knowledge, contemplated by the Commission.

(e) *Accountant's Comfort Letter*. At the time of the execution of this Agreement, the Representative shall have received from Ernst & Young LLP a letter dated such date, in form and substance reasonably satisfactory to the Representative, together with signed or reproduced copies of such letter for each of the other Underwriters containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package, and the Prospectus as of the Applicable Time.

(f) *Bring-down Comfort Letter*. At the Closing Time, the Representative shall have received from Ernst & Young LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section, except that the specified date referred to shall be a date not more than three Business Days prior to the Closing Time.

(g) *Lock-up Agreements*. At the date of this Agreement, the Representative shall have received agreements substantially in the form of Exhibit B hereto signed by the persons listed on Schedule E hereto (the "Lock-up Agreements").

(h) *Chief Financial Officer Certificate.* At the time of the execution of this Agreement and at the Closing Time, the Representative shall have received a certificate, dated as of the date hereof and as of the Closing Time, respectively, from the Chief Financial Officer of the Company in form and substance reasonably satisfactory to the Representative, together with signed or reproduced copies of such certificate for each of the other Underwriters, to the effect set forth in Exhibit C hereto.

(i) *Conditions to Purchase of Option Securities*. In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company and its subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representative shall have received:

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the Chief Executive Officer or a Vice President of the Company and of the Chief Financial Officer or Chief Accounting Officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) Opinions of Counsel for Company. Opinions of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP and Shearman & Sterling LLP, each counsel for the Company, in form and substance reasonably satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinions required by Section 5(b) hereof.

(iii) Opinion of Counsel for Underwriters. An opinion of Davis Polk & Wardwell LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities

to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) Bring-down Comfort Letter. A letter from Ernst & Young LLP, in form and substance reasonably satisfactory to the Representative and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representative pursuant to Section 5(e) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three days prior to such Date of Delivery.

(v) Chief Financial Officer Certificate. A certificate from the Chief Financial Officer of the Company, dated such Date of Delivery, to the same effect as the certificate required by Section 5(h) hereof.

(j) *Additional Documents*. At the Closing Time, and at each Date of Delivery, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated.

(k) *Termination of Agreement*. If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities, on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representative by written notice to the Company at any time at or prior to the Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7 and 8 shall survive any such termination and remain in full force and effect.

SECTION 6. Indemnification.

(a) *Indemnification of Underwriters*. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, as such term is defined in Rule 501(b) under the 1933 Act Regulations (each, an "Affiliate"), and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including any information deemed to be part thereof pursuant to Rule 430B, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all expense whatsoever, as reasonably incurred (including the fees and disbursements of counsel chosen by the Representative), in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Underwriter directly or through the Representative expressly for use in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, any preliminary

prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Company, Directors and Officers*. Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification*. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representative, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances**.** No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse*. If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

SECTION 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other

hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter' s Affiliates shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the aggregate principal amount of Securities set forth opposite their respective names in Schedule A hereto and not joint.

SECTION 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates, any person controlling any Underwriter, its officers or directors or any person controlling the Company, and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination; General*. The Representative may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representative, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (iii) (x) if trading in any securities of the Company has been suspended or materially limited by the Commission or the Nasdaq Global Market, or (y) if trading generally on the American Stock Exchange or the New York Stock Exchange or in the Nasdaq Global Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the Financial Industry Regulatory Authority or any other governmental authority, or (iv) if a material disruption has occurred in securities settlement or payment or clearance services in the United States, or (v) if a commercial banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities*. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7 and 8 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representative shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting

Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representative shall not have completed such arrangements within such 24-hour period, then:

(a) if the aggregate principal amount of Defaulted Securities does not exceed 10% of the aggregate principal amount of the Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(b) if the aggregate principal amount of Defaulted Securities exceeds 10% of the aggregate principal amount of the Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase and of the Company to sell the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either (i) the Representative or (ii) the Company shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to

effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Default by the Company. If the Company shall fail at the Closing Time or at the Date of Delivery to sell the Securities that it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any non-defaulting party; provided, however, that the provisions of Sections 1, 4, 6, 7 and 8 shall remain in full force and effect. No action taken pursuant to this Section shall relieve the Company from liability, if any, in respect of such default.

SECTION 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if sent by mail, telex or facsimile transmission. Notices to the Underwriters shall be directed to: Merrill Lynch at One Bryant Park, New York, New York 10036, Attention: Syndicate Department, with a copy to ECM Legal. Notices to the Company shall be directed to Theravance, Inc. at 901 Gateway Boulevard, South San Francisco, California 94080, Attention: Chief Financial Officer. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the underwriters to properly identify their respective clients.

SECTION 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm' s-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the

agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

SECTION 14. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

SECTION 15. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 16. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 17. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 19. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

THERAVANCE, INC.

By /s/ Rick E Winningham
Name: Rick E Winningham
Title: Chief Executive Officer

CONFIRMED AND ACCEPTED,
as of the date first above written:

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By /s/ Edward Baxter
Authorized Signatory

For itself and as Representative of the other Underwriters named in Schedule A hereto.

[*Signature Page to the Underwriting Agreement*]

SCHEDULE A

The initial public offering price of the Securities shall be 100% of the principal amount thereof, plus accrued interest, if any, from the date of issuance.

The purchase price to be paid by the Underwriters for the Securities shall be 98.15% of the principal amount thereof.

The interest rate on the Securities shall be 2.125% per annum.

Name of Underwriter	Initial Securities	Option Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	$ 225,000,000	$ 33,750,000
Leerink Swann LLC	$ 12,500,000	$ 1,875,000
Piper Jaffray & Co.	$ 12,500,000	$ 1,875,000
Total	$ 250,000,000	$ 37,500,000

SCHEDULE B

Free Writing Prospectuses

- Final Term Sheet
- Each of the two free writing prospectuses of the Company filed with the Commission on January 16, 2013 relating to the Registration Statement
- Free writing prospectus of the Company filed with the Commission on January 17, 2013 relating to the Registration Statement

SCHEDULE C

Subsidiaries

Advanced Medicine East, Inc., a Delaware corporation.

Theravance UK Ltd., a limited liability company organized under the laws of England.

SCHEDULE D

Final Term Sheet

Issuer Free Writing Prospectus
Filed Pursuant to Rule 433
Registration Statement No. 333-186058
(Supplementing Preliminary Prospectus dated January 16, 2013)

Pricing Term Sheet
Dated January 17, 2013

Theravance, Inc.

2.125% Convertible Subordinated Notes due 2023

The information in this pricing term sheet relates only to Theravance, Inc.' s offering (the "Offering") of its 2.125% Convertible Subordinated Notes due 2023 (the "Notes") described below and should be read together with the preliminary prospectus dated January 16, 2013 relating to the Offering (the "Preliminary Prospectus") as included in Registration Statement No. 333-186058, and any free writing prospectus and other documents incorporated by reference therein, before making a decision in connection with an investment in the Notes. The information in this term sheet supersedes the information contained in the Preliminary Prospectus to the extent that it is inconsistent therewith. Terms used but not defined herein have the meaning ascribed to them in the Preliminary Prospectus.

Issuer: Theravance, Inc. (NASDAQ: THRX)

Securities Offered: 2.125% Convertible Subordinated Notes due 2023

Offering Size: $250,000,000 aggregate principal amount (or $287,500,000 aggregate principal amount if the underwriters exercise their option to purchase additional Notes in full)

Public Offering Price: 100% of the principal amount, plus accrued interest, if any, from the Settlement Date

Underwriting Discount: 1.85% of the principal amount

Use of Proceeds: The net proceeds from the Offering are estimated to be approximately $244.5 million (or $281.3 million if the underwriters exercise their option to purchase additional Notes in full), after deducting underwriting discounts and estimated offering expenses payable by the Issuer. The Issuer intends to use the net proceeds from the Offering, including from any such sale of additional Notes, for potential milestone payments to GSK if there is any approval or launch of products under the LABA collaboration, including RELVAR™/BREO™, ANORA™, or VI, potential repayment of debt, $32.0 million to pay the cost of the base capped call transactions (as defined below) that the Issuer intends to enter into with one or more of the underwriters or their affiliates (the "hedge counterparties"), and other general corporate purposes. See "Use of Proceeds" in the Preliminary Prospectus.

Maturity: January 15, 2023, unless earlier repurchased or converted

Interest Rate: 2.125% per annum payable semiannually in arrears in cash

Interest Payment Dates: January 15 and July 15, beginning July 15, 2013

NASDAQ Last Reported Sale Price on January 17, 2013: $20.97 per share of Common Stock

Initial Conversion Rate: 35.9903 shares of Common Stock per $1,000 principal amount of Notes

Initial Conversion Price: Approximately $27.79 per share of Common Stock

Conversion Premium: Approximately 32.5% above the NASDAQ Last Reported Sale Price on January 17, 2013

Make-Whole Premium Upon Certain Fundamental Changes: If certain fundamental changes occur and a holder elects to convert in connection with such transaction, the conversion rate will be increased by a number of shares. The number of additional shares will be determined by reference to the following table and is based on the date on which such fundamental change becomes effective and the price paid, or deemed to be paid, per share of common stock on the effective date:

Stock Price on Effective Date	Make Whole Premium Upon Fundamental Change (Increase in Applicable Conversion Rate)										
	1/24/2013	1/15/2014	1/15/2015	1/15/2016	1/15/2017	1/15/2018	1/15/2019	1/15/2020	1/15/2021	1/15/2022	1/15/2023
$ 20.97	11.6968	11.6968	11.6968	11.6968	11.6968	11.6968	11.6968	11.6968	11.6968	11.6968	11.6968
25.00	8.8219	8.8219	8.8219	8.8219	8.8219	8.8083	8.5430	8.0750	7.3247	6.1387	4.0097
27.79	7.4315	7.4315	7.4153	7.3596	7.2441	7.0382	6.6835	6.1250	5.2767	3.9487	0.0000
30.00	6.5609	6.5336	6.4752	6.3805	6.2230	5.9726	5.5802	4.9908	4.1248	2.8015	0.0000
35.00	5.0949	5.0246	4.9199	4.7755	4.5710	4.2798	3.8639	3.2831	2.4816	1.3606	0.0000
40.00	4.0844	3.9961	3.8736	3.7129	3.4973	3.2073	2.8124	2.2891	1.6075	0.7515	0.0000
50.00	2.8090	2.7152	2.5938	2.4402	2.2461	1.9970	1.6810	1.2930	0.8361	0.3618	0.0000
60.00	2.0533	1.9686	1.8622	1.7312	1.5712	1.3711	1.1288	0.8480	0.5448	0.2560	0.0000
80.00	1.2201	1.1585	1.0832	0.9932	0.8912	0.7706	0.6334	0.4806	0.3223	0.1646	0.0000
100.00	0.7960	0.7555	0.7036	0.6452	0.5767	0.4977	0.4104	0.3158	0.2170	0.1134	0.0000

The actual stock price and effective date may not be set forth in the above table, in which case:

- If the actual stock price on the effective date is between two stock prices on the table or the actual effective date is between two effective dates on the table, the make-whole premium will be determined by a straight-line interpolation between the make-whole premiums set forth for the two stock prices and the two effective dates on the table based on a 365-day year, as applicable.

- If the stock price exceeds $100.00 per share, subject to adjustment, no make-whole premium will be paid.

- If the stock price is less than $20.97 per share, subject to adjustment, no make-whole premium will be paid.

Notwithstanding the foregoing, in no event will the conversion rate exceed 47.6871 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustments in the same manner as the conversion rate as set forth under "Description of the Notes–Conversion Rights–Conversion Rate Adjustments" in the Preliminary Prospectus.

Capped Call Transactions: In connection with the pricing of the Notes, the Issuer expects to enter into capped call transactions (the "base capped call transactions") with one or more hedge counterparties. If the underwriters exercise their option to purchase additional Notes, the Issuer may enter into additional capped call transactions with the hedge counterparties (together with the base capped call

transactions, the "capped call transactions"). The capped call transactions are expected generally to reduce potential dilution to the Issuer' s common stock upon conversion of the Notes in the event that the market price of the Issuer' s common stock, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the notes, and is subject to customary anti-dilution adjustments. However, if the market price of the Issuer' s common stock, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, the anti-dilutive effect of the capped call transactions will be limited.

Trade Date: January 17, 2013

Settlement Date: January 24, 2013

CUSIP/ISIN: 88338TAB0 / US88338TAB08

Sole Book-Running Manager: Merrill Lynch, Pierce, Fenner & Smith Incorporated

Co-Manager(s): Leerink Swann LLC
Piper Jaffray & Co.

******

The Issuer has filed a registration statement (including a preliminary prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the preliminary prospectus in that registration statement and other documents the Issuer has filed with the SEC for more complete information about the Issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, the Issuer, any underwriter or any dealer participating in the offering will arrange to send you the preliminary prospectus if you request it by calling BofA Merrill Lynch at 866-500-5408.

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.

SCHEDULE E

List of Persons and Entities Subject to Lock-up

Directors and Officers
Aguiar, Michael W.
Blum, Leonard
Brinkley, David
Fore, Henrietta Holsman
Gunderson, Robert V.
Levine, Arnold J.
Malkiel, Burton

Mammen, Mathai
Ringrose, Peter S.
Shafer, Bradford J.
Waltrip, William H.
Whitesides, George M.
Winningham, Rick E
Young, William D.

Other Stockholders
Glaxo Group Limited

Exhibit A-1

FORM OF OPINION OF
GUNDERSON DETTMER STOUGH VILLENEUVE FRANKLIN & HACHIGIAN, LLP
TO BE DELIVERED PURSUANT TO SECTION 5(b)

(i) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of Delaware, has the corporate power and authority to enter into and perform its obligations under the Underwriting Agreement, own, lease and operate its property and to conduct its business as described in the General Disclosure Package and the Prospectus and is duly qualified to transact intrastate business as a foreign corporation in California.

(ii) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the General Disclosure Package and the Prospectus under the caption "Capitalization."

(iii) The shares of issued and outstanding capital stock of the Company have been duly authorized and validly issued and, to our knowledge, are fully paid and non-assessable.

(iv) To our knowledge, there are no persons with registration rights or other similar rights to have any securities registered pursuant to the Registration Statement other than such rights as have been satisfied or waived.

(v) The shares of Common Stock issuable upon conversion of the Securities have been duly authorized and, when the certificates representing such shares in the form of the specimen certificate examined by us have been duly issued and delivered by the Company in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non-assessable and the issuance of such Common Stock will not be subject to any preemptive or similar rights set forth in the Company' s certificate of incorporation or bylaws or any agreement filed as an exhibit to the Registration Statement or to any report filed under the 1934 Act that is incorporated by reference in the General Disclosure Package or the Prospectus.

(vi) The Underwriting Agreement has been duly authorized, executed and delivered by the Company.

(vii) The Registration Statement became effective under the 1933 Act upon filing on January 16, 2013; any required filing of each prospectus relating to the Securities (including the Prospectus) pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b) (without reference to Rule 424(b)(8)); any required filing of each Issuer Free Writing Prospectus pursuant to Rule 433 has been made in the manner and within the time period required by Rule 433(d); and, to our knowledge, (A) no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and (B) no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

(viii) The execution and delivery by the Company of, and the performance by the Company of its obligations under, the Underwriting Agreement (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described in the General Disclosure Package and the Prospectus under the caption "Use Of Proceeds") will not contravene any provision of applicable

United States federal law, California law or Delaware corporate law applicable to the Company. The execution and delivery by the Company of, and the performance by the Company of its obligations under, the Underwriting Agreement, the Indenture, the Securities and the Capped Call Confirmations (including the issuance and sale of and performance by the Company with respect to the Securities and the use of the proceeds from the sale of the Securities as described in the Prospectus under the caption "Use Of Proceeds") (A) will not contravene any provision of the certificate of incorporation or bylaws of the Company or any agreement filed as an exhibit to the Registration Statement or other instrument binding upon the Company that is filed as an exhibit to the Registration Statement or to any report filed under the 1934 Act that is incorporated by reference in the General Disclosure Package or the Prospectus or, to our knowledge, any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company, and (B) will not constitute a breach of, or default or Repayment Event (as defined in Section 1(a)(xiv) of the Underwriting Agreement) under or pursuant to any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or any other agreement or instrument filed as an exhibit to the Registration Statement or to any report filed under the 1934 Act that is incorporated by reference in the General Disclosure Package and the Prospectus (except for such breaches, defaults or Repayment Events that would not have a Material Adverse Effect), and no consent, approval, authorization or order of, or qualification with, any governmental body or governmental agency is required for the execution and delivery by the Company of, and the performance by the Company of its obligations under, the Underwriting Agreement, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities.

(ix) The statements (A) in the General Disclosure Package and the Prospectus under the captions "Description of Capital Stock" and, to the extent of the description of the Underwriting Agreement, "Underwriting" and (B) in the Registration Statement in Item 15, in each case insofar as such statements constitute summaries of the legal matters, documents or proceedings referred to therein, fairly present the information called for with respect to such legal matters, documents and proceedings and fairly summarize the matters referred to therein.

(x) The Company is not required, and upon the issuance and sale of the Securities as contemplated in the Underwriting Agreement and the application of the net proceeds therefrom as described in the General Disclosure Package and the Prospectus will not be required immediately following the Closing, to register as an "investment company" under the 1940 Act.

(xi) The share purchase rights under the Company' s Rights Plan to which holders of the Securities will be entitled have been duly authorized.

In addition to rendering legal advice and assistance to the Company in the course of the preparation of the Registration Statement, the General Disclosure Package and the Prospectus, involving, among other things, discussions and inquiries concerning various legal matters and the review of certain corporate records, documents and proceedings, we also participated in conferences with certain officers and other representatives of the Company, including its independent certified public accountants and with you and your counsel, at which the contents of the Registration Statement and the Prospectus and related matters were discussed. We have not, however, independently verified the accuracy, completeness or fairness of the information contained in the Registration Statement and Prospectus.

However, based upon our participation as described in the preceding paragraph, (i) we believe that the documents incorporated by reference in the General Disclosure Package and the Prospectus (other than the financial statements and schedules and other financial

data included therein or omitted therefrom, as to which we express no opinion), when they were filed with the Commission complied as to form in all material respects with the requirements of the 1933 Act or the 1934 Act, as applicable, and the rules and regulations of the Commission thereunder, (ii) we believe that the Registration Statement as originally

filed, including any amendments thereto and any information deemed to be part thereof pursuant to Rule 430B, and the Prospectus (except for financial statements and schedules and other financial data, as to which we express no belief), comply as to form in all material respects with the requirements of the Act and the rules and regulations of the Commission thereunder and (iii) nothing has come to our attention that would lead us to believe that (except for financial statements and schedules and other financial data, as to which we express no belief) the Registration Statement as originally fled, including any amendments thereto and including any information deemed to be part thereof pursuant to Rule 430B, at the time such Registration Statement as originally filed became effective, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; that the Registration Statement including any information deemed to be part thereof pursuant to Rule 430B (except for financial statements and schedules and other financial data, as to which we express no belief), at the Applicable Time, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; or that the Prospectus (except for financial statements and schedules and other financial data, as to which we express no belief), as of its date or at the Closing Time, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. In addition, nothing has come to our attention that would lead us to believe that the General Disclosure Package (other than the financial statements and schedules and other financial data, as to which we express no belief), as of the Applicable Time, contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of circumstances under which they were made, not misleading. For the purposes of such opinion, the General Disclosure Package shall consist of the prospectus relating to the Securities that was included in the Registration Statement immediately prior to the Applicable Time, the Final Term Sheet (as defined in the Underwriting Agreement) and any other Issuer General Free Writing Prospectuses (as defined in the Underwriting Agreement), if any, considered together. With respect to statements contained in the General Disclosure Package, any statement contained in any of the constituent documents shall be deemed to be modified or superseded to the extent that any information contained in subsequent constituent documents modifies or replaces such statement, provided that such subsequent constituent documents are part of the General Disclosure Package at the Applicable Time.

In addition, we supplementally inform you that, to our knowledge, there is no pending or threatened action, suit or proceeding, to which the Company or any subsidiary is a party, or to which the property of the Company or any subsidiary is subject, before or brought by any court or governmental agency or body, which would reasonably be expected to result in a Material Adverse Effect, or which would reasonably be expected to materially and adversely affect the consummation of the transactions contemplated in the Underwriting Agreement, or the performance by the Company of its obligations thereunder, or consummation of the transactions contemplated by the Capped Call Confirmations.

Exhibit A-2

FORM OF OPINION OF
SHEARMAN & STERLING LLP
TO BE DELIVERED PURSUANT TO SECTION 5(b)

1. The Company (a) has the corporate power to execute, deliver and perform the Indenture, the Notes and the Capped Call Confirmation and (b) has taken all corporate action necessary to authorize the execution, delivery and performance of the Indenture, the Notes and the Capped Call Confirmation.

2. Each of the Indenture and the Capped Call Confirmation have been duly executed and delivered by the Company and are the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

3. When the Notes have been executed by the Company, authenticated by the Trustee in accordance with the terms of the Indenture and delivered and paid for as provided in the Underwriting Agreement, the Notes will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and entitled to the benefits of the Indenture.

4. The execution and delivery by the Company of the Indenture, the Notes and the Capped Call Confirmation do not, and the performance by the Company of its obligations thereunder will not, result in a violation of Generally Applicable Law.

5. No authorization, approval or other action by, and no notice to or filing with, any United States federal or New York governmental authority or regulatory body, is required for the due execution, delivery or performance by the Company of the Indenture, the Notes or the Capped Call Confirmation, except as have been obtained and are in full force and effect under the Securities Act or the Trust Indenture Act and as may be required under the securities or blue sky laws of any jurisdiction in the United States in connection with the offer and sale of the Notes.

6. The Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

7. The statements in the General Disclosure Package and the Final Prospectus under the captions "Description of the Notes," "Description of Debt Securities" and "Description of Capped Call Transactions," insofar as such statements constitute summaries of documents referred to therein, fairly summarize in all material respects the documents referred to therein.

8. The statements in the General Disclosure Package and the Final Prospectus under the caption "Material U.S. Federal Income Tax Considerations," insofar as such statements constitute summaries of legal matters referred to therein, fairly summarize in all material respects the legal matters referred to therein.

Exhibit B

FORM OF LOCK-UP FROM DIRECTORS, OFFICERS OR OTHER STOCKHOLDERS PURSUANT TO SECTION 5(g)

January , 2013

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Re: Proposed Public Offering by Theravance, Inc.

Dear Sirs:

The undersigned, a stockholder and an officer and/or director of Theravance, Inc., a Delaware corporation (the "Company"), understands that Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") proposes to enter into an Underwriting Agreement (the "Underwriting Agreement") with the Company providing for the public offering of the Company' s Convertible Subordinated Notes (the "Securities"). The Securities will be convertible into shares of common stock of the Company, par value $0.01 per share ("Common Stock"). In recognition of the benefit that such an offering will confer upon the undersigned as a stockholder and an officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with each underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on the date that is 90 days from the date of the Underwriting Agreement (the "Lock-Up Period"), the undersigned will not, without the prior written consent of Merrill Lynch, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the "Lock-Up Securities"), or exercise any right with respect to the registration of any of the Lock-Up Securities, or file, or cause to be filed, any registration statement in connection therewith, under the Securities Act of 1933, as amended, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

Notwithstanding the foregoing, the undersigned may transfer the Lock-Up Securities (i) as a *bona fide* gift or gifts, provided that the donee or donees thereof agree to be bound in writing by the restrictions set forth herein, (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, or (iii) with the prior written consent of Merrill Lynch, provided, however, that in the case of clauses (i) and (ii), no party, including the undersigned, shall (a) be required to, nor shall it voluntarily, file a report under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in connection with such transfer (other than a filing on Form 5 made after the expiration of the Lock-Up Period) or (b) otherwise voluntarily effect any public filing, report or announcement of such transfer. For purposes of this agreement, "immediate

family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. In addition, notwithstanding the foregoing, if the undersigned is a corporation, the corporation may transfer the capital stock of the Company to any wholly-owned subsidiary of such corporation; provided, however, that in any such case, it shall be a condition to the transfer that the transferee execute an agreement stating that the transferee is receiving and holding such capital stock subject to the provisions of this agreement and there shall be no further transfer of such capital stock except in accordance with this agreement, and provided further that any such transfer shall not involve a disposition for value. Further, notwithstanding the foregoing, the undersigned may transfer or sell Common Stock pursuant to any contract, instruction or plan complying with Rule 10b5-1 (a "10b5-1 Plan") of the rules and regulations of the Securities and Exchange Commission promulgated under the Exchange Act, that has been entered into by the undersigned prior to the date of this agreement and disclosed to Merrill Lynch (an "Existing 10b5-1 Plan"), enter into a new 10b5-1 Plan after the date of this agreement (a "New 10b5-1 Plan") or transfer or sell Common Stock pursuant to such New 10b5-1 Plan; provided that such New 10b5-1 Plan does not permit transfers or sales of Common Stock, and no transfers or sales of Common Stock pursuant to such plan occur, until on or after the expiration of this agreement; and provided, further, that no party, including the undersigned, shall (a) be required to, nor shall it voluntarily, file a report under the Exchange Act in connection with the entry into a New 10b5-1 Plan or (b) otherwise voluntarily effect any public filing, report or announcement of the entry into a New 10b51-1 Plan. Furthermore, the undersigned may surrender shares of Common Stock to the Company upon the vesting or settlement of any restricted stock unit of the Company ("RSU") or any restricted

stock award of the Company ("RSA") held by the undersigned, provided that such surrender is solely for the purpose of covering the undersigned' s tax liability in connection with the vesting or settlement of such RSU or RSA pursuant to a stock withholding program approved by the Company' s Board of Directors or Compensation Committee of the Company' s Board of Directors prior to the date of this Lock-Up Agreement.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company' s transfer agent and registrar against the transfer of the Lock-Up Securities except in compliance with the foregoing restrictions.

This lock-up letter shall automatically terminate upon the earliest to occur, if any, of (a) the date that the Company advises Merrill Lynch, in writing, prior to the execution of the Underwriting Agreement, that it has determined not to proceed with the offering, or (b) termination of the Underwriting Agreement before the closing of the public offering of the Securities.

Very truly yours,

Signature: _____

Print Name: _____

Exhibit C

FORM OF CHIEF FINANCIAL OFFICER' S CERTIFICATE
TO BE DELIVERED PURSUANT TO SECTION 5(H)

THERAVANCE, INC.

January [•], 2013

This certificate has been prepared in connection with the public offering of securities by Theravance, Inc. (the "**Company**"), pursuant to Section 5(h) of the Underwriting Agreement dated January 17, 2013, between the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several Underwriters named in Schedule A thereto (the "**Underwriting Agreement**"). Capitalized terms used but not defined in this certificate have the meaning ascribed to them in the Underwriting Agreement.

In connection with the offering of the Securities, and to assist the Underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of the Securities, I, Michael W. Aguiar, solely in my capacity as Chief Financial Officer of the Company, do hereby certify to the best of my knowledge and on behalf of the Company, based on an examination of the financial books, records and schedules of the Company, as follows:

1. I am knowledgeable with respect to the accounting records and internal accounting practices, policies, procedures and controls of the Company and its subsidiaries and have responsibility for financial and accounting matters with respect to the Company and its subsidiaries. In addition, I am familiar with the internal budget and financial planning of the Company and its subsidiaries.

2. I, or members of my staff, have reviewed each of the items identified by you on (a) certain pages of the [preliminary] prospectus dated January [•], 2013, which are attached hereto as Exhibit A, and (b) certain pages of the Company' s Form 8-K (and exhibit thereto) filed with the Securities and Exchange Commission on January [•], 2013 and incorporated by reference into the Registration Statement, which are attached hereto as Exhibit B. Such items relate to certain forward-looking information for the fiscal year ending December 31, 2013 (the "**Prospective Financial Information**").

3. (a) The Prospective Financial Information has been prepared on a reasonable basis and in good faith, and is based in part on accounting and other financial records of the Company; and (b) the assumptions underlying the Prospective Financial Information are consistent with assumptions used in the Company' s internal budgeting process.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned, solely in his capacity as an officer of Theravance, Inc., has executed and delivered this certificate as of the date first written above.

By: _____

Name: Michael W. Aguiar
Title: Senior Vice President, Finance and Chief Financial Officer

Exhibit 10.1

January 17, 2013

To: Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Attn: General Counsel
Telephone: 650-808-6000
Facsimile: 650-808-6095

From: Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036
Attn: John Servidio
Telephone: 646-855-6770
Facsimile: 704-208-2869

Re: Base Capped Call Transaction

Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between Bank of America, N.A. ("**BofA**") and Theravance, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the "**2000 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2000 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of January 24, 2013 between Counterparty and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**Indenture**") relating to the USD 250,000,000 principal amount of 2.125% Convertible Subordinated Notes due 2023 (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended following its execution, any such amendment will be disregarded for purposes of this Confirmation (other than as provided in Section 8(a) below) unless the parties agree otherwise in writing.

This Confirmation evidences a complete and binding agreement between BofA and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 2002 ISDA Master Agreement (the "**ISDA Form**") as if BofA and Counterparty had executed an agreement in such form (without any Schedule but with the elections set forth in this Confirmation). For the avoidance of doubt, the Transaction shall be the only transaction under the Agreement.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

---

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	January 17, 2013
Effective Date:	The closing date of the initial issuance of the Convertible Securities.
Option Type:	Call
Seller:	BofA
Buyer:	Counterparty
Shares:	The common stock of Counterparty, par value USD0.01 per share (Ticker Symbol: "THRX").
Number of Options:	The number of Convertible Securities in denominations of USD1,000 principal amount issued by Counterparty on the closing date for the initial issuance of the Convertible Securities (excluding any "Option Securities" (as defined in the Underwriting Agreement (as defined below)))..For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty.
Number of Shares:	As of any date, the product of the Number of Options and the Option Entitlement.
Optional Entitlement:	35.9903.
Strike Price:	USD 27.79.
Cap Price:	As provided in Annex A to this Confirmation.
Premium:	As provided in Annex A to this Confirmation.
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market

Related Exchange:	All Exchanges
Excluded Provisions:	Section 4.01(e) and Section 4.12 of the Indenture.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each "Conversion Date", as defined in the Indenture, occurring during the period from and excluding the Trade Date to and including the Expiration Date, for Convertible Securities, each in denominations of USD1,000 principal amount, that are submitted for conversion on such Conversion Date in accordance with the terms of the Indenture, excluding Convertible Securities that are Excluded Convertible Securities (such Convertible Securities, other than those excluded as set forth above, the "**Relevant Convertible Securities**" for such Conversion Date).

Required Exercise on Conversion Dates:	On each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall be automatically exercised. Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.
Excluded Convertible Securities:	Convertible Securities surrendered for conversion on any date prior to the 95th Scheduled Trading Day immediately preceding the "Final Maturity Date" (as defined in the Indenture).
Expiration Date:	The second "Business Day" immediately preceding the "Final Maturity Date" (each as defined in the Indenture).
Automatic Exercise:	As provided above under "Required Exercise on Conversion Dates".
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, BofA shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder unless Counterparty notifies BofA in writing prior to 5:00 PM, New York City time, on the second "Business Day" immediately preceding the "Final Maturity Date" (each as defined in the Indenture) (the "Exercise Notice Deadline") of the aggregate number of Options being exercised hereunder (such notice, a "**Notice of Exercise**"); *provided* that, notwithstanding the above, if Counterparty fails to give such Notice of Exercise by the Exercise Notice Deadline in respect of any exercise of Options hereunder but Counterparty subsequently delivers such Notice of Exercise prior to 5:00 PM, New York City time, on the fifth "Business Day" following the "Final Maturity Date" (each as defined in the Indenture) (the "**Extended Exercise Notice Deadline**"), such Notice of Exercise shall be effective and the Calculation Agent may make appropriate adjustments to reflect any

additional losses, costs or expenses actually incurred by BofA as a result of BofA receiving the notice after the Exercise Notice Deadline. For the avoidance of doubt, if Counterparty fails to deliver a Notice of Exercise prior to the Extended Exercise Notice Deadline in respect of any exercise of Options hereunder, BofA' s obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and delivery of a Notice of Exercise following such Extended Exercise Notice Deadline shall not cure such failure. Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.

BofA' s Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice: To be provided by BofA.

Settlement Terms:

Settlement Method: Net Share Settlement

Net Share Settlement: BofA will deliver to Counterparty, on the Settlement Date, a number of Shares equal to the product of (i) the number of Net Shares *multiplied by* (ii) the number of Options validly exercised or deemed exercised hereunder.

On the Settlement Date, BofA will pay to Counterparty cash in lieu of any fractional Share that would otherwise be deliverable hereunder, valued at the Relevant Price for the last Trading Day of the Conversion Reference Period.

Net Shares: In respect of any Option validly exercised or deemed exercised relating to any conversion of a Convertible Security, a number of Shares equal to the sum of the quotients, for each Trading Day during the Conversion Reference Period, of (I) (A) the quotient (the "**Daily Share Number**") of (1) the Option Entitlement on such Trading Day *divided by* (2) the number of Scheduled Trading Days in the Conversion Reference Period *multiplied by* (B) (1) the amount by which the Cap Price exceeds the Strike Price, if the Relevant Price on such Trading Day is equal to or greater than the Cap Price, (2) the amount by which the Relevant Price on such Trading Day exceeds the Strike Price, if such Relevant Price is greater than the Strike Price but less than the Cap Price or (3) zero, if the Relevant Price on such Trading Day is less than or equal to the Strike Price, *divided by* (II) such Relevant Price, subject to "Consequences of Disrupted Days" below; *provided* that the aggregate number of Net Shares for any Convertible Security shall not exceed the quotient of the Applicable Limit *divided by* the Applicable Limit Price for such Convertible Security.

Applicable Limit: With respect to any conversion of a Convertible Security, the excess, if any, of (i) the product of (a) the number of Shares delivered by Counterparty to the holder of such

	Convertible Security, *multiplied by* (b) the Applicable Limit Price over (ii) USD 1,000.
Applicable Limit Price:	With respect to any conversion of a Convertible Security, the opening price as displayed under the heading "Op" on Bloomberg page THRX <equity> (or any successor thereto) on the date that Counterparty delivers Shares to the holder of such Convertible Security.
Trading Day:	Any Scheduled Trading Day that is not a Disrupted Day in full.
Market Disruption Event:	Section 6.3(a) of the Equity Definitions shall be amended by deleting the words "at any time during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be". Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof.
Consequences of Disrupted Days:	If a Disrupted Day occurs during the Conversion Reference Period, the Calculation Agent may extend the Conversion Reference Period; *provided* that if the Conversion Reference Period would otherwise be extended beyond the eighth Scheduled Trading Day following the "Final Maturity Date" (as defined in the Indenture) on account of any Market Disruption Event, BofA may elect in its discretion that such eighth Scheduled Trading Day shall be deemed to be a Trading Day notwithstanding such Market Disruption Event, in which case the Relevant Price on such Scheduled Trading Day shall be the market value per Share as determined by

	the Calculation Agent in a commercially reasonable manner. If any Scheduled Trading Day is a Disrupted Day because of a Market Disruption Event, the Calculation Agent shall determine whether (i) such Scheduled Trading Day is a Disrupted Day in full or (ii) such Scheduled Trading Day is a Disrupted Day only in part, in which case the Relevant Price for such Scheduled Trading Day shall be determined by the Calculation Agent based on transactions in the Shares on such Scheduled Trading Day taking into account the nature and duration of the relevant Market Disruption Event, and the Daily Share Numbers for the Trading Days in such Conversion Reference Period shall be adjusted in a commercially reasonable manner by the Calculation Agent. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled following the date hereof, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. Section 6.6 of the Equity Definitions shall not apply to the Transaction.
Relevant Price:	On any Trading Day, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page THRX.Q <equity>

AQR (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Trading Day (or if such volume-weighted average price is unavailable at such time or is manifestly incorrect, the market value of one Share on such Trading Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method), subject to "Consequences of Disrupted Days" above. The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

Settlement Date:	The date three "Business Days" (as defined in the Indenture) following the final Scheduled Trading Day of the Conversion Reference Period; *provided* that the Settlement Date will not be prior to the second Exchange Business Day immediately following the date Counterparty provides the Notice of Exercise prior to 5:00 PM, New York City time.
Conversion Reference Period:	The 90 consecutive Trading Days beginning on, and including, the 92nd Scheduled Trading Day immediately prior to the "Final Maturity Date" (as defined in the Indenture), subject to "Consequences of Disrupted Days" above.
Other Applicable Provisions:	To the extent BofA is obligated to deliver Shares hereunder, the provisions of Sections 9.1(c), 9.8, 9.9, 9.10 and 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the Issuer of the Shares) of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions,

BofA may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Share Adjustments:

Method of Adjustment:	Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.06(a) of the Indenture that results in an adjustment under the Indenture (any such event or condition, an "**Adjustment Event**"), the Calculation Agent shall make a corresponding adjustment to the terms relevant to the exercise, settlement or payment of the Transaction and shall adjust the Cap Price as appropriate to account for the economic effect on the Transaction of such Adjustment Event; *provided* that the Cap Price shall not be adjusted so that it is less than the Strike Price; *provided further* that, notwithstanding the foregoing, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture

that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to the last sentence of Section 4.06(a) of the Indenture or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner. Promptly following the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall promptly notify the Calculation Agent in writing of the details of such adjustments. For the avoidance of doubt, BofA shall not have any delivery obligation hereunder in respect of any "Distributed Securities" delivered by Counterparty pursuant to the first sentence of the third paragraph of Section 4.06(a)(iii) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of the second paragraph of Section 4.06(a)(v) of the Indenture (collectively, the "**Conversion Rate Adjustment Fallback Provisions**"), and no adjustment shall be made to the terms of the Transaction on account of any event or condition described in the Conversion Rate Adjustment Fallback Provisions.

Extraordinary Events:

Merger Events: Notwithstanding Section 12.1(b) of the Equity Definitions, a "Merger Event" means the occurrence of any "Business Combination" (as defined in the Indenture).

Consequences of Merger Events and Tender Offer: Notwithstanding Sections 12.2 and 12.3 of the Equity Definitions, (i) upon the occurrence of a Merger Event that results in an adjustment under the Indenture, the Calculation Agent shall make a

corresponding adjustment to the terms relevant to the exercise, settlement or payment of the Transaction; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to Section 4.01(e) or Section 4.12 of the Indenture; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction to BofA (taking into account a commercially reasonable hedge position) is not adversely affected as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (A) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any State thereof or the District of Columbia or (B) the Counterparty to the Transaction following such Merger Event will not be a corporation or will not be the Issuer following such Merger Event, Cancellation and Payment (Calculation Agent Determination) may apply at BofA' s sole discretion; and (ii) in such event or in the

	event of a Tender Offer, the Calculation Agent shall adjust the Cap Price as appropriate to account for the economic effect on the Transaction of such event; *provided* that the Cap Price shall not be adjusted so that it is less than the Strike Price.
Consequences of Announcement Events:	Upon the occurrence of an Announcement Event, the Calculation Agent will adjust the Cap Price as appropriate (including, for the avoidance of doubt, increasing the Cap Price as a result of an event such as the one described in part (iii) of the definition of Announcement Event below, if appropriate), to preserve the fair value of the Transaction to BofA.
Announcement Event:	(i) The public announcement of any Merger Event or Tender Offer or the intention to enter into a Merger Event or Tender Offer, (ii) the public announcement by Counterparty of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or (iii) any subsequent public announcement of a change to or cancellation or termination of a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (in each case, whether such announcement is made by Counterparty or a third party, so long as, in each case, such announcement relates to a transaction with respect to which (x) the Issuer or its board of directors is recommending to its shareholders that they approve the relevant Merger Event or participate in the relevant Tender Offer, as the case may be or (y) the Issuer or its board of directors has a legal obligation to make a recommendation to its shareholders and does not recommend to its shareholders that they reject such transaction prior to the first Trading Day in the Conversion Reference Period or any earlier date of termination or cancellation, in whole or in part, of the Transaction).
Notice of Merger Consideration:	Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of

	stockholder election), Counterparty shall reasonably promptly (but, in any event prior to the effective time of such Merger Event) notify the Calculation Agent of (i) the weighted average of the types and amounts of consideration received by the holders of Shares entitled to receive cash, securities or other property or assets with respect to or in exchange for such Shares in any Merger Event who affirmatively make such an election and (ii) the details of the adjustment made under the Indenture in respect of such Merger Event.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York

Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

(a) Change in Law: Applicable; *provided* that Section 12.9(a)(ii) is hereby amended by (w) adding the words "(including, for the avoidance of doubt and without limitation, adoption or promulgation of new regulations authorized or mandated by existing statute)" after the word "regulation" in the second line thereof, (x) adding the words "or any Hedge Positions" after the word "Shares" in the clause (X) thereof and (y) adding the words ", or holding, acquiring or disposing of Shares or any Hedge Positions relating," after the word "obligations" in clause (Y) thereof and (z) adding the following proviso at the end thereof: "provided that such party has used good faith efforts to utilize alternative Hedge Positions that would avoid such illegality or increased cost, as long as (i) such party would not incur a materially increased cost (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position, or any increase in margin or capital requirements) in doing so and (ii) the acquisition, holding and disposition of such Hedge Positions would not violate any applicable law, rule, regulation or policy of such party, as reasonably determined, in each case, by such party".

(b) Failure to Deliver: Applicable

(c) Insolvency Filing: Applicable

(d) Hedging Disruption: Applicable; *provided* that:

(i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by adding the following language immediately following clause (B) thereof:

"; provided that the Hedging Party has used good faith efforts to utilize alternative Hedge Positions that would avoid such inability to hedge, as long as (i) the Hedging Party would not incur a materially increased cost (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse

effect on its tax position, or any increase in margin or capital requirements) in doing so and (ii) the acquisition, holding and disposition of such Hedge Positions would not violate any applicable law, rule, regulation or policy of the Hedging Party, as reasonably determined, in each case, by the Hedging Party";

(ii) Section 12.9(a)(v) of the Equity Definitions is hereby further amended by inserting the following two phrases at the end of such Section:

	"For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms."; and (iii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words "to terminate the Transaction", the words "or a portion of the Transaction affected by such Hedging Disruption".
(e) Increased Cost of Hedging:	Applicable; *provided* that, solely for the purpose of Section 12.9(a)(vi) of the Equity Definitions, the phrase "a materially increased (as compared with circumstances existing on the Trade Date) amount of tax, duty, expense or fee" shall mean an increase in such amount by at least 50 basis points, as compared with circumstances existing on the Trade Date. For the avoidance of doubt, if an Increased Cost of Hedging occurs, the corresponding Price Adjustment (as such term is used in Section 12.9(b)(vi) of the Equity Definitions) will take into account the full amount of the increased cost, as compared with circumstances existing on the Trade Date.
Hedging Party:	For all applicable Potential Adjustment Events and Extraordinary Events, BofA
Determining Party:	For all applicable Extraordinary Events, BofA
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

3. Calculation Agent:	BofA, unless an Event of Default of the type set forth in Section 5(a)(vii) of the Agreement has occurred and is continuing with respect to BofA, in which case the Calculation Agent shall be a nationally recognized third-party dealer in over-the counter corporate equity derivatives selected by the Counterparty. All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a written request from either party, the Calculation Agent will promptly provide to the other party a statement displaying in reasonable detail the basis for such determination or calculation, as the case may be, it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.
4. Account Details:	
BofA Payment Instructions:	Bank of America, N.A.

New York, NY
SWIFT: BOFAUS3N
Bank Routing: 026-009-593
Account Name: Bank of America
Account No. : 0012334-61892

Counterparty Payment Instructions: To be provided by Counterparty.

5. Offices:

The Office of BofA for the Transaction is: New York

Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036
Attention: John Servidio
Telephone: 646-855-7127
Facsimile: 704-208-2869

The Office of Counterparty for the Transaction is: Not applicable

6. Notices: For purposes of this Confirmation:

Address for notices or communications to Counterparty:

To: Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Attn: General Counsel
Telephone: 650-808-6000
Facsimile: 650-808-6095

Address for notices or communications to BofA:

To: Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036
Attn: John Servidio
Telephone: 646-855-7127
Facsimile: 704-208-2869

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, BofA as follows:

(i) On the Trade Date, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) During (x) the Conversion Reference Period and (y) in the event an Early Termination Date is designated due to an Additional Termination Event as a result of an Excluded Conversion Event, a period starting on or about such Early Termination Date as reasonably determined by Dealer and notified to Counterparty (an "**Early Termination Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for, Shares will not be subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**").

(iii) On the Trade Date and on each day during the Conversion Reference Period and any Early Termination Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through BofA.

(iv) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that BofA is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging − Contracts in Entity's Own Equity* (or any successor issue statements) or under FASB' s Liabilities & Equity Project.

(v) Without limiting the generality of Section 3(a)(iii) of the Agreement, the Transaction will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.

(vi) Prior to the Trade Date, Counterparty shall deliver to BofA a resolution of Counterparty' s board of directors authorizing the Transaction and such other certificate or certificates as BofA shall reasonably request.

(vii) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(viii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(ix) On each of the Trade Date and the Premium Payment Date, Counterparty is not, or will not be, "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code

(Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Shares hereunder in compliance with the laws of the jurisdiction of its incorporation.

(x) Counterparty is not aware of any state or local law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of BofA or its affiliates owning or holding (however defined) Shares.

(xi) The representations and warranties of Counterparty set forth in Section 3 of the Agreement and Section 1 of the Underwriting Agreement dated as of January 17, 2013, between the Counterparty and Merrill Lynch, Pierce, Fenner & Smith Incorporated as representative of the Underwriters party thereto (the "**Underwriting Agreement**") are true and correct and are hereby deemed to be repeated to BofA as if set forth herein.

(xii) Counterparty understands no obligations of BofA to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of BofA or any governmental agency.

(xiii) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least $50 million.

(b) Each of BofA and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended.

(c) Each of BofA and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to BofA that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(d) Counterparty agrees and acknowledges that BofA is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment," within the meaning of Section 546 of the Bankruptcy Code and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer," as such term is defined in

Section 101(54) of the Bankruptcy Code and a "payment or other transfer of property" within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) BofA is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to BofA an opinion of counsel, dated as of the Effective Date and reasonably acceptable to BofA in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement.

8. Other Provisions:

(a) *Additional Termination Events*. The occurrence of (i) an "Event of Default" with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 8.01(a) of the Indenture, which has resulted in the Convertible Securities becoming due and payable prior to the "Final Maturity Date" (as defined in the Indenture), (ii) an Amendment Event or (iii) an Excluded Conversion Event shall be an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and BofA shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement; *provided* that in the case of an Excluded Conversion Event (A) BofA shall designate an Early Termination Date, (B) the Transaction shall be subject to termination only in respect of a number of Options equal to the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event and (C) the amount payable with respect to such termination shall not be greater than the product of (1) the number of such Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event *multiplied by* (2) the Applicable Limit with respect to such Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event. For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event, the Determining Party (as defined in the Agreement) shall assume that (x) the relevant Excluded Convertible Securities shall not have been converted and remain outstanding, (y) no adjustments to the "Conversion Rate" (as defined in the Indenture) have occurred pursuant to Section 4.01(e) of the Indenture and (z) in the case of an Induced Conversion, any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith had not occurred. In addition, if a Fundamental Change Repurchase Event occurs, (A) Counterparty will promptly notify BofA in writing of such Fundamental Change Repurchase Event and the number of Convertible Securities repurchased and cancelled in such Fundamental Change Repurchase Event (any such notice, a "**Fundamental Change Repurchase Notice**"), (B) receipt by BofA of any such Fundamental Change Repurchase Notice shall constitute an Additional Termination Event with respect to which the terminated portion of the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party and (C) upon receipt of any such Fundamental Change Repurchase Notice, BofA shall promptly designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which in no event shall be earlier than the related settlement date for such Convertible Securities), with respect to the portion of this Transaction corresponding to a number of Options (the "**Repurchase Options**") equal to the lesser of (i) the number of such Convertible Securities specified in such Fundamental Change Repurchase Notice and (ii) the Number of Options as of the date BofA designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with a Fundamental Change Repurchase Event, the Determining Party (as defined in the Agreement) shall assume that (x) the Convertible Securities repurchased in such Fundamental Change Repurchase Event shall not have been repurchased and remain outstanding and (y) no adjustments to the "Conversion Rate" (as defined in the Indenture) have occurred pursuant to Section 4.01(e) of the Indenture.

"**Amendment Event**" means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion

rate or any provision governing adjustments thereto, conversion settlement dates or the period during which the Convertible Securities may be converted), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the consent of BofA.

"**Excluded Conversion Event**" means any conversion of any Excluded Convertible Securities. Counterparty will notify BofA of such conversion within two Scheduled Trading Days of the relevant "Conversion Date" (as defined in the Indenture).

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the "Conversion Rate" (as defined in the Indenture) effected by Counterparty (whether pursuant to Section 4.12 of the Indenture or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of

either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

"**Fundamental Change Repurchase Event**" means any repurchase and cancellation of Convertible Securities pursuant to Section 3.02 of the Indenture in connection with a "Fundamental Change" (as defined in the Indenture).

(b) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If BofA shall owe Counterparty any amount pursuant to "Consequences of Merger Events" above or Sections 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), BofA shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless (i) Counterparty gives irrevocable telephonic notice to BofA, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, date of the relevant Announcement Event, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable, of its election that the Share Termination Alternative shall not apply and (ii) Counterparty remakes the representation set forth in Section 7(a)(i) as of the date of such election. For the avoidance of doubt, if the Share Termination Alternative does not apply, the provisions set forth under "Consequences of Merger Events" above, Sections 12.6, 12.7 and/or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply, without regard to this Section 8(b).

Share Termination Alternative:	If applicable, BofA shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation *divided by* the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an

	amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to BofA at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the issuer of the Shares or any portion of the Share Termination Delivery Units) of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units."

(c) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of BofA based on the advice of counsel, any Shares (the "**Hedge Shares**") acquired by BofA for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the public market by BofA without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow BofA to sell the Hedge Shares in a registered offering, make available to BofA an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to BofA, substantially in the form of an underwriting agreement for a registered offering, (B) provide accountant' s "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to BofA, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford BofA a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if BofA, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(c) shall apply at the election of Counterparty; (ii) in order to allow BofA to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of

equity securities, in form and substance satisfactory to BofA, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to BofA, due diligence rights (for BofA or any designated buyer of the Hedge Shares from BofA), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to BofA (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate BofA for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from BofA at the Relevant Prices on such Exchange Business Days, and in the amounts, requested by BofA.

(d) *Amendment to Equity Definitions*. The following amendment shall be made to the Equity Definitions:

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor "or (C) at BofA' s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall notify BofA (any such notice, a "**Repurchase/Adjustment Notice**") promptly following any repurchase of Shares or consummating or otherwise executing or engaging in any transaction or event (a "**Conversion Rate Adjustment Event**") that would lead to an increase in the "Conversion Rate" (as such term is defined in the Indenture) if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage as determined on the date of such Repurchase/Adjustment Notice will be greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase/Adjustment Notice (or, in the case of the first such Repurchase/Adjustment Notice, greater than the Notice Percentage as of the date hereof (calculated as if any Other Capped Call Confirmation

(as defined below) had been entered into as of such date)), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material non-public information with respect to Counterparty or the Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase/Adjustment Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the sum of the Number of Shares and the "Number of Shares" under any confirmation (an "**Other Capped Call Confirmation**"), substantially similar to this Confirmation (except for the "Trade Date," "Effective Date" and "Number of Options" thereunder), entered into by the parties hereto within 30 days of the Trade Date and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide BofA with a Repurchase/Adjustment Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless BofA, its affiliates and their respective directors, officers, employees, agents and controlling persons (BofA and each such person being an "**Indemnified Party**") from and against any and all losses, claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all expenses (including reasonable counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of BofA.

(f) *Transfer and Assignment*. Either party may transfer any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, BofA may condition its consent on any of the following, without limitation: (i) the receipt by BofA of opinions and documents reasonably satisfactory to BofA in connection with such assignment, (ii) such assignment being effected on terms reasonably satisfactory to BofA with respect to any legal and regulatory requirements relevant to BofA, and (iii) Counterparty continuing to be obligated to provide notices hereunder relating to the Convertible Securities and continuing to be obligated with respect to "Disposition of Hedge Shares" and "Repurchase and Conversion Rate Adjustment Notices" above. In addition, BofA may transfer or assign without any consent of the Counterparty its rights and obligations hereunder and under the Agreement, in whole or in part, to (i) any of its affiliates, (ii) any entities sponsored or organized by, or on behalf of or for the benefit of BofA or (iii) any person of credit quality equivalent to BofA. At any time at which any Excess Ownership Position or a Hedging Disruption exists, if BofA, in its discretion, is unable to effect a transfer or assignment to a third party in accordance with the requirements set forth above after using its commercially reasonable efforts on pricing terms and within a time period reasonably acceptable to BofA such that an Excess Ownership Position or a Hedging Disruption, as the case may be, no longer exists, BofA may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that such Excess Ownership Position or Hedging Disruption, as the case may be, no longer exists. In the event that BofA so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(b) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction shall be the only Terminated Transaction. "**Excess Ownership Position**" means any of the following: (i) the Equity Percentage exceeds 7.5%, (ii) BofA or any "affiliate" or "associate" of BofA would own in excess of 13% of the outstanding Shares for purposes of Section 203 of the Delaware General Corporation Law or (iii) BofA, BofA Group (as defined below) or any person whose ownership position would be aggregated with that of BofA or BofA Group (BofA, BofA Group or any such person, a "**BofA Person**") under any federal, state or local laws, regulations, regulatory orders or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a

number of Shares equal to (x) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a BofA Person, or could result in an adverse effect on a BofA Person, under Applicable Laws, as determined by BofA in its reasonable discretion, and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty or any contract or agreement to which Counterparty is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that BofA and any of its affiliates or any other person subject to aggregation with BofA, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13) of which BofA is or may be deemed to be a part (BofA and any such affiliates, persons and groups, collectively, "**BofA Group**") beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that, as a result of a change in law, regulation or interpretation after the date hereof, the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Shares outstanding on such day.

(g) *Staggered Settlement*. BofA may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, BofA will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the beginning of the Conversion Reference Period) or delivery times and how it will allocate the Shares it is required to deliver under "Net Share Settlement" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that BofA will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that BofA would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Right to Extend*. BofA may postpone or add, in whole or in part, any Trading Day or Days during the Conversion Reference Period or any Settlement Date or any other date of valuation or delivery by BofA, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the number of Net Shares), if BofA determines, in its reasonable discretion and in the case of (ii) below, based on advice of counsel, that such extension is reasonably necessary or advisable to (i) preserve BofA' s hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the cash market, the stock loan market or any other relevant market (but only if there has been a material decline in such liquidity conditions since the Trade Date) or (ii) enable BofA to effect purchases of Shares in connection with its hedging, hedge unwind or settlement activity hereunder in a manner that would, if BofA were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to BofA.

(i) *Adjustments*. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position.

(j) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(k) *Designation by BofA*. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing BofA to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, BofA may designate any of its affiliates to purchase, sell, receive or deliver such shares or other

securities and otherwise to perform BofA obligations in respect of the Transaction and any such designee may assume such obligations. BofA shall be discharged of its obligations to Counterparty to the extent of any such performance.

(l) *No Netting and Set-off*. Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(m) *Equity Rights*. BofA acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty' s bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty' s bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that this Confirmation is not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(n) *Agreements and Acknowledgements Regarding Hedging*. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the final Settlement Date, BofA and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) BofA and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) BofA shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of BofA and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.

(o) *Early Unwind*. In the event the sale by Counterparty of the "Initial Securities" (as defined in the Underwriting Agreement) is not consummated with the underwriters pursuant to the Underwriting Agreement for any reason by the close of business in New York on January 24, 2013 (or such later date as agreed upon by the parties, which in no event shall be later than the tenth "Business Day" (as defined in the Underwriting Agreement) thereafter) (January 24, 2013 or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**"), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of BofA and Counterparty thereunder shall be cancelled and terminated and (ii) Counterparty shall pay to BofA an amount in cash equal to the aggregate amount of reasonable costs and expenses relating to the unwinding of BofA' s hedging activities in respect of the Transaction (including market losses incurred in reselling any Shares purchased by BofA or its affiliates in connection with such hedging activities). Following such termination, cancellation and payment, each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of either party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. BofA and Counterparty represent and acknowledge to the other that upon an Early Unwind and following the payment referred to above, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(p) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party' s rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(q) *No Payment by Counterparty*. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty would otherwise owe to BofA an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty would otherwise owe to BofA,

pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.

(r) *Waiver of Trial by Jury*. **EACH OF COUNTERPARTY AND BOFA HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF BOFA OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF**.

(s) *Governing Law; Jurisdiction*. **THIS CONFIRMATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS**.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by BofA) correctly sets forth the terms of the agreement between BofA and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to John Servidio, Facsimile No. 704-208-2869.

Yours faithfully,

BANK OF AMERICA, N.A.

By: /s/ Christopher A. Hutmaker
Name: Christopher A. Hutmaker
Title: Managing Director

Agreed and Accepted By:

THERAVANCE, INC.

By: /s/ Rick E Winningham
Name: Rick E Winningham
Title: Chief Executive Officer

Annex A

Cap Price:	USD 38.00.
Premium:	USD 32,000,000.

Exhibit 10.2

January 18, 2013

To: Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Attn: General Counsel
Telephone: 650-808-6000
Facsimile: 650-808-6095

From: Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036
Attn: John Servidio
Telephone: 646-855-6770
Facsimile: 704-208-2869

Re: Additional Capped Call Transaction

Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between Bank of America, N.A. ("**BofA**") and Theravance, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the "**2000 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2000 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of January 24, 2013 between Counterparty and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**Indenture**") relating to the USD 250,000,000 principal amount of 2.125% Convertible Subordinated Notes due 2023 and the additional USD 37,500,000 principal amount of 2.125% Convertible Subordinated Notes due 2023 issued pursuant to the over-allotment option exercised on the date hereof (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended following its execution, any such amendment will be

disregarded for purposes of this Confirmation (other than as provided in Section 8(a) below) unless the parties agree otherwise in writing.

This Confirmation evidences a complete and binding agreement between BofA and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 2002 ISDA Master Agreement (the "**ISDA Form**") as if BofA and Counterparty had executed an agreement in such form (without any Schedule but with the elections set forth in this Confirmation). For the avoidance of doubt, the Transaction shall be the only transaction under the Agreement.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	January 18, 2013
Effective Date:	The closing date of the Convertible Securities issued pursuant to the over-allotment option exercised on the date hereof.
Option Type:	Call
Seller:	BofA
Buyer:	Counterparty
Shares:	The common stock of Counterparty, par value USD0.01 per share (Ticker Symbol: "THRX").
Number of Options:	The number of "Option Securities" (as defined in the Underwriting Agreement (as defined below)) in denominations of USD1,000 principal amount purchased by the Underwriters (as defined in the Underwriting Agreement), upon exercise by Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the Underwriters, of the Underwriters' option pursuant to Section 2(b) of the Underwriting Agreement. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty.
Number of Shares:	As of any date, the product of the Number of Options and the Option Entitlement.
Optional Entitlement:	35.9903.
Strike Price:	USD 27.79.
Cap Price:	As provided in Annex A to this Confirmation.

Premium:	As provided in Annex A to this Confirmation.
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market
Related Exchange:	All Exchanges
Excluded Provisions:	Section 4.01(e) and Section 4.12 of the Indenture.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each "Conversion Date", as defined in the Indenture, occurring during the period from and excluding the Trade Date to and including the Expiration Date, for Convertible Securities, each in denominations of USD1,000 principal amount, that are submitted for conversion on such Conversion Date in accordance with the terms of the Indenture (excluding Convertible Securities that are Excluded Convertible Securities) but are not "Relevant Convertible Securities" under, and as defined in, the confirmation

between the parties hereto regarding the Base Capped Call Transaction dated January 17, 2013 (the "**Base Capped Call Transaction Confirmation**") (such Convertible Securities, other than those excluded as set forth above, the "**Relevant Convertible Securities**" for such Conversion Date). For the purposes of determining whether any Convertible Securities will be Relevant Convertible Securities hereunder or under the Base Capped Call Transaction Confirmation, Convertible Securities that are converted pursuant to the Indenture shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated.

Required Exercise on Conversion Dates:	On each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall be automatically exercised. Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.
Excluded Convertible Securities:	Convertible Securities surrendered for conversion on any date prior to the 95th Scheduled Trading Day immediately preceding the "Final Maturity Date" (as defined in the Indenture) that are not "Excluded Convertible Securities" under, and as defined in, the Base Capped Call Transaction Confirmation. For purposes of determining whether any Convertible Securities will be Excluded Convertible Securities hereunder or under the Base Capped Call Transaction Confirmation,

Convertible Securities that are converted prior to such date shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated.

Expiration Date: The second "Business Day" immediately preceding the "Final Maturity Date" (each as defined in the Indenture).

Automatic Exercise: As provided above under "Required Exercise on Conversion Dates".

Notice of Exercise: Notwithstanding anything to the contrary in the Equity Definitions, BofA shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder unless Counterparty notifies BofA in writing prior to 5:00 PM, New York City time, on the second "Business Day" immediately preceding the "Final Maturity Date" (each as defined in the Indenture) (the "Exercise Notice Deadline") of the aggregate number of Options being exercised hereunder (such notice, a "**Notice of Exercise**"); *provided* that any "Notice of Exercise" delivered to BofA pursuant to the Base Capped Call Transaction Confirmation shall be deemed to be a Notice of Exercise pursuant to this Confirmation and the terms of such Notice of Exercise shall apply, *mutatis mutandis*, to this Confirmation; *provided* that, notwithstanding the above, if Counterparty fails to give such Notice of Exercise by the Exercise Notice Deadline in respect of any exercise of Options hereunder but Counterparty subsequently delivers such Notice of Exercise prior to 5:00 PM, New York City time, on the fifth "Business Day" following the "Final Maturity Date" (each as defined in the Indenture) (the "**Extended Exercise Notice Deadline**"), such Notice of Exercise shall be effective and

the Calculation Agent may make appropriate adjustments to reflect any additional losses, costs or expenses actually incurred by BofA as a result of BofA receiving the notice after the Exercise Notice Deadline. For the avoidance of doubt, if Counterparty fails to deliver a Notice of Exercise prior to the Extended Exercise Notice Deadline in respect of any exercise of Options hereunder, BofA' s obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and delivery of a Notice of Exercise following such Extended Exercise Notice Deadline shall not cure such failure. Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.

BofA' s Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice: To be provided by BofA.

Settlement Terms:

Settlement Method: Net Share Settlement

Net Share Settlement:	BofA will deliver to Counterparty, on the Settlement Date, a number of Shares equal to the product of (i) the number of Net Shares *multiplied by* (ii) the number of Options validly exercised or deemed exercised hereunder. On the Settlement Date, BofA will pay to Counterparty cash in lieu of any fractional Share that would otherwise be deliverable hereunder, valued at the Relevant Price for the last Trading Day of the Conversion Reference Period.
Net Shares:	In respect of any Option validly exercised or deemed exercised relating to any conversion of a Convertible Security, a number of Shares equal to the sum of the quotients, for each Trading Day during the Conversion Reference Period, of (I) (A) the quotient (the "**Daily Share Number**") of (1) the Option Entitlement on such Trading Day *divided by* (2) the number of Scheduled Trading Days in the Conversion Reference Period *multiplied by* (B) (1) the amount by which the Cap Price exceeds the Strike Price, if the Relevant Price on such Trading Day is equal to or greater than the Cap Price, (2) the amount by which the Relevant Price on such Trading Day exceeds the Strike Price, if such Relevant Price is greater than the Strike Price but less than the Cap Price or (3) zero, if the Relevant Price on such Trading Day is less than or equal to the Strike Price, *divided by* (II) such Relevant Price, subject to "Consequences of Disrupted Days" below; *provided* that the aggregate number of Net Shares for any Convertible Security shall not exceed the quotient of the Applicable Limit *divided by* the Applicable Limit Price for such Convertible Security.
Applicable Limit:	With respect to any conversion of a Convertible Security, the excess, if any, of (i) the product of (a) the number of Shares delivered by Counterparty to the holder of such Convertible Security, *multiplied by* (b) the Applicable Limit Price over (ii) USD 1,000.

Applicable Limit Price:	With respect to any conversion of a Convertible Security, the opening price as displayed under the heading "Op" on Bloomberg page THRX <equity> (or any successor thereto) on the date that Counterparty delivers Shares to the holder of such Convertible Security.
Trading Day:	Any Scheduled Trading Day that is not a Disrupted Day in full.
Market Disruption Event:	Section 6.3(a) of the Equity Definitions shall be amended by deleting the words "at any time during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be". Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof.

Consequences of Disrupted Days:	If a Disrupted Day occurs during the Conversion Reference Period, the Calculation Agent may extend the Conversion Reference Period; *provided* that if the Conversion Reference Period would otherwise be extended beyond the eighth Scheduled Trading Day following the "Final Maturity Date" (as defined in the Indenture) on account of any Market Disruption Event, BofA may elect in its discretion that such eighth Scheduled Trading Day shall be deemed to be a Trading Day notwithstanding such Market Disruption Event, in which case the Relevant Price on such Scheduled Trading Day shall be the market value per Share as determined by the Calculation Agent in a commercially reasonable manner. If any Scheduled Trading Day is a Disrupted Day because of a Market Disruption Event, the Calculation Agent shall determine whether (i) such Scheduled Trading Day is a Disrupted Day in full or (ii) such Scheduled Trading Day is a Disrupted Day only in part, in which case the Relevant Price for such Scheduled Trading Day shall be determined by the Calculation Agent based on transactions in the Shares on such Scheduled Trading Day taking into account the nature and duration of the relevant Market Disruption Event, and the Daily Share Numbers for the Trading Days in such Conversion Reference Period shall be adjusted in a commercially reasonable manner by the Calculation Agent. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled following the date hereof, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. Section 6.6 of the Equity Definitions shall not apply to the Transaction.
Relevant Price:	On any Trading Day, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page THRX.Q <equity> AQR (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Trading Day (or if such volume-weighted average price is unavailable at such time or is manifestly incorrect, the market value of one Share on such Trading Day, as determined by the

	Calculation Agent using, if practicable, a volume-weighted average method), subject to "Consequences of Disrupted Days" above. The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Date:	The date three "Business Days" (as defined in the Indenture) following the final Scheduled Trading Day of the Conversion Reference Period; *provided* that the Settlement Date will not be prior to the second Exchange Business Day immediately following the date Counterparty provides the Notice of Exercise prior to 5:00 PM, New York City time.
Conversion Reference Period:	The 90 consecutive Trading Days beginning on, and including, the 92nd Scheduled Trading Day immediately prior to the "Final Maturity Date" (as defined in the Indenture), subject to "Consequences of Disrupted Days" above.

Other Applicable Provisions:	To the extent BofA is obligated to deliver Shares hereunder, the provisions of Sections 9.1(c), 9.8, 9.9, 9.10 and 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the Issuer of the Shares) of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, BofA may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Share Adjustments:

Method of Adjustment:	Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.06(a) of the Indenture that results in an adjustment under the Indenture (any such event or condition, an "**Adjustment Event**"), the Calculation Agent shall make a corresponding adjustment to the terms relevant to the exercise, settlement or payment of the Transaction and shall adjust the Cap Price as appropriate to account for the economic effect on the Transaction of such Adjustment Event; *provided* that the Cap Price shall not be adjusted so that it is less than the Strike Price; *provided further* that, notwithstanding the foregoing, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to the last sentence of Section 4.06(a) of the Indenture or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the

Transaction in a commercially reasonable manner. Promptly following the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall promptly notify the Calculation Agent in writing of the details of such adjustments. For the avoidance of doubt, BofA shall not have any delivery obligation hereunder in respect of any "Distributed Securities" delivered by Counterparty pursuant to the first sentence of the third paragraph of Section 4.06(a)(iii) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of the second paragraph of Section 4.06(a)(v) of the Indenture (collectively, the "**Conversion Rate Adjustment**

Fallback Provisions"), and no adjustment shall be made to the terms of the Transaction on account of any event or condition described in the Conversion Rate Adjustment Fallback Provisions.

Extraordinary Events:

Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions, a "Merger Event" means the occurrence of any "Business Combination" (as defined in the Indenture).
Consequences of Merger Events and Tender Offer:	Notwithstanding Sections 12.2 and 12.3 of the Equity Definitions, (i) upon the occurrence of a Merger Event that results in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment to the terms relevant to the exercise, settlement or payment of the Transaction; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to Section 4.01(e) or Section 4.12 of the Indenture; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction to BofA (taking into account a commercially reasonable hedge position) is not adversely affected as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (A) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any State thereof or the District of Columbia or (B) the Counterparty to the Transaction following such Merger Event will not be a corporation or will not be the Issuer following such Merger Event, Cancellation and Payment (Calculation Agent Determination) may apply at BofA' s sole discretion; and (ii) in such event or in the event of a Tender Offer, the Calculation Agent shall adjust the Cap Price as appropriate to account for the economic effect on the Transaction of such event; *provided* that the Cap Price shall not be adjusted so that it is less than the Strike Price.
Consequences of Announcement Events:	Upon the occurrence of an Announcement Event, the Calculation Agent will adjust the Cap Price as appropriate (including, for the avoidance of doubt, increasing the Cap Price as a result of an event such as the one described in part (iii) of the definition of Announcement Event below, if appropriate), to preserve the fair value of the Transaction to BofA.

Announcement Event:	(i) The public announcement of any Merger Event or Tender Offer or the intention to enter into a Merger Event or Tender Offer, (ii) the public announcement by Counterparty of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or (iii) any subsequent public announcement of a change to or cancellation or termination of a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (in each case, whether such announcement is made by Counterparty or a third party, so long as, in each case,

such announcement relates to a transaction with respect to which (x) the Issuer or its board of directors is recommending to its shareholders that they approve the relevant Merger Event or participate in the relevant Tender Offer, as the case may be or (y) the Issuer or its board of directors has a legal obligation to make a recommendation to its shareholders and does not recommend to its shareholders that they reject such transaction prior to the first Trading Day in the Conversion Reference Period or any earlier date of termination or cancellation, in whole or in part, of the Transaction).

Notice of Merger Consideration: Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but, in any event prior to the effective time of such Merger Event) notify the Calculation Agent of (i) the weighted average of the types and amounts of consideration received by the holders of Shares entitled to receive cash, securities or other property or assets with respect to or in exchange for such Shares in any Merger Event who affirmatively make such an election and (ii) the details of the adjustment made under the Indenture in respect of such Merger Event.

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

(a) Change in Law: Applicable; *provided* that Section 12.9(a)(ii) is hereby amended by (w) adding the words "(including, for the avoidance of doubt and without limitation, adoption or promulgation of new regulations authorized or mandated by existing statute)" after the word "regulation" in the second line thereof, (x) adding the words "or any Hedge Positions" after the word "Shares" in the clause (X) thereof and (y) adding the words ", or holding, acquiring or

disposing of Shares or any Hedge Positions relating," after the word "obligations" in clause (Y) thereof and (z) adding the following proviso at the end thereof: "provided that such party has used good faith efforts to utilize alternative Hedge Positions that would avoid such illegality or increased cost, as long as (i) such party would not incur a materially increased cost (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position, or any increase in margin or capital requirements) in doing so and (ii) the acquisition,

holding and disposition of such Hedge Positions would not violate any applicable law, rule, regulation or policy of such party, as reasonably determined, in each case, by such party".

(b) Failure to Deliver: Applicable

(c) Insolvency Filing: Applicable

(d) Hedging Disruption: Applicable; *provided* that:

(i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by adding the following language immediately following clause (B) thereof:

"; provided that the Hedging Party has used good faith efforts to utilize alternative Hedge Positions that would avoid such inability to hedge, as long as (i) the Hedging Party would not incur a materially increased cost (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position, or any increase in margin or capital requirements) in doing so and (ii) the acquisition, holding and disposition of such Hedge Positions would not violate any applicable law, rule, regulation or policy of the Hedging Party, as reasonably determined, in each case, by the Hedging Party";

(ii) Section 12.9(a)(v) of the Equity Definitions is hereby further amended by inserting the following two phrases at the end of such Section:

"For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms."; and

(iii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words "to terminate the Transaction", the words "or a portion of the Transaction affected by such Hedging Disruption".

(e) Increased Cost of Hedging: Applicable; *provided* that, solely for the purpose of Section 12.9(a)(vi) of the Equity Definitions, the phrase "a materially increased (as compared with circumstances existing on the Trade Date) amount of tax, duty, expense or fee" shall mean an increase in such amount by at least 50 basis points, as compared with circumstances existing on the Trade Date. For the avoidance of doubt, if an Increased Cost of Hedging occurs, the corresponding Price Adjustment (as such term is used in Section 12.9(b)(vi) of the Equity Definitions) will take into account the full amount of the increased cost, as compared with circumstances existing on the Trade Date.

Hedging Party: For all applicable Potential Adjustment Events and Extraordinary Events, BofA

Determining Party:	For all applicable Extraordinary Events, BofA
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

3. Calculation Agent: BofA, unless an Event of Default of the type set forth in Section 5(a)(vii) of the Agreement has occurred and is continuing with respect to BofA, in which case the Calculation Agent shall be a nationally recognized third-party dealer in over-the counter corporate equity derivatives selected by the Counterparty. All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a written request from either party, the Calculation Agent will promptly provide to the other party a statement displaying in reasonable detail the basis for such determination or calculation, as the case may be, it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

BofA Payment Instructions:
Bank of America, N.A.
New York, NY
SWIFT: BOFAUS3N
Bank Routing: 026-009-593
Account Name: Bank of America
Account No. : 0012334-61892

Counterparty Payment Instructions: To be provided by Counterparty.

5. Offices:

The Office of BofA for the Transaction is: New York

Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036
Attention: John Servidio
Telephone: 646-855-7127
Facsimile: 704-208-2869

The Office of Counterparty for the Transaction is: Not applicable

6. Notices: For purposes of this Confirmation:

Address for notices or communications to Counterparty:

To: Theravance, Inc.
901 Gateway Boulevard
South San Francisco, CA 94080
Attn: General Counsel
Telephone: 650-808-6000
Facsimile: 650-808-6095

Address for notices or communications to BofA:

To: Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036
Attn: John Servidio
Telephone: 646-855-7127
Facsimile: 704-208-2869

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, BofA as follows:

(i) On the Trade Date, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) During (x) the Conversion Reference Period and (y) in the event an Early Termination Date is designated due to an Additional Termination Event as a result of an Excluded Conversion Event, a period starting on or about such Early Termination Date as reasonably determined by Dealer and notified to Counterparty (an "**Early Termination Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for, Shares will not be subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**").

(iii) On the Trade Date and on each day during the Conversion Reference Period and any Early Termination Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through BofA.

(iv) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that BofA is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging − Contracts in Entity's Own Equity* (or any successor issue statements) or under FASB' s Liabilities & Equity Project.

(v) Without limiting the generality of Section 3(a)(iii) of the Agreement, the Transaction will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.

(vi) Prior to the Trade Date, Counterparty shall deliver to BofA a resolution of Counterparty' s board of directors authorizing the Transaction and such other certificate or certificates as BofA shall reasonably request.

(vii) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(viii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(ix) On each of the Trade Date and the Premium Payment Date, Counterparty is not, or will not be, "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Shares hereunder in compliance with the laws of the jurisdiction of its incorporation.

(x) Counterparty is not aware of any state or local law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of BofA or its affiliates owning or holding (however defined) Shares.

(xi) The representations and warranties of Counterparty set forth in Section 3 of the Agreement and Section 1 of the Underwriting Agreement dated as of January 17, 2013, between the Counterparty and Merrill Lynch, Pierce, Fenner & Smith Incorporated as representative of the Underwriters party thereto (the "**Underwriting Agreement**") are true and correct and are hereby deemed to be repeated to BofA as if set forth herein.

(xii) Counterparty understands no obligations of BofA to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of BofA or any governmental agency.

(xiii) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least $50 million.

(b) Each of BofA and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended.

(c) Each of BofA and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to BofA that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(d) Counterparty agrees and acknowledges that BofA is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this

Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment," within the meaning of Section 546 of the Bankruptcy Code and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer," as such term is defined in Section 101(54) of the Bankruptcy Code and a "payment or other transfer of property" within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) BofA is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to BofA an opinion of counsel, dated as of the Effective Date and reasonably acceptable to BofA in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement.

8. Other Provisions:

(a) *Additional Termination Events*. The occurrence of (i) an "Event of Default" with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 8.01(a) of the Indenture, which has resulted in the Convertible Securities becoming due and payable prior to the "Final Maturity Date" (as defined in the Indenture), (ii) an Amendment Event or (iii) an Excluded Conversion Event shall be an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and BofA shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement; *provided* that in the case of an Excluded Conversion Event (A) BofA shall designate an Early Termination Date, (B) the Transaction shall be subject to termination only in respect of a number of Options equal to the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event and (C) the amount payable with respect to such termination shall not be greater than the product of (1) the number of such Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event *multiplied by* (2) the Applicable Limit with respect to such Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event. For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event, the Determining Party (as defined in the Agreement) shall assume that (x) the relevant Excluded

Convertible Securities shall not have been converted and remain outstanding, (y) no adjustments to the "Conversion Rate" (as defined in the Indenture) have occurred pursuant to Section 4.01(e) of the Indenture and (z) in the case of an Induced Conversion, any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith had not occurred. In addition, if a Fundamental Change Repurchase Event occurs, (A) Counterparty will promptly notify BofA in writing of such Fundamental Change Repurchase Event and the number of Convertible Securities repurchased and cancelled in such Fundamental Change Repurchase Event (any such notice, a "**Fundamental Change Repurchase Notice**"), (B) receipt by BofA of any such Fundamental Change Repurchase Notice shall constitute an Additional Termination Event with respect to which the terminated portion of the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party and (C) upon receipt of any such Fundamental Change Repurchase Notice, BofA shall promptly designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which in no event shall be earlier than the related settlement date for such Convertible Securities), with respect to the portion of this Transaction corresponding to a number of Options (the "**Repurchase Options**") equal to the lesser of (i) the number of such Convertible Securities specified in such Fundamental Change Repurchase Notice *minus* the number of "Repurchase Options" (as defined in the Base Capped Call Transaction Confirmation) and (ii) the Number of Options as of the date BofA designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with a Fundamental Change Repurchase Event, the Determining Party (as defined in the Agreement) shall assume that (x) the Convertible Securities repurchased in such Fundamental Change Repurchase Event shall not have been repurchased and remain outstanding and (y) no adjustments to the "Conversion Rate" (as defined in the Indenture) have occurred pursuant to Section 4.01(e) of the Indenture.

"**Amendment Event**" means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion rate or any provision governing adjustments thereto, conversion settlement dates or the period during which the Convertible Securities may be converted), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the consent of BofA.

"**Excluded Conversion Event**" means any conversion of any Excluded Convertible Securities. Counterparty will notify BofA of such conversion within two Scheduled Trading Days of the relevant "Conversion Date" (as defined in the Indenture).

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the "Conversion Rate" (as defined in the Indenture) effected by Counterparty (whether pursuant to Section 4.12 of the Indenture or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

"**Fundamental Change Repurchase Event**" means any repurchase and cancellation of Convertible Securities pursuant to Section 3.02 of the Indenture in connection with a "Fundamental Change" (as defined in the Indenture).

(b) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If BofA shall owe Counterparty any amount pursuant to "Consequences of Merger Events" above or Sections 12.6, 12.7 or 12.9 of the

Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), BofA shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless (i) Counterparty gives irrevocable telephonic notice to BofA, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, date of the relevant Announcement Event, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable, of its election that the Share Termination Alternative shall not apply and (ii) Counterparty remakes the representation set forth in Section 7(a)(i) as of the date of such election. For the avoidance of doubt, if the Share Termination Alternative does not apply, the provisions set forth under "Consequences of Merger Events" above, Sections 12.6, 12.7 and/or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply, without regard to this Section 8(b).

Share Termination Alternative:	If applicable, BofA shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation *divided by* the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to BofA at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any

representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the issuer of the Shares or any portion of the Share Termination Delivery Units) of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units."

(c) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of BofA based on the advice of counsel, any Shares (the "**Hedge Shares**") acquired by BofA for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the public market by BofA without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow BofA to sell the Hedge Shares in a registered offering, make available to BofA an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to BofA, substantially in the form of an underwriting agreement for a registered offering, (B) provide accountant' s "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to BofA, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford BofA a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if BofA, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(c) shall apply at the election of Counterparty; (ii) in order to allow BofA to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities, in form and substance satisfactory to BofA, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to BofA, due diligence rights (for BofA or any designated buyer of the Hedge Shares from BofA), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to BofA (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate BofA for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from BofA at the Relevant Prices on such Exchange Business Days, and in the amounts, requested by BofA.

(d) *Amendment to Equity Definitions*. The following amendment shall be made to the Equity Definitions:

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor "or (C) at BofA' s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall notify BofA (any such notice, a "**Repurchase/Adjustment Notice**") promptly following any repurchase of Shares or consummating or otherwise executing or engaging in any transaction or event (a "**Conversion Rate Adjustment Event**") that would lead to an increase in the "Conversion Rate" (as such term is defined in the Indenture) if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage as determined on the date of such Repurchase/Adjustment Notice will be greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase/Adjustment Notice (or, in the case of the first such Repurchase/Adjustment Notice, greater than the Notice Percentage as of January 17, 2013 (calculated as if this Confirmation had been entered into as of such date)), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material non-public information with respect to Counterparty or the Shares, Counterparty shall

make public disclosure thereof at or prior to delivery of such Repurchase/Adjustment Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the sum of the Number of Shares and the "Number of Shares" under the Base Capped Call Transaction Confirmation and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide BofA with a Repurchase/Adjustment Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless BofA, its affiliates and their respective directors, officers, employees, agents and controlling persons (BofA and each such person being an "**Indemnified Party**") from and against any and all losses, claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all expenses (including reasonable counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of BofA.

(f) *Transfer and Assignment*. Either party may transfer any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, BofA may condition its consent on any of the following, without limitation: (i) the receipt by BofA of opinions and documents reasonably satisfactory to BofA in connection with such assignment, (ii) such assignment being effected on terms reasonably satisfactory to BofA with respect to any legal and regulatory requirements relevant to BofA, and (iii) Counterparty continuing to be obligated to provide notices hereunder relating to the Convertible Securities and continuing to be obligated with respect to "Disposition of Hedge Shares" and "Repurchase and Conversion Rate Adjustment Notices" above. In addition, BofA may transfer or assign without any consent of the Counterparty its rights and obligations hereunder and under the Agreement, in whole or in part, to (i) any of its affiliates, (ii) any entities sponsored or organized by, or on behalf of or for the benefit of BofA or (iii) any person of credit quality equivalent to BofA. At any time at which any Excess Ownership Position or a Hedging Disruption exists, if BofA, in its discretion, is unable to effect a transfer or assignment to a third party in accordance with the requirements set forth above after using its commercially reasonable efforts on pricing terms and within a time period reasonably acceptable to BofA such that an Excess Ownership Position or a Hedging Disruption, as the case may be, no longer exists,

BofA may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that such Excess Ownership Position or Hedging Disruption, as the case may be, no longer exists. In the event that BofA so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(b) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction shall be the only Terminated Transaction. "**Excess Ownership Position**" means any of the following: (i) the Equity Percentage exceeds 7.5%, (ii) BofA or any "affiliate" or "associate" of BofA would own in excess of 13% of the outstanding Shares for purposes of Section 203 of the Delaware General Corporation Law or (iii) BofA, BofA Group (as defined below) or any person whose ownership position would be aggregated with that of BofA or BofA Group (BofA, BofA Group or any such person, a "**BofA Person**") under any federal, state or local laws, regulations, regulatory orders or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares ("**Applicable**

Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a BofA Person, or could result in an adverse effect on a BofA Person, under Applicable Laws, as determined by BofA in its reasonable discretion, and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty or any contract or agreement to which Counterparty is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that BofA and any of its affiliates or any other person subject to aggregation with BofA, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13) of which BofA is or may be deemed to be a part (BofA and any such affiliates, persons and groups, collectively, "**BofA Group**") beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that, as a result of a change in law, regulation or interpretation after the date hereof, the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Shares outstanding on such day.

(g) *Staggered Settlement*. BofA may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, BofA will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the beginning of the Conversion Reference Period) or delivery times and how it will allocate the Shares it is required to deliver under "Net Share Settlement" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that BofA will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that BofA would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Right to Extend*. BofA may postpone or add, in whole or in part, any Trading Day or Days during the Conversion Reference Period or any Settlement Date or any other date of valuation or delivery by BofA, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the number of Net Shares), if BofA determines, in its reasonable discretion and in the case of (ii) below, based on advice of counsel, that such extension is reasonably necessary or advisable to (i) preserve BofA' s hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the cash market, the stock loan market or any other relevant market (but only if there has been a material decline in such liquidity conditions since the Trade Date) or (ii) enable BofA to effect purchases of Shares in connection with its hedging, hedge unwind or settlement activity hereunder in a manner that would, if BofA were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to BofA.

(i) *Adjustments*. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position.

(j) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(k) *Designation by BofA*. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing BofA to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, BofA may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform BofA obligations in respect of the Transaction and any such designee may assume such obligations. BofA shall be discharged of its obligations to Counterparty to the extent of any such performance.

(l) *No Netting and Set-off*. Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(m) *Equity Rights*. BofA acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty' s bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty' s bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that this Confirmation is not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(n) *Agreements and Acknowledgements Regarding Hedging*. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the final Settlement Date, BofA and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) BofA and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) BofA shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of BofA and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.

(o) *Early Unwind*. In the event the sale by Counterparty of the Option Securities (as defined in the Underwriting Agreement) is not consummated with the underwriters pursuant to the Underwriting Agreement for any reason by the close of business in New York on January 24, 2013 (or such later date as agreed upon by the parties, which in no event shall be later than the tenth "Business Day" (as defined in the Underwriting Agreement) thereafter) (January 24, 2013 or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**"), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of BofA and Counterparty thereunder shall be cancelled and terminated and (ii) Counterparty shall pay to BofA an amount in cash equal to the aggregate amount of reasonable costs and expenses relating to the unwinding of BofA' s hedging activities in respect of the Transaction (including market losses incurred in reselling any Shares purchased by BofA or its affiliates in connection with such hedging activities). Following such termination, cancellation and payment, each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of either party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. BofA and Counterparty represent and acknowledge to the other that upon an Early Unwind and following the payment referred to above, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(p) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party' s rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(q) *No Payment by Counterparty*. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty would otherwise owe to BofA an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty would otherwise owe to BofA, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.

(r) *Waiver of Trial by Jury*. **EACH OF COUNTERPARTY AND BOFA HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF BOFA OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF**.

(s) *Governing Law; Jurisdiction*. **THIS CONFIRMATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS**.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by BofA) correctly sets forth the terms of the agreement between BofA and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to John Servidio, Facsimile No. 704-208-2869.

Yours faithfully,

BANK OF AMERICA, N.A.

By: /s/ Christopher A. Hutmaker

Name: Christopher A. Hutmaker

Title: Managing Director

Agreed and Accepted By:

THERAVANCE, INC.

By: /s/ Rick E Winningham
Name: Rick E Winningham
Title: Chief Executive Officer

Annex A

Cap Price:	USD 38.00.
Premium:	USD 4,800,000.

Exhibit 99.1

PRESS RELEASE

THERAVANCE ANNOUNCES PRICING OF CONVERTIBLE SUBORDINATED

NOTES OFFERING

Company has also entered into Capped Call Transactions in connection with the Notes Offering

SOUTH SAN FRANCISCO, CA. − January 17, 2013 − Theravance, Inc. (NASDAQ: THRX) (the "Company"), a biopharmaceutical company with a pipeline of internally discovered product candidates and strategic collaborations with pharmaceutical companies, announced the pricing of $250 million aggregate principal amount of 2.125% convertible subordinated notes due 2023 (the "notes") in an underwritten public offering. The Company has also granted the underwriters an option to purchase up to $37.5 million aggregate principal amount of additional notes. The offering is scheduled to close on Thursday, January 24, 2013, subject to satisfaction of customary closing conditions. BofA Merrill Lynch is acting as the sole book-running manager for the offering.

The notes will pay interest semiannually at a rate of 2.125% per annum. The notes will be convertible at the option of the holders, at any time on or prior to the second business day preceding the maturity date, into shares of the Company' s common stock at an initial conversion rate of 35.9903 shares of common stock per $1,000 principal amount of notes, which is equivalent to an initial conversion price of approximately $27.79 per share, subject to adjustment upon the occurrence of certain events. The initial conversion price represents a conversion premium of approximately 32.5% over the last reported sale price of $20.97 per share of the Company' s common stock on the NASDAQ Global Select Market on January 17, 2013.

In connection with the offering of the notes, the Company has also entered into privately-negotiated capped call option transactions with one or more of the underwriters or their affiliates ("hedge counterparties"). The cost of the capped call options will be $32.0 million. The cap price of the capped call options will initially be $38.00 per share, which represents approximately an 81.2% premium to the closing price of the Company' s common stock price on January 17, 2013. The capped call options are expected generally to reduce the potential

---

dilution upon conversion of the notes in the event that the market price of the Company' s common stock, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the notes, and is expected to be subject to customary anti-dilution adjustments. However, if the market price of the Company' s common stock, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, the anti-dilutive effect of the capped call transactions will be limited.

For any conversions of notes prior to the close of business of the 95th scheduled trading day immediately preceding the maturity date, including without limitation upon an acquisition of the Company or similar business combination, a corresponding portion of the capped call transactions will be terminated. Upon such termination, the portion of the capped call transactions being terminated will be settled

at fair value (subject to certain limitations), which the Company expects to receive from the hedge counterparties, and no payments will be due to the hedge counterparties.

The Company has been advised that, in connection with establishing their initial hedges of the capped call transactions, the hedge counterparties (or their affiliates) expect to enter into various derivative transactions with respect to the Company' s common stock concurrently with, and/or purchase the Company' s common stock shortly after, the pricing of the notes. These activities could have the effect of increasing, or reducing the size of any decrease in, the price of the notes and/or the Company' s common stock concurrently with, or shortly after, the pricing of the notes. In addition, the hedge counterparties (or their affiliates) are likely to modify their hedge positions by entering into or unwinding various derivative transactions with respect to the Company' s common stock and/or by purchasing or selling the Company' s common stock or other of its securities in secondary market transactions following the pricing of the notes and prior to the maturity date of the notes (and are likely to do so during a specified averaging period under the capped call transactions preceding the maturity date, and on or around any earlier conversion date related to a conversion of the notes). The effect, if any, of any of these transactions and activities on the market price of the Company' s common stock or the notes will depend in part on market conditions and cannot be ascertained at this time, but any of these activities could adversely affect the value of the Company' s common stock, which could affect the value of the notes and the value of any of the Company' s common stock holders of the notes receive upon any conversion of the notes.

The Company intends to use the net proceeds of the offering for potential milestone payments to GlaxoSmithKline plc if there is any approval or launch of products under the parties' long-acting beta$_2$ agonist (LABA) collaboration, including RELVAR™ or BREO™ (fluticasone furoate/vilanterol), ANORO™ (umeclidinium bromide/vilanterol), or vilanterol, for the potential repayment of debt, and for other general corporate purposes. The Company also intends to use a portion of the net proceeds of the offering to pay for the cost of entering into capped call option transactions with the hedge counterparties. If the underwriters exercise their option to purchase additional notes, the Company may enter into additional capped call transactions with the hedge counterparties.

This press release is neither an offer to sell nor a solicitation of an offer to buy any securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful.

The offering is being made pursuant to a registration statement (including a prospectus for the offering) filed with the U.S. Securities and Exchange Commission (the "SEC") on January 16, 2013. Before you invest, you should read the prospectus in that registration statement and the other documents the issuer has filed with the SEC for more complete information about the issuer and the offering. You may get these documents for free by visiting EDGAR on the SEC' s website at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request them by calling BofA Merrill Lynch at 866-500-5408. In addition, copies of the final prospectus may be obtained from BofA Merrill Lynch, 222 Broadway, New York, NY 10038, Attn: Prospectus Department, or email dg.prospectus_requests@baml.com.

THERAVANCE®, the Theravance logo, and MEDICINES THAT MAKE A DIFFERENCE® are registered trademarks of Theravance, Inc.

RELVAR™ or BREO™ (FF/VI) and ANORO™ (UMEC/VI) are investigational medicines and are not currently approved anywhere in the world. RELVAR™, BREO™ and ANORO™ are trademarks of the GlaxoSmithKline group of companies. The use of these brand names has not yet been approved by any regulatory authority.

This press release contains certain "forward-looking" statements as that term is defined in the Private Securities Litigation Reform Act of 1995 regarding, among other things, statements relating to goals, plans, objectives and future events. Theravance intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 21E of the Securities Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. These statements are based on the current estimates and assumptions of the management of Theravance as of the date of this press release and are subject to risks, uncertainties,

changes in circumstances, assumptions and other factors that may cause the actual results of Theravance to be materially different from those reflected in its forward-looking statements. Factors that could cause such differences are described under the heading "Risk Factors" contained in Theravance' s registration statement filed with the SEC on January 16, 2013 related to the offering and the risks discussed in the Company' s periodic filings with SEC. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Theravance assumes no obligation to update its forward-looking statements.

Contact Information:

Theravance, Inc.
Michael W. Aguiar
Senior Vice President and Chief Financial Officer
650-808-4100
investor.relations@theravance.com

****

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.

Exhibit 99.2

PRESS RELEASE

THERAVANCE ANNOUNCES EXERCISE BY UNDERWRITERS OF OPTION TO PURCHASE

ADDITIONAL $37.5 MILLION CONVERTIBLE SUBORDINATED NOTES

Company has also entered into Additional Capped Call Transactions in connection with the Additional Notes

SOUTH SAN FRANCISCO, CA. – January 22, 2013 – Theravance, Inc. (NASDAQ: THRX) (the "Company"), a biopharmaceutical company with a pipeline of internally discovered product candidates and strategic collaborations with pharmaceutical companies, announced that the underwriters of its 2.125% convertible subordinated notes due 2023 (the "notes") have exercised in full their option to purchase an additional $37.5 million aggregate principal amount of the notes, for a total offering size of $287.5 million. The offering is scheduled to close on Thursday, January 24, 2013, subject to satisfaction of customary closing conditions. BofA Merrill Lynch is acting as the sole book-running manager for the offering.

In connection with the underwriters' exercise of their option to purchase additional notes, the Company has also entered into privately-negotiated capped call option transactions with one or more of the underwriters or their affiliates ("hedge counterparties"). The Company has previously entered into capped call transactions with the hedge counterparties with respect to $250 million of the notes on the same terms.

The capped call options are expected generally to reduce the potential dilution upon conversion of the notes in the event that the market price of the Company' s common stock, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the notes, and is expected to be subject to customary anti-dilution adjustments. However, if the market price of the Company' s common stock, as measured under the terms of the capped call transactions, exceeds $38.00 per share, which is the initial cap price of the capped call transactions, the anti-dilutive effect of the capped call transactions will be limited.

This press release is neither an offer to sell nor a solicitation of an offer to buy any securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful.

The offering is being made pursuant to a registration statement filed with the U.S. Securities and Exchange Commission (the "SEC") on January 16, 2013 and including a final prospectus dated January 17, 2013 filed with the SEC on January 18, 2013. Before you invest, you should read the prospectus in that registration statement and the other documents the issuer has filed with the SEC for more complete information about the issuer and the offering. You may get these documents for free by visiting EDGAR on the SEC' s website at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request them by calling BofA Merrill Lynch at 866-500-5408. In addition, copies of the final prospectus may be

obtained from BofA Merrill Lynch, 222 Broadway, New York, NY 10038, Attn: Prospectus Department, or email dg.prospectus_requests@baml.com.

THERAVANCE®, the Theravance logo, and MEDICINES THAT MAKE A DIFFERENCE® are registered trademarks of Theravance, Inc.

This press release contains certain "forward-looking" statements as that term is defined in the Private Securities Litigation Reform Act of 1995 regarding, among other things, statements relating to goals, plans, objectives and future events. Theravance intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 21E of the Securities Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. These statements are based on the current estimates and assumptions of the management of Theravance as of the date of this press release and are subject to risks, uncertainties, changes in circumstances, assumptions and other factors that may cause the actual results of Theravance to be materially different from those reflected in its forward-looking statements. Factors that could cause such differences are described under the heading "Risk Factors" contained in Theravance' s final prospectus filed with the SEC on January 18, 2013 related to the offering and the risks discussed in the Company' s periodic filings with SEC. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Theravance assumes no obligation to update its forward-looking statements.

Contact Information:

Theravance, Inc.
Michael W. Aguiar
Senior Vice President and Chief Financial Officer
650-808-4100
investor.relations@theravance.com

****

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.