

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

**FORM S-1
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

Obalon Therapeutics, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

3841
(Primary Standard Industrial
Classification Code Number)
5421 Avenida Encinas, Suite F
Carlsbad, California 92008
(760) 795-6558

26-1828101
(I.R.S. Employer
Identification Number)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Andrew Rasdal
President and Chief Executive Officer
Obalon Therapeutics, Inc.
5421 Avenida Encinas, Suite F
Carlsbad, California 92008
(760) 795-6558

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Proposed maximum aggregate offering price(1)	Amount of registration fee(2)
Common Stock, \$0.001 par value per share	\$75,000,000	\$7,553

- (1) Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) under the Securities Act. Includes the offering price of additional shares that the underwriters have the option to purchase.
(2) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

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

The information contained in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

Shares



Common Stock

This is the initial public offering of our common stock. No public market currently exists for our common stock. We are offering all of the shares of common stock offered by this prospectus. We expect the initial public offering price to be between \$ and \$ per share.

We have applied to list our common stock on The NASDAQ Global Market under the symbol “OBLN.”

We are an “emerging growth company” as that term is used in the Jumpstart Our Business Startups Act of 2012 and, as such, have elected to comply with certain reduced public company reporting requirements for this prospectus and future filings.

Investing in our common stock involves a high degree of risk. Before buying any shares, you should carefully read the discussion of material risks of investing in our common stock in “Risk factors” beginning on page 12 of this prospectus.

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

	Per share	Total
Public offering price	\$	\$
Underwriting discounts and commissions(1)	\$	\$
Proceeds, before expenses, to us	\$	\$

(1) We refer you to “Underwriting” for additional information regarding total underwriting compensation.

The underwriters may also purchase up to an additional shares of our common stock at the public offering price, less the underwriting discounts and commissions payable by us, to cover over-allotments, if any, within 30 days from the date of this prospectus.

The underwriters expect to deliver the shares of common stock to investors on or about , 2016.

UBS Investment Bank

Canaccord Genuity

Stifel

BTIG

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We have not, and the underwriters have not, authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus or in any applicable free writing prospectus is current only as of its date, regardless of its time of delivery or any sale of shares of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

For investors outside the United States: We have not, and the underwriters have not, done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside the United States.

Prospectus summary

This summary highlights selected information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our consolidated financial statements and the related notes thereto and the information set forth under the sections “Risk factors” and “Management’s discussion and analysis of financial condition and results of operations.” Unless the context otherwise requires, we use the terms “Obalon,” “company,” “we,” “us” and “our” in this prospectus to refer to Obalon Therapeutics, Inc. and our consolidated subsidiary.

OUR BUSINESS

We are a commercial-stage medical device company focused on developing and commercializing innovative medical devices to treat obese and overweight people by facilitating weight loss. Our initial product offering is the Obalon balloon system, the first swallowable, gas-filled intragastric balloon designed to provide progressive and sustained weight loss in obese patients. We recently received premarket approval, or PMA, from the U.S. Food and Drug Administration, or FDA, to market our balloon system for temporary use to facilitate weight loss in obese adults with a body mass index, or BMI, of 30 to 40, who have failed to lose weight through diet and exercise. The Obalon balloon system is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed. The Obalon balloon system has the potential to provide patients and physicians with a cost-effective, reversible and repeatable weight loss solution in an outpatient setting, without altering patient anatomy or requiring surgery. We anticipate commencing the U.S. commercial launch of our Obalon balloon system in early 2017.

We received PMA approval for our Obalon balloon system based on the results of our U.S. pivotal clinical trial, referred to as the SMART trial. The SMART trial was a prospective, double-blinded, multi-center, randomized (1:1), parallel-group, active sham-controlled trial involving 387 patients, which demonstrated that patients in the Obalon treatment group lost, on average, approximately twice as much body weight as patients in the sham-control group, while at the same time maintaining a low rate of serious adverse device events, or SADEs. In the SMART trial, the Obalon balloon system also demonstrated a strong safety profile, showed statistically significant differences in metabolic profiles and demonstrated that patients were able to maintain most of their weight loss for at least six months following the removal of the balloons.

Having received PMA approval for the Obalon balloon system, we are currently focused on commencing U.S. commercialization using a direct sales force, which we anticipate will occur in early 2017. We initially plan to sell the Obalon balloon system on a self-pay basis to bariatric surgeons and gastroenterologists with existing weight loss practices. We believe the design features of the Obalon balloon system will enable us to penetrate these existing physician specialties and later expand into new specialties, such as plastic surgery.

In 2012, we began selling an earlier generation of our Obalon balloon system in a limited number of countries outside of the United States through a combination of direct sales efforts and distributors. In 2015, we refocused our efforts toward developing and seeking regulatory approval for our balloon system in the United States and discontinued most of our international sales efforts other than our sales to Bader Sultan & Bros. Co. W.L.L., our distributor in the Middle East and one of our significant stockholders. As of June 30, 2016, we had sold over 23,000 of our earlier generation Obalon balloon systems for commercial use outside the United States.

THE OBESITY EPIDEMIC

Obesity is one of the largest, most debilitating, costly and underserved disease states globally. In adults, the disease is linked to several co-morbidities, including hypertension, type 2 diabetes, high blood pressure, certain cancers and other chronic conditions, as well as psychological disorders such as anxiety, depression and insomnia. The national medical care costs of obesity-related illness in adults, including out of pocket expenses, third-party payer expenses and Medicaid, were estimated to be approximately \$210 billion in 2008.

Current treatment alternatives for obese patients begin with lifestyle modification, such as diet and exercise. If this alternative fails to produce the desired results, physicians may prescribe pharmaceutical therapies, typically to obese or overweight patients with a lower BMI. Although pharmaceutical therapies have been effective in assisting with weight loss, they are often associated with safety risks and negative side effects that may limit patient compliance. In obese patients with a higher BMI, physicians may pursue aggressive surgical treatments, such as gastric bypass and gastric banding. These procedures promote weight loss by surgically restricting the stomach's capacity and outlet size; however, they present substantial side effects and carry short- and long-term safety risks that have limited adoption. Importantly, bariatric surgical procedures can result in permanent changes to the patient's anatomy, are often associated with significant reoperation rates, typically involve extended hospitalization and can result in patient intolerance to common foods.

Recently, new medical procedures have been introduced in an attempt to address the gap in care between pharmaceutical treatment and invasive surgical procedures. These new procedures have included neuroblocking therapy, aspiration therapy and traditional intragastric balloons. The traditional intragastric balloons currently available in the U.S. market were approved for use in 2015. These balloons are large, saline-filled silicone devices that must be both placed in the stomach and later removed with an endoscopic procedure performed under anesthesia. While in the stomach, the balloons fill space, creating a sense of fullness in the patient. Traditional intragastric balloons have been associated with successful weight loss. However, we believe traditional intragastric balloons suffer limitations that are impeding their adoption, including their rate of SADEs, a lack of comfort and tolerability, a limited ability to provide progressive and sustained weight loss and an inconvenient placement procedure.

OUR SOLUTION

We designed the Obalon balloon system to address many of the limitations of traditional intragastric balloons. We believe the Obalon balloon system offers patients and physicians the following benefits:

- Ø **Favorable safety profile.** In our pivotal SMART trial, only one of 336 (less than 0.3%) patients that received our Obalon balloon experienced a SADE. As of June 2016, we had sold over 23,000 units of our earlier generation Obalon balloon systems in international markets and had only nine SADEs reported to us, none of which were required to be reported to the applicable foreign regulatory authorities. Our investigations determined that all of the international SADEs occurred in patients where the device was not used in accordance with approved labeling.
- Ø **Improved patient tolerability and comfort.** Our Obalon balloon is filled with a proprietary mix of gas, as opposed to heavier saline solutions used in traditional intragastric balloons. Our system is designed to use three Obalon balloons over the course of treatment, allowing the volume in the stomach to be gradually increased. We believe these design elements have the potential to improve patient comfort and tolerability of our Obalon balloon.
- Ø **Progressive weight loss with durable results.** In our SMART trial, patients in the Obalon treatment group lost, on average, approximately twice as much body weight as patients in the sham-control

group. In addition, patients in the Obalon treatment group showed, on average, progressive weight loss over the entire six-month balloon treatment period, and maintained, on average, 89.5% of the weight loss six months after balloon removal.

- Ø **Simple and convenient placement.** The Obalon balloon is placed without anesthesia or an endoscopy through a swallowable capsule that dissolves in the stomach and releases the Obalon balloon. A microcatheter is attached to the balloon to enable inflation and is subsequently detached and removed from the patient. Placement typically occurs in less than ten minutes and patients can return to normal activity once the placement is complete. The balloons are removed endoscopically under light, conscious sedation six months after the first balloon placement.
- Ø **Attractive economics for patients and physicians.** By eliminating the need for an endoscopic delivery procedure, anesthesia and use of a special endoscopy suite, we believe our Obalon balloon system has the potential to reduce physician costs and allow more time to perform additional procedures. We believe patients will benefit from lower treatment costs, no post-placement recovery period and a quick return to daily activities.

OUR STRATEGY

Our objective is to be the leading provider of medical devices for the non-surgical treatment of obese and overweight individuals. The key elements of our strategy are to:

- Ø **Drive product adoption by working with key thought leaders in bariatrics and gastroenterology.** We plan to initially focus on direct sales to the leading bariatric surgeons and gastroenterologists in the United States. We believe adoption of our technology by these thought leaders will accelerate broader adoption of the Obalon balloon system in each physician specialty area.
- Ø **Partner with physicians to create consumer awareness and drive patients into the channel.** Our initial strategy is to establish marketing and support programs with physicians to create patient awareness and demand for the Obalon balloon system. We plan to support these physicians with best practices and tools to treat qualified patients already in the channel and through local outreach to attract new patients to the practice.
- Ø **Expand into new physician channels.** We also plan to target additional physician specialties that have access to obese patients, including the 1,900 aesthetically focused plastic surgeons. We believe that plastic surgeons are among the physicians that have access to patients appropriate for the Obalon balloon system, have experience managing self-pay centers and have the capability to learn and perform Obalon balloon placements.
- Ø **Continue to develop innovative products to facilitate market penetration.** We plan to leverage our proprietary product technology and research and development expertise to develop products for weight loss that improve clinical outcomes, increase ease of use and reduce cost. Our development pipeline includes an automated, easier-to-use inflation system, a navigation system that would reduce the need for imaging at every placement, a balloon with a treatment period of longer than six months and a self-deflating and self-passing balloon that could eliminate the need for endoscopic balloon removal.
- Ø **Optimize manufacturing to drive operating leverage.** We have built a highly leverageable manufacturing facility that allows us to control the manufacturing and assembly of our products quickly and cost-efficiently and produce higher quality products than if we outsourced manufacturing. We believe we have the ability to increase our manufacturing scale within our current facility in a cost-effective manner.

- Ø
 Protect and expand our strong intellectual property portfolio. We have developed a strong portfolio of issued patents and pending applications that protect our products and technology. We believe we have also developed know-how critical to creating current and future products that we hold and protect as trade secrets. We intend to aggressively protect and enforce our intellectual property, both for existing and new products.

THE OBALON BALLOON SYSTEM

The main components of the Obalon balloon system are: a swallowable capsule that contains the balloon attached to a microcatheter, a hand-held inflation system and a pre-filled can of our proprietary mix of gas.



Placement of the Obalon balloon typically occurs in less than ten minutes and can be accomplished in an outpatient setting. To place the Obalon balloon, the patient swallows the capsule, which has the Obalon balloon folded inside, with a glass of water. No sedation or anesthesia is required. Once swallowed, placement of the capsule is confirmed in the stomach with digital imaging. The microcatheter, which is attached to the Obalon balloon, is then connected to our EzFill inflation system. The EzFill inflation system provides real-time pressure measurements to confirm that the Obalon balloon is both properly placed and able to be correctly inflated in the stomach. A pre-filled can of gas is inserted into the EzFill inflation system and then the gas is discharged to fill the balloon to a volume of 250cc. Once the inflation of the Obalon balloon is confirmed, the microcatheter is detached from the balloon via hydrostatic pressure and is removed through the patient’s mouth. The patient returns two more times over the following eight to 12 weeks to receive a second and third Obalon balloon, expanding total balloon volume within the stomach to 750cc.

All of the balloons are removed in a single procedure six months after the placement of the initial balloon. Removal of the Obalon balloon typically requires approximately 15 minutes. The balloons are removed endoscopically under light conscious sedation, using standard commercially-available endoscopy tools.

PRODUCT PIPELINE

We are leveraging our proprietary product technology and research and development expertise to develop additional products and product enhancements that improve clinical outcomes, increase ease of

use and reduce cost. These include a vegetable-derived balloon capsule, our EzPz inflation system, which is being designed to be automated and simpler to operate, a navigation system that could reduce the need for digital imaging at each balloon placement, a longer-term balloon that could be used to provide treatment for up to one year and a deflatable-passable balloon that could potentially eliminate the need for an endoscopic procedure to remove the balloons.

RISK FACTORS

Our business is subject to numerous risks and uncertainties, including those highlighted in the section titled “Risk factors” immediately following this prospectus summary. Some of these risks are:

- Ø we have limited operating experience and a history of net losses, and we may not be able to achieve or sustain profitability;
- Ø we are currently a single product company with limited commercial sales experience, which makes it difficult to evaluate our current business, predict our future prospects and forecast our financial performance and growth;
- Ø physicians and patients may be slow to adopt and use intragastric balloons, and adverse events or other negative developments involving other companies’ intragastric balloons or other obesity treatments may further slow physician and patient adoption;
- Ø we may be unable to convince physicians to adopt our Obalon balloon system and recommend it to their patients;
- Ø the effectiveness and safety of our Obalon balloon system depends critically on our ability to educate physicians on its safe and proper use;
- Ø patients may experience SADEs as the result of the misuse or malfunction of, or design flaws in, our products;
- Ø our success depends on our ability to obtain FDA approval or other regulatory approvals for our future products and product improvements; and
- Ø we may be unable to adequately protect our proprietary technology and maintain issued patents that are sufficient to protect our Obalon balloon system.

CORPORATE INFORMATION

We were incorporated under the laws of the State of Delaware in January 2008. Our principal executive offices are located at 5421 Avenida Encinas, Suite F, Carlsbad, California 92008, and our telephone number is (760) 795-6558. Our website address is www.obalon.com. The information contained on, or that can be accessed through, our website is not part of, and is not incorporated by reference into, this prospectus. Investors should not rely on any such information in deciding whether to purchase our common stock.

We have registered the trademarks “Obalon” in the United States and several foreign countries, “Obalon Swallowable Balloon” in the European Union and our Obalon logo in Mexico. We have trademark applications pending for “EzPz” in the United States and several foreign countries and for “OGB” and “EzFill” in the United States. Additionally, our Obalon logo and all product names are our common law trademarks. All other service marks, trademarks and trade names appearing in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and tradenames referred to in this prospectus appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor to these trademarks and tradenames.

IMPLICATIONS OF BEING AN EMERGING GROWTH COMPANY

As a company with less than \$1.0 billion in revenue during our last fiscal year, we qualify as an emerging growth company as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act. An emerging growth company may take advantage of specified reduced reporting requirements and is relieved of certain other significant requirements that are otherwise generally applicable to public companies. These provisions include, but are not limited to:

- Ø being permitted to present only two years of audited financial statements and only two years of related Management’s discussion and analysis of financial condition and results of operations in this prospectus;
- Ø not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act;
- Ø reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and
- Ø exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We may take advantage of these provisions until the last day of the fiscal year following the fifth anniversary of the closing of this offering. However, if certain events occur prior to the end of such five-year period, including if we become a “large accelerated filer,” our annual gross revenues equal or exceed \$1.0 billion or we issue more than \$1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company prior to the end of such five-year period.

We have elected to take advantage of certain of the reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of other reduced reporting requirements in future filings. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

The JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. We have irrevocably elected not to avail ourselves of this exemption and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

The offering

Common stock offered by us	shares (or shares if the underwriters exercise their option to purchase additional shares in full).
Common stock to be outstanding after this offering	shares (or shares if the underwriters exercise their option to purchase additional shares in full).
Use of proceeds	We estimate that the net proceeds from this offering will be approximately \$ million, or approximately \$ million if the underwriters exercise their option to purchase additional shares in full, based on an assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use the net proceeds from this offering for the commercialization of our Obalon balloon system, continued research and development efforts and working capital and other general corporate purposes. See “Use of proceeds.”
Directed share program	At our request, the underwriters have reserved up to 5% of the common stock being offered by this prospectus for sale at the initial public offering price to our directors, officers, employees and other individuals associated with us and members of their families. The sales will be made by UBS Financial Services Inc., a selected dealer affiliated with UBS Securities LLC, an underwriter of this offering, through a directed share program. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of common stock. Any shares sold in the directed share program to our directors or executive officers will be subject to the lock-up agreements described in “Shares eligible for future sale—Lock-up agreements.” See “Underwriting—Directed share program.”

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Risk factors	See “Risk factors” for a discussion of factors you should carefully consider before deciding to invest in our common stock.
Proposed NASDAQ Global Market symbol	“OBLN”
The number of shares of our common stock to be outstanding after this offering is based on _____ shares of our common stock outstanding as of June 30, 2016, which assumes the automatic conversion of all outstanding shares of our convertible preferred stock as of June 30, 2016 into an aggregate of 30,045,279 shares of common stock immediately prior to the closing of this offering and _____ shares that we expect to issue upon the automatic net exercise of warrants immediately prior to the closing of this offering, based on an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and excludes: - Ø 5,126,449 shares of common stock issuable upon the exercise of stock options outstanding as of June 30, 2016, with a weighted-average exercise price of \$0.48 per share; - Ø 655,675 shares of common stock issuable upon the exercise of stock options granted after June 30, 2016, with an exercise price of \$0.97 per share; - Ø 176,286 shares of common stock issuable upon the exercise of warrants to purchase shares of preferred stock outstanding as of June 30, 2016, with a weighted-average exercise price of \$2.55 per share, which will become warrants to purchase 176,286 shares of common stock upon the closing of this offering; and - Ø _____ shares of common stock reserved for future issuance under our stock-based compensation plans as of June 30, 2016, consisting of (i) 3,063,416 shares of common stock reserved for future issuance under our 2008 Equity Incentive Plan as of June 30, 2016, which was reduced to 1,298,197 shares on July 17, 2016, (ii) _____ shares of common stock reserved for future issuance under our 2016 Equity Incentive Plan, which will become effective on the date immediately prior to the effective date of the registration statement of which this prospectus is a part, and (iii) _____ shares of common stock reserved for future issuance under our 2016 Employee Stock Purchase Plan, which will become effective on the effective date of the registration statement of which this prospectus is a part. Upon the effective date of the 2016 Equity Incentive Plan, any remaining shares available for issuance under our 2008 Equity Incentive Plan will be added to the shares reserved for future issuance under our 2016 Equity Incentive Plan and we will cease granting awards under our 2008 Equity Incentive Plan. Our 2016 Equity Incentive Plan and 2016 Employee Stock Purchase Plan will also provide for automatic annual increases in the number of shares reserved under the plans each year, as more fully described in the section entitled “Executive compensation—Employee benefit and stock compensation plans.” Unless otherwise noted, all information contained in this prospectus reflects and assumes the following: - Ø the automatic conversion of all outstanding shares of our convertible preferred stock as of June 30, 2016 into an aggregate of 30,045,279 shares of common stock immediately prior to the closing of this offering; - Ø pursuant to their terms, the automatic net exercise of outstanding warrants to purchase 71,200 shares of preferred stock immediately prior to the closing of this offering, which will result in the issuance of _____ shares of common stock, based on an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus; - Ø pursuant to their terms, the automatic conversion of outstanding warrants to purchase 176,286 shares of preferred stock into warrants to purchase 176,286 shares of common stock upon the closing of this offering;	

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- Ø no exercise of a warrant, issued to Pacific Western Bank in September 2016, to purchase that number of shares of our Series E convertible preferred stock, at a purchase price of \$2.8597 per share, equal to 3.0% of the total additional amount of debt drawn under our loan and security agreement (up to \$5.0 million) divided by the purchase price, which will only be exercisable in the event that we borrow such additional amount and which will automatically convert to a warrant to purchase the same number of shares of common stock immediately prior to the closing of this offering pursuant to its terms;
- Ø no exercise of the outstanding options or warrants other than as described above;
- Ø a -for- reverse stock split, which became effective on , 2016;
- Ø the filing and effectiveness of our restated certificate of incorporation in Delaware and the adoption of our restated bylaws, both of which will occur immediately prior to the closing of this offering;
- Ø no exercise by the underwriters of their option to purchase additional shares of our common stock; and
- Ø no purchases by existing stockholders or their affiliates pursuant to the directed share program.

SUMMARY CONSOLIDATED FINANCIAL DATA

The summary consolidated statements of operations data presented below for the years ended December 31, 2014 and 2015 are derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary consolidated statements of operations data for the six months ended June 30, 2015 and 2016 and our consolidated balance sheet data as of June 30, 2016 are derived from our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus. The unaudited interim condensed consolidated financial statements were prepared on a basis consistent with our audited financial statements and reflect, in the opinion of management, all adjustments of a normal recurring nature that are necessary for the fair presentation of the financial statements. Our historical results are not necessarily indicative of the results that may be expected in any future period, and the results for the six months ended June 30, 2016 are not necessarily indicative of results to be expected for the full year ending December 31, 2016, or any other period.

The following summary consolidated financial data should be read with “Selected consolidated financial data,” “Management’s discussion and analysis of financial condition and results of operations” and our consolidated financial statements and related notes included elsewhere in this prospectus. The summary consolidated financial data in this section are not intended to replace the consolidated financial statements and are qualified in their entirety by the consolidated financial statements and related notes included elsewhere in this prospectus.

	Year ended December 31,		Six months ended June 30,	
	2014	2015	2015	2016
	(unaudited)			
	(in thousands, except shares and per share data)			
Consolidated statements of operations data:				
Revenue:				
Revenue	\$ 1,683	\$ 216	\$ 224	\$ —
Revenue, related party	1,856	3,823	1,739	1,848
Total revenue	3,539	4,039	1,963	1,848
Cost of revenue	2,912	2,503	1,205	1,294
Gross profit	627	1,536	758	554
Operating expenses:				
Research and development	5,767	12,978	5,968	5,098
Selling, general and administrative	4,700	3,491	1,679	2,975
Total operating expenses	10,467	16,469	7,647	8,073
Loss from operations	(9,840)	(14,933)	(6,889)	(7,519)
Interest expense, net	(220)	(549)	(263)	(290)
Gain (loss) from change in fair value of warrant liability	167	(34)	11	119
Other income (expense), net	3	(41)	(16)	(22)
Net loss	(9,890)	(15,557)	(7,157)	(7,712)
Other comprehensive income	9	5	10	4
Net loss and comprehensive loss	\$ (9,881)	\$ (15,552)	\$ (7,147)	\$ (7,708)
Net loss per share, basic and diluted(1)	\$ (6.42)	\$ (9.36)	\$ (4.31)	\$ (4.61)
Weighted-average common shares outstanding, basic and diluted(1)	1,541,166	1,662,255	1,659,394	1,672,633
Pro forma net loss per share, basic and diluted (unaudited)(1)		\$		\$
Pro forma weighted-average common shares outstanding, basic and diluted (unaudited)(1)				

(footnotes on following page)

- (1) See Notes 2 and 4 to our audited consolidated financial statements and Notes 2 and 4 to our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus for an explanation of the calculations of our basic and diluted net loss per share, basic and diluted pro forma net loss per share and the shares used in computing basic and diluted net loss per share and basic and diluted pro forma net loss per share.

	As of June 30, 2016	
	Actual	Pro forma as adjusted(2)
		Pro forma(1) (unaudited) (in thousands)
Consolidated balance sheet data:		
Cash and cash equivalents and short-term investments	\$ 18,282	\$
Working capital	13,924	
Total assets	20,071	
Term loan	9,883	
Warrant liability	213	
Convertible preferred stock	70,498	
Accumulated deficit	(63,854)	
Total stockholders' (deficit) equity	(62,690)	

- (1) The pro forma consolidated balance sheet data give effect to: (i) the automatic conversion of all outstanding shares of our convertible preferred stock as of June 30, 2016 into an aggregate of 30,045,279 shares of common stock immediately prior to the closing of this offering; (ii) the automatic net exercise of outstanding warrants to purchase 71,200 shares of preferred stock immediately prior to the closing of this offering, which will result in the issuance of shares of common stock, based on an assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and the related reclassification of the warrant liability to stockholders' equity; and (iii) the automatic conversion of outstanding warrants to purchase 176,286 shares of preferred stock into warrants to purchase 176,286 shares of common stock upon the closing of this offering and the related reclassification of the warrant liability to additional paid-in capital.
- (2) The pro forma as adjusted balance sheet data give effect to: (i) the pro forma adjustments set forth above and (ii) the sale and issuance of shares of common stock in this offering, at an assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Each \$1.00 increase (decrease) in the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) each of our pro forma as adjusted cash and cash equivalents and short-term investments, working capital, total assets and total stockholders' equity by approximately \$ million, assuming the number of shares offered, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions payable by us. Similarly, each increase (decrease) of one million shares in the number of shares offered would increase (decrease) each of our pro forma as adjusted cash and cash equivalents and short-term investments, working capital, total assets and total stockholders' equity by approximately \$ million, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions payable by us. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of our initial public offering determined at pricing.

Risk factors

Investing in our common stock involves a high degree of risk. Before making your decision to invest in shares of our common stock, you should carefully consider the risks described below, together with the other information contained in this prospectus, including our financial statements and the related notes appearing at the end of this prospectus. We cannot assure you that any of the events discussed below will not occur. These events could have a material and adverse impact on our business, results of operations, financial condition and cash flows. If that were to happen, the trading price of our common stock could decline, and you could lose all or part of your investment.

RISKS RELATED TO OUR BUSINESS

We have limited operating experience and a history of net losses, and we may not be able to achieve or sustain profitability.

We have a limited operating history and have focused primarily on research and development, clinical trials, product engineering and building our manufacturing capabilities. We have also conducted a commercial launch of a previous generation of the Obalon balloon system in certain international markets, but our commercial sales experience in these international markets has been limited and our total revenue to date is approximately \$10.6 million. We have incurred significant losses in each period since our inception in 2008, with net losses of \$9.9 million, \$15.6 million and \$7.7 million for the years ended December 31, 2014 and 2015 and the six months ended June 30, 2016, respectively. As of June 30, 2016, we had an accumulated deficit of approximately \$63.9 million. These losses and our accumulated deficit reflect the substantial investments we have made to develop and seek regulatory approval for our Obalon balloon system and sell our Obalon balloon system internationally.

We expect our costs and expenses to increase in the future as we prepare for and commence U.S. commercialization of our product, including the development of a direct sales force and the expansion of our manufacturing facilities, and as we continue to expend substantial amounts on research and development, including for conducting clinical trials, of our products in development. As a result, we expect our losses to continue for the foreseeable future. In addition, as a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. Accordingly, we cannot assure you that we will achieve profitability in the future or that, if we do become profitable, we will sustain profitability. Our failure to achieve and sustain profitability would negatively impact the market price of our common stock.

We are currently a single product company with limited commercial sales experience, which makes it difficult to evaluate our current business, predict our future prospects and forecast our financial performance and growth.

We were incorporated in 2008, and to date our business activities have been focused primarily on the development and regulatory approval of our Obalon balloon system. All of our revenue to date is, and we expect for the foreseeable future will be, attributable to sales of our Obalon balloon system and its component parts. Our commercial sales experience to date has been limited to sales to distributors in a limited number of countries outside the United States. We recently obtained premarket approval, or PMA, from the U.S. Food and Drug Administration, or FDA, to market the current generation of our balloon system in the United States, and we expect that sales in the United States will account for a majority of our revenue for the foreseeable future. Our limited operating experience and lack of

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commercialization experience in what we expect will be our primary market make it difficult to evaluate our current business and predict our future prospects. A number of factors that are outside our control may contribute to fluctuations in our financial results, including:

- Ø patient and physician demand for our Obalon balloon system, including the rate at which physicians recommend our Obalon balloon system to their patients;
- Ø positive or negative media coverage, or public, patient and/or physician perception, of our Obalon balloon system, the procedures or products of our competitors, or our industry;
- Ø any safety or efficacy concerns that arise through patient experience with our Obalon balloon system;
- Ø unanticipated delays in product development or product launches;
- Ø our ability to maintain our current or obtain further regulatory clearances or approvals;
- Ø delays in, or failure of, product and component deliveries by our third-party suppliers;
- Ø introduction of new procedures or products for treating obese or overweight patients that compete with our product;
- Ø adverse changes in the economy that reduce patient demand for elective procedures; and
- Ø performance of our international distributors.

It is therefore difficult to predict our future financial performance and growth, and such forecasts are inherently limited and subject to a number of uncertainties. If our assumptions regarding the risks and uncertainties we face, which we use to plan our business, are incorrect or change due to circumstances in our business or our markets, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations and our business could suffer.

Because we devote substantially all of our resources to our Obalon balloon system and rely on our Obalon balloon system as our sole source of revenue, any factors that negatively impact our product, or result in decreasing product sales, would materially and adversely affect our business, financial condition and results of operations.

Physicians and patients may be slow to adopt and use intragastric balloons, and adverse events or other negative developments involving other companies' intragastric balloons or other obesity treatments may further slow physician and patient adoption. If any of these events were to occur, our business and prospects would be negatively affected.

Intragastric balloons are a new treatment option for obese and overweight patients. Currently, we are aware of only two other intragastric balloons available for sale in the United States, neither of which was available prior to 2015. As a result, physician and patient awareness of intragastric balloons as a treatment option for obesity and weight management, and experience with intragastric balloons, is minimal. Our success depends in large part on our ability to educate physicians and patients, and successfully demonstrate the safety, tolerability, ease of use, efficacy, cost effectiveness and other merits of our Obalon balloon system. Since we received PMA approval for the Obalon balloon system in September 2016, we expect to begin engaging in an active marketing campaign to raise awareness of our Obalon balloon system and its benefits among physicians, but we cannot assure you that these efforts will be successful or that they will not prove to be cost-prohibitive.

Physicians play a significant role in determining the course of a patient's weight management or obesity treatments and as a result, the type of treatment that will be recommended or provided to a patient. We

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intend to target our sales efforts at bariatric surgeons and gastroenterologists, and, over time, to plastic surgeons, because they are either the physicians treating obese and overweight patients and/or have experience with endoscopic procedures. However, the initial point of contact for many obese and overweight patients may be general practitioners, bariatricians, endocrinologists, obstetricians and gynecologists, each of whom commonly manage and regularly see patients that are obese or overweight. If these physicians are not made aware of our Obalon balloon system, they may not refer patients to bariatric surgeons, gastroenterologists or plastic surgeons for treatment using our product, and those patients may instead not seek treatment at all or be treated with pharmaceuticals or an alternative device or surgical procedure.

Additionally, because the market for intragastric balloons is new and developing and contains a limited number of market participants, our products could be negatively impacted by unfavorable market reactions to these other devices. If the use of these or future intragastric balloons results in serious adverse device events, or SADEs, or such products are subject to malfunctions or misuse, patients and physicians may attribute such negative events to intragastric balloons generally, which may adversely affect market adoption of our Obalon balloon system. Additionally, if patients undergoing treatment with our Obalon balloon perceive the weight loss inadequate or adverse events too numerous or severe as compared with the retreatment rates of alternative balloons or procedures, it will be difficult to demonstrate the value of our Obalon balloon system to patients and physicians. As a result, demand for our Obalon balloon system may decline or may not increase at the pace or to the levels we expect.

If we are unable to convince physicians to adopt our Obalon balloon system and recommend it to their patients, we may be unable to sell our products, grow our business or achieve profitability.

Our ability to sell our Obalon balloon system depends heavily on the willingness of physicians to adopt our system and recommend it to their patients. Physicians may not adopt our Obalon balloon system unless they are able to determine, based on experience, long-term clinical data, recommendations from other physicians and published peer-reviewed journal articles, that it provides a safe and effective treatment alternative for obesity. Even if we are able to raise awareness among physicians, physicians tend to be slow in changing their medical treatment practices and may be hesitant to select our Obalon balloon system for recommendation to patients for a variety of reasons, including:

- Ø long-standing relationships with competitors and distributors that sell other products and their competitive response and negative selling efforts;
- Ø lack of experience with our products and concerns that we are relatively new to the obesity market, or concerns that our competitors offer greater support or have larger amounts of resources than our company;
- Ø perceived liability risk generally associated with the use of new products and procedures;
- Ø lack of perceived lack of sufficient clinical evidence supporting clinical benefits;
- Ø reluctance to change to or use new products;
- Ø perceptions that our products are unproven or experimental; and
- Ø time and skill commitment that may be required to gain familiarity with a new system.

We are also aware of certain characteristics and features of our Obalon balloon system that may prevent widespread market adoption. For example, our Obalon balloon system is approved as an adjunct to a moderate intensity diet and behavior modification program. As a result, physicians will need to develop the appropriate practice management programs, which include treatment protocols, nutritional

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counseling and patient management, to treat patients in a manner consistent with our treatment protocol. If physicians are unable or unwilling to implement the appropriate practice management programs to successfully treat patients with the Obalon balloon, they may not adopt our balloon system. Our current EzFill inflation system requires certain pre-programming that is dependent upon the altitude of the physician's practice, which may hinder or make it more difficult for us to market and commercialize our products.

The effectiveness and safety of our Obalon balloon system depends critically on our ability to educate physicians on its safe and proper use. If we are unable to do so, we may not achieve our expected growth and may be subject to risks and liabilities.

In addition to educating physicians on the clinical benefits of our Obalon balloon system, we must also train physicians on its safe and appropriate use. In particular, our FDA approved labeling requires physicians to complete an Obalon training program before they can place the device and for us to provide clinical support as needed. If we are unable to provide an adequate training program, product misuse may occur that could lead to SADEs. Many physicians may be unfamiliar with such treatments or find it more complex than competitive products or alternative treatments. As such, there is a learning process involved for physicians to become proficient in the use of our products and it may take several procedures for a physician to be able to use our Obalon balloon system comfortably. In addition, it is also critical for physicians to be educated and trained on best practices in order to achieve optimal results, including patient selection and eligibility criteria as well as complementary methods of use such as diet or behavioral modification programs. Convincing physicians to dedicate the time and energy necessary for adequate training is challenging, and we cannot assure you that we will be successful in these efforts. This training process may also take longer than we expect. In the event that physicians are not properly trained in the use of our Obalon balloon system, they may misuse or ineffectively use our products for the treatment of patients. As a result, patients may experience adverse events or not be able to enjoy the benefits of our system or achieve the weight loss outcomes they expect, leading to dissatisfaction and market rejection of our products. In addition, misuse of our products in any stage of the treatment may result in, among other things, patient injury, adverse side effects, negative publicity or lawsuits against us. Any of these events could have an adverse effect on our business and reputation.

If patients are unable to successfully swallow the capsule, our device malfunctions during delivery or physicians cannot deploy the Obalon balloon, physicians may be unwilling to continue to recommend our products.

Patients may be unable to successfully swallow the capsule that contains the Obalon balloon, potentially creating an economic disincentive for physicians in adopting our technology. In our SMART trial, 7.6% of the combined treatment and control group patients failed to swallow a capsule with the microcatheter attached despite success swallowing a placebo that did not have a catheter attached. There were also instances where balloon deployment was negatively impacted due to a leak in the microcatheter, which was caused by the patient biting the catheter during placement. There may be other reasons for unsuccessful placements that we are not yet aware. If the balloon is not successfully placed for any reason, the patient may attempt to seek a refund or monetary damages for the treatment. Alternatively, physicians that have paid us for a balloon, but have not been paid by their patient because of a treatment failure, may seek a refund or monetary damages from us. Either scenario could cause a negative financial impact for us and could also create ill will with patients and physicians.

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Patients may experience SADEs as the result of the misuse or malfunction of, or design flaws in, our products, which could expose us to expensive litigation, divert management's attention and harm our reputation and business.

Our business is subject to significant risks associated with manufacture, distribution and use of medical devices that are placed inside the human body, including the risk that patients may be severely injured by or even die from the misuse or malfunction of, or design flaws in, our products. In addition, our business may suffer adverse consequences even in circumstances where a patient injury is caused by the actions of others, such as where a patient is injured due to the improper or negligent use of our products by a physician.

For instance, if the Obalon capsule does not reach a patient's stomach and is inflated in another portion of the body, such as the esophagus or the small intestines, the patient could be severely injured. A patient who experiences an esophageal inflation of the balloon would most likely require surgical intervention, and could die as a result of an esophageal inflation or as a result of complications from subsequent surgery. While we have designed our products, and established instructions and protocols for physicians, to attempt to mitigate such risks, we cannot guarantee that adverse events will not occur. For example, physicians may fail to follow our instructions and protocols, and the safety systems we design into our products may not prevent all possible adverse events and injuries and/or our products may fail to function properly.

In connection with the sale of over 23,000 units of our earlier generation Obalon balloon systems in international markets through June 30, 2016, nine SADEs have been reported to us, of which six were related to balloon deflations resulting in migration requiring surgical removal and three were related to an esophageal laceration or rupture. We investigated each of these events and determined that all nine of these events occurred in patients where the device was not used in accordance with approved labeling. In one instance, a balloon was inflated inside a patient's esophagus, and following a subsequent surgical procedure intended to address esophageal injury, the patient died of sepsis. While we have evidence that the inflation occurred due to the physician's failure to follow our instructions and protocols for proper device placement, we have been unable to obtain sufficient information from the physician to verify the exact cause of injury, and we cannot guarantee that other similar improper inflations will not occur in the future.

Our quality assurance testing programs may not be adequate to detect all defects, which may result in patient adverse events, interfere with customer satisfaction, reduce sales opportunities, harm our marketplace reputation, increase warranty repairs or reduce gross margins. Our inability to remedy a product defect could result in the financial failure of products, a product recall, temporary or permanent withdrawal of a product from a market, product liability suits, damage to our reputation or our brand, inventory costs or product reengineering expenses, any of which could have a material impact on our business, results of operations and financial condition.

If we fail to grow our sales and marketing capabilities and develop widespread brand awareness cost effectively, our growth will be impeded and our business may suffer.

We have very limited experience as a company in the sales and marketing of our products, and no experience with sales and marketing in the United States. The majority of our product sales to date have been through a single international distributor in the Middle East, with a lesser percentage sold through distributors or directly to physicians in Europe and Mexico. We recently obtained FDA approval to market our Obalon balloon system in the United States, and we plan to launch the product with a direct sales force that we are currently in the process of building. Identifying and recruiting qualified sales

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personnel and training them in the use of our Obalon balloon system to achieve the level of clinical competency expected by physicians, and compliance with applicable federal and state laws and regulations and our internal policies and procedures, requires significant time, expense and attention. It can take several months before our sales representatives are fully trained and productive. Our business may be harmed if our efforts to expand and train our sales force do not generate a corresponding increase in revenues. In particular, there is significant competition for qualified and experienced sales personnel. If we are unable to hire, develop and retain talented sales personnel or if new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, we may not be able to realize the expected benefits of this investment or increase our revenues.

In addition, factors that may inhibit our efforts to commercialize our Obalon balloon system and any other products that may receive FDA approval include:

- Ø the inability of our sales and marketing personnel to perform their duties and conduct business in a manner that is compliant with our internal policies and procedures and FDA law and regulations;
- Ø the inability of sales personnel to obtain access to or persuade adequate numbers of physicians to recommend any current and future products;
- Ø the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more extensive product lines;
- Ø unforeseen costs and expenses associated with creating an independent sales and marketing organization; and
- Ø efforts by our competitors to commercialize products at or about the time when our product would be coming to market.

Our ability to increase our customer base and achieve broader market acceptance of our Obalon balloon system will depend to a significant extent on our ability to expand our marketing operations. We plan to dedicate significant financial and other resources to our marketing programs. Our business will be harmed if our marketing efforts and expenditures do not generate an increase in revenue.

In addition, we believe that developing and maintaining widespread awareness of our brand in a cost-effective manner is critical to achieving widespread acceptance of our product and attracting new customers. Brand promotion activities may not generate customer awareness or increase revenue, and even if they do, any increase in revenue may not offset the costs and expenses we incur in building our brand. If we fail to successfully promote, maintain and protect our brand, we may fail to attract or retain the customers necessary to realize a sufficient return on our brand-building efforts, or to achieve the widespread brand awareness that is critical for broad customer adoption of our Obalon balloon system.

We do not expect that physicians or patients will receive third-party reimbursement for treatment with our products. As a result, we expect that our success will depend on the ability and willingness of physicians to adopt self-pay practice management infrastructure and of patients to pay out-of-pocket for treatment with our products.

Certain elective treatments, such as an intragastric balloon, are typically not covered by insurance. Accordingly, we do not expect that any third-party payors will cover or reimburse physicians or patients for the Obalon balloon system. As a result, we expect that our success will depend on the ability and willingness of physicians that may not have historically operated a self-pay practice to adopt the policies and procedures needed to successfully operate such a practice. Our initial sales and marketing efforts in the United States will be targeted at bariatric surgeons and gastroenterologists. These physicians are

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accustomed to providing services that are reimbursed by third-party payors. As a result, these physicians may need to augment their administrative staff and billing procedures to address the logistics of a self-pay practice. If physicians are unable or unwilling to make such changes, adoption of our products may be slower than anticipated.

Our success will also depend on the ability and willingness of patients to pay out-of-pocket for treatment with our products. Adverse changes in the economy may cause consumers to reassess their spending choices and reduce the demand for elective treatments and could have an adverse effect on consumer spending. This shift could have an adverse effect on our net sales. Furthermore, consumer preferences and trends may shift due to a variety of factors, including changes in demographic and social trends, public health initiatives and product innovations, which may reduce consumer demand for our products. The decision by a patient to elect to undergo treatment with the Obalon balloon system may be influenced by a number of additional factors, such as:

- Ø the success of any sales and marketing programs, including direct-to-consumer marketing efforts, that we, or any third parties we engage, undertake, and as to which we have limited experience;
- Ø the extent to which physicians offer the Obalon balloon system to their patients;
- Ø the extent to which the Obalon balloon system satisfies patient expectations;
- Ø the cost, safety, comfort, tolerability, ease of use, and effectiveness of the Obalon balloon system as compared to other treatments; and
- Ø general consumer confidence, which may be impacted by economic and political conditions.

Our financial performance will be materially harmed if we cannot generate significant physician or patient demand for the Obalon balloon system.

We have limited experience manufacturing our Obalon balloon system in commercial quantities.

All of our product sales to date have occurred internationally using an earlier generation of the Obalon balloon system. We expect to transition our international sales to the current generation of the Obalon balloon system in 2017. As a result, we have no experience in manufacturing our current Obalon balloon system in commercial quantities, and we will need to increase our manufacturing capabilities in order to satisfy expected demand for our Obalon balloon system. We may encounter production delays or shortfalls caused by many factors, including the following:

- Ø the timing and process needed to assimilate the changes necessary to enable our production processes to accommodate anticipated demand;
 - Ø shortages that we may experience in any of the key components or sub-assemblies that we obtain from third-party suppliers;
 - Ø delays that we may experience in completing validation and verification testing for new controlled-environment rooms at our manufacturing facilities;
 - Ø delays that we may experience in seeking FDA review and approval of PMA supplements required for certain changes in manufacturing facilities, methods or quality control procedures;
 - Ø our limited experience in complying with the FDA's Quality System Regulation, or the QSR, which sets forth good manufacturing practice requirements for medical devices and applies to the manufacture of the components of our Obalon balloon system; and
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- Ø our ability to attract and retain qualified employees, who are in short supply, in order to increase our manufacturing output.

If we are unable to keep up with demand for our Obalon balloon system, our revenue could be impaired, market acceptance for our product could be harmed and our customers might instead purchase our competitors' products. Our inability to successfully manufacture components of our Obalon balloon system in quantities sufficient to meet expected demand would materially harm our business.

We depend on third-party suppliers, including single source suppliers, to manufacture some of our components and sub-assemblies, which could make us vulnerable to supply shortages and price fluctuations that could harm our business.

We currently manufacture our Obalon balloon system and some of its components and sub-assemblies at our Carlsbad facility and we rely on third-party suppliers for other components and sub-assemblies used in production. In some cases, these suppliers are single source suppliers. For example, we rely on single suppliers for the extruded film, swallowable capsule, molded silicone valve used to manufacture our Obalon balloons and the hydrophilic coating for our catheters. These components are critical to our products and there are relatively few alternative sources of supply. We do not carry a significant inventory of these components. Identifying and qualifying additional or replacement suppliers for any of the components or sub-assemblies used in our products could involve significant time and cost. For example, given that we have received PMA approval for our Obalon balloon system, any replacement supplier will have to be approved by the FDA prior to our ability to use the components it provides. This could result in significant delays as we would be unable to produce additional product until such supplier had been identified and qualified. In addition, our reliance on third-party suppliers subjects us to a number of risks that could impact our ability to manufacture our products and harm our business, including:

- Ø interruption of supply resulting from modifications to, or discontinuation of, a supplier's operations;
- Ø delays in product shipments resulting from uncorrected defects, reliability issues or a supplier's failure to consistently produce quality components that meet our specifications;
- Ø price fluctuations due to a lack of long-term supply arrangements with our suppliers for key components;
- Ø inability to obtain adequate supply in a timely manner or on commercially reasonable terms;
- Ø difficulty identifying and qualifying alternative suppliers for components in a timely manner;
- Ø inability of manufacturers or suppliers to comply with the QSR and other regulations enforced by the FDA and state regulatory authorities;
- Ø inability to control the quality of products manufactured by third parties;
- Ø production delays related to the evaluation and testing of products from alternative suppliers and corresponding regulatory qualifications; and
- Ø delays in delivery by our suppliers due to changes in demand from us or their other customers.

Although we expect our third-party suppliers to supply us with components that meet our specifications and comply with regulatory and quality requirements, we do not control our suppliers outside of our agreements and contracts, as they operate and oversee their own businesses. There is a risk that our suppliers will not always act consistent with our best interests, and may not always supply components that meet our needs. Any significant delay or interruption in the supply of components or sub-assemblies,

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or our inability to obtain substitute components, sub-assemblies or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and harm our business.

We may not be able to secure additional financing on favorable terms, or at all, to meet our future capital needs and our failure to obtain additional financing when needed could force us to delay, reduce or eliminate our commercialization efforts and product development programs.

Our operations have consumed substantial amounts of cash since inception. We believe that our cash and cash equivalents and short-term investments as of June 30, 2016 are not sufficient to fund our operations for the next 12 months. However, we believe that the net proceeds from this offering, together with our existing cash and cash equivalents and short-term investments and expected revenue, will be sufficient to meet our capital requirements and fund our operations for at least two years following this offering. We expect our costs and expenses to increase in the future as we prepare for and commence U.S. commercialization of our Obalon balloon system, including the development of a direct sales force and the expansion of our manufacturing facilities, and as we continue to expend substantial amounts on research and development, including for conducting clinical trials, of our products in development. We also may need additional funds to complete the development and commercialization of advancements to our existing Obalon balloon system as well as our additional products under development. Additionally, we expect to incur additional costs as a result of operating as a public company. Our future capital requirements will depend on many factors, including:

- Ø the costs and expenses of establishing our U.S. sales and marketing infrastructure and our manufacturing operations;
- Ø the degree of success we experience in commercializing our Obalon balloon system;
- Ø the revenue generated by sales of our Obalon balloon system and any other products that may be approved in the United States;
- Ø the costs, timing and outcomes of clinical trials and regulatory reviews associated with our products under development;
- Ø the costs and timing of developing enhancements of our Obalon balloon system and obtaining FDA clearance or approval of such enhancements;
- Ø the emergence of competing or complementary technological developments;
- Ø the extent to which our Obalon balloon system is adopted by the physician community and patients;
- Ø the number and types of future products we develop and commercialize;
- Ø the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property-related claims;
- Ø costs of operating as a public company and compliance with existing and future regulations; and
- Ø the extent and scope of our general and administrative expenses.

Additional financing may not be available on a timely basis on terms acceptable to us, or at all. We may raise funds in equity or debt financings following our initial public offering or enter into additional credit facilities in order to access funds for our capital needs. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new equity securities we issue could

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have rights, preferences and privileges senior to those of holders of our common stock. Any debt financing obtained by us in the future would cause us to incur additional debt service expenses and could include restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and pursue business opportunities. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, we may terminate or delay the development of one or more of our products, delay clinical trials necessary to market our products, or delay establishment of sales and marketing capabilities or other activities necessary to commercialize our products. If this were to occur, our ability to continue to grow and support our business and to respond to business challenges could be significantly limited.

A majority of our historical revenue and all of our current revenue is derived from a single distributor that is also one of our principal stockholders.

Bader Sultan & Bros. Co. W.L.L., or Bader, is currently the sole distributor of our Obalon balloon system in the Middle East. Revenue received from Bader's distribution of our Obalon balloon system in the Middle East represented 100% of our total revenue for the first six months ended June 30, 2016 and a majority of our total revenue for the year ended December 31, 2015. Although we intend to commence sales in the United States through a directed sales force, we expect Bader will continue to be a significant source of our revenue for the near term. While we have a contract with Bader that provides for certain minimum purchase requirements over the term of the agreement, restricts Bader's ability to sell competing products and limits Bader's ability to terminate the agreement, Bader may still devote insufficient resources to our products, sell competitive products or terminate its relationship with us. We also have limited control over Bader's sales and marketing efforts for our product. If Bader fails to effectively market and sell our products in full compliance with applicable laws, or if we are unable to maintain our existing relationship with Bader, we may not be able to find a distributor with the scale and resources of Bader, maintain existing levels of international revenue or realize expected long-term international revenue growth. In addition, since the Obalon balloon system is our sole source of revenue, a delay or failure by Bader to successfully market our Obalon balloon system or the loss of Bader as a distributor could have a significant impact on our revenues and financial health.

We do not currently intend to devote significant additional resources in the near-term to market our Obalon balloon system internationally, which will limit our potential revenue from our product.

Marketing our Obalon balloon system outside of the United States would require substantial additional sales and marketing, regulatory and personnel expenses. As part of our product development and regulatory strategy, we plan to expand into other select international markets, but we do not currently intend to devote significant additional resources to market our Obalon balloon system internationally. Our decision to market our product primarily in the United States in the near-term will limit our ability to reach all of our potential markets and will limit our potential sources of revenue. In addition, our competitors will have an opportunity to further penetrate and achieve market share outside of the United States until such time, if ever, that we devote significant additional resources to market our product internationally.

The medical device industry, and the market for weight loss and obesity in particular, is highly competitive. If our competitors are able to develop and market products that are safer, more effective, easier to use or more readily adopted by patients and physicians, our commercial opportunities will be reduced or eliminated.

The medical device industry is highly competitive, subject to rapid change and significantly affected by new product introductions, results of clinical research, corporate combinations, actions by regulatory

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bodies, changes by public and private payers and other factors relating to our industry. Because of the market opportunity and the high growth potential of the non-surgical device market for weight loss and obesity, competitors and potential competitors have historically dedicated, and will continue to dedicate, significant resources to aggressively develop and commercialize their products.

In the United States, our product competes with a variety of pharmaceuticals, surgical procedures and devices for the treatment of obese and overweight people. There are several competitors in the pharmaceutical segment including those recently approved by the FDA, including Vivus, Inc., Arena Pharmaceuticals, Inc., Orexigen Therapeutics, Inc., and those with older brands or generics including Takeda Pharmaceutical Company Ltd, AstraZeneca plc, and Actavis plc. Large competitors in the surgical segment for weight loss and obesity include Ethicon Inc. (subsidiary of Johnson & Johnson), Medtronic plc (formerly Covidien Ltd.) and Apollo EndoSurgery, Inc., which acquired the Lap-Band from Allergan plc and currently sells that device worldwide. After approximately a decade, four new devices were approved by the FDA in 2015 and 2016. Enteromedics Inc. received FDA approval for the Maestro, which is intended to create weight loss by vagal nerve stimulation. ReShape Medical Inc. and Apollo EndoSurgery, Inc. received FDA approval for the ReShape Duo Balloon and the ORBERA Balloon, respectively, each a traditional intragastric balloon filled with saline. Aspire Bariatrics received FDA approval for the Aspire Assist, a device that allows a patient to aspirate food after a meal. Allurion Technologies, Inc. has also developed a swallowable, passable saline-filled intragastric balloon that has been approved for sale in Europe. Additionally, there are many more companies around the world working to develop less invasive and less costly alternatives for the treatment of obesity, which could compete with us in the future.

At any time, these or other competitors may introduce new or alternative products that compete directly or indirectly with our products and services. They may also develop and patent products and processes earlier than we can or obtain regulatory clearance or approvals faster than us, which could impair our ability to develop and commercialize similar products or services. If clinical outcomes of procedures performed with our competitors' products are, or are perceived to be, superior to treatments performed with our products, sales of our products could be negatively affected and our business, results of operations and financial condition could suffer.

Many of our competitors have significantly greater financial and other resources than we do, as well as:

- Ø well-established reputations and name recognition with key opinion leaders and physician networks;
- Ø an established base of long-time customers with strong brand loyalty;
- Ø products supported by long-term data;
- Ø longer operating histories;
- Ø significantly larger installed bases of equipment;
- Ø greater existing market share in the obesity and weight management market;
- Ø broader product offerings and established distribution channels;
- Ø greater ability to cross-sell products;
- Ø additional lines of products, and the ability to offer rebates or bundle products to offer higher discounts or incentives; and
- Ø more experience in conducting research and development, manufacturing, performing clinical trials and obtaining regulatory approvals or clearances.

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Competition with these companies could result in significant price-cutting, reduced profit margins and loss of market share, any of which would harm our business, financial condition and results of operations. In addition, competitors with greater financial resources than ours could acquire other companies to gain enhanced name recognition and market share, as well as new technologies or products that could effectively compete with our existing and future products, which may cause our revenues to decline and harm our business.

If our manufacturing facility becomes damaged or inoperable, or we are required to vacate the facility, our ability to manufacture and sell our Obalon balloon system and to pursue our research and development efforts may be jeopardized.

We currently manufacture and assemble our Obalon balloon system in our single manufacturing facility in Carlsbad, California. Our products consist of components sourced from a variety of contract manufacturers, with final assembly completed at our facility. Our facility and equipment, or those of our suppliers, could be harmed or rendered inoperable by natural or man-made disasters, including fire, earthquake, terrorism, flooding and power outages. Any of these may render it difficult or impossible for us to manufacture products for some period of time. If our facility is inoperable for even a short period of time, the inability to manufacture our current products, and the interruption in research and development of any future products, may result in harm to our reputation, increased costs, lower revenues and the loss of customers. Furthermore, it could be costly and time-consuming to repair or replace our facilities and the equipment we use to perform our research and development work and manufacture our products, particularly as the use of a new facility or manufacturing equipment would require FDA review and approval of a PMA supplement.

In addition, the lease for our principal executive offices and manufacturing facility expires in March 2017, and while we are currently discussing an extension of the lease with the landlord, there can be no assurance that the current lease will be extended, modified, or replaced by a new lease facility prior to its expiration. Failure to satisfy our facility needs could have a detrimental impact on our ability to continue day to day operations and our business and future growth prospects could be harmed.

We depend on our senior management team and the loss of one or more key employees or an inability to attract and retain highly skilled employees could harm our business.

Our success largely depends upon the continued services of our executive management team and key employees and the loss of one or more of our executive officers or key employees could harm us and directly impact our financial results. Although we have entered into employment agreements with some of our executive officers and key employees, each of them may terminate their employment with us at any time. Changes in our executive management team resulting from the hiring or departure of executives could disrupt our business. For example, we recently hired our Chief Financial Officer, Vice President of Sales and Vice President of Marketing and Vice President of Quality Assurance. We could experience disruptions as each of these individuals begins to integrate into the business and build his or her respective departments. Alternatively, our President and Chief Executive Officer, Andrew Rasdal, has been with us since inception and has been instrumental in building operational capabilities, raising capital and guiding product development and regulatory strategy. In addition, our Vice President of Research and Development, Mark Brister, has led most of our product development activities, and our Vice President of Regulatory and Clinical Affairs, Amy VandenBerg, has been with us since inception and led our efforts to obtain FDA approval. If Andrew Rasdal was no longer working at our company, our industry credibility and operational capabilities would be harmed. Alternatively, if Mark Brister was no longer working at our company, our product development would be harmed, and if Amy VandenBerg

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was no longer with our company, our efforts to obtain FDA approval of future products and product improvements may be harmed. We do not currently maintain key personnel life insurance policies on any of our employees, including Andrew Rasdal, Mark Brister or Amy VandenBerg.

To execute our growth plan, we must attract and retain highly qualified personnel. Competition for skilled personnel is intense, especially for engineers with high levels of experience in designing and developing medical devices and for sales executives. We have, from time to time, experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. The loss of the services of our executive officers or other key employees could impede the achievement of our research, development and commercialization objectives and seriously harm our ability to successfully implement our business strategy. Furthermore, replacing executive officers and key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to successfully develop, gain regulatory approval of and commercialize medical devices.

Many of the companies with which we compete for experienced personnel have greater resources than we have. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached legal obligations, resulting in a diversion of our time and resources and, potentially, damages. In addition, job candidates and existing employees, particularly in the San Diego area, often consider the value of the stock awards they receive in connection with their employment. If the perceived value of our stock awards declines, either because we are a public company or otherwise, it may harm our ability to recruit and retain highly skilled employees. In addition, we invest significant time and expense in training our employees, which increases their value to competitors who may seek to recruit them. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects would be harmed.

If we are unable to manage the anticipated growth of our business, our future revenues and results of operations may be harmed.

We have been growing rapidly in recent periods and have a relatively short operating history as a commercial company, with no history as a commercial company in the United States. We intend to continue to grow our business and may experience periods of rapid growth and expansion. Future growth will impose significant additional responsibilities on management, including the need to identify, recruit, train and integrate additional employees. In addition, rapid and significant growth will place a strain on our administrative personnel, information technology systems and other operational infrastructure. We must successfully expand our sales force to achieve broad market penetration and geographical coverage within the United States. We must also successfully increase manufacturing output to meet expected customer demand, and may experience difficulties with yields, quality control, component supply and shortages of qualified personnel, among others. Any failure to manage our expected growth effectively could have an adverse effect on our ability to achieve our development and commercialization goals, which in turn could adversely impact our business and results of operations.

Changes in coverage and reimbursement for obesity treatments and procedures could affect the adoption of our Obalon balloon system and our future revenues.

Currently, intragastric balloon products are not reimbursed by third-party payors. We do not plan on submitting any requests to any third-party payor for coverage or billing codes specific to our products. However, payors may change their coverage and reimbursement policies for intragastric balloon products as a category and/or for other obesity treatments and procedures, and these changes could negatively impact our business. For example, healthcare reform legislation or regulation that may be

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proposed or enacted in the future that results in a favorable change in coverage and reimbursement for competitive products and procedures in weight loss and obesity could also negatively impact adoption of our products and our future revenues, and our business could be harmed as we would be at an economic disadvantage when competing for customers.

From time to time, we engage outside parties to perform services related to certain of our clinical studies and trials, and any failure of those parties to fulfill their obligations could increase costs and cause delays.

From time to time, we engage consultants to help design, monitor and analyze the results of certain of our clinical studies and trials. The consultants we engage interact with clinical investigators to enroll patients in our clinical trials. We depend on these consultants and clinical investigators to help facilitate the clinical studies and trials and monitor and analyze data from these studies and trials under the investigational plan and protocol for the study or trial and to comply with applicable regulations and standards, commonly referred to as good clinical practices, or GCP, requirements for conducting, monitoring, recording and reporting the results of clinical trials, in order to ensure that the data and results are scientifically credible and accurate and that the trial subjects are adequately informed of the potential risks of participating in clinical trials. We rely on medical institutions, clinical investigators, contract laboratories and other third parties, such as CROs, to conduct GLP-compliant preclinical studies and GCP-compliant clinical trials on our product properly and on time. While we will have agreements governing their activities, we control only certain aspects of their activities and have limited influence over their actual performance. We may face delays in our regulatory approval process if these parties do not perform their obligations in a timely, compliant or competent manner. If these third parties do not successfully carry out their duties or meet expected deadlines, or if the quality, completeness or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical trial protocols or for other reasons, our clinical studies or trials may be extended, delayed or terminated or may otherwise prove to be unsuccessful to support product approval of a commercially viable product, or at all, and we may have to conduct additional studies, which would significantly increase our costs, in order to obtain the regulatory clearances or approvals that we need to commercialize our products and delay commercialization.

Our Obalon balloon system may in the future be subject to product recalls that could harm our reputation.

The FDA and similar governmental authorities in other countries have the authority to require the recall of commercialized products in the event of material regulatory deficiencies or defects in design or manufacture. A government-mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors or design or labeling defects. Recalls of our Obalon balloon system would divert managerial attention, be expensive, harm our reputation with customers and harm our financial condition and results of operations. A recall announcement would negatively affect our stock price.

We may face product liability claims that could result in costly litigation and significant liabilities.

Our business exposes us to the risk of product liability claims that are inherent in the testing, manufacturing and marketing of medical devices, including those which may arise from the misuse or malfunction of, or design flaws in, our products. Claims may be made by patients, healthcare providers or others selling our products. We may be subject to product liability claims if our products cause, or merely appear to have caused, an injury. In addition, we may be subject to claims against us even if the apparent injury is due to the actions of others or the pre-existing health of the patient. For example, we rely on physicians in connection with the placement of our Obalon balloon into patients. If these

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physicians are not properly trained or are negligent, the capabilities of our products may be diminished or the patient may suffer critical injury. We may also be subject to claims that are caused by the activities of our suppliers, such as those who provide us with components and raw materials. This risk exists even if a device or product is cleared or approved for commercial sale by the FDA or other foreign regulators and manufactured in facilities registered with and regulated by the FDA or an applicable foreign regulatory authority.

Although we have, and intend to maintain, product liability and clinical trial liability insurance that we believe is appropriate, this insurance is subject to deductibles and coverage limitations. Our current product liability insurance may not continue to be available to us on acceptable terms, or at all, and, if available, the coverages may not be adequate to protect us against any future product liability claims. In addition, we may seek additional insurance coverage; however, if we are unable to obtain insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect against potential product liability claims, we will be exposed to significant liabilities, which may harm our business. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could result in significant costs and significant harm to our business.

For instance, patients could be harmed by the Obalon balloon if it is improperly inflated or inflated in the body other than in the stomach or if it deflates while in the body. Additionally, we do not sell our product sterilized, and it may be contaminated with forms of microorganisms prior to use. Any failure to follow the physician's directions for use or the patient information guide, or any other defects, misuse or abuse associated with our product, could result in patient injury or death. The medical device industry has historically been subject to extensive litigation over product liability claims, and we cannot assure you that we will not face product liability suits.

In addition, regardless of merit or eventual outcome, product liability claims may result in:

- Ø impairment of our brand and business reputation;
- Ø costly litigation;
- Ø distraction of management's attention from our primary business;
- Ø loss of revenue;
- Ø the inability to commercialize our product;
- Ø decreased demand for our product;
- Ø product recall or withdrawal from the market;
- Ø withdrawal of clinical trial participants; and
- Ø substantial monetary awards to patients or other claimants.

While we may attempt to manage our product liability exposure by proactively recalling or withdrawing from the market any defective products, any recall or market withdrawal of our products may delay the supply of those products to our customers and may impact our reputation. We cannot assure you that we will be successful in initiating appropriate recall or market withdrawal efforts that may be required in the future or that these efforts will have the intended effect of preventing product malfunctions and the accompanying product liability that may result. Any such recalls and market withdrawals may also be used by our competitors to harm our reputation for safety or be perceived by patients as a safety risk when considering the use of our products, either of which could have an adverse effect on our business, results of operations and financial condition.

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If patients using our products experience adverse events or other undesirable side effects, regulatory authorities could withdraw or modify our commercial approvals, which would adversely affect our reputation and commercial prospects and/or result in other significant negative consequences.

Undesirable side effects caused by our Obalon balloon system could cause us, the FDA or other regulatory authorities to interrupt, delay or halt clinical trials, and could result in more restrictive labeling than originally required, cause the FDA or other regulatory authorities to subsequently withdraw or modify our PMA or other commercial approvals, or result in the delay or denial of regulatory approval by other notified bodies. For example, in the 1980s and early 1990s, the FDA required post-market safety and efficacy data be collected on an earlier version of an intragastric balloon after patients suffered severe side effects and complications with the device, which ultimately resulted in the withdrawal of the PMA approval.

In our SMART trial, 90.8% of patients who received the Obalon balloon system experienced an event that the FDA classifies as an adverse device event, or ADE. A substantial majority (82.3%) of the ADEs were considered mild in severity and required no medical intervention beyond homeopathic or over-the-counter medications, with the most common ADEs being abdominal pain, nausea and vomiting. Approximately 17.3% of the ADEs required prescription medications for medical management and the remaining 0.4% of ADEs were considered severe and required intervention beyond prescription medications. Only one ADE (0.08%) was considered a SADE, and involved a patient who developed peptic ulcer disease after receiving an outpatient total knee replacement that required the patient to receive NSAID and aspirin therapy during balloon treatment. NSAIDs are contraindications during our balloon treatment.

In addition, as of June 30, 2016, we had sold over 23,000 units of our earlier generation Obalon balloon system in international markets. In our commercial experience, nine SADEs have been reported to us, of which six related to balloon deflations resulting in migration and three related to an esophageal laceration or rupture. We investigated each of these events and determined that all nine of these international SADEs occurred in patients where the device was not used in accordance with approved labeling.

The safety data we have disclosed to date represent our interpretation of the data at the time of disclosure and are subject to further review and analysis. Additionally, SADEs that are not characterized by clinical investigators as possibly related to our device or SADEs that occur in small numbers may not be disclosed to the public until such time the various documents submitted to the FDA as part of the approval process are made public.

If we are unable to demonstrate that any adverse events are not related to our product, the FDA or other regulatory authorities could order us to cease further development of, require more restrictive indications for use and/or additional warnings, precautions and/or contraindications in the labeling than originally required, or delay or deny approval of any of our future products. Even if we are able to do so, such event could affect patient recruitment or the ability of enrolled patients to complete the trial. Moreover, if we elect, or are required, to not initiate, delay, suspend or terminate any future clinical trial of any of our products, the commercial prospects of such product may be harmed and our ability to generate product revenues from our product may be delayed or eliminated. Any of these occurrences may harm our ability to develop other products, and may harm our business, financial condition and prospects significantly.

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In addition, we or others may later identify undesirable side effects caused by the product (or any other similar product), resulting in potentially significant consequences, including:

- Ø the FDA or European notified bodies may withdraw or limit their approval of the product;
- Ø the FDA or European notified bodies may require the addition of labeling statements, such as a contraindication;
- Ø we may be required to change the way the product is distributed or administered, conduct additional clinical trials or change the labeling of the product;
- Ø we may be required to correct or remove the products from the marketplace or decide to conduct a voluntary recall;
- Ø we may decide to alert physicians through customer notifications;
- Ø the FDA may use publicity such as a press release to alert our customers and the public of the issue;
- Ø physicians and patients may be dissatisfied, seek refunds and refuse to use our products;
- Ø we could be sued and held liable for injury caused to individuals using our product; and
- Ø our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of our Obalon balloon system and could substantially increase the costs of commercializing our product and significantly impact our ability to successfully commercialize our product and generate product sales.

Our international operations subject us to regulatory and legal risks and certain operating risks, which could adversely impact our business, results of operations and financial condition.

The sale of our Obalon balloon system across international borders and our international operations subject us to U.S. and foreign governmental trade, import and export and customs regulations and laws. Compliance with these regulations and laws is costly and exposes us to penalties for non-compliance.

Other laws and regulations that can significantly impact us include various anti-bribery laws, including the U.S. Foreign Corrupt Practices Act, as well as export control laws and economic sanctions laws. Any failure to comply with applicable legal and regulatory obligations could impact us in a variety of ways that include, but are not limited to, significant costs and disruption of business associated with an internal and/or government investigation, criminal, civil and administrative penalties, including imprisonment of individuals, fines and penalties, denial of export privileges, seizure of shipments, restrictions on certain business activities and exclusion or debarment from government contracting.

Our international operations expose us and our distributors to risks inherent in operating in foreign jurisdictions. These risks include:

- Ø foreign currency exchange rate fluctuations;
- Ø a shortage of high-quality sales people and distributors;
- Ø pricing pressure that we may experience internationally;
- Ø competitive disadvantage to competitors who have more established business and customer relationships;
- Ø reduced or varied intellectual property rights available in some countries;

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- Ø economic instability of certain countries;
- Ø the imposition of additional U.S. and foreign governmental controls, regulations and laws;
- Ø changes in duties and tariffs, license obligations and other non-tariff barriers to trade;
- Ø scrutiny of foreign tax authorities which could result in significant fines, penalties and additional taxes being imposed on us; and
- Ø laws and business practices favoring local companies.

If we experience any of these events, our business, results of operations and financial condition may be harmed.

We have a significant amount of debt, which may affect our ability to operate our business and secure additional financing in the future.

As of June 30, 2016, we had \$10.0 million in principal and interest outstanding under our loan and security agreement with Pacific Western Bank (as successor in interest to Square 1 Bank). Subsequent to June 30, 2016, we amended our loan and security agreement, pursuant to which an additional \$5.0 million is available to us, none of which is outstanding. We are required to make interest-only monthly payments on the outstanding debt through March 2018, followed by 30 equal monthly installments of principal and interest, which diverts a portion of our resources from other activities. Our debt with Pacific Western Bank is collateralized by substantially all of our assets and contains customary financial and operating covenants limiting our ability to, among other things, incur additional indebtedness, change the name, location, office or executive management of our business, change our business, merge with or acquire other entities, pay dividends or make other distributions to holders of our capital stock, make certain investments, engage in transactions with our affiliates, create liens, sell assets, pay any subordinated debt and store certain inventory and equipment with third parties. These covenants may make it difficult to operate our business. We are also subject to standard event of default provisions under the credit agreement that, if triggered, would allow the debt to be accelerated, which could significantly deplete our cash resources, cause us to raise additional capital at unfavorable terms, require us to sell portions of our business or result in us becoming insolvent. The existing collateral pledged under the credit agreement, and the covenants to which we are bound may prevent us from being able to secure additional debt or equity financing on favorable terms, or at all, or to pursue business opportunities, including potential acquisitions, heighten our vulnerability to downturns in our business or our industry or the general economy, limit our ability to adjust to changing market conditions and place us at a competitive disadvantage compared to our competitors who have greater capital resources.

If there are significant disruptions in our information technology systems, our business, financial condition and operating results could be adversely affected.

The efficient operation of our business depends on our information technology systems. We rely on our information technology systems to effectively manage sales and marketing data, accounting and financial functions, inventory, product development tasks, clinical data, and customer service and technical support functions. Our information technology systems are vulnerable to damage or interruption from earthquakes, fires, floods and other natural disasters, terrorist attacks, computer viruses or hackers, power losses, and computer system or data network failures. In addition, a variety of our software systems are cloud-based data management applications hosted by third-party service providers whose security and information technology systems are subject to similar risks.

The failure of our or our service providers' information technology could disrupt our entire operation or result in decreased sales, increased overhead costs and product shortages. For example, the loss of clinical

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trial data from completed or ongoing clinical trials could result in delays in our regulatory efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach were to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could also incur liability and the further development of our product could be delayed. Any of these events could have a material adverse effect on our reputation, business, financial condition and results of operations.

Our costs could substantially increase if we experience a significant number of warranty claims.

We provide limited product warranties against manufacturing defects of our products. Our product warranty requires us to repair defects arising from product design and production processes, and, if necessary, replace defective components. The future costs associated with our warranty claims are uncertain due to our limited commercialization experience. Thus far, we have not accrued a significant liability contingency for potential warranty claims.

If we experience warranty claims in excess of our expectations, or if our repair and replacement costs associated with warranty claims increase significantly, we will incur liabilities for potential warranty claims that may be greater than we expect. An increase in the frequency of warranty claims or amount of warranty costs may harm our reputation and could have a material adverse effect on our business, results of operations and financial condition.

If our clinical trials are unsuccessful or significantly delayed, or if we do not complete our clinical trials, our business may be harmed.

Clinical development of Class III medical device systems and accessories such as the Obalon balloon system is a rigorous, lengthy, expensive and uncertain process. It is also subject to delays and the risk that products may ultimately prove unsafe or ineffective in treating the indications for which they are designed. Completion of clinical trials may take several years or more. We cannot provide any assurance that we will successfully, or in a timely manner, enroll our clinical trials, that our clinical data will be found reliable by the FDA, that our clinical trials will meet their primary endpoints or that such trials or their results will be accepted by the FDA or foreign regulatory authorities and support product approval. Successful results of pre-clinical studies are not necessarily indicative of future clinical trial results, and predecessor clinical trial results may not be replicated in subsequent clinical trials. Additionally, the FDA or foreign regulatory authorities may disagree with our analyses and interpretation of the data from our clinical trial, or may find the clinical trial design, conduct, monitoring, or results unreliable or inadequate to prove safety or efficacy, and may require us to pursue additional pre-clinical studies or clinical trials, which could further delay the clearance or approval of our products. The data we collect from our clinical trials may not be sufficient to support FDA clearance or approval, and if we are unable to demonstrate the safety and efficacy of our future products in our clinical trials, we will be unable to obtain regulatory clearance or approval to market our products.

In addition, we may estimate and publicly announce the anticipated timing of the accomplishment of various clinical, regulatory and other product development goals, which are often referred to as milestones. These milestones could include the obtainment of the right to affix the Certificat de Conformité, or CE, mark in the European Union, the submission to the FDA of an IDE application, PMA application, or PMA supplement, the enrollment of patients in clinical trials, the release of data from clinical trials; and other clinical and regulatory events. The actual timing of these milestones could vary dramatically compared to our estimates, in some cases for reasons beyond our control. We cannot assure you that we will meet our projected milestones and if we do not meet these milestones as publicly

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announced, the commercialization of our products may be delayed and, as a result, our stock price may decline.

Clinical trials are necessary to support PMA applications for our device and may be necessary to support PMA supplements for modified versions of our marketed device products or to support comparative safety, effectiveness or performance claims. This could require the enrollment of large numbers of suitable subjects, which may be difficult to identify, recruit and maintain as participants in the clinical trial.

We may experience numerous unforeseen events during, or because of, the clinical trial process that could delay or prevent us from receiving regulatory clearance or approval for new products or modifications of existing products, for new or expanded indications for use for existing products, or for comparative safety, effectiveness, or performance claims for existing products, including new indications for existing products, including:

- Ø enrollment in our clinical trials may be slower than we anticipate, or we may experience high screen failure rates in our clinical trials, resulting in significant delays;
 - Ø our clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and/or preclinical testing which may be expensive and time consuming;
 - Ø trial results may not meet the level of statistical significance required by the FDA or other regulatory authorities;
 - Ø the FDA or similar foreign regulatory authorities may find the product is not sufficiently safe for investigational use in humans;
 - Ø the FDA or similar foreign regulatory authorities may interpret data from preclinical testing and clinical trials in different ways than we do;
 - Ø there may be delays or failure in obtaining approval of our clinical trial protocols from the FDA or other regulatory authorities;
 - Ø there may be delays in obtaining institutional review board approvals or government approvals to conduct clinical trials at prospective sites;
 - Ø the FDA or similar foreign regulatory authorities may find our or our suppliers' manufacturing processes or facilities unsatisfactory;
 - Ø the FDA or similar foreign regulatory authorities may change their review policies or adopt new regulations that may negatively affect or delay our ability to bring a product to market or receive approvals or clearances to treat new indications;
 - Ø we may have trouble in managing multiple clinical sites or adding a sufficient number of clinical trial sites;
 - Ø we may have trouble addressing any patient safety concerns that arise during the course of a clinical trial;
 - Ø we may experience delays in agreeing on acceptable terms with prospective clinical research organizations, or CROs, and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites; and
 - Ø we, or regulators, may suspend or terminate our clinical trials because the participating patients are being exposed to unacceptable health risks.
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Patient enrollment in clinical trials and completion of patient follow-up depend on many factors, including the size of the trial patient population, the nature of the trial protocol, the proximity of patients to clinical sites, the eligibility criteria for the clinical trial, patient compliance, competing clinical trials and clinicians' and patients' perceptions as to the potential advantages of the product being studied in relation to other available therapies, including any new treatments that may be approved for the indications we are investigating. For example, patients may be discouraged from enrolling in our clinical trials if the trial protocol requires them to undergo extensive post-treatment procedures or follow-up to assess the safety and efficacy of a product, or they may be persuaded to participate in contemporaneous clinical trials of a competitor's product. In addition, patients participating in our clinical trials may drop out before completion of the trial or suffer adverse medical events unrelated to our products. Delays in patient enrollment or failure of patients to continue to participate in a clinical trial may delay commencement or completion of the clinical trial, cause an increase in the costs of the clinical trial and delay, or result in the failure of the clinical trial.

We could also encounter delays if the FDA or foreign regulatory authority concluded that our financial relationships with our principal investigators resulted in a perceived or actual conflict of interest that may have affected the interpretation of a study, the integrity of the data generated at the applicable clinical trial site or the utility of the clinical trial itself. Principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and receive cash compensation and/or stock options in connection with such services. If these relationships and any related compensation to or ownership interest by the clinical investigator carrying out the study result in perceived or actual conflicts of interest, or the FDA or foreign regulatory authority concludes that the financial relationship may have affected interpretation of the study, the integrity of the data generated at the applicable clinical trial site may be questioned and the utility of the clinical trial itself may be jeopardized, which could result in the delay or rejection of our application by the FDA. Any such delay or rejection could prevent us from commercializing any of our products currently in development.

If we are unable to implement and maintain effective internal control over financial reporting in the future, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock may decrease.

As a public company, we will be required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, requires that we evaluate and determine the effectiveness of our internal control over financial reporting and, beginning with our annual report for the year ending December 31, 2017, provide a management report on our internal control over financial reporting. However, while we remain an emerging growth company we will not be required to include the attestation report issued by our independent registered public accounting firm.

We are in the process of designing and implementing our internal control over financial reporting, which will be time consuming, costly and complicated. If we identify material weaknesses in our internal control over financial reporting, if we are unable to comply with the requirements of Section 404 in a timely manner, if we are unable to assert that our internal control over financial reporting is effective or, once required, if our independent registered public accounting firm is unable to attest that our internal control over financial reporting is effective, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could decrease. We could also become subject to stockholder or other third-party litigation as well as investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources and could result in fines, trading suspensions or other remedies.

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We may acquire other companies or technologies, which could divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our operations and harm our results of operations.

We may in the future seek to acquire or invest in businesses, applications or technologies that we believe could complement or expand our Obalon balloon system, enhance our technical capabilities or otherwise offer growth opportunities. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various costs and expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. We may not be able to identify desirable acquisition targets or be successful in entering into an agreement with any particular target or obtain the expected benefits of any acquisition or investment.

To date, the growth in our business has been organic, and we have no experience in acquiring other businesses. In any acquisition, we may not be able to realize the benefits of acquiring such businesses if we are unable to successfully integrate the acquired business with our existing operations, technologies and company culture. We cannot assure you that following any such acquisition we would achieve the expected synergies to justify the transaction.

Our ability to utilize our net operating loss carryovers may be limited.

At December 31, 2015, we had federal, state and foreign tax net operating loss carryforwards, or NOLs, of approximately \$31.5 million, \$13.9 million and \$1.3 million, respectively. Each of the federal and state NOLs will begin expiring in 2028, unless previously utilized. The foreign NOLs will begin expiring in 2023, unless previously utilized. We also had federal and California research and development tax credit carryforwards totaling \$1.3 million and \$1.1 million, respectively. The federal research and development tax credit carryforward will begin to expire in 2028 unless previously utilized. The California research tax credits do not expire.

In general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or IRC, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change NOLs and certain other tax assets to offset future taxable income, and an ownership change is generally defined as a cumulative change of 50% or more in the ownership positions of certain stockholders during a rolling three-year period. We have not completed a formal study to determine if any ownership changes within the meaning of IRC Section 382 have occurred.

If ownership changes within the meaning of IRC Section 382 have occurred, it could restrict our ability to use NOL carryforwards and research and development tax credits generated since inception. Limitations on our ability to use NOL carryforwards and research and development tax credits to offset future taxable income could require us to pay U.S. federal income taxes earlier than would be required if such limitations were not in effect. Similar rules and limitations may apply for state income tax purposes.

RISKS RELATED TO REGULATORY APPROVAL

Our success depends on our ability to obtain FDA approval or other regulatory approvals for our future products and product improvements.

The successful commercialization of our Obalon balloon system is dependent on the successful development and commercialization of future devices such as the EzPz inflation system, our next generation inflation system that is expected to replace the EzFill inflation system to inflate the balloon

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with gas. Additionally, we are evaluating our vegetable-based HydroxyPropylMethylCellulose, or HPMC, capsule, which is expected to replace the current animal-based gelatin capsule. The primary information to support the EzPz inflation system and HPMC capsule is anticipated to be in vitro testing including but not limited to software validation, human factors assessment, and biocompatibility evaluation of the capsule. It is not anticipated that human clinical data will be required to support these regulatory submissions; however, it is possible that the FDA may require this information, which could delay potential approval. To support this potential request we are also evaluating these products in our current SMARTCAR study. While we expect to successfully complete the in vitro testing required to submit a PMA supplement for both the EzPz inflation system and the HPMC capsule, there can be no guarantee that these product enhancements will be completed or that we will receive regulatory approval for the sale and marketing of the EzPz inflation system or the HPMC capsule in the United States. Although we have collected preliminary data on these two products from our SMARTCAR trial, this preliminary data may not be predictive of its final results and failure of the trial can occur at any time. A number of companies in the medical device field have suffered significant setbacks during clinical trials due to lack of efficacy or unacceptable safety issues, notwithstanding promising preliminary results. Because we are depending on EzPz inflation system and HPMC capsule to achieve our revenue goals in future years, failure to successfully complete the study and receive FDA approval, in a timely manner or at all, will harm our financial results and ability to become profitable. Even if we obtain such regulatory approval, our ability to successfully market the Obalon balloon system may be limited. If we cannot sell our Obalon balloon system with EzPz inflation system and the HPMC capsule as planned, our financial results could be harmed.

Failure to successfully complete our SMARTCAR clinical study if required by the FDA could impair our financial results. Such a failure could delay or prevent EzPz inflation system and/or HPMC capsule from obtaining regulatory approval, could require us to perform another clinical trial, which would be expensive, may not be successful and will significantly delay our ability to commercialize the EzPz inflation system and/or HPMC capsule, and could impair our ability to convince physicians of the benefits of our Obalon balloon system.

The FDA and other regulatory agencies actively enforce the laws and regulations governing the development, approval and commercialization of medical devices. If we are found to have failed to comply with these laws and regulations, we may become subject to significant liability.

The Obalon balloon system is classified by the FDA as a Class III medical device. As a result, we are subject to extensive government regulation in the United States by the FDA and state regulatory authorities. We are also subject to foreign regulatory authorities in the countries in which we currently and intend to conduct business. These regulations relate to, among other things, research and development, design, pre-clinical testing, clinical trials, manufacturing, packaging, storage, premarket approval, environmental controls, safety and efficacy, labeling, advertising, promotion, pricing, recordkeeping, reporting, import and export, post-approval studies and the sale and distribution of the Obalon balloon system.

In the United States, before we can market a new medical device, or label and market a previously cleared or approved device for a new intended use or new indication for use, or make a significant modification to a previously cleared or approved device, we must first receive either FDA clearance under Section 510(k) of the Federal Food, Drug and Cosmetic Act or approval of a PMA application from the FDA, unless an exemption applies. The process of obtaining PMA approval, which was required for the Obalon balloon system, is much more rigorous, costly, lengthy and uncertain than the 510(k) clearance process. In the 510(k) clearance process, the FDA must determine that a proposed device is “substantially

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equivalent” to a device legally on the market, known as a “predicate” device, in order to clear the proposed device for marketing. To be “substantially equivalent,” the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes required to support substantial equivalence. In the PMA approval process, the FDA must determine that a proposed device is safe and effective for its intended use based, in part, on extensive data, including, but not limited to, technical, pre-clinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for devices for which the 510(k) process cannot be used and that are deemed to pose the greatest risk.

Modifications to products that are approved through a PMA application generally need FDA approval of a PMA supplement. Similarly, some modifications made to products cleared through a 510(k) may require a new 510(k). The FDA’s 510(k) clearance process usually takes from three to 12 months, but may last longer. The process of obtaining a PMA generally takes from one to three years, or even longer, from the time the PMA is submitted to the FDA until an approval is obtained. Any delay or failure to obtain necessary regulatory approvals would have a material adverse effect on our business, financial condition and prospects.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including:

- Ø our inability to demonstrate to the satisfaction of the FDA or the applicable regulatory entity or notified body that our products are safe or effective for their intended uses;
- Ø the disagreement of the FDA or the applicable foreign regulatory body with the design, conduct or implementation of our clinical trials or the analyses or interpretation of data from pre-clinical studies or clinical trials;
- Ø serious and unexpected adverse device effects experienced by participants in our clinical trials;
- Ø the data from our pre-clinical studies and clinical trials may be insufficient to support clearance or approval, where required;
- Ø our inability to demonstrate that the clinical and other benefits of the device outweigh the risks;
- Ø an advisory committee, if convened by the applicable regulatory authority, may recommend against approval of our application or may recommend that the applicable regulatory authority require, as a condition of approval, additional preclinical studies or clinical trials, limitations on approved labeling or distribution and use restrictions, or even if an advisory committee, if convened, makes a favorable recommendation, the respective regulatory authority may still not approve the product;
- Ø the applicable regulatory authority may identify deficiencies in the chemistry, manufacturing and control sections of our application, our manufacturing processes, facilities or analytical methods or those of our third party contract manufacturers;
- Ø the potential for approval policies or regulations of the FDA or applicable foreign regulatory bodies to change significantly in a manner rendering our clinical data or regulatory filings insufficient for clearance or approval; and
- Ø the FDA or foreign regulatory authorities may audit our clinical trial data and conclude that the data is not sufficiently reliable to support a PMA application.

Further, the FDA and European regulatory authorities strictly regulate the indications for use and associated promotional safety and effectiveness claims, including comparative and superiority claims vis a vis competitors’ products, that may be made about products, such as the Obalon balloon system. In

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particular, a medical device may not be promoted for uses or indications that are not approved by the FDA or other regulatory agencies as reflected in the product's approved labeling. For example, we will not be able to promote or make claims for the Obalon balloon system for the treatment of patients outside of the BMI ranges specifically approved by the FDA or other regulatory authorities. In the United States, we received FDA approval of the Obalon balloon system for temporary use to facilitate weight loss in adults with obesity (BMI of 30 to 40) who have failed to lose weight through diet and exercise. The Obalon balloon system is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed. Our pivotal trial inclusion and exclusion criteria included patients with a BMI of 30 to 40; thus, our approved labeling is limited to the same BMI range. We also will not be able to make comparative or superiority claims for the Obalon balloon system versus other products without scientific data supporting or establishing those claims, including possibly data from head-to-head clinical trials if appropriate. Our CE mark label includes patients with a BMI of 27 or greater. The FDA may impose further requirements or restrictions on the distribution or use of the Obalon balloon system as part of a Risk Evaluation and Mitigation, or REMS plan. Physicians may choose to prescribe such products to their patients in a manner that is inconsistent with the approved label, as the FDA does not restrict or regulate a physician's choice of treatment within the practice of medicine. However, if the FDA determines that our promotional materials or physician training, including our paid consultants' educational materials, constitutes promotion of an off-label use, it could request that we modify our training or promotional materials or subject us to enforcement action, including warning letters, untitled letters, fines, penalties, or seizures. If we are found to have promoted such off-label uses, we may become subject to significant liability. The federal government has levied large civil and criminal fines and/or other penalties against companies for alleged improper promotion and has investigated, prosecuted, and/or enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees of permanent injunctions under which specified promotional conduct is changed, curtailed or prohibited. If we cannot successfully manage the promotion of and training for our Obalon balloon system, we could become subject to significant liability, which would materially adversely affect our business and financial condition.

Material modifications to our Obalon balloon system may require new premarket approvals and may require us to recall or cease marketing our Obalon balloon system until approvals are obtained.

Once a medical device is approved, a manufacturer must notify the FDA of any modifications to the device. Any modification to a device that has received FDA clearance or approval that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design or manufacture, requires premarket clearance or approval from the FDA pursuant to a new 510(k) clearance or approval of a PMA supplement. The FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new approval, supplement, notice in an annual report or clearance; however, the FDA can review a manufacturer's decision. Any modification to an FDA-cleared device that would significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new 510(k) clearance or possibly a premarket approval. Any modification to a PMA approved device requires a PMA supplement, notification to the FDA in a PMA annual report, or possibly a new PMA. We may not be able to obtain additional 510(k) clearances or premarket approvals for new products or obtain approval of PMA supplements or new PMAs for modifications to, or additional indications for, our Obalon balloon system in a timely fashion, or at all. Delays in obtaining required future clearances would harm our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth. If we make additional modifications in the future that we believe do not or will not require additional clearances or approvals and the FDA disagrees and requires new clearances or approvals for the

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modifications, we may be required to recall and to stop selling or marketing our Obalon balloon system as modified, which could harm our operating results and require us to redesign our Obalon balloon system. In these circumstances, we may be subject to significant enforcement actions.

Even though we have received FDA approval of our PMA application to commercially market the Obalon balloon system in the United States, we will continue to be subject to extensive FDA regulatory oversight.

Our Obalon balloon system is a medical device that is subject to extensive regulation by the FDA in the United States and by regulatory agencies in other countries where we do business. We will be required to timely file various reports with the FDA, including reports required by the medical device reporting regulations, or MDRs, that require that we report to the regulatory authorities if our devices may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If these reports are not filed timely, regulators may impose sanctions and sales of our products may suffer, and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

If we initiate a correction or removal for one of our devices, issue a safety alert, or undertake a field action or recall to reduce a risk to health posed by the device, we would be required to submit a publically available Correction and Removal report to the FDA and in many cases, similar reports to other regulatory agencies. This report could be classified by the FDA as a device recall, which could lead to increased scrutiny by the FDA, other international regulatory agencies and our customers regarding the quality and safety of our devices and to negative publicity, including FDA alerts, press releases, or administrative or judicial enforcement actions. Furthermore, the submission of these reports has been and could be used by competitors against us in competitive situations and cause customers to delay purchase decisions or cancel orders and would harm our reputation.

The FDA and the Federal Trade Commission, or FTC, also regulate the advertising and promotion of our products to ensure that the claims we make are consistent with our regulatory clearances, that there are adequate and reasonable data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading in any respect. If the FDA or FTC determines that any of our advertising or promotional claims are false, misleading, not substantiated or not permissible, we may be subject to enforcement actions, including Warning Letters, and we may be required to revise our promotional claims and make other corrections or restitutions.

Additionally, the medical device industry's relationship with physicians is under increasing scrutiny by the Health and Human Services Office of Inspector General, or OIG, the Department of Justice, or DOJ, state attorneys general, and other foreign and domestic government agencies. Our failure to comply with laws, rules and regulations governing our relationships with physicians, or an investigation into our compliance by the OIG, DOJ, state attorneys general and other government agencies, could significantly harm our business.

The FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following sanctions:

- Ø adverse publicity, warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- Ø repair, replacement, refunds, recalls, termination of distribution, administrative detention or seizures of our products;

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- Ø operating restrictions, partial suspension or total shutdown of production;
- Ø customer notifications or repair, replacement or refunds;
- Ø refusing our requests for 510(k) clearance or PMA approvals or foreign regulatory approvals of new products, new intended uses or modifications to existing products;
- Ø withdrawals of current 510(k) clearances or PMAs or foreign regulatory approvals, resulting in prohibitions on sales of our products;
- Ø FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries; and
- Ø criminal prosecution.

Any of these sanctions could also result in higher than anticipated costs or lower than anticipated sales and have a material adverse effect on our reputation, business, results of operations and financial condition.

If we fail to obtain and maintain regulatory approval in foreign jurisdictions, our market opportunities will be limited.

In order to market our products in the European Union, the Middle East or other foreign jurisdictions, we must obtain and maintain separate regulatory approvals and comply with numerous and varying regulatory requirements. The approval procedure varies from country to country and can involve additional testing. The time required to obtain approval abroad may be longer than the time required to obtain FDA clearance or approval. Foreign regulatory approval processes include many of the risks associated with obtaining FDA clearance or approval and we may not obtain foreign regulatory approvals on a timely basis, if at all. FDA clearance or approval does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries. However, the failure to obtain clearance or approval in one jurisdiction may have a negative impact on our ability to obtain clearance or approval elsewhere. If we do not obtain or maintain necessary approvals to commercialize our products in markets outside the United States, it would negatively affect our overall market penetration.

If we or our suppliers fail to comply with the FDA's QSR, our manufacturing operations could be delayed or shut down and sales of our Obalon balloon system could suffer.

Our manufacturing processes and those of our third-party suppliers are required to comply with the FDA's QSR, which covers the procedures and documentation of the design, testing, production, control, quality assurance, inspection, complaint handling, recordkeeping, management review, labeling, packaging, sterilization, storage and shipping of our Obalon balloon system. We are also subject to similar state requirements and licenses. In addition, we must engage in extensive recordkeeping and reporting and must make available our manufacturing facilities and records for periodic unannounced inspections by governmental agencies, including the FDA, state authorities and comparable agencies in other countries. If we are found to not be in compliance at the conclusion of an FDA QSR inspection, our operations could be disrupted and our manufacturing interrupted. Failure to take adequate corrective action in response to an adverse QSR inspection could result in, among other things, issuance of a Warning Letter, a shut-down of our manufacturing operations, significant fines, suspension of marketing clearances and approvals, seizures or recalls of our device, operating restrictions and criminal prosecutions, any of which would cause our business to suffer. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements, which may result in manufacturing delays for our product and cause our revenues to decline.

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We have registered with the FDA as a medical device manufacturer and have obtained a manufacturing license from the California Department of Public Health, or CDPH. The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA and the Food and Drug Branch of CDPH to determine our compliance with the QSR and other regulations, and these inspections may include the manufacturing facilities of our suppliers. Our current facility has been inspected by the FDA in 2014 and 2016, with four and zero inspectional observations, respectively, noted during those inspections. Although we believe our manufacturing facilities and those of our critical component suppliers are in compliance with the QSR requirements, we can provide no assurance that we will continue to remain in compliance with the QSR. If our manufacturing facilities or those of any of our component suppliers are found to be in violation of applicable laws and regulations, or we or our suppliers have significant noncompliance issues or fail to timely and adequately respond to any adverse inspectional observations or product safety issues, or if any corrective action plan that we or our suppliers propose in response to observed deficiencies is not sufficient, the FDA could take enforcement action, including any of the following sanctions:

- Ø untitled letters or warning letters;
- Ø fines, injunctions, consent decrees and civil penalties;
- Ø customer notifications or repair, replacement, refunds, recall, detention or seizure of our products;
- Ø operating restrictions or partial suspension or total shutdown of production;
- Ø refusing or delaying our requests for clearance or approval of new products or modified products;
- Ø withdrawing clearances or approvals that have already been granted;
- Ø refusal to grant export approval for our products; or
- Ø criminal prosecution.

Taking corrective action may be expensive, time consuming and a distraction for management and if we experience a shutdown or delay at our manufacturing facility we may be unable to produce our Obalon balloon system, which would harm our business.

Outside the United States, our products and operations are also often required to comply with standards set by industrial standards bodies, such as the International Organization for Standardization. Foreign regulatory bodies may evaluate our products or the testing that our products undergo against these standards. The specific standards, types of evaluation and scope of review differ among foreign regulatory bodies. If we fail to adequately comply with any of these standards, a foreign regulatory body may take adverse actions similar to those within the power of the FDA. Any such action may harm our reputation and could have an adverse effect on our business, results of operations and financial condition.

We also have an ISO 13485:2003 Quality System Certificate through British Standards Institution, or BSI, that is required to support our CE mark. We have been audited at least annually and are subject to unannounced audits by BSI which could result in major nonconformances. Major nonconformances could result in the suspension or revocation of our ISO Certificate, which would disrupt distribution in the European Union and other countries that require certificated Quality Systems.

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

Healthcare providers, physicians and others will play a primary role in the recommendation and ordering of, and treatment using, our Obalon balloon system. Although intragastric balloon products similar to

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our Obalon balloon system are not currently reimbursed by United States federal healthcare programs (such as Medicare or Medicaid) or other third-party payors, any future reimbursement by third-party payors could expose our business to broadly applicable fraud and abuse and other healthcare laws and regulations that would regulate the business, including laws that would regulate financial arrangements and relationships through which we market, sell and distribute the Obalon balloon system. Additionally, as a device manufacturer, we are still subject to certain healthcare fraud and abuse regulation, including those laws that apply to self-pay products, and enforcement by the federal government and the states in which we conduct our business.

Applicable and potentially applicable United States federal and state healthcare laws and regulations include, but are not limited to, the following:

- Ø **Anti-Kickback Laws.** The federal healthcare program Anti-Kickback Statute, which prohibits, among other things, any person from knowingly and willfully offering, soliciting, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs, such as Medicare and Medicaid, unless the arrangement fits within one of several statutory exceptions or regulatory “safe harbors.” Courts have interpreted the term “remuneration” broadly under the Anti-Kickback Statute to include anything of value, such as, for example, gifts, discounts, payments of cash and waivers of payments. Violations can result in significant penalties, imprisonment and exclusion from Medicare, Medicaid and other federal healthcare programs. Exclusion of a manufacturer would preclude any federal healthcare program from paying for the manufacturer’s products. A person does not need to have actual knowledge of the federal Anti-Kickback Statute or specific intent to violate it in order to have committed a violation. In addition, kickback arrangements can provide the basis for an action under the False Claims Act, which is discussed in more detail below.

Government officials have recently increased enforcement efforts with respect to sales and marketing activities of pharmaceutical, medical device, and other healthcare companies, and they have brought cases against individuals and entities that allegedly offered unlawful inducements to potential or existing customers in an attempt to procure business. Settlements of these government cases have involved significant fines and penalties and, in some instances, criminal pleas.

In addition to the federal Anti-Kickback Statute, many states have their own anti-kickback laws. Often, these laws closely follow the language of the federal law, although they do not always have the same exceptions or safe harbors. In some states, the restrictions imposed by anti-kickback laws are not limited to items and services paid for by government programs but, instead, apply with respect to all payors for healthcare items and services, including commercial health insurance companies.

- Ø **False Claims Laws.** The federal False Claims Act prohibits any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, or causing to be made, a false statement to get a false claim paid. A manufacturer can be held liable under false claims laws, even if it does not submit claims to the government, if it is found to have caused submission of false claims. For example, these laws may apply to a manufacturer that provides information regarding coverage, coding or reimbursement of its products to persons who bill third-party payors. In addition, under the Patient Protection and Affordable Care Act, as amended, or PPACA, a violation of the federal Anti-Kickback Statute is deemed to be a violation of the federal False Claims Act.

The federal False Claims Act also includes whistleblower provisions that allow private citizens to bring suit against an entity or individual on behalf of the United States and to recover a portion of any monetary recovery. Many of the recent, highly publicized settlements in the healthcare industry relating to sales and marketing practices have related to cases brought under the federal False Claims Act.

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The majority of states also have adopted statutes or regulations similar to the federal laws, which apply to items and services reimbursed under Medicaid and other state programs. Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a manufacturer's products from reimbursement under government programs, criminal fines and imprisonment.

- o **Privacy and Security Laws.** The Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, or HITECH Act, and accompanying regulations, which we collectively refer to as HIPAA, require certain entities, referred to as "covered entities" (including most healthcare providers and health plans), to comply with established standards, including standards regarding the privacy and security of protected health information, or PHI. HIPAA further requires that covered entities enter into agreements meeting certain regulatory requirements with their "Business Associates," as such term is defined by HIPAA, which, among other things, obligate the Business Associates to safeguard the covered entity's PHI against improper use and disclosure. In addition, a Business Associate may face significant statutory and contractual liability if the Business Associate breaches the agreement or causes the covered entity to fail to comply with HIPAA. We believe that we generally do not conduct our business in a manner that would cause us to be a Business Associate under HIPAA, but we are nevertheless committed to maintaining the security and privacy of patients' health information. Although we believe the business is not currently subject to HIPAA, there is no guarantee that government enforcement agencies will agree. Violation of HIPAA could result in the imposition of civil or criminal penalties.

In addition, many state laws regulate the use and disclosure of health information and require notification in the event the confidentiality of such information is breached. Those state laws that are more protective of individually identifiable health information are not preempted by HIPAA. Violation of applicable state privacy laws also may result in significant fines and other penalties.

- o **Transparency Laws.** There has been a recent trend of increased federal and state regulation of payments and transfers of value provided to healthcare professionals and entities. For example, the Physician Payment Sunshine Act, which was enacted as part of PPACA, imposes annual reporting requirements on certain manufacturers of drugs, medical devices, biologics and medical supplies with respect to payments and other transfers of value provided by them, directly or indirectly, to physicians and teaching hospitals, as well as with respect to certain ownership and investment interests held by physicians and their family members. A manufacturer's failure to submit timely, accurately and completely the required information regarding all payments, transfers of value or ownership or investment interests may result in civil monetary penalties. Certain states also mandate implementation of commercial compliance programs, impose restrictions on medical device manufacturers' marketing practices, and require the tracking and reporting of gifts, compensation and other remuneration to healthcare professionals and entities under certain circumstances.

Efforts to ensure that our business arrangements will comply with applicable healthcare laws may involve substantial costs. In addition, the dynamic healthcare regulatory compliance environment and the need to build and maintain robust systems to comply with different reporting and other legal requirements in multiple jurisdictions, increase the possibility that a healthcare company may fail to comply fully with one or more of these laws or regulations. It is possible that governmental and enforcement authorities will conclude that our business practices do not comply with current or future statutes, regulations, agency guidance or case law interpreting applicable fraud and abuse or other healthcare laws and regulations. If any such actions are instituted against us, defending against any such actions can be costly, time-consuming and may require significant financial and personnel resources. If our operations are found to be in violation of any of the healthcare regulatory laws to which the business is subject, or any other laws that apply to the business, we may be subject to penalties, including potentially significant criminal and civil and administrative penalties, damages, fines, disgorgement,

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imprisonment, exclusion from participation in government healthcare programs, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

In addition, the clearance or approval and commercialization of any of our products outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws.

Compliance with environmental laws and regulations could be expensive. Failure to comply with environmental laws and regulations could subject us to significant liability.

Our research and development and manufacturing operations involve the use of hazardous substances and a greenhouse gas, and are subject to a variety of federal, state, local and foreign environmental laws and regulations relating to the storage, use, discharge, disposal, remediation of, and human exposure to, hazardous substances and the sale, labeling, collection, recycling, treatment and disposal of products containing hazardous substances as well as the control and reduction of greenhouse gas emissions. In addition, our research and development and manufacturing operations produce biological waste materials, such as human and animal tissue, and waste solvents, such as isopropyl alcohol. These operations are permitted by regulatory authorities, and the resultant waste materials are disposed of in material compliance with environmental laws and regulations. Liability under environmental laws and regulations can be joint and several and without regard to fault or negligence. Compliance with environmental laws and regulations may be expensive and non-compliance could result in substantial liabilities, fines and penalties, personal injury and third part property damage claims and substantial investigation and remediation costs. Environmental laws and regulations could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We cannot assure you that violations of these laws and regulations will not occur in the future or have not occurred in the past as a result of human error, accidents, equipment failure or other causes. The expense associated with environmental regulation and remediation could harm our financial condition and results of operations.

RISKS RELATED TO OUR INTELLECTUAL PROPERTY

If we are unable to adequately protect our proprietary technology or maintain issued patents that are sufficient to protect our Obalon balloon system or our other products, others could compete against us more directly, which would have a material adverse impact on our business, results of operations, financial condition and prospects.

Our commercial success will depend in part on our ability to protect our proprietary rights to the technologies and inventions used in, or embodied by, our products. We rely on a combination of patents, trademarks, trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights. If we do not adequately protect our intellectual property rights and proprietary technology, competitors may be able to use our technologies and erode or negate any competitive advantage that we may have, which could harm our business and ability to achieve profitability.

As of June 30, 2016, we held 13 issued U.S. patents and had 18 pending U.S. patent applications, as well as 17 international patents issued in Europe, Mexico, Australia, Canada, Asia, China and Israel and 37 pending international patent applications in Australia, Canada, Europe, Asia, the Middle East and South America. Our issued patents expire between the years 2023 and 2032.

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Although an issued patent is presumed valid and enforceable, its issuance is not conclusive as to its validity or its enforceability, and it may not provide us with adequate proprietary protection or competitive advantages against competitors with similar products. Competitors may also be able to design around our patents. Other parties may develop and obtain patent protection for more effective technologies, designs or methods.

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- Ø any of our patents, or any of our pending patent applications, if issued, will include claims having a scope sufficient to protect the Obalon balloon system or any other products;
- Ø any of our pending patent applications will issue as patents;
- Ø we will be able to successfully commercialize our Obalon balloon system before our relevant patents expire;
- Ø we were the first to make the inventions covered by each of our patents and pending patent applications;
- Ø we were the first to file patent applications for these inventions;
- Ø others will not develop similar or alternative technologies that do not infringe our patents;
- Ø any of our patents will be found to ultimately be valid and enforceable;
- Ø any patents issued to us will provide a basis for an exclusive market for our commercially viable products, will provide us with any competitive advantages or will not be challenged by third parties;
- Ø we will develop additional proprietary technologies or products that are separately patentable; or
- Ø that our commercial activities or products will not infringe upon the patents of others.

If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.

In addition to patent protection, we also rely on other proprietary rights, including protection of unpatented trade secrets, unpatented know-how and confidential and proprietary information, which we seek to protect, in part, by confidentiality agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us and have non-compete agreements with some, but not all, of our consultants. It is possible that technology relevant to our business will become known or be independently developed by a person that is not a party to such an agreement, including our competitors. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, vendors, former employees and current employees. If the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets through such breaches or violations.

We may be subject to claims challenging the inventorship or ownership of our patents and other intellectual property.

We may also be subject to claims that former employees, collaborators or other third parties have an ownership interest in our patents or other intellectual property. For example, each of our patents and patent applications names one or more inventors having past or present affiliations with other institutions, and any of these institutions may assert an ownership claim. Litigation may be necessary to defend against these and other claims challenging inventorship or ownership. If we fail in defending any

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such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

We may infringe or be alleged to infringe the intellectual property rights of others, which may result in costly and time-consuming litigation, delay our product development efforts or prevent us from commercializing the Obalon balloon system.

Our success will depend in part on our ability to operate without infringing the intellectual property and proprietary rights of third parties. The medical device industry is characterized by rapid technological change and extensive litigation regarding patent and other intellectual property rights. Our competitors and other industry participants, many of which have substantially greater resources and have made substantial investments in patent portfolios and competing technologies, may have applied for or obtained, or may in the future apply for and obtain, patents that will prevent, limit or otherwise interfere with our ability to make, use and sell our products. In addition, numerous third-party patents exist in the fields relating to our products. We cannot assure you that our business, products and methods do not or will not infringe the patents or other intellectual property rights of third parties.

From time to time, third parties, including our competitors as well as other industry participants and/or non-practicing entities, may allege that the Obalon balloon system or the use of our technologies infringes patent claims or other intellectual property rights held by them or that we are employing their proprietary technology without authorization. For example, we recently received and may from time to time in the ordinary course of business continue to receive, letters from third parties advising us of third-party patents that may relate to our business. The letters do not explicitly seek any particular action or relief from us. Although these letters do not threaten legal action, these letters may be deemed to put us on notice that continued operation of our business might infringe the patent rights of such third parties. If we decide not to seek a license or do not otherwise obtain a license to such third-party patents, there can be no assurance that we will not become subject to infringement claims or will not be forced to initiate legal proceedings in order to dispose of such actual or potential infringement claims or to seek to invalidate the claims of such third-party patents.

Patent and other types of intellectual property litigation can involve complex factual and legal questions, and can have an uncertain outcome. Any claim relating to intellectual property infringement that is successfully asserted against us may require us to pay substantial damages, including treble damages and attorney's fees if we are found to be willfully infringing another party's patents, for past use of the asserted intellectual property and royalties and other consideration going forward if we determine it necessary or are required to take a license. In addition, if any such claim were successfully asserted against us and we could not obtain such a license, an injunction may force us to stop or delay developing, manufacturing, selling or otherwise commercializing the Obalon balloon system or our other products.

Intellectual property claims or litigation, regardless of merit, may be expensive and time-consuming to resolve, result in negative publicity, and divert our management's attention from our core business. In addition, if we are subject to intellectual property claims or litigation, we may:

- be subject to a protected period of uncertainty while the claims or litigation remain unresolved, which could adversely affect our ability to raise additional capital and otherwise adversely affect our business;
- lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property rights against others; and

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- be required to redesign those products that contain the allegedly infringing intellectual property, which could be costly, disruptive and/or infeasible.

Furthermore, we also rely on our trademarks as one means to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. However, our trademark applications may not be approved. Third parties may oppose our trademark applications, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources to advertising and marketing new brands. Our competitors may infringe our trademarks and we may not have adequate resources to enforce our trademarks.

If any of the risks described above come to fruition, our business, results of operations, financial condition and prospects could be harmed.

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

The U.S. Patent and Trademark Office, or U.S. PTO, and various international, foreign governmental and foreign regional patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent application process. In addition, periodic maintenance fees on issued patents often must be paid to the U.S. PTO and foreign patent agencies over the lifetime of the patent. There are situations in which noncompliance with these requirements can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

We may be involved in legal proceedings to protect or enforce our intellectual property, which could be expensive, time-consuming, and unsuccessful.

Competitors may infringe our patents, trademarks or other intellectual property rights. Our ability to enforce our intellectual property rights depends on our ability to detect infringement. It may be difficult to detect infringers who do not advertise the components of their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product.

To counter infringement of our intellectual property rights, we have in the past been, and may in the future be, required to file infringement claims, which can be expensive and time-consuming. Even if successful, litigation to enforce our intellectual property rights could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. Moreover, we may not have sufficient resources to bring these actions to a successful conclusion. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded if we were to prevail may not be commercially meaningful. In addition, in an infringement proceeding, a court may decide that a patent of ours is not infringed and may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question.

Interference proceedings instituted by third parties or brought by us may be necessary to determine the priority of inventions with respect to our patents or patent applications. An unfavorable outcome could require us to cease using the related technology or to attempt to obtain a license under such rights from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms or offer us a license at all. Our defense of interference proceedings may

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fail and, even if successful, may result in substantial costs and distract our management and other employees.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

Issued patents covering our products could be found invalid or unenforceable if challenged in court or before administrative bodies.

If we initiated legal proceedings against a third party to enforce one of our patents, the defendant could counterclaim that the patent is invalid and/or unenforceable. Even if legal proceedings were not initiated, if we threatened a third party with a patent infringement lawsuit, the third party may preemptively sue us in a declaratory judgment action and seek to have our patent declared invalid or not infringed. In patent litigation in the United States, defendant counterclaims alleging invalidity and/or unenforceability are commonplace. Grounds for a validity challenge include alleged failures to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for unenforceability assertions include allegations that someone connected with prosecution of the patent withheld relevant information from the U.S. PTO, or made a misleading statement during prosecution. Third parties may also raise similar claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include re-examination, post grant review and equivalent proceedings in foreign jurisdictions, e.g., opposition proceedings. Such proceedings could result in revocation or amendment of our patents in such a way that they no longer cover our products or competitive products. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to validity, for example, we cannot be certain that there is no invalidating prior art of which we and the patent examiner were unaware during prosecution. If a third party were to prevail on a legal assertion of invalidity and/or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our products. Such a loss of patent protection would have a material adverse impact on our business. An adverse result in any legal proceeding could put one or more of our patents at risk of being invalidated, found unenforceable or interpreted narrowly and could put our patent applications at risk of not issuing.

We do not seek to protect our intellectual property rights in all jurisdictions throughout the world and we may not be able to adequately enforce our intellectual property rights even in the jurisdictions where we seek protection.

Filing, prosecuting and defending intellectual property rights related to our products in all countries and jurisdictions throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States could be less extensive than those in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States, or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States. These products may compete with our products, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

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In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries. If these problems were to occur, they could have a material adverse effect on our sales. Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to medical devices, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly, could put our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may not adequately protect our rights or permit us to gain or keep any competitive advantage.

Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.

The United States has recently enacted and is currently implementing the America Invents Act of 2011, a wide-ranging patent reform legislation. Further, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain future patents, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on decisions by the U.S. Congress, the federal courts and the U.S. PTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents or future patents.

We may be subject to damages resulting from claims that we, our employees, consultants or third parties we engage to manufacture our products have wrongfully used, or disclosed, alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors.

Many of our employees were previously employed at pharmaceutical companies and other medical device companies, including our potential competitors, in some cases until recently. We may be subject to claims that we, our employees, consultants or third parties have inadvertently or otherwise used or disclosed alleged trade secrets or proprietary information of these former employers or competitors. In addition, we may be subject to claims that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction for our management. If our defense to those claims fails, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with third parties. A loss of key personnel or their work product could have an adverse effect on our business, results of operations and financial condition.

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RISKS RELATED TO THIS OFFERING AND OWNERSHIP OF OUR COMMON STOCK

Our common stock has never been publicly traded, and an active trading market may not develop or be sustained following this offering.

There is currently no public market for our common stock. Although we have applied to list our common stock on The NASDAQ Global Market, or NASDAQ, an active public trading market may not develop after completion of this offering or, if developed, may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

Our stock price may be volatile, and you may not be able to resell shares of our common stock at or above the price you paid.

The initial public offering price for our common stock will be determined through negotiations between the underwriters and us and may vary substantially from the market price of our common stock following this offering. The public trading price for our common stock after this offering will be affected by a number of factors, including:

- Ø a slowdown in the medical device industry, the aesthetics industry or the general economy;
 - Ø quarterly variations in our or our competitors' results of operations;
 - Ø the results of our clinical trials, including our SMARTCAR trial;
 - Ø unanticipated or serious safety concerns related to the use of any of our products;
 - Ø adverse regulatory decisions, including failure to receive regulatory approval for any of our products;
 - Ø regulatory or legal developments in the United States and other countries;
 - Ø changes in analysts' estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' estimates;
 - Ø the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
 - Ø changes in operating performance and stock market valuations of other technology companies generally, or those in the medical device industry in particular;
 - Ø performance of third parties on whom we rely, including for the manufacture of the components for our product, including their ability to comply with regulatory requirements;
 - Ø inability to obtain adequate supply of the components for any of our products, or inability to do so at acceptable prices;
 - Ø the loss of key personnel, including changes in our board of directors and management;
 - Ø legislation or regulation of our business;
 - Ø changes in the structure of healthcare payment systems;
 - Ø our commencement of, or involvement in, litigation;
 - Ø the announcement of new products or product enhancements by us or our competitors;
 - Ø competition from existing technologies and products or new technologies and products that may emerge;
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- Ø developments, announcements or disputes related to patents or other proprietary rights issued to us or our competitors and to litigation; and
- Ø developments in our industry.

In recent years, the stock markets generally and the stock prices of many companies in the medical device industry have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may significantly affect the market price of our common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our common stock shortly following this offering. If the market price of shares of our common stock after this offering does not ever exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment.

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

Our management will have considerable discretion in the application of the net proceeds that we receive from this offering, including for any of the purposes described in the section entitled “Use of proceeds,” and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. Our management might not apply our net proceeds in ways that ultimately increase the value of your investment. We expect to use the net proceeds from this offering for the commercialization of our Obalon balloon system, continued research and development efforts and working capital and other general corporate purposes. The failure by our management to apply these funds effectively could harm our business. Pending their use, we may invest the net proceeds from this offering in short-term, investment-grade, interest-bearing securities. These investments may not yield a favorable return to our stockholders. If we do not invest or apply the net proceeds from this offering in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline.

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

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business, our market and our competitors. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

New investors purchasing our common stock in this offering will experience immediate and substantial dilution in the net tangible book value of their investment.

Our initial public offering price of our common stock is substantially higher than the net tangible book value per share of our common stock immediately prior to this offering. Therefore, if you purchase common stock in this offering, you will incur immediate dilution of approximately \$ in pro forma as adjusted net tangible book value per share as of June 30, 2016 from the price you paid, based on the assumed initial public offering price of \$ per share, the mid-point of the range set forth on the cover page of this prospectus. New investors who purchase shares in this offering will contribute

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approximately _____ % of the total amount of equity capital raised by us through the date of this offering, and will own approximately _____ % of the outstanding share capital and approximately _____ % of the voting rights. In the past, we have also issued options and warrants to acquire common stock at prices below the initial public offering price. To the extent outstanding options and warrants are ultimately exercised, there will be further dilution to investors who purchase shares in this offering. In addition, if the underwriters exercise their option to purchase additional shares or if we issue additional equity securities, investors purchasing shares in this offering will experience additional dilution. As a result of the dilution to investors purchasing shares in this offering, investors may receive significantly less than the purchase price paid in this offering, if anything, in the event of our liquidation. For a further description of the dilution that you will experience immediately after this offering, see “Dilution.”

A sale of a substantial number of shares of our common stock may cause the price of our common stock to decline.

Based on shares outstanding as of June 30, 2016, upon completion of this offering, we will have outstanding a total of _____ shares of common stock. Of these shares, only the _____ shares of common stock sold in this offering by us, or shares if the underwriters exercise their option to purchase additional shares in full, will be freely tradable, without restriction, in the public market immediately after this offering (excluding any shares purchased by our directors and executive officers pursuant to the directed share program that will be subject to lock-up agreements). Each of our officers and directors and the holders of more than 95% of our capital stock have entered into lock-up agreements with the underwriters that restrict their ability to sell or transfer their shares. The lock-up agreements pertaining to this offering will expire 180 days from the date of this prospectus. However, our underwriters may, in their sole discretion, permit our officers, directors and other current stockholders who are subject to the contractual lock-up to sell shares prior to the expiration of the lock-up agreements. After the lock-up agreements expire, based on shares outstanding as of June 30, 2016, up to an additional _____ shares of common stock will be eligible for sale in the public market, approximately _____ of which are held by our officers, directors and their affiliated entities, and will be subject to volume limitations under Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, and various vesting agreements. In addition, _____ shares of our common stock that are subject to outstanding options as of June 30, 2016 and _____ shares of our common stock that are subject to options granted after June 30, 2016 will become eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements, the lock-up agreements and Rules 144 and 701 under the Securities Act.

After this offering, the holders of an aggregate of _____ shares of our outstanding common stock as of June 30, 2016 will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or our stockholders. We also intend to register shares of common stock that we may issue under our equity incentive plans. Once we register these shares, they will be able to be sold freely in the public market upon issuance, subject to the 180-day lock-up period under the lock-up agreements described above and in the section entitled “Underwriting.”

We cannot predict what effect, if any, sales of our shares in the public market or the availability of shares for sale will have on the market price of our common stock. However, future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of outstanding options, or the perception that such sales may occur, could adversely affect the market price of our common stock.

We also expect that significant additional capital may be needed in the future to continue our planned operations. To raise capital, we may sell common stock, convertible securities or other equity securities

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in one or more transactions at prices and in a manner we determine from time to time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

We are an emerging growth company, and intend to take advantage of reduced disclosure requirements applicable to emerging growth companies, which could make our common stock less attractive to investors.

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. We will remain an emerging growth company until the earliest of (i) the last day of the fiscal year in which we have total annual gross revenue of \$1 billion or more; (ii) the last day of the fiscal year following the fifth anniversary of the date of the completion of this offering; (iii) the date on which we have issued more than \$1 billion in nonconvertible debt during the previous three years; or (iv) the date on which we are deemed to be a large accelerated filer under the rules of the SEC, which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter. For so long as we remain an emerging growth company, we are permitted and intend to rely on exemptions from certain disclosure requirements that are applicable to other public companies that are not emerging growth companies. These exemptions include:

- Ø not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002;
- Ø not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements;
- Ø being permitted to present only two years of audited financial statements in addition to any required unaudited interim financial statements with correspondingly reduced "Management's discussion and analysis of financial condition and results of operations" disclosure in this prospectus;
- Ø reduced disclosure obligations regarding executive compensation; and
- Ø exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

We may choose to take advantage of some, but not all, of the available exemptions described above. We have taken advantage of reduced reporting burdens in this prospectus. In particular, we have provided only two years of audited financial statements and have not included all of the executive compensation information that would be required if we were not an emerging growth company. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

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We will incur increased costs as a result of operating as a public company and our management will be required to devote substantial time to new compliance initiatives.

As a public company, particularly after we are no longer an emerging growth company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002 and rules subsequently implemented by the SEC and NASDAQ, have imposed various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly.

Pursuant to Section 404, we will be required to furnish a report by our management on our internal control over financial reporting, including an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. However, while we remain an emerging growth company, we will not be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. To achieve compliance with Section 404 within the prescribed period, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that neither we nor our independent registered public accounting firm will be able to conclude within the prescribed timeframe that our internal control over financial reporting is effective as required by Section 404. This could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our consolidated financial statements.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

We also expect that being a public company and compliance with applicable rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantially higher costs to obtain and maintain the same or similar coverage. These factors could also make it more difficult for us to attract and retain qualified executive officers and members of our board of directors.

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Our executive officers, directors, principal stockholders and their affiliates will continue to exercise significant influence over our company after this offering, which will limit your ability to influence corporate matters and could delay or prevent a change in corporate control.

As of June 30, 2016, our executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates beneficially owned approximately 77.7% of our capital stock and, upon the closing of this offering, that same group will hold approximately % of our outstanding capital stock (assuming no exercise of the underwriters' option to purchase additional shares, no exercise of outstanding options and no purchases of shares in this offering by any members of this group), in each case assuming the conversion of all outstanding shares of our convertible preferred stock into shares of our common stock immediately prior to the closing of this offering.

As a result, this group of stockholders will have the ability to control us through this ownership position even if they do not purchase any additional shares in this offering. These stockholders may be able to determine all matters requiring stockholder approval. For example, these stockholders may be able to control elections of directors, amendments of our organizational documents or approval of any merger, sale of assets or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders. The interests of this group of stockholders may not always coincide with your interests or the interests of other stockholders and they may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock.

We could be subject to securities class action litigation.

In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and harm our business, results of operations, financial condition, reputation and cash flows. These factors may materially and adversely affect the market price of our common stock.

Provisions in our corporate charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our certificate of incorporation and our bylaws that will become effective immediately prior to the closing of this offering may discourage, delay or prevent a merger, acquisition or other change in control of our company that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions:

- Ø establish a classified board of directors so that not all members of our board are elected at one time;
- Ø permit only the board of directors to establish the number of directors and fill vacancies on the board;
- Ø provide that directors may only be removed "for cause" and only with the approval of two-thirds of our stockholders;

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- Ø require super-majority voting to amend some provisions in our restated certificate of incorporation and restated bylaws;
- Ø authorize the issuance of “blank check” preferred stock that our board could use to implement a stockholder rights plan, also known as a “poison pill”;
- Ø eliminate the ability of our stockholders to call special meetings of stockholders;
- Ø prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- Ø prohibit cumulative voting; and
- Ø establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

Moreover, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or the DGCL, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

Any of these provisions of our charter documents or Delaware law could, under certain circumstances, depress the market price of our common stock. See the section entitled “Description of capital stock.”

Our restated certificate of incorporation will designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our restated certificate of incorporation that will become effective immediately prior to the closing of this offering will provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders, any action asserting a claim arising pursuant to any provision of the DGCL, our restated certificate of incorporation or our restated bylaws or any action asserting a claim that is governed by the internal affairs doctrine, in each case subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein and the claim not being one which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery or for which the Court of Chancery does not have subject matter jurisdiction. Any person purchasing or otherwise acquiring any interest in any shares of our capital stock shall be deemed to have notice of and to have consented to this provision of our restated certificate of incorporation. This choice of forum provision may limit our stockholders’ ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and our directors, officers, employees and agents even though an action, if successful, might benefit our stockholders. Stockholders who do bring a claim in the Court of Chancery could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near Delaware. The Court of Chancery may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments or results may be more favorable to us than to our stockholders. Alternatively, if a court were to find this provision of our restated certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the

Risk factors

specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could have a material adverse effect on our business, financial condition or results of operations.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.

We have never declared or paid any cash dividends on our common stock and do not currently intend to do so for the foreseeable future. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business. In addition, our credit agreement with Pacific Western Bank prohibits us from, among other things, paying any dividends or making any other distribution or payment on account of our common stock. Any return to stockholders will be limited to the appreciation of stock. Therefore, the success of an investment in shares of our common stock will depend upon any future appreciation in the value of the stock. We cannot guarantee you that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

Special note regarding forward-looking statements

This prospectus, including the sections entitled “Prospectus summary,” “Risk factors,” “Use of proceeds,” “Management’s discussion and analysis of financial condition and results of operations” and “Business,” contains forward-looking statements. The words “believe,” “may,” “will,” “should,” “potentially,” “estimate,” “continue,” “anticipate,” “intend,” “could,” “would,” “project,” “plan” “expect,” and similar expressions that convey uncertainty of future events or outcomes, are intended to identify forward-looking statements.

These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in “Risk factors” and elsewhere in this prospectus. Moreover, we operate in a competitive and rapidly changing environment, and new risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot assure you that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this prospectus to conform these statements to actual results or to changes in our expectations, except as required by law.

You should read this prospectus and the documents that we reference in this prospectus and have filed with the SEC as exhibits to the registration statement of which this prospectus is a part with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

Market and industry data

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate is based on information from various sources, including independent industry publications. In presenting this information, we have also made assumptions based on such data and other similar sources, and on our knowledge of, and our experience to date in, the potential markets for our product. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the section entitled “Risk factors.” These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

Use of proceeds

We estimate that the net proceeds from our sale of _____ shares of common stock in this offering at an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, will be approximately \$ _____ million, or \$ _____ million if the underwriters exercise their option to purchase additional shares in full.

A \$1.00 increase (decrease) in the assumed initial public offering price would increase (decrease) the net proceeds to us from this offering by \$ _____ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions payable by us. Similarly, each increase (decrease) of one million shares in the number of shares offered would increase (decrease) the net proceeds to us from this offering by \$ _____ million, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions payable by us.

We currently intend to use the net proceeds we receive from this offering for the commercialization of our Obalon balloon system, including the development of a direct sales force and the expansion of our manufacturing facilities, as well as continued research and development efforts, working capital and other general corporate purposes.

We estimate that the net proceeds from this offering, together with our existing cash and cash equivalents and short-term investments and expected revenue, will be sufficient to meet our capital requirements and fund our operations for at least two years following this offering. In the future, we may need additional funds to complete the development and commercialization of advancements to our existing Obalon balloon system as well as our additional products under development.

This expected use of net proceeds of this offering represents our current intentions based upon our present plans and business conditions. The amounts we actually expend in these areas, and the timing thereof, may vary significantly from our current intentions and will depend upon a number of factors, including future sales growth, success of research and product development efforts, cash generated from future operations and actual expenses to operate our business. We may use a portion of the net proceeds to acquire complementary products, technologies or businesses; however, we currently have no agreements or commitments to complete any such transactions and are not involved in negotiations to do so.

As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to be received upon the closing of this offering. Accordingly, our management will have broad discretion in the application of the net proceeds, and investors will be relying on the judgment of our management regarding the application of the net proceeds of this offering.

Pending their use as described above, we intend to invest the net proceeds from this offering in short-term, investment-grade, interest-bearing securities such as money market accounts, certificates of deposit, commercial paper and guaranteed obligations of the U.S. government.

Dividend policy

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. We do not intend to pay cash dividends on our common stock for the foreseeable future. Any future determination related to dividend policy will be made at the discretion of our board of directors and will depend on, among other factors, our results of operations, financial condition, capital requirements, contractual restrictions, business prospects and other factors our board of directors may deem relevant. Investors should not purchase our common stock with the expectation of receiving cash dividends. In addition, under our loan and security agreement with Pacific Western Bank (as successor in interest to Square 1 Bank), we are restricted from paying any dividends or making any distributions on account of our capital stock. See “Management’s discussion and analysis of financial condition and results of operations—Liquidity and capital resources” for a description of the restrictions on our ability to pay dividends.

Capitalization

The following table sets forth our cash and cash equivalents and short-term investments and total capitalization as of June 30, 2016:

- Ø on an actual basis;
- Ø on a pro forma basis to give effect to: (i) the automatic conversion of all outstanding shares of our convertible preferred stock as of June 30, 2016 into an aggregate of 30,045,279 shares of common stock immediately prior to the closing of this offering; (ii) the automatic net exercise of outstanding warrants to purchase 71,200 shares of preferred stock immediately prior to the closing of this offering, which will result in the issuance of _____ shares of common stock, based on an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and the related reclassification of the warrant liability to stockholders' equity; (iii) the automatic conversion of outstanding warrants to purchase 176,286 shares of preferred stock into warrants to purchase 176,286 shares of common stock upon the closing of this offering and the related reclassification of the warrant liability to additional paid-in capital; and (iv) the effectiveness of our restated certificate of incorporation immediately prior to the closing of this offering; and
- Ø on a pro forma as adjusted basis to give effect to: (i) the pro forma adjustments set forth above and (ii) the sale and issuance of _____ shares of common stock in this offering, at an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing.

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Capitalization

You should read this table together with “Use of proceeds,” “Selected consolidated financial data,” “Management’s discussion and analysis of financial condition and results of operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

	As of June 30, 2016		
	Actual	Pro forma (unaudited) (in thousands, except shares and per share data)	Pro forma as adjusted ⁽¹⁾
Cash and cash equivalents and short-term investments	\$ 18,282	\$	\$
Term loan	9,883	—	—
Warrant liability	213	—	—
Convertible preferred stock, \$0.001 par value; 34,460,759 shares authorized, 29,280,311 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted	70,498	—	—
Stockholders’ (deficit) equity:			
Preferred stock, par value \$0.001; no shares authorized, issued and outstanding, actual and pro forma; shares authorized and no shares issued and outstanding, pro forma as adjusted	—	—	—
Common stock, \$0.001 par value; 45,000,000 shares authorized, 1,684,465 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted	2		
Additional paid-in capital	1,158		
Other comprehensive income	4		
Accumulated deficit	(63,854)		
Total stockholders’ (deficit) equity	(62,690)		
Total capitalization	\$ 17,904	\$	\$

- (1) Each \$1.00 increase (decrease) in the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) each of cash and cash equivalents and short-term investments, additional paid-in capital, total stockholders’ equity and total capitalization by approximately \$ million, assuming the number of shares offered, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions payable by us. Similarly, each increase (decrease) of one million shares in the number of shares offered would increase (decrease) each of cash and cash equivalents and short-term investments, additional paid-in capital, total stockholders’ equity and total capitalization by approximately \$ million, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions payable by us.

The table above excludes the following shares:

- Ø 5,126,449 shares of common stock issuable upon the exercise of stock options outstanding as of June 30, 2016, with a weighted-average exercise price of \$0.48 per share;
- Ø 655,675 shares of common stock issuable upon the exercise of stock options granted after June 30, 2016, with an exercise price of \$0.97 per share;

Capitalization

- Ø 176,286 shares of common stock issuable upon the exercise of warrants to purchase shares of preferred stock outstanding as of June 30, 2016, with a weighted-average exercise price of \$2.55 per share, which will become warrants to purchase 176,286 shares of common stock upon the closing of this offering; and
- Ø shares of common stock reserved for future issuance under our stock-based compensation plans as of June 30, 2016, consisting of (i) 3,063,416 shares of common stock reserved for future issuance under our 2008 Equity Incentive Plan as of June 30, 2016, which was reduced to 1,298,197 shares on July 17, 2016, (ii) shares of common stock reserved for future issuance under our 2016 Equity Incentive Plan, which will become effective on the date immediately prior to the effective date of the registration statement of which this prospectus is a part, and (iii) shares of common stock reserved for future issuance under our 2016 Employee Stock Purchase Plan, which will become effective on the effective date of the registration statement of which this prospectus is a part.

Dilution

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

As of June 30, 2016, our historical net tangible book value (deficit) was \$ million, or \$ per share of our common stock. Net tangible book value (deficit) per share represents our total tangible assets (total assets less intangible assets) less total liabilities and preferred stock, divided by the total number of our outstanding shares of common stock.

Our pro forma net tangible book value as of June 30, 2016 was approximately \$ million, or \$ per share of common stock. Pro forma net tangible book value per share represents the amount of our total tangible assets (total assets less intangible assets) less total liabilities and preferred stock, divided by the total number of outstanding shares of our common stock, after giving effect to (i) the automatic conversion of all outstanding shares of our convertible preferred stock as of June 30, 2016 into an aggregate of 30,045,279 shares of common stock immediately prior to the closing of this offering; (ii) the automatic net exercise of outstanding warrants to purchase 71,200 shares of preferred stock immediately prior to the closing of this offering, which will result in the issuance of shares of common stock, based on an assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus.

After giving effect to (i) the pro forma adjustments set forth above and (ii) the sale and issuance of shares of common stock in this offering, at an assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of June 30, 2016 would have been approximately \$ million, or \$ per share of our common stock. This represents an immediate increase in pro forma net tangible book value of approximately \$ per share to our existing stockholders and an immediate dilution of \$ per share to investors purchasing shares in this offering, as follows:

Assumed initial public offering price per share	\$
Historical net tangible book value per share as of June 30, 2016	\$
Increase in net tangible book value per share attributable to automatic conversion of convertible preferred stock and automatic net exercise of warrants	\$
Pro forma net tangible book value per share as of June 30, 2016 before giving effect to this offering	\$
Increase in pro forma net tangible book value per share attributable to this offering	
Pro forma as adjusted net tangible book value per share after this offering	
Dilution in pro forma as adjusted net tangible book value per share to new investors participating in this offering	\$

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) our

Dilution

pro forma as adjusted net tangible book value per share after this offering by approximately \$ _____ and the dilution per share to new investors participating in this offering would increase (decrease) by approximately \$ _____, assuming the number of shares offered, as set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions payable by us. We may also increase or decrease the number of shares we are offering. A one million share increase in the number of shares offered by us would increase our pro forma as adjusted net tangible book value per share after this offering by approximately \$ _____ and the dilution per share to new investors participating in this offering would decrease by approximately \$ _____, assuming the assumed initial public offering price remains the same and after deducting the estimated underwriting discounts and commissions payable by us. Similarly, a one million share decrease in the number of shares offered by us would decrease our pro forma as adjusted net tangible book value per share after this offering by approximately \$ _____ and the dilution per share to new investors participating in this offering would increase by approximately \$ _____, assuming the assumed initial public offering price remains the same and after deducting the estimated underwriting discounts and commissions payable by us.

If the underwriters exercise their option to purchase additional shares in full, our pro forma as adjusted net tangible book value per share after this offering would be approximately \$ _____ per share, and the dilution in pro forma as adjusted net tangible book value per share to new investors participating in this offering would be \$ _____ per share.

The following table summarizes, on a pro forma as adjusted basis as of June 30, 2016, the differences between the number of shares of common stock purchased from us, the total cash consideration and the average price per share paid to us by existing stockholders and by new investors purchasing shares in this offering, at an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us:

	Shares purchased		Total consideration		Average price per share
	Number	Percent	Amount	Percent	
Existing stockholders		%	\$	%	\$
New investors participating in this offering					\$
Total		100%		100%	

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ _____ per share of our common stock, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors participating in this offering by approximately \$ _____ million, assuming the number of shares offered, as set forth on the cover page of this prospectus, remains the same, and before deducting the estimated underwriting discounts and commissions payable by us. Similarly, each increase (decrease) of one million shares in the number of shares offered would increase (decrease) the total consideration paid by new investors participating in this offering by approximately \$ _____ million, assuming the assumed initial public offering price remains the same and before deducting the estimated underwriting discounts and commissions payable by us.

If the underwriters exercise their option to purchase additional shares in full, the number of shares of common stock held by existing stockholders will be reduced to _____ % of the total number of shares of common stock to be outstanding after this offering, and the number of shares of common stock held by _____

Dilution

investors participating in this offering will be further increased to _____ % of the total number of shares of common stock to be outstanding after this offering.

To the extent that any outstanding options and warrants described below are exercised, investors will experience further dilution. Assuming the exercise of all of our outstanding options and warrants as of June 30, 2016, the number of shares of common stock held by existing stockholders would be increased to _____ % of the total number of shares of common stock to be outstanding after this offering, and the number of shares of common stock held by investors participating in this offering would be reduced to _____ % of the total number of shares of common stock to be outstanding after this offering.

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

- Ø 5,126,449 shares of common stock issuable upon the exercise of stock options outstanding as of June 30, 2016, with a weighted-average exercise price of \$0.48 per share;
 - Ø 655,675 shares of common stock issuable upon the exercise of stock options granted after June 30, 2016, with an exercise price of \$0.97 per share;
 - Ø 176,286 shares of common stock issuable upon the exercise of warrants to purchase shares of preferred stock outstanding as of June 30, 2016, with a weighted-average exercise price of \$2.55 per share, which will become warrants to purchase 176,286 shares of common stock upon the closing of this offering; and
 - Ø _____ shares of common stock reserved for future issuance under our stock-based compensation plans as of June 30, 2016, consisting of (i) 3,063,416 shares of common stock reserved for future issuance under our 2008 Equity Incentive Plan as of June 30, 2016, which was reduced to 1,298,197 shares on July 17, 2016, (ii) _____ shares of common stock reserved for future issuance under our 2016 Equity Incentive Plan, which will become effective on the date immediately prior to the effective date of the registration statement of which this prospectus is a part, and (iii) _____ shares of common stock reserved for future issuance under our 2016 Employee Stock Purchase Plan, which will become effective on the effective date of the registration statement of which this prospectus is a part.
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Selected consolidated financial data

The selected consolidated statements of operations data for the years ended December 31, 2014 and 2015 and the consolidated balance sheet data as of December 31, 2014 and 2015 are derived from our audited consolidated financial statements included elsewhere in this prospectus. The selected consolidated statement of operations data for the six months ended June 30, 2015 and 2016 and the consolidated balance sheet data as of June 30, 2016 have been derived from our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus. The unaudited interim condensed consolidated financial statements were prepared on a basis consistent with our audited financial statements and reflect, in the opinion of management, all adjustments of a normal recurring nature that are necessary for the fair presentation of the financial statements. Our historical results are not necessarily indicative of the results that may be expected in any future period, and the results for the six months ended June 30, 2016 are not necessarily indicative of results to be expected for the full year ending December 31, 2016, or any other period.

The following selected consolidated financial data should be read with “Management’s discussion and analysis of financial condition and results of operations” and our consolidated financial statements and related notes included elsewhere in this prospectus. The selected consolidated financial data in this section are not intended to replace the consolidated financial statements and are qualified in their entirety by the consolidated financial statements and related notes included elsewhere in this prospectus.

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Selected consolidated financial data

	Year ended December 31,		Six months ended June 30,	
	2014	2015	2015	2016
	(unaudited)			
	(in thousands, except shares and per share data)			
Consolidated statements of operations data:				
Revenue:				
Revenue	\$ 1,683	\$ 216	\$ 224	\$ —
Revenue, related party	1,856	3,823	1,739	1,848
Total revenue	3,539	4,039	1,963	1,848
Cost of revenue	2,912	2,503	1,205	1,294
Gross profit	627	1,536	758	554
Operating expenses:				
Research and development	5,767	12,978	5,968	5,098
Selling, general and administrative	4,700	3,491	1,679	2,975
Total operating expenses	10,467	16,469	7,647	8,073
Loss from operations	(9,840)	(14,933)	(6,889)	(7,519)
Interest expense, net	(220)	(549)	(263)	(290)
Gain (loss) from change in fair value of warrant liability	167	(34)	11	119
Other income (expense), net	3	(41)	(16)	(22)
Net loss	(9,890)	(15,557)	(7,157)	(7,712)
Other comprehensive income	9	5	10	4
Net loss and comprehensive loss	\$ (9,881)	\$ (15,552)	\$ (7,147)	\$ (7,708)
Net loss per share, basic and diluted(1)	\$ (6.42)	\$ (9.36)	\$ (4.31)	\$ (4.61)
Weighted-average common shares outstanding, basic and diluted(1)	1,541,166	1,662,255	1,659,394	1,672,633
Pro forma net loss per share, basic and diluted (unaudited)(1)		\$		\$
Pro forma weighted-average common shares outstanding, basic and diluted (unaudited)(1)				

- (1) See Notes 2 and 4 to our consolidated financial statements and Notes 2 and 4 to our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus for an explanation of the calculations of our basic and diluted net loss per share, basic and diluted pro forma net loss per share and the shares used in computing basic and diluted net loss per share and basic and diluted pro forma net loss per share.

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Selected consolidated financial data

	As of December 31,		As of
	2014	2015	June 30, 2016
			(unaudited)
	(in thousands)		
Consolidated balance sheet data:			
Cash and cash equivalents and short-term investments	\$ 19,244	\$ 12,531	\$ 18,282
Working capital	19,364	8,236	13,924
Total assets	20,719	14,221	20,071
Term loan	4,877	9,841	9,883
Warrant liability	56	332	213
Convertible preferred stock	54,826	54,699	70,498
Accumulated deficit	(40,585)	(56,142)	(63,854)
Total stockholders' deficit	(39,856)	(55,139)	(62,690)

Management's discussion and analysis of financial condition and results of operations

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

OVERVIEW

We are a commercial-stage medical device company focused on developing and commercializing innovative medical devices to treat obese and overweight people by facilitating weight loss. Our initial product offering is the Obalon balloon system, the first swallowable, gas-filled intragastric balloon designed to provide progressive and sustained weight loss in obese patients. We recently received premarket approval from the U.S. Food and Drug Administration, or FDA, to market our balloon system for temporary use to facilitate weight loss in obese adults with a body mass index, or BMI, of 30 to 40, who have failed to lose weight through diet and exercise. The Obalon balloon system is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed. The Obalon balloon system has the potential to provide patients and physicians with a cost-effective, reversible and repeatable weight loss solution in an outpatient setting, without altering patient anatomy or requiring surgery. We anticipate commencing the U.S. commercial launch of our Obalon balloon system in early 2017. As of June 30, 2016, we had sold over 23,000 of our earlier generation Obalon balloon systems for commercial use outside the United States.

We began selling an earlier version of our Obalon balloon system in Europe in the third quarter of 2012, and we expanded sales into Mexico and the Middle East in the third quarter of 2013. Our Obalon balloon system was sold in Europe through distributors, in Mexico directly to physicians and in the Middle East through a single distributor. In 2015, we discontinued sales in Europe and Mexico to conserve financial resources while we focused on developing our current Obalon balloon system and subsequently obtaining regulatory approval to market it in the United States, which we believe to be our largest single market opportunity. In 2017, we intend to discontinue international distribution of our earlier generation product and begin selling our current Obalon balloon system.

In June 2013, we entered into a distribution agreement with Bader Sultan & Bros. Co W.L.L., or Bader, a healthcare products distributor based in Sufat, Kuwait, which subsequently became one of our significant stockholders. Pursuant to the distribution agreement, in November 2013, we began selling our earlier generation Obalon balloon system to Bader, our sole distributor in the Middle East. Sales to Bader for the years ended December 31, 2014 and 2015 totaled \$1.9 million and \$3.8 million, which represent 52.4% and 94.7% of total revenue, respectively. As of June 30, 2016, all of our total revenue consisted of sales of our earlier generation Obalon balloon system to Bader.

We intend to focus our sales and marketing efforts primarily on selling our product in the United States through a direct sales force, as well as selling our products through Bader in the Middle East and other

Management's discussion and analysis of financial condition and results of operations

distributors in select international markets. We are building a direct sales organization consisting of regional sales directors, executive account managers and product specialists. We initially plan to sell the Obalon balloon system on a self-pay basis into existing physician specialty areas with weight loss practices, such as bariatric surgeons and gastroenterologists. Given the initial focus of our sales and marketing efforts, we believe we can begin targeting the U.S. market with a sales organization of approximately 15 to 20 individuals.

We generated total revenue, including revenue recognized from related parties, of \$3.5 million, \$4.0 million and \$1.8 million for the years ended December 31, 2014 and 2015 and the six months ended June 30, 2016, respectively. For the years ended December 31, 2014 and 2015, our net loss was \$9.9 million and \$15.6 million, respectively, and for the six months ended June 30, 2016, our net loss was \$7.7 million. We have not been profitable since inception, and as of June 30, 2016, our accumulated deficit was \$63.9 million. Since inception, we have financed our operations primarily through private placements of our preferred securities and, to a lesser extent, debt financing arrangements. We expect to continue to incur net losses for the foreseeable future as we commercialize our product in the United States, including building our sales and marketing organization and expanding our manufacturing facilities, continue research and development efforts, and seek regulatory approval for new products and product enhancements. We will need additional funding to pay expenses relating to our operating activities, including selling, general and administrative expenses and research and development expenses. Adequate funding may not be available to us on acceptable terms, or at all. Our failure to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on our business, results of operations or financial condition.

COMPONENTS OF OUR RESULTS OF OPERATIONS**Revenue**

Total revenue consists of international sales of an earlier generation of our Obalon balloon system. Revenue consists of sales of our Obalon balloon system to distributors or directly to physicians in Europe and Mexico, and revenue, related party reflects sales of our Obalon balloon system to Bader in the Middle East. During the third quarter of 2015, we discontinued sales in Europe and Mexico, and as of June 30, 2016, total revenue consisted of sales of our Obalon balloon system to Bader in the Middle East.

We plan to focus on selling our Obalon balloon system in the United States, which we anticipate will be our primary market. We expect that, as a result, total revenue will increase as we implement our U.S. sales strategy and our revenue from international sales will constitute a smaller percentage of total revenue. However, the degree to which our revenue increases depends on many factors, including acceptance of our Obalon balloon system by doctors and patients, the emergence of competing products and general economic trends.

Cost of revenue and gross margin

Cost of revenue consists primarily of costs related to the direct materials and direct labor that are used to produce our products and the manufacturing overhead that directly support production. Currently, a significant portion of our cost of revenue consists of manufacturing overhead, which is mostly fixed in nature. These overhead costs include the cost of compensation for operations supervision and management, material procurement, inventory control, facilities and depreciation on production equipment. We expect cost of revenue to increase in absolute dollars to the extent our total revenue grows.

Management's discussion and analysis of financial condition and results of operations

We calculate gross margin as gross profit divided by total revenue. Our gross margin has been and will continue to be affected by a variety of factors, primarily production volumes, manufacturing costs, product yields, headcount and cost-reduction strategies. We expect our gross margin to increase over the long term as our production volume increases and as we spread the fixed portion of our manufacturing overhead costs over a larger number of units produced, thereby reducing our per unit manufacturing costs. We intend to use our design, engineering and manufacturing capabilities to further advance and improve the efficiency of our manufacturing processes, which we believe will reduce costs and increase our gross margin. While we expect gross margin to increase over the long term, it will likely fluctuate from quarter to quarter as we continue to introduce new products and adopt new manufacturing processes and technologies.

Research and development expenses

Research and development, or R&D, expenses consist of the cost of engineering, clinical affairs, regulatory affairs and quality assurance associated with developing our Obalon balloon system. R&D expenses consist primarily of:

- Ø employee-related expenses, including salaries, benefits, travel expense and stock-based compensation expense;
- Ø cost of outside consultants who assist with technology development, regulatory affairs, clinical affairs and quality assurance;
- Ø cost of clinical trial activities performed by third party medical partners; and
- Ø cost of facilities, depreciation on R&D equipment and supplies used for internal research and development and clinical activities.

We expense R&D costs as incurred. In the future, we expect R&D expenses to increase in absolute dollars as we continue to develop new products and enhance existing products and technologies. However, we expect R&D expenses as a percentage of total revenue to vary over time depending on the level and timing of our new product development efforts, as well as our clinical development, clinical trial and other related activities.

Selling, general and administrative expenses

Selling, general and administrative, or SG&A, expenses consist of employee-related expenses, including salaries, benefits, travel expense and stock-based compensation expense. Other SG&A expenses include promotional activities, marketing, conferences and trade shows, professional services fees, including legal, audit and tax fees, insurance costs, general corporate expenses and allocated facilities-related expenses. We expect to grow our sales and marketing force significantly in the near future in preparation for the commercial launch of our Obalon balloon system in the United States in early 2017. As a result, we expect SG&A expenses to significantly increase in absolute dollars and as a percentage of total revenue for the foreseeable future as we expand our sales and marketing infrastructure to drive and support anticipated growth in revenue and due to the additional legal, accounting, insurance and other expenses associated with becoming a public company.

Management's discussion and analysis of financial condition and results of operations

RESULTS OF OPERATIONS

	Year ended December 31,		Six months ended June 30,	
	2014	2015	2015	2016
(in thousands)				
Consolidated statements of operations data:				
Revenue:				
Revenue	\$ 1,683	\$ 216	\$ 224	\$ —
Revenue, related party	1,856	3,823	1,739	1,848
Total revenue	3,539	4,039	1,963	1,848
Cost of revenue	2,912	2,503	1,205	1,294
Gross profit	627	1,536	758	554
Operating expenses:				
Research and development	5,767	12,978	5,968	5,098
Selling, general and administrative	4,700	3,491	1,679	2,975
Total operating expenses	10,467	16,469	7,647	8,073
Loss from operations	(9,840)	(14,933)	(6,889)	(7,519)
Interest expense, net	(220)	(549)	(263)	(290)
Gain (loss) from change in fair value of warrant liability	167	(34)	11	119
Other income (expense), net	3	(41)	(16)	(22)
Net loss	(9,890)	(15,557)	(7,157)	(7,712)
Other comprehensive income	9	5	10	4
Net loss and comprehensive loss	\$ (9,881)	\$ (15,552)	\$ (7,147)	\$ (7,708)

Comparison of six months ended June 30, 2015 and 2016

Total revenue. Total revenue decreased \$0.2 million to \$1.8 million during the six months ended June 30, 2016, compared to \$2.0 million during the six months ended June 30, 2015. This decrease was primarily attributable to a decrease in the volume sold as we discontinued sales of the Obalon balloon system in Europe and Mexico beginning in the third quarter of 2015.

Cost of revenue. Cost of revenue increased \$0.1 million to \$1.3 million during the six months ended June 30, 2016, compared to \$1.2 million during the six months ended June 30, 2015. This increase was primarily attributable to changes in the allocation of production cost between R&D expense and cost of revenue.

Research and development expenses. R&D expenses decreased \$0.9 million to \$5.1 million during the six months ended June 30, 2016, compared to \$6.0 million during the six months ended June 30, 2015. This decrease was primarily attributable to a \$1.3 million decrease in clinical trial expenses due to the conclusion of our SMART trial. This decrease was partially offset by a \$0.3 million increase in employee-related expenses associated with additional headcount and a \$0.1 million increase due to payments to outside consultants associated with projects to prepare us for FDA audits during the six months ended June 30, 2016.

Selling, general and administrative expenses. SG&A expenses increased \$1.3 million to \$3.0 million during the six months ended June 30, 2016, compared to \$1.7 million during the six months ended June 30, 2015. This increase was primarily attributable to a \$1.0 million increase in legal fees associated with increased intellectual property development and protection and a \$0.3 million increase in employee-related expenses from an increase in headcount.

Management's discussion and analysis of financial condition and results of operations

Interest expense, net. Interest expense, net remained relatively consistent at \$0.3 million for the six months ended June 30, 2015 and 2016.

Comparison of years ended December 31, 2014 and 2015

Total revenue. Total revenue increased by \$0.5 million to \$4.0 million during the year ended December 31, 2015, compared to \$3.5 million during the year ended December 31, 2014. This increase was attributable to a \$2.0 million increase in revenue, related party due to the increased volume sold in the Middle Eastern market during the year ended December 31, 2015 as a result of our distributor selling to new territories, offset by a \$1.5 million decrease in revenue, as we discontinued sales in Europe and Mexico beginning in the third quarter of 2015 and the volume sold in those regions decreased substantially.

Cost of revenue. Cost of revenue decreased by \$0.4 million to \$2.5 million during the year ended December 31, 2015, compared to \$2.9 million during the year ended December 31, 2014. This decrease was primarily attributable to lower payroll and outside consulting expense associated with manufacturing our products. During the year ended December 31, 2015, we operated with a lower engineering and supervisory headcount in our manufacturing department compared to the year ended December 31, 2014.

Research and development expenses. R&D expenses increased \$7.2 million to \$13.0 million during the year ended December 31, 2015, compared to \$5.8 million during the year ended December 31, 2014. This increase was primarily attributable to the initiation of our SMART trial in April 2015.

Selling, general and administrative expenses. SG&A expenses decreased \$1.2 million to \$3.5 million during the year ended December 31, 2015, compared to \$4.7 million during the year ended December 31, 2014. This decrease was primarily attributable to decreases in selling and marketing expenses due to the discontinuation of sales in Mexico and Europe beginning in the third quarter of 2015.

Interest expense, net. Interest expense, net increased \$0.3 million to \$0.5 million during the year ended December 31, 2015, compared to an expense of \$0.2 million during the year ended December 31, 2014. The increase in interest expense was attributable to an increase in outstanding debt to support our operations during the year ended December 31, 2015 as compared to the year ended December 31, 2014.

LIQUIDITY AND CAPITAL RESOURCES

As of June 30, 2016, we had cash and cash equivalents and short-term investments of \$18.3 million and an accumulated deficit of \$63.9 million. Our primary sources of capital have been private placements of preferred stock and the incurrence of debt. To date, we have raised an aggregate of \$70.5 million in proceeds from convertible preferred stock financings. Additionally, in June 2013, we incurred \$3.0 million of debt under a loan and security agreement with Square 1 Bank, which was amended in October 2014 to increase the outstanding debt to \$5.0 million with an additional \$5.0 million funded in January 2015, which resulted in aggregate outstanding indebtedness as of June 30, 2016 of \$10.0 million. In September 2016, the loan and security agreement was subsequently amended to provide for an additional \$5.0 million in funding, which we may borrow at any time prior to March 7, 2017.

Due to the FDA's recent approval of our Obalon balloon system, we expect to incur substantial additional expenditures in the next 12 months to support the commercial launch of our product in the United States beginning in early 2017. We believe that cash and cash equivalents and short-term

Management's discussion and analysis of financial condition and results of operations

investments as of June 30, 2016 are not sufficient to fund these operations for the next 12 months. However, we believe that the net proceeds from this offering, together with our existing cash and cash equivalents and short-term investments and expected revenue, will be sufficient to meet our capital requirements and fund our operations for at least two years following this offering. We expect our costs and expenses to increase in the future as we prepare for and commence U.S. commercialization of our Obalon balloon system, including the development of a direct sales force and the expansion of our manufacturing facilities, and as we continue to make substantial expenditures on research and development, including for conducting clinical trials of our products in development. Additionally, we expect to incur additional costs as a result of operating as a public company. Our future capital requirements will depend on many factors, including:

- Ø the costs and expenses of establishing our U.S. sales and marketing infrastructure and our manufacturing operations;
- Ø the degree of success we experience in commercializing our Obalon balloon system;
- Ø the revenue generated by sales of our Obalon balloon system and other products that may be approved in the United States;
- Ø the costs, timing and outcomes of clinical trials and regulatory reviews associated with our products under development;
- Ø the costs and timing of developing variations of our Obalon balloon system, and, if necessary, obtaining FDA approval of such variations;
- Ø the emergence of competing or complementary technological developments;
- Ø the extent to which our Obalon balloon system is adopted by the physician community;
- Ø the number and types of future products we develop and commercialize;
- Ø the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property-related claims; and
- Ø the extent and scope of our general and administrative expenses.

Additional financing may not be available on a timely basis on terms acceptable to us, or at all. We may raise funds in equity or debt financings following our initial public offering or enter into additional credit facilities in order to access funds for our capital needs. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new equity securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. Any debt financing obtained by us in the future would cause us to incur additional debt service expenses and could include restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and pursue business opportunities. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, we may terminate or delay the development of one or more of our products, delay clinical trials necessary to market our products, or delay establishment of sales and marketing capabilities or other activities necessary to commercialize our products.

Loan and security agreement

In June 2013, we entered into a \$3.0 million loan and security agreement with Square 1 Bank (predecessor in interest to Pacific Western Bank), which we subsequently amended in October 2014 and September 2016.

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As of June 30, 2016, we could borrow up to \$10.0 million in two tranches of \$5.0 million each. The first \$5.0 million tranche allowed for an additional \$2.0 million of outstanding debt and was funded upon execution of the amendment in October 2014. The second \$5.0 million was available upon our receipt of at least \$20.0 million in equity proceeds. In January 2015, following our Series D preferred stock offering, the full \$5.0 million of the second tranche was funded. As of June 30, 2016, we had \$10.0 million outstanding under this loan and security agreement, which had a variable annual interest rate equal to the greater of the prime rate plus 1.75% or 5.0%, and matured in October 2018.

Subsequent to June 30, 2016, we amended the loan and security agreement to allow for total borrowings up to \$15.0 million in two tranches as follows: a first tranche consisting of \$10.0 million funded in September 2016, of which the full \$10.0 million was used to repay the existing debt with Pacific Western Bank (a successor in interest to Square 1 Bank) (pursuant to its original terms); and a second tranche consisting of an additional \$5.0 million which may be drawn at any time prior to March 7, 2017.

The current interest rate on the outstanding debt is a variable annual rate equal to the greater of the prime rate plus 1.50% or 5.0%. The loan and security agreement provides for an interest-only period through March 2018, followed by a 30-month principal and interest period. Pursuant to the loan and security agreement, we provided a first priority security interest in all existing and after-acquired assets, excluding intellectual property, owned by us. The debt currently matures in September 2020, at which time all amounts outstanding, including accrued interest, become immediately due and payable.

Pursuant to the loan and security agreement, we issued to Pacific Western Bank a warrant to purchase a number of our shares of Series E convertible preferred stock, at a purchase price of \$2.8597 per share, equal to 3.0% of the total amount of debt drawn under the second tranche divided by the purchase price, which will only be exercisable in the event that we borrow all or part of the second tranche.

The loan and security agreement provides for restrictions on, among other things, our ability to incur additional indebtedness, change the name or location of our business, change our business, merge with or acquire other entities, pay dividends or make other distributions to holders of our capital stock, make certain investments, engage in transactions with our affiliates, create liens, sell assets, pay any subordinated debt, and store certain inventory and equipment with third parties. In addition, if our total cash is less than \$15.0 million, we are required to maintain all our deposits, transaction accounts and primary investment accounts with Pacific Western Bank, and if our total cash is greater than \$15.0 million, we are required to maintain 50% of our deposits, transaction accounts and primary investment accounts with Pacific Western Bank.

CASH FLOWS

	Year ended December 31,		Six months ended June 30,	
	2014	2015	2015	2016
	(in thousands)			
Net cash (used in) provided by:				
Operating activities	\$ (9,907)	\$ (11,392)	\$ (3,452)	\$ (8,663)
Investing activities	(7,918)	2,777	(6,549)	(4,892)
Financing activities	22,188	5,062	5,059	14,528
Exchange rate effect	12	7	—	—
Net increase (decrease) in cash and cash equivalents	<u>\$ 4,375</u>	<u>\$ (3,546)</u>	<u>\$ (4,942)</u>	<u>\$ 973</u>

Management's discussion and analysis of financial condition and results of operations

Net cash used in operating activities

During the six months ended June 30, 2016, net cash used in operating activities was \$8.7 million, consisting primarily of a net loss of \$7.7 million and an increase in net operating assets of \$1.2 million, primarily related to the payment of compensation accrued at December 31, 2015. These items were offset by non-cash charges of \$0.2 million, consisting primarily of depreciation, stock-based compensation expense and non-cash interest expense related to amortization of investment premium and debt discount.

During the six months ended June 30, 2015, net cash used in operating activities was \$3.5 million, consisting primarily of a net loss of \$7.2 million, offset by a decrease in net operating assets of \$3.3 million and non-cash charges of \$0.4 million. The decrease in net operating assets consisted primarily of an increase in accrued expenses for our SMART trial and a customer deposit received from Bader. The non-cash charges primarily consisted of depreciation, stock-based compensation expense and non-cash interest expense related to amortization of investment premium and debt discount.

During the year ended December 31, 2015, net cash used in operating activities was \$11.4 million, consisting primarily of a net loss of \$15.6 million, offset by a decrease in net operating assets of \$3.4 million and non-cash charges of \$0.8 million. The decrease in net operating assets primarily consisted of increased accrued expenses for our SMART trial and a customer deposit received from Bader.

During the year ended December 31, 2014, net cash used in operating activities was \$9.9 million, consisting primarily of a net loss of \$9.9 million and an increase in net operating assets of \$0.3 million, partially offset by non-cash charges of \$0.3 million. The increase in net operating assets was primarily attributable to increases in inventory and other current assets and decreases in accrued clinical expenses. The non-cash charges primarily consisted of depreciation, stock-based compensation expense and non-cash interest expense related to amortization of investment premium and debt discount.

Net cash (used in) provided by investing activities

During the six months ended June 30, 2016, net cash used in investing activities was \$4.9 million, consisting primarily of purchases of short-term investments, partially offset by maturities of short-term investments.

During the six months ended June 30, 2015, net cash used in investing activities was \$6.5 million, consisting primarily of purchases of short-term investments, partially offset by maturities of short-term investments.

During the year ended December 31, 2015, net cash provided by investing activities was \$2.8 million, consisting primarily of maturities of short-term investments.

During the year ended December 31, 2014, net cash used in investing activities was \$7.9 million, consisting primarily of purchases of short-term investments, partially offset by maturities of short-term investments.

Net cash provided by financing activities

During the six months ended June 30, 2016, net cash provided by financing activities was \$14.5 million, consisting primarily of net proceeds of \$14.5 million from the issuance of Series E convertible preferred stock.

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During the six months ended June 30, 2015, net cash provided by financing activities was \$5.1 million, consisting primarily of proceeds of \$5.0 million from borrowings under our loan and security agreement with Pacific Western Bank.

During the year ended December 31, 2015, net cash provided by financing activities was \$5.1 million, consisting primarily of proceeds of \$5.0 million from borrowings under our loan and security agreement with Pacific Western Bank.

During the year ended December 31, 2014, net cash provided by financing activities was \$22.2 million, consisting primarily of net proceeds of \$20.2 million from the issuance of Series D convertible preferred stock and a \$2.0 million increase in borrowings under our loan and security agreement with Pacific Western Bank.

OFF-BALANCE SHEET ARRANGEMENTS

We currently have no off-balance sheet arrangements, such as structured finance, special purpose entities or variable interest entities.

CONTRACTUAL OBLIGATIONS

Our principal obligations consist of the operating lease for our facility and our loan and security agreement with Square 1 Bank. The following table sets out, as of December 31, 2015, our contractual obligations due by period:

	Payments due by period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
	(in thousands)				
Operating lease obligations(1).	\$ 279	\$ 225	\$ 54	\$ —	\$ —
Term loan	10,000	833	9,167	—	—
Total	<u>\$ 10,279</u>	<u>\$ 1,058</u>	<u>\$ 9,221</u>	<u>\$ —</u>	<u>\$ —</u>

(1) Consists of obligations under a multi-year, non-cancelable building lease for our facility in Carlsbad, California. The lease expires on March 31, 2017.

We enter into contracts in the normal course of business with clinical trial sites and clinical supply manufacturing organizations and with vendors for preclinical studies, research supplies and other services and products for operating purposes. These contracts generally provide for termination after a notice period, and, therefore, are cancelable contracts and not included in the table above. As of June 30, 2016, we had completed our lead clinical trial and all material expenses were accrued.

In September 2016, we amended our loan and security agreement with Pacific Western Bank. See “—Loan and security agreement.”

Our contractual obligations as of June 30, 2016 have not otherwise significantly changed from December 31, 2015.

Management's discussion and analysis of financial condition and results of operations

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The preparation of these financial statements requires us to make estimates and assumptions for the reported amounts of assets, liabilities, revenue, expenses and related disclosures. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions and any such differences may be material.

While our significant accounting policies are more fully described in the notes to our financial statements appearing elsewhere in this prospectus, we believe the following discussion addresses our most critical accounting policies, which are those that are most important to our financial condition and results of operations and require our most difficult, subjective and complex judgments.

Revenue recognition

Revenue relates to sales of components of the Obalon balloon system, which includes the balloon and accessory kit, EzFill inflation system, pre-filled can of gas and placebo capsule. As of June 30, 2016, the product is sold to one customer, Bader, a related party and healthcare product distributor based in Sufat, Kuwait. We recognize revenue when the following revenue recognition criteria are met:

- Ø **Persuasive evidence of an arrangement exists.** We consider this criterion satisfied when we have an agreement or contract in place with the customer.
- Ø **Delivery has occurred.** Our standard terms specify that title and risk of loss transfers upon shipment to customer. We use third-party shipping documents to verify that title has transferred.
- Ø **The selling price is fixed or determinable.** We assess whether the sales price is fixed or determinable at the time of the transaction. Sales prices are documented in the executed sales contract or purchase order received prior to shipment. Our standard terms do not allow for trial or evaluation periods, rights of return or refund, payments contingent upon the customer obtaining financing or other terms that could impact the customer's obligation.
- Ø **Collectability is reasonably assured.** We assess whether collection is reasonably assured based on a number of factors, including the customer's past transaction history and credit worthiness.

Stock-based compensation expense

We maintain an equity incentive plan to provide long-term incentive for employees, consultants and members of our board of directors. The plan allows for the issuance of non-statutory and incentive stock options to employees and non-statutory stock options to consultants and non-employee directors.

We are required to determine the fair value of equity incentive awards and recognize compensation expense for all equity incentive awards, including employee stock options. We recognize this expense over the requisite service period. In addition, we recognize stock-based compensation expense in the statements of operations and comprehensive loss based on awards expected to vest and, therefore, the amount of expense has been reduced for estimated forfeitures. We use the straight-line method for expense attribution.

Management's discussion and analysis of financial condition and results of operations

The valuation model we used for calculating the fair value of awards for stock-based compensation expense is the Black-Scholes option-pricing model, or the Black-Scholes model. The Black-Scholes model requires us to make assumptions and judgments about the variables used in the calculation, including:

- ◊ **Expected term.** We do not believe we are able to rely on our historical exercise and post-vesting termination activity to provide accurate data for estimating the expected term for use in determining the fair value-based measurement of our options. Therefore, we have opted to use the "simplified method" for estimating the expected term of options, which is the average of the weighted-average vesting period and contractual term of the option.
- ◊ **Expected volatility.** Since there has been no public market for our common stock and lack of company specific historical volatility, we have determined the share price volatility for options granted based on an analysis of the volatility of a peer group of publicly traded companies. In evaluating similarity, we consider factors such as stage of development, risk profile, enterprise value and position within the industry.
- ◊ **Risk-free interest rate.** The risk-free interest rate is based on the U.S. Treasury yield in effect at the time of the grant for zero-coupon U.S. Treasury notes with remaining terms similar to the expected term of the options.
- ◊ **Dividend rate.** We assumed the expected dividend to be zero as we have never paid dividends and have no current plans to do so.
- ◊ **Expected forfeiture rate.** We are required to estimate forfeitures at the time of grant, and revise those estimates in subsequent periods if actual forfeitures differ from those estimates. We use historical data to estimate pre-vesting option forfeitures and record share-based compensation expense only for those awards that are expected to vest. To the extent actual forfeitures differ from the estimates, we record the difference as a cumulative adjustment in the period that the estimates are revised.
- ◊ **Service period.** We amortize all stock-based compensation over the requisite service period of the awards, which is generally the same as the vesting period of the awards. We amortize the stock-based compensation cost on a straight-line basis over the expected service periods.
- ◊ **Fair value of common stock.** The fair value of the common stock underlying our stock options has historically been determined by our board of directors after considering, among other things, contemporaneous valuations of our common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. Given the absence of a public trading market for our common stock, our board of directors exercised reasonable judgment and considered a number of objective and subjective factors to determine the best estimate of the fair value of our common stock, including our stage of development; the rights, preferences and privileges of our convertible preferred stock relative to those of our common stock; our results of operations and financial condition, including our levels of available capital resources; equity market conditions affecting comparable public companies; general U.S. market conditions and the lack of marketability of our common stock; and valuations obtained from sales of our preferred stock to unrelated parties.

For stock awards after the completion of this offering, our board of directors intends to determine the fair value of each share of underlying common stock based on the closing price of our common stock as reported on the date of grant.

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The intrinsic value of all outstanding options as of June 30, 2016 was \$ million based on the estimated fair value of our common stock of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus.

If factors change and we employ different assumptions, stock-based compensation expense may differ significantly from what we have recorded in the past. If there are any modifications or cancellations of the underlying unvested securities, we may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense. To the extent that our assumptions are incorrect, the amount of stock-based compensation recorded will change.

Research and development expenses

As part of the process of preparing our financial statements, we are required to estimate our accrued R&D expenses as of each balance sheet date. This process involves reviewing open contracts and purchase orders, communicating with our personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of the actual cost. The majority of our service providers invoice us monthly in arrears for services performed or when contractual milestones are met. We make estimates of our accrued expenses as of each balance sheet date based on facts and circumstances known to us at that time. We periodically confirm the accuracy of our estimates with the service providers and make adjustments if necessary. The significant estimates in our accrued R&D expenses include the costs incurred for services performed by our vendors in connection with R&D activities for which we have not yet been invoiced.

We base our expenses related to R&D activities on our estimates of the services received and efforts expended pursuant to quotes and contracts with vendors that conduct R&D on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. There may be instances in which payments made to our vendors will exceed the level of services provided and result in a prepayment of the R&D expense. In accruing service fees, we estimate the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrual or prepaid accordingly. Advance payments for goods and services that will be used in future R&D activities are expensed when the activity has been performed or when the goods have been received rather than when the payment is made.

Although we do not expect our estimates to be materially different from amounts actually incurred, if our estimates of the status and timing of services performed differ from the actual status and timing of services performed, it could result in us reporting amounts that are too high or too low in any particular period. To date, there has been no material differences between our estimates of such expenses and the amounts actually incurred.

Income Taxes

We use the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial reporting and the tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We assess the likelihood that the resulting deferred tax assets will be realized. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. Due to our lack of earnings history and uncertainties surrounding our ability to generate future taxable income, the net deferred tax assets have been fully offset by a valuation allowance.

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Due to the uncertainty surrounding possible IRC section 382 limitations on the use of our U.S. federal and state tax net operating loss carryforwards, such tax loss carryforwards have been removed from the deferred tax assets as of December 31, 2014 and December 31, 2015.

In general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or IRC, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, and certain other tax assets to offset future taxable income, and an ownership change is generally defined as a cumulative change of 50% or more in the ownership positions of certain stockholders during a rolling three year period. We have not completed a formal study to determine if any ownership changes within the meaning of IRC Section 382 have occurred.

If ownership changes within the meaning of IRC Section 382 have occurred, it could restrict our ability to use NOL carryforwards and research and development tax credits generated since inception. Limitations on our ability to use NOL carryforwards and research and development tax credits to offset future taxable income could require us to pay U.S. federal income taxes earlier than would be required if such limitations were not in effect. Similar rules and limitations may apply for state income tax purposes.

JOBS ACT ACCOUNTING ELECTION

In April 2012, the JOBS Act was enacted. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

NEW ACCOUNTING PRONOUNCEMENTS

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board, or FASB, or other standard setting bodies that are adopted by us as of the specified effective date. Unless otherwise discussed, we believe that the impact of recently issued standards that are not yet effective will not have a material impact on our financial position or results of operations upon adoption.

In May 2014, the FASB issued Accounting Standard Update, or ASU, 2014-09, *Revenue from Contracts with Customers*. ASU 2014-09 outlines a comprehensive revenue recognition model and supersedes most current revenue recognition guidance. ASU 2014-09 is effective for annual reporting periods, and interim periods within those periods, beginning after December 15, 2016. Entities are able to use one of three prescribed transition methods. In August 2015, the FASB issued ASU 2015-14 to defer the effective date of ASU 2014-09 by one year and allow early adoption for all entities but not before the original public entity effective date. We have not yet selected a transition method as we are currently evaluating the impact of the amended revenue recognition guidance on our consolidated financial statements.

In August 2014, the FASB issued ASU 2014-15, *Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern*. ASU 2014-15 requires management to evaluate relevant conditions, events and certain management plans that are known or reasonably knowable that when, considered in the aggregate, raise substantial doubt about the entity’s ability to continue as a going concern within one year after the date that the financial statements are issued, for both annual and interim periods. ASU

Management's discussion and analysis of financial condition and results of operations

2014-15 also requires certain disclosures around management's plans and evaluation, as well as the plans, if any, that are intended to mitigate those conditions or events that will alleviate the substantial doubt. ASU 2014-15 is effective for fiscal years ending after December 15, 2016. We do not anticipate that the adoption of ASU 2014-15 will have a material impact on our consolidated financial statements.

In April 2015, FASB issued ASU 2015-03, *Interest – Imputation of Interest*. This simplifies the presentation of debt issuance costs by requiring them to be presented in the balance sheet as a direct deduction from the carrying amount of the debt liability. ASU 2015-03 is effective for financial statements issued for fiscal years beginning after December 15, 2015. We previously presented debt issuance costs as a direct deduction from the carrying amount of its debt liabilities. As such, we have early adopted the provisions of ASU 2015-03 for the years ended December 31, 2014 and 2015.

In July 2015, FASB issued ASU 2015-11, *Simplifying the Measurement of Inventory*. This update applies to companies that measure inventory on a first in, first out, or FIFO, or average cost basis. Under this update, companies are to measure their inventory at the lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion. The amendments in this update are effective for fiscal years beginning after December 31, 2016 with earlier application permitted as of the beginning of an interim or annual reporting period. We do not expect that the adoption of this guidance will have a significant impact on our consolidated financial statements.

In November 2015, the FASB issued ASU 2015-17, *Balance Sheet Classification of Deferred Taxes*, an update to Accounting Standards Codification, or ASC, 740, *Income Taxes*. Current GAAP requires an entity to separate deferred income tax liabilities and assets into current and noncurrent amounts in a classified statement of financial position. To simplify the presentation of deferred income taxes, the amendments in this update require that deferred tax liabilities and assets be classified as noncurrent in a classified statement of financial position. The current requirement that deferred tax liabilities and assets of a tax-paying component of an entity be offset and presented as a single amount is not affected by the amendments in this update. For nonpublic business entities, the amendments in this update are effective for financial statements issued for annual periods beginning after December 15, 2017, and interim periods within those annual periods. The FASB also decided to permit earlier application by all entities as of the beginning of any interim or annual reporting period. The FASB further provides that this update may be applied to all deferred tax liabilities and assets prospectively. We adopted this update prospectively beginning in the year ended December 31, 2015. No prior periods were retrospectively adjusted.

In February 2016, the FASB issued ASU 2016-02, *Leases*. Under this new guidance, at the commencement date, lessees will be required to recognize (i) a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis and (ii) a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. This guidance is not applicable for leases with a term of 12 months or less. The new standard is effective for us on January 1, 2019, with early adoption permitted. We are currently evaluating the impact that this standard will have on our consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, *Improvements to Employee Share-Based Payment Accounting*, which involves several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This new guidance will require all income tax effects of awards to be recognized as income tax expense or benefit in the income statement when the awards vest or are settled, as opposed to additional paid-in-capital where it is currently recorded. It also will allow an

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employer to repurchase more of an employee's shares than it can today for tax withholding purposes without triggering liability accounting. All tax-related cash flows resulting from share-based payments are to be reported as operating activities on the statement of cash flows. The guidance also allows a company to make a policy election to either estimate the number of awards that are expected to vest or account for forfeitures as they occur. This new standard is effective for us on January 1, 2017, with early adoption permitted. We are currently evaluating the impact that this standard will have on our consolidated financial statements.

QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**Interest rate risk**

The risk associated with fluctuating interest rates is primarily limited to our cash equivalents and short-term investments, which are carried at quoted market prices. All of our short-term investments are U.S. treasury notes with maturities of less than one year. Due to the short-term maturities and low risk profile of our cash equivalents and short-term investments, an immediate 100 basis point change in interest rates would not have a material effect on the fair value of our cash equivalents. We do not currently use or plan to use financial derivatives in our investment portfolio.

In addition, we have outstanding debt under our loan and security agreement with Pacific Western Bank that bears interest. As of June 30, 2016, our aggregate outstanding indebtedness was \$10.0 million, which bears interest at the rate equal to the greater of the prime rate plus 1.75% or 5.0%. In September 2016, we entered into an amendment to the loan and security agreement which amended the rate to the greater of the prime rate plus 1.50% or 5.0%. We do not believe an immediate 10% increase in interest rates would have a material effect on interest expense for the loan with Pacific Western Bank, and therefore we do not expect our operating results or cash flows to be materially affected to any degree by a sudden change in market interest rates.

Credit risk

As of December 31, 2015 and June 30, 2016, our cash and cash equivalents were maintained with one financial institution in the United States, and our current deposits are likely in excess of insured limits. We have reviewed the financial statements of this institution and believe it has sufficient assets and liquidity to conduct its operations in the ordinary course of business with little or no credit risk to us.

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OVERVIEW

We are a commercial-stage medical device company focused on developing and commercializing innovative medical devices to treat obese and overweight people by facilitating weight loss. Our initial product offering is the Obalon balloon system, the first swallowable, gas-filled intragastric balloon designed to provide progressive and sustained weight loss in obese patients. We recently received premarket approval, or PMA, from the U.S. Food and Drug Administration, or FDA, to market our balloon system for temporary use to facilitate weight loss in obese adults with a body mass index, or BMI, of 30 to 40, who have failed to lose weight through diet and exercise. The Obalon balloon system is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed. The Obalon balloon system has the potential to provide patients and physicians with a cost-effective, reversible and repeatable weight loss solution in an outpatient setting, without altering patient anatomy or requiring surgery. We anticipate commencing the U.S. commercial launch of our Obalon balloon system in early 2017. As of June 30, 2016, we had sold over 23,000 of our earlier generation Obalon balloon systems for commercial use outside the United States.

We received PMA approval for our Obalon balloon system based on the results of our U.S. pivotal clinical trial, referred to as the SMART trial. The SMART trial was a prospective, double-blinded, multi-center, randomized (1:1), parallel-group, active sham-controlled trial involving 387 patients, which demonstrated that patients in the Obalon treatment group lost, on average, approximately twice as much body weight as patients in the sham-control group, while at the same time maintaining a low rate of serious adverse device events, or SADEs. In the SMART trial, the Obalon balloon system also demonstrated a strong safety profile, showed statistically significant differences in metabolic profiles and demonstrated that patients were able to maintain most of their weight loss for at least six months following the removal of the balloons. Having received PMA approval for the Obalon balloon system, we are currently focused on commencing U.S. commercialization using a direct sales force, which we anticipate will occur in early 2017.

Obesity is one of the largest, most debilitating, costly and underserved disease states globally. In adults, the disease is linked to several co-morbidities, including hypertension, type 2 diabetes, high blood pressure, certain cancers and other chronic conditions, as well as psychological disorders such as anxiety, depression and insomnia. The national medical care costs of obesity-related illness in adults, including out of pocket expenses, third-party payer expenses and Medicaid, were estimated to be approximately \$210 billion in 2008. Current treatment alternatives for obese patients begin with lifestyle modification, such as diet and exercise. If this alternative fails to produce the desired results, physicians may prescribe pharmaceutical therapies, typically to obese or overweight patients with a lower body mass index, or BMI. Although pharmaceutical therapies have been effective in assisting with weight loss, they are often associated with safety risks and negative side effects that may limit patient compliance. In obese patients with a higher BMI, physicians may pursue aggressive surgical treatments, such as gastric bypass and gastric banding. These procedures promote weight loss by surgically restricting the stomach's capacity and outlet size; however, they present substantial side effects and carry short- and long-term safety risks that have limited adoption. Importantly, bariatric surgical procedures can result in permanent changes to the patient's anatomy, are often associated with significant reoperation rates, typically involve extended hospitalization and can result in patient intolerance to common foods.

Business

Recently, new medical procedures have been introduced in an attempt to address the gap in care between pharmaceutical treatment and invasive surgical procedures. These new procedures have included neuroblocking therapy, aspiration therapy and traditional intragastric balloons. The traditional intragastric balloons currently available in the U.S. market were approved for use in 2015. These balloons are large, saline-filled silicone devices that must be both placed in the stomach and later removed with an endoscopic procedure performed under anesthesia. While in the stomach, the balloons fill space, creating a sense of fullness in the patient. Traditional intragastric balloons have been associated with successful weight loss. However, we believe traditional intragastric balloons suffer limitations that are impeding their adoption, including their rate of SADEs, a lack of comfort and tolerability, a limited ability to provide progressive and sustained weight loss and an inconvenient placement procedure.

We designed the Obalon balloon system to address many of the limitations of traditional intragastric balloons. We believe the Obalon balloon system offers patients and physicians the following benefits:

- Ø **Favorable safety profile.** In our pivotal SMART trial, only one of 336 (less than 0.3%) patients that received our Obalon balloon experienced a SADE. As of June 2016, we had sold over 23,000 units of our earlier generation Obalon balloon systems in international markets and had only nine SADEs reported to us, none of which were required to be reported to the applicable foreign regulatory authorities. Our investigations determined that all of the international SADEs occurred in patients where the device was not used in accordance with approved labeling.
- Ø **Improved patient tolerability and comfort.** Our Obalon balloon is filled with a proprietary mix of gas, as opposed to heavier saline solutions used in traditional intragastric balloons. Our system is designed to use three Obalon balloons over the course of treatment, allowing the volume in the stomach to be gradually increased. We believe these design elements have the potential to improve patient comfort and tolerability of our Obalon balloon.
- Ø **Progressive weight loss with durable results.** In our SMART trial, patients in the Obalon treatment group lost, on average, approximately twice as much body weight as patients in the sham-control group. In addition, patients in the Obalon treatment group showed, on average, progressive weight loss over the entire six-month balloon treatment period, and maintained, on average, 89.5% of the weight loss six months after balloon removal.
- Ø **Simple and convenient placement.** The Obalon balloon is placed without anesthesia or an endoscopy through a swallowable capsule that dissolves in the stomach and releases the Obalon balloon. The balloon is attached to a microcatheter that enables inflation and then is detached from the Obalon balloon and removed from the patient. Placement typically occurs in less than ten minutes and patients can return to normal activity once the placement is complete. The balloons are removed endoscopically under light, conscious sedation six months after the first balloon placement.
- Ø **Attractive economics for patients and physicians.** By eliminating the need for an endoscopic delivery procedure, anesthesia and use of a special endoscopy suite, we believe our Obalon balloon system has the potential to reduce physician costs and allow more time to perform additional procedures. We believe patients will benefit from lower treatment costs, no post-placement recovery period and a quick return to daily activities.

Based on the results of our double-blinded, randomized, sham-controlled SMART trial, we received PMA approval from the FDA in September 2016 for temporary use of our Obalon balloon system to facilitate weight loss in obese adults with a BMI of 30 to 40 who have failed to lose weight through diet and exercise. The Obalon balloon system is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed. The trial results met or exceeded, and were statistically significant for, both of our co-primary endpoints.

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In 2012, we began selling an earlier generation of our Obalon balloon system in a limited number of countries outside of the United States through a combination of direct sales efforts and distributors. In 2015, we refocused our efforts toward developing and seeking regulatory approval for our balloon system in the United States and discontinued most of our international sales efforts other than our sales to Bader Sultan & Bros. Co. W.L.L., or Bader, our distributor in the Middle East and one of our significant stockholders. We intend to focus our sales and marketing efforts primarily on selling our Obalon balloon system in the United States through a direct sales force. We initially plan to sell the Obalon balloon system on a self-pay basis to bariatric surgeons and gastroenterologists with existing weight loss practices. We believe the design features of the Obalon balloon system will enable us to penetrate these existing physician specialties and later expand into new specialties, such as plastic surgery.

THE OBESITY EPIDEMIC

Obesity has been identified by the U.S. Surgeon General as an epidemic and a significant threat to the quality of life in the United States. Based on results from the 2013-2014 National Health and Nutrition Examination Survey, it is estimated that more than 86 million adults in the United States were obese, defined as a BMI of 30 or greater (calculated as weight in kilograms divided by height in meters squared), and an additional 75 million adults in the United States were overweight, defined as a BMI between 25 and 29. Research sponsored by the Centers for Disease Control and Prevention, or CDC, suggests that if current obesity rates persist, more than half of the U.S. population will be obese by 2030. Similarly, obesity is also a significant health problem outside of the United States. The number of obese adults worldwide has more than doubled since 1980, and the World Health Organization estimates that more than 600 million adults were obese and more than 1.9 billion were overweight in 2014.

The CDC has identified obesity as a leading cause of preventable death in the United States. Obesity-related disorders, known as comorbidities, include Type 2 diabetes, hypertension, stroke and certain cancers as well as psychological disorders such as anxiety, depression and insomnia. The national medical care costs of obesity-related illness in adults, including out of pocket expenses, third-party payer expenses and Medicaid, were estimated to be approximately \$210 billion in 2008. Furthermore, the annual global economic impact of obesity is estimated to be \$2 trillion.

We expect the obesity epidemic among adults to continue to grow worldwide given the excess caloric intake of highly-processed, fatty foods, increasingly sedentary lifestyles and a growing prevalence of obesity among children and adolescents. Despite the growing public interest in the obesity epidemic and the significant medical and economic repercussions associated with the disease, there remains a significant unmet need for more effective treatments.

CURRENT TREATMENTS AND LIMITATIONS

Current treatment alternatives for obese and overweight patients begin with lifestyle modification, such as diet and exercise. If this alternative fails to produce the desired results, physicians may prescribe pharmaceutical therapies, and in patients with more severe obesity, physicians may pursue aggressive surgical treatments, such as gastric bypass and gastric banding. These approaches are associated with safety concerns, lifestyle impact and ease of use, cost and compliance issues that have limited their adoption.

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Lifestyle modification

Lifestyle modification, which includes diet, exercise and behavior modification, is usually prescribed as an initial treatment for an obese or overweight patient and is typically prescribed in all obesity management approaches. However, lifestyle modification alone has generally been ineffective in producing sustainable weight loss in obese patients due to inability to comply with the modifications over an extended period. Many studies have shown that a significant majority of dieters will regain lost weight and many will gain more than they originally lost.

Pharmaceutical therapy

Several pharmaceutical products have been approved by the FDA for obesity in the United States. Pharmaceutical therapy often represents a first option in the treatment of obese patients that have failed to achieve weight loss goals through lifestyle modifications alone. Pharmaceutical therapy can have limited effectiveness due to patient non-compliance. Additionally, pharmaceutical therapy may carry significant safety risks and negative side effects, such as adverse gastrointestinal, cardiovascular and central nervous system issues, some of which are serious or life threatening.

Bariatric surgery

Bariatric surgery is a treatment option generally reserved for cases of severe obesity, or patients with a BMI in excess of 40. The two most common forms of bariatric surgery, gastric bypass and gastric banding, promote weight loss by surgically restricting the stomach's capacity and outlet size. Gastric bypass also affects weight loss by restricting the body's ability to absorb nutrients. While largely effective, these procedures are generally invasive, expensive for the patient and irreversible. Bariatric surgery patients are generally required to make significant postoperative lifestyle changes, including strict dietary changes, vitamin supplementation and long-term medical follow-up programs. Side effects of bariatric surgery include a high rate of re-operation, nausea, vomiting, dumping syndrome, dehydration, dental problems and other issues.

Recently developed treatment alternatives

Given the shortcomings and limitations of the existing treatment alternatives, new medical procedures have been recently introduced in an attempt to address the gap in care between pharmaceutical treatment and invasive surgical procedures. These new procedures include: neuroblocking therapy, aspiration therapy and traditional intragastric balloons. Neuroblocking therapy involves a surgical procedure in which a neuromodulation device is implanted in the body and used to block electrical signals from the stomach to the brain. By blocking those signals, the device attempts to control the patient's feelings of hunger. Aspiration therapy involves a surgical procedure in which a feeding tube is implanted in the abdomen in order to remove food from the stomach before calories are absorbed into the body. We believe high costs, procedural complications and the risk of SADEs may limit their adoption.

Intragastric balloons are a type of space-occupying device placed in the stomach in order to cause a sensation of fullness. Currently marketed traditional balloons are large, saline-filled silicone devices that are placed in the stomach endoscopically, under anesthesia, for a treatment period of up to six months. Following treatment, the balloons are removed in a second endoscopic procedure. Other approved traditional intragastric balloons in the United States are the ReShape Duo Balloon and the ORBERA Balloon. While generally effective in delivering weight loss, these traditional intragastric balloons have been accompanied by a number of limitations that have impeded their adoption, including:

- **Rate of SADEs.** In the pivotal clinical trial for the ReShape Duo Balloon, 31 device- or procedure-related serious adverse events were reported in 20 patients, resulting in an SADE rate of approximately

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7.5%. The most common SAEs were vomiting and abdominal pain. Similarly, in the pivotal clinical trial for the ORBERA Balloon, 17 serious adverse events were reported in 16 patients, resulting in an SAE rate of approximately 10%. The most significant SAE was severe and intolerable gastrointestinal upset.

- Ø **Lack of comfort and tolerability.** The ReShape Duo Balloon consists of two attached balloons that are filled and sealed separately. Each balloon can hold a maximum of 450cc of saline solution. The ORBERA Balloon is a single balloon that can be filled to a range of 400cc to 700cc. Neither of these traditional balloon systems allows for the volume of its respective balloon to be adjusted after placement, nor can additional balloons be added after the initial placement. As a result, physicians cannot incrementally increase the volume of the balloons and, therefore, the patient begins treatment with the maximum volume. We believe that this, combined with the weight of the filled balloons, which tend to sink to the bottom of the stomach, contributes to a lack of patient comfort and tolerability.
- Ø **Limited ability to provide progressive and sustained weight loss.** Patients in the pivotal trial for the ORBERA balloon lost only 31% of their total body weight loss, or approximately 6.8 lbs, in the last 18 weeks of use. Additionally, six months after removal of the ORBERA Balloon, patients in ORBERA's pivotal trial regained 26% of the weight loss, or 5.6 lbs. The average treatment subject in ReShape's pivotal trial with weight loss at six months regained 40% of the weight loss at one year. At one year, the weight loss for ORBERA Balloon and ReShape Balloon patients was 16.2 lbs and 9.9 lbs, respectively.
- Ø **Inconvenient placement procedure.** Both the ReShape Duo Balloon and the ORBERA Balloon procedures require both the device placement and device removal to be performed in an endoscopic procedure using anesthesia. The placement procedure for the ReShape Duo Balloon takes an average of approximately 20 minutes and for the ORBERA Balloon takes an average of approximately 30 minutes. The patient cannot immediately return to normal activities and must be placed under medical observation for a few hours until cleared to go home.

OUR SOLUTION

We have developed our Obalon balloon system to overcome the limitations of traditional intragastric balloons. Based on our clinical data and commercial experiences, we believe the Obalon balloon system provides the following benefits to our patients and their physicians:

- Ø **Favorable safety profile.** In our pivotal SMART trial, only one of 336 (less than 0.3%) patients that received our Obalon balloon experienced a SAE. As of June 2016, we had sold over 23,000 units of our earlier generation Obalon balloon systems in international markets and had only nine SAEs reported to us, none of which were required to be reported to the applicable foreign regulatory authorities. Our investigations determined that all of the international SAEs occurred in patients where the device was not used in accordance with approved labeling.
 - Ø **Improved patient tolerability and comfort.** The Obalon balloon is inflated with a proprietary mix of gas. This creates a light, buoyant balloon that floats at the top of the stomach instead of sinking to the bottom of the stomach like a traditional intragastric balloon. Further, the Obalon balloon system consists of three separate 250cc balloons placed individually over a three-month period to progressively add volume. We believe these design elements have the potential to improve patient comfort and tolerability of our Obalon balloon.
 - Ø **Progressive weight loss with durable results.** In our pivotal SMART trial, patients in the Obalon treatment group lost, on average, approximately twice as much body weight as patients in the sham-control group. In addition, patients in the Obalon treatment group showed, on average, progressive
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weight loss over the balloon treatment period, which we believe is attributable to the individual placement of three separate Obalon balloons over the treatment period. Subsequent data analysis at 12 months also showed that, on average, 89.5% of the weight loss was maintained six months after balloon removal.

- Ø **Simple and convenient placement.** The Obalon balloon is placed without anesthesia or an endoscopy through a swallowable capsule that dissolves in the stomach and releases the balloon. These unique features allow patients the flexibility to receive the Obalon balloon discreetly in an outpatient setting. Placement typically occurs in less than ten minutes and can be scheduled in the morning before work, during a lunch break or in the evening. Treated patients can return promptly to their normal daily activities. The balloons are removed endoscopically under light, conscious sedation six months after the first balloon placement.
- Ø **Attractive economics for patients and physicians.** By eliminating the need for an endoscopic delivery procedure, anesthesia and use of a special endoscopy suite, we believe our Obalon balloon system has the potential to reduce physician costs and allow more time to perform additional procedures. Furthermore, the Obalon balloon's tolerability profile may reduce the need for ongoing patient management. We believe patients will benefit from lower treatment costs, no post-placement recovery period and a quick return to daily activities.

OUR STRATEGY

Our objective is to be the leading provider of medical devices for the non-surgical treatment of obese and overweight individuals. The key elements of our strategy are to:

- Ø **Drive product adoption by working with key thought leaders in bariatrics and gastroenterology.** We plan to initially focus on direct sales to the leading bariatric surgeons and gastroenterologists in the United States. We estimate that there are approximately 3,500 bariatric surgery centers in the United States, and we believe the leading 700 centers provide an opportunity to effectively access obese patients using an efficiently-sized sales force. In addition, there are over 15,000 gastroenterologists, many of which are expanding their practices to include weight loss treatments. We believe adoption of our technology by these thought leaders will accelerate broader adoption of the Obalon balloon system in each physician specialty area.
- Ø **Partner with physicians to create consumer awareness and drive patients into the channel.** Our initial strategy is to establish marketing and support programs with physicians to create patient awareness and demand for the Obalon balloon system. We plan to support these physicians with best practices and tools to treat qualified patients already in the channel and through local outreach to attract new patients to the practice. We also intend to provide physicians with the clinical training to utilize our Obalon balloon system, as well as the practice development support to manage their practices as self-pay centers. In addition, we believe we can address an even larger patient population by creating a recognizable brand name through a direct-to-patient campaign designed to differentiate the Obalon balloon system using targeted, cost effective digital and social media platforms, and media outreach through public relations efforts.
- Ø **Expand into new physician channels.** Although our initial focus is on bariatric and gastroenterology practices where the physician has or is already developing the capability to provide weight loss treatments, we also plan to target additional physician specialties that have access to obese patients, including the 1,900 aesthetically focused plastic surgeons. We believe that plastic surgeons are among the physicians that have access to patients appropriate for the Obalon balloon system, have experience managing self-pay centers and have the capability to learn and perform Obalon balloon placements.

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- ◊ **Continue to develop innovative products to facilitate market penetration.** We plan to leverage our proprietary product technology and research and development expertise to develop products for weight loss that improve clinical outcomes, increase ease of use and reduce cost. For example, we plan to seek supplemental approval for improvements to our Obalon balloon system, including a new, automated, easier-to-use inflation system. Other products currently in our development pipeline include a navigation system that would reduce the need for imaging at every placement, a balloon with a treatment period of longer than six months and a self-deflating and self-passing balloon that could eliminate the need for endoscopic balloon removal.
- ◊ **Optimize manufacturing to drive operating leverage.** We have built a highly leverageable manufacturing facility at our headquarters in Carlsbad, California, where we design, develop and manufacture our products in-house using some components and sub-assemblies provided by third-party suppliers. We believe that controlling the manufacturing and assembly of our products allows us to innovate more quickly and cost-efficiently and produce higher quality products than if we outsourced manufacturing. We believe we have the ability to increase our manufacturing scale within our current facility in a cost-effective manner.
- ◊ **Protect and expand our strong intellectual property portfolio.** We have developed a strong portfolio of issued patents and pending applications that protect our products and technology. We believe we have also developed know-how critical to creating current and future products that we hold and protect as trade secrets. We have an inventive culture and expect to continue innovating to create a proprietary pathway for future product development. We intend to aggressively protect and enforce our intellectual property, both for existing and new products.

OUR PRODUCTS AND TECHNOLOGY

The Obalon balloon system was designed to overcome the historical limitations of traditional intragastric balloons and nonsurgical treatments for weight loss. We have developed the individual components of the Obalon balloon system to collectively improve clinical outcomes, increase ease of use and reduce cost.

The Obalon balloon system

The main components of the Obalon balloon system are: a swallowable capsule that contains the balloon attached to a microcatheter, a hand-held inflation system and a pre-filled can of our proprietary mix of gas.

Swallowable Capsule



EzFill Inflation System



Gas-Filled Balloon



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Capsule, balloon and microcatheter technology

Dissolvable capsule

We designed the capsule to be large enough to accommodate the folded balloon, yet small enough to be swallowed. The capsule is titrated to optimize dissolution timing. If the capsule dissolves too quickly, the balloon could be prematurely released before entering the stomach, and if too slowly, the patient and physician are inconvenienced by having to wait longer to inflate the balloon.

Balloon film

Our film is a coextruded, multilayer polymer consisting primarily of nylon and polyethylene. We designed the film to be thin enough to fit into a swallowable capsule, yet stable enough to withstand the chemical and mechanical forces in the stomach. Our film is biocompatible, cost-effective to manufacture, puncture and abrasion resistant, smooth and atraumatic to the stomach's lining and able to appropriately retain gas.

Balloon valve

Our balloon valve is an innovative combination of materials, including silicone and titanium, designed to be highly reliable. The valve is small enough to fit into a swallowable capsule and radiopaqued for visibility under digital imaging. A key feature of our valve is the ability to effectively reseal after the inflation catheter is removed to prevent leaks.

Microcatheter

Our microcatheter is designed to quickly and reliably inflate the Obalon balloon. It is small, flexible and smooth in order to minimize any potential discomfort to the patient during balloon placement. The catheter utilizes a hydrophilic coating to reduce friction during swallowing.

Inflation system

Our hand-held inflation system, the EzFill inflation system, is a reusable device that delivers our proprietary mixture of gas to consistently inflate the Obalon balloon to the standardized volume and pressure. The inflation system is equipped with pre-pulse, a confirmation system that provides pressure feedback measurements to confirm that the Obalon balloon is both properly placed and able to be correctly inflated in the stomach.

Proprietary gas

The Obalon balloon is inflated with our proprietary mix of gas, which, in combination with the permeability of the balloon film and the stomach gases, enables the balloon to remain inflated for the full six-month treatment period.

The Obalon balloon treatment

Placement of the Obalon balloon typically occurs in less than ten minutes and can be accomplished in an outpatient setting. To place the Obalon balloon, the patient swallows the capsule, which has the Obalon balloon folded inside, with a glass of water. No sedation or anesthesia is required. Once swallowed, placement of the capsule is confirmed in the stomach with digital imaging. The microcatheter, which is attached to the Obalon balloon, is then connected to our EzFill inflation system. The EzFill inflation system provides real-time pressure measurements to confirm that the Obalon balloon is both properly placed and able to be correctly inflated in the stomach. A pre-filled can of gas is inserted into the EzFill inflation system and then the gas is discharged to fill the balloon to a volume of 250cc. Once the

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inflation of the Obalon balloon is confirmed, the microcatheter is detached from the balloon via hydrostatic pressure and is removed through the patient’s mouth. The patient returns two more times over the following eight to 12 weeks to receive a second and third Obalon balloon, expanding total balloon volume within the stomach to 750cc.

All of the balloons are removed in a single procedure six months after the placement of the initial balloon. Removal of the Obalon balloon typically requires approximately 15 minutes. The balloons are removed endoscopically under light conscious sedation, using standard commercially-available endoscopy tools.

The following pictures depict the treatment steps of the Obalon balloon system:



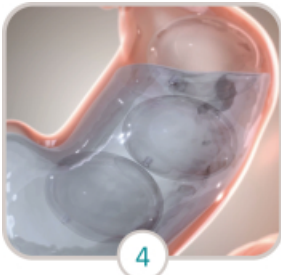
1
The patient swallows a capsule attached to a microcatheter. No sedation or anesthesia is required.



2
The balloon capsule location is confirmed in stomach with digital imaging and EzFill inflation system. Balloon is inflated with gas.



3
Microcatheter is removed, leaving the inflated balloon behind.



4
Three balloons placed over 12 weeks to stimulate progressive weight loss and minimize side-effects.



5
After six-month treatment period, all balloons are removed in a short endoscopic procedure.

Product pipeline

We have a robust pipeline of new products and product improvements for weight loss intended to improve clinical outcomes, increase ease of use and reduce cost.

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Next generation balloon capsule

We have developed a next generation HydroxyPropylMethylCellulose, or HPMC, Obalon balloon capsule that is fully vegetable-derived and is intended to eliminate potential cultural or religious concerns with animal-derived gelatin capsules. We expect to submit a PMA supplement for the HPMC Obalon balloon capsule in the United States.

Next generation inflation system

Our next generation inflation system, the EzPz inflation system, is designed to be automated, simpler to operate and to provide more reliable and consistent Obalon balloon placements. The EzPz inflation system has Certificat de Conformité, or CE, mark approval and is approved in Brazil and select Middle East markets. We believe the EzPz inflation system will require a PMA supplement approval for use in the United States.

Navigation

We are developing a balloon and navigation system for balloon placements that would reduce the need for digital imaging at each placement. We believe this navigation system has the potential to reduce the cost and logistics related to confirmatory digital imaging during the Obalon balloon placement, which could enable physician practices to treat higher volumes of patients and increase the number of physicians and sites offering the Obalon balloon system. The navigation system consists of hardware, software and a display to be used in conjunction with the current Obalon balloon. We have completed two feasibility studies for proof-of-concept and intend to conduct further clinical studies with this navigation system.

Longer-term duration balloon system

We are developing a balloon intended for a longer duration of treatment, potentially up to one year. In our SMART trial, patients in the Obalon treatment group continued, on average, to lose weight throughout the six months of balloon treatment. We have completed the initial engineering testing on the proprietary materials and systems, which we believe would permit reliable balloon performance over a longer period of up to twelve months. We intend to complete more rigorous engineering testing and submit for approval to conduct human trials to understand if longer balloon treatment may address higher BMI patients desiring a longer weight loss treatment.

Deflatable-passable balloon system

We have a balloon system in development that is intended to self-deflate at the end of a specified treatment period and then pass naturally through the digestive system to be excreted as waste, thereby potentially eliminating the need for endoscopy and creating a procedureless balloon treatment. However, it is of paramount importance to patient safety that such a balloon would pass with an extremely high level of reliability and not create a blockage of the intestines, which could require surgery and cause significant patient injury or death. We have conducted initial engineering and animal testing successfully on self-deflating and self-passing balloons, and we believe we have developed novel technology with a strong intellectual property portfolio. We intend to continue development and testing, and, if the results of our studies warrant, move toward human clinical trials in support of regulatory approvals.

Research and development

As of June 30, 2016, we had ten employees focused on research and development. In addition to our internal team, we retain third-party contractors from time to time to provide us with assistance on specialized projects. We also work closely with experts in the medical community to supplement our

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internal research and development resources. Research and development expenses for the years ended December 31, 2014 and 2015 and for the six months ended June 30, 2016 were \$5.8 million, \$13.0 million and \$5.1 million, respectively.

CLINICAL TRIALS AND DATA**SMART trial**

Based on our clinical data, we believe our Obalon balloon has the potential to offer a compelling combination of efficacy and safety. We have evaluated various versions of our Obalon balloon system in nine clinical trials, which included a total of 630 patients as of June 30, 2016. Based on the results of our U.S. pivotal trial, the SMART trial, we received FDA approval for our current Obalon balloon system in September 2016. The SMART trial met its primary weight loss endpoints, demonstrated a strong safety profile, showed statistically significant differences in metabolic profiles and demonstrated that patients were able to maintain most of the weight loss for at least six months following the removal of the Obalon balloons.

The SMART trial was a prospective, double-blinded, multi-center, randomized (1:1), parallel-group, active sham-controlled trial of 387 patients. The Obalon treatment group received three balloons placed individually at approximately week zero, week three and week 12. Alternatively, the sham-control group received placebo capsules with microcatheters and were led to believe in a mock placement that a balloon was placed and inflated in their stomachs at week zero, week three and week 12. The patients ranged in age from 22 to 64 years and had a BMI range of 30 to 40. The patients enrolled were required to have previously attempted to lose weight unsuccessfully through a change in diet and could not use weight loss medications or undergo gastric surgery for the duration of the trial. Patients were given minimal diet counseling of 25 minutes every three weeks in order to isolate the impact of the Obalon balloon on weight reduction. The trial was conducted by both bariatric surgeons and gastroenterologists at 15 U.S. centers. The trial evaluated a co-primary endpoint comprised of (i) a minimum difference in mean percent total body loss, or TBL, between the Obalon treatment group and sham-control group of at least 2.1% and (ii) achievement by at least 35% of the Obalon treatment group patients of at least 5% TBL at the end of six-months of treatment. Secondary measures included metabolic metrics and weight loss maintenance after removal of balloons. The median time for each balloon placement was nine minutes, while the median balloon removal time for three balloons was 14 minutes.

Results from the SMART trial met both the co-primary endpoints. The per protocol analysis included 366 patients (185 in the Obalon treatment group and 181 in the sham-control group) and showed patients in the Obalon treatment group achieved mean TBL of 6.86%, or 15.06 lbs, vs 3.59%, or 7.77 lbs, in the sham-control group, showing a difference of 3.28%, or 7.28 lbs. The following table summarizes average percentage of TBL, percentage of excess weight loss, or EWL, and weight loss (in pounds) for the Obalon treatment group and the sham-control group in the SMART trial. All weight loss metrics below were statistically significant.

Weight Loss Metric Per Protocol Cohort	Obalon Treatment Group (N = 185)	Sham-Control Group (N = 181)	Difference	p-value
Percent TBL	-6.86	-3.59	-3.28	0.0261
Percent EWL	-25.05	-12.95	-12.09	< 0.0001
Weight Loss (lbs.)	-15.06	-7.77	-7.28	< 0.0001

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In addition, 64.9% of the Obalon treatment group patients met or exceeded the 5% TBL endpoint whereas only 32.0% of the sham-control group met or exceeded 5% TBL. The following table summarizes the 5% TBL responder rates for the Obalon treatment group and the sham-control group in the SMART trial.

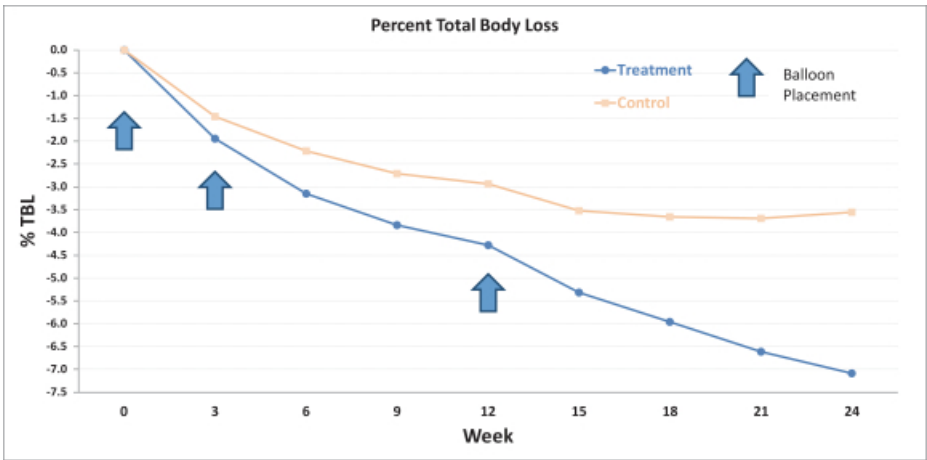
Main Analysis of -5% TBL Responder Rate	Estimate
Obalon Treatment Group—Per Protocol Cohort*	120 / 185 (64.9%)
Sham-Control Group	58 / 181 (32.0%)
Difference (Treatment less Control)	32.8%

* p-value <0.0001

The following table summarizes the various responder rate thresholds for the Obalon treatment group and the sham-control group in the SMART trial.

Responder Rate Threshold (-%TBL)	Obalon Treatment Group	Sham-Control Group
-6%	98 / 185 (53.0%)	47 / 181 (26.0%)
-7%	81 / 185 (43.8%)	38 / 181 (21.0%)
-8%	68 / 185 (36.8%)	35 / 181 (19.3%)
-9%	55 / 185 (29.7%)	29 / 181 (16.0%)
-10%	49 / 185 (26.5%)	23 / 181 (12.7%)

Notably, the Obalon treatment group demonstrated a progressive weight loss profile for the duration of the six month therapy period. The following chart shows percent TBL by week for the Obalon treatment group and sham-control group. The arrows represent the average week of each balloon placement.



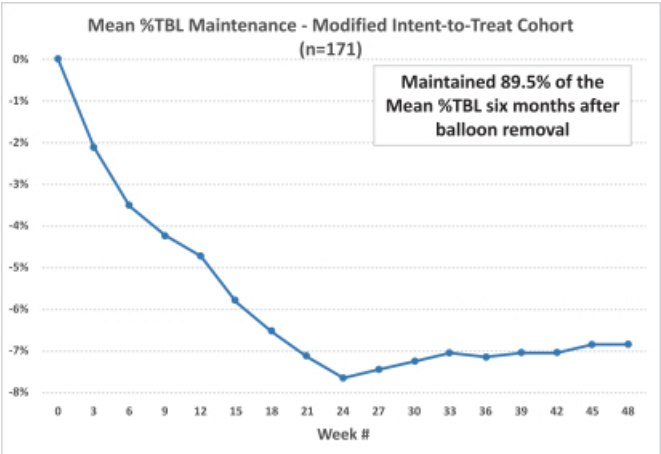
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In addition, nearly all patients in the Obalon treatment group, including patients in the bottom 25% of the group, achieved TBL, EWL and weight loss and a reduction in BMI. The table below summarizes the mean, the average of the top 25% of the results, the average of the bottom 25% of the results and the single best changes in TBL, EWL, weight loss and BMI achieved by patients in the Obalon treatment group.

Weight Loss Metric	Mean	Average Top 25%	Average Worst 25%	Single Best
Percent TBL	-6.9%	-10.2%	-3.6%	-19.3%
Percent EWL	-25.1%	-36.3%	-12.3%	-80.7%
Weight Loss (lbs.)	-15.1	-21.8	-7.4	-49.7
BMI Change	-2.4	-3.6	-1.3	-7.1

In secondary measures, the Obalon treatment group also demonstrated statistically significant improvements in systolic blood pressure, fasting glucose, total cholesterol and triglycerides compared to both their own baseline measures and to the sham-control group.

At the conclusion of the six-month treatment period, the Obalon treatment group patients continued with the standardized behavior modification program for six additional months after the Obalon balloon removal. Subsequent data analysis of the subjects who lost weight in the first six months of the study and were evaluated for up to an additional six months, suggest that, on average, 89.5% of the weight loss was maintained six months after balloon removal. The following graph depicts the weight loss maintained for the one-year period in the Obalon treatment group. We did not continue to collect data from patients in the sham-control group who received the Obalon balloons subsequent to balloon removal.



Safety

As part of the SMART trial, we actively solicited patients to provide details of any adverse events, or AEs, by contacting all patients 24 hours after each Obalon balloon placement and balloon removal as well as at every office visit. All AEs were first assigned a device-relatedness and a pre-defined severity rating. Mild events did not require intervention, required homeopathic remedies (including chamomile

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tea, peppermint oil tea and Altoids) or required over the counter remedies to treat and resolve the events. Moderate severity events required a prescription medication to treat and resolve the event. Severe events required medical intervention beyond a prescription medication.

In our SMART trial, only one out of 336 patients (less than 0.3%) receiving Obalon balloons in both phases experienced a SADE. The event was described as peptic ulcer disease, or bleeding. The patient was hospitalized, and after stabilization, the patient was discharged from the hospital without sequelae. During the Obalon balloon therapy period the subject underwent an outpatient total knee replacement surgery. During the surgery and as part of post-operative recovery, the subject was prescribed both a high dose of nonsteroidal anti-inflammatory drugs, or NSAIDs, and aspirin, both of which are contraindicated for use with each other as well as for use in conjunction with the Obalon balloon system. The SADE event was determined to be “possibly,” but not “probably,” device-related by the investigator since concomitant high dose NSAID and aspirin use is also known to cause peptic ulcer disease. The investigator felt that the NSAID and aspirin use was the primary cause of the event but could not rule out the balloons completely. The patient previously had no ulcers per the upper gastrointestinal screen performed at time of enrollment and was not taking medications prior to surgery.

In our SMART trial, there were no surgical removals or other hospitalizations due to a SADE other than the SADE described above. The most common other adverse device events during balloon placement were abdominal pain (72.6% of patients), nausea (56.0% of patients) and vomiting (17.3% of patients), all of which were classified as mild or moderate.

Commercial safety experience

As of June 2016, we had sold over 23,000 units of our earlier generation Obalon balloon systems in international markets. In our commercial experience, nine serious adverse events have been reported to us, of which six related to balloon deflations resulting in migration and three related to an esophageal laceration or rupture. We investigated each of these events and determined that all nine of these events occurred in patients where the device was not used in accordance with approved labeling. None of these events were required to be reported to the applicable foreign regulatory authorities.

SMARTCAR trial

In April 2016, we received an Investigational Device Exemption, or IDE, approval from the FDA to conduct a single arm clinical study, which we have named SMARTCAR, to evaluate the safety and efficacy profile of our new HPMC vegetable-derived capsule and EzPz inflation system. We are currently enrolling patients for the trial at clinical sites in the United States. The data from the SMARTCAR trial are intended to be used to support our filing of a PMA supplement for our HPMC capsule for use with our Obalon balloon system.

SALES AND MARKETING

Our primary sales efforts are expected to be conducted in the United States, with some sales generated through distributors in select international markets. We are building a direct sales organization consisting of regional sales directors, executive account managers and product specialists. Our sales team will encompass three key disciplines that we believe are necessary to create and grow the market for our Obalon balloon system in the United States: sales conversion, practice development and clinical training and application. In select international markets, we plan to utilize distributors.

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We currently have an agreement to sell to Bader as the sole distributor of our Obalon balloon system in the Middle East. Our agreement with Bader restricts Bader's ability to sell competing products and requires Bader to purchase a certain number of products from us monthly based on annual forecasts that we provide to Bader. If Bader does not resell the minimum purchase quantity specified in the contract by the applicable date, then we have the right, in our sole discretion, to sell to other distributors in the Middle East or terminate our agreement with Bader. The initial term of the agreement expires in December 2019, and will thereafter automatically renew for successive terms of 12 months, subject to certain exceptions. The agreement can be terminated by us immediately upon certain breaches by Bader, or by either Bader or us for uncured material breach of the agreement.

Our initial marketing efforts are focused on differentiating the benefits of our technology, leveraging the strong clinical outcome from our SMART trial, working with key thought leaders in bariatrics and gastroenterology, and partnering with physicians to create consumer awareness and drive patients into the channel. We also intend to provide physicians with the clinical training to utilize our Obalon balloon system, as well as the practice development support to manage their practices as self-pay centers.

In an effort to evaluate the potential U.S. market opportunity for our Obalon balloon system, we commissioned a survey of 3,000 individuals. Each participant was asked to complete a survey containing a series of questions relating to income level, weight and interest in various weight loss alternatives. We took the results of that survey and applied them generally to the U.S. population figures for 2015 to estimate that there are approximately 11.0 million individuals in the United States with a household income greater than \$30,000 and a BMI between 30 and 40 that would be interested in receiving treatment using the Obalon balloon system. We also used this information to estimate that the percentage of potentially interested individuals that are men or women is approximately the same. We cannot assure you that the individuals selected for the survey are representative of the characteristics and interests of the broader U.S. population, or that the responses of these individuals to our survey or our estimates are reliable or accurate. To the extent our assumptions regarding these individuals and data are inaccurate, our estimated market opportunity could be significantly different.

We have very limited experience as a company in the sales and marketing of our products, and no experience with sales and marketing in the United States. Identifying and recruiting qualified sales personnel and training them in the use of our Obalon balloon system to achieve the level of clinical competency expected by physicians, and compliance with applicable federal and state laws and regulations and our internal policies and procedures, requires significant time, expense and attention. It can take several months before our sales representatives are fully trained and productive.

COMPETITION

The medical device industry is highly competitive, subject to rapid change and significantly affected by new product introductions, results of clinical research, corporate combinations, actions by regulatory bodies, changes by public and private payers and other factors relating to our industry. Because of the market opportunity and the high growth potential of the non-surgical device market for weight loss and obesity, competitors and potential competitors have historically dedicated, and will continue to dedicate, significant resources to aggressively develop and commercialize their products.

In the United States, our product competes with a variety of pharmaceuticals, surgical procedures and devices for the treatment of obese and overweight people. There are several competitors in the pharmaceutical segment including those recently approved by the FDA, including Vivus, Inc., Arena Pharmaceuticals, Inc., Orexigen Therapeutics, Inc., and those with older brands or generics including

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Takeda Pharmaceutical Company Ltd, AstraZeneca plc, and Actavis plc. Large competitors in the surgical segment for weight loss and obesity include Ethicon Inc. (subsidiary of Johnson & Johnson), Medtronic plc (formerly Covidien Ltd.) and Apollo EndoSurgery, Inc., which acquired the Lap-Band from Allergan plc and currently sells that device worldwide. After approximately a decade, four new devices were approved by the FDA in 2015 and 2016. Enteromedics Inc. received FDA approval for the Maestro, which is intended to create weight loss by vagal nerve stimulation. ReShape Medical Inc. and Apollo EndoSurgery, Inc. received FDA approval for the ReShape Duo Balloon and the ORBERA Balloon, respectively, each a traditional intragastric balloon filled with saline. Aspire Bariatrics received FDA approval for the Aspire Assist, a device that allow you to aspirate food after a meal. Allurion Technologies, Inc. has also developed a swallowable, passable saline-filled intragastric balloon that has been approved for sale in Europe. Additionally, there are many more companies around the world working to develop less invasive and less costly alternatives for the treatment of obesity, which could compete with us in the future.

At any time, these or other competitors may introduce new or alternative products that compete directly or indirectly with our products and services. They may also develop and patent products and processes earlier than we can or obtain regulatory clearance or approvals faster than us, which could impair our ability to develop and commercialize similar products or services. If clinical outcomes of procedures performed with our competitors' products are, or are perceived to be, superior to treatments performed with our products, sales of our products could be negatively affected and our business, results of operations and financial condition could suffer.

Many of our competitors have significantly greater financial and other resources than we do, as well as:

- Ø well-established reputations and name recognition with key opinion leaders and physician networks;
- Ø an established base of long-time customers with strong brand loyalty;
- Ø products supported by long-term data;
- Ø longer operating histories;
- Ø significantly larger installed bases of equipment;
- Ø greater existing market share in the obesity and weight management market;
- Ø broader product offerings and established distribution channels;
- Ø greater ability to cross-sell products;
- Ø additional lines of products, and the ability to offer rebates or bundle products to offer higher discounts or incentives; and
- Ø more experience in conducting research and development, manufacturing, performing clinical trials and obtaining regulatory approvals or clearances.

Competition with these companies could result in significant price-cutting, reduced profit margins and loss of market share, any of which would harm our business, financial condition and results of operations. In addition, competitors with greater financial resources than ours could acquire other companies to gain enhanced name recognition and market share, as well as new technologies or products that could effectively compete with our existing and future products, which may cause our revenues to decline and harm our business.

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In order to compete effectively, we plan to continue to develop new product offerings and enhancements to our existing Obalon balloon system, price our product competitively with traditional intragastric balloons and maintain adequate research and development and sales and marketing personnel and resources to meet the demands of the market.

INTELLECTUAL PROPERTY

In order to remain competitive, we must develop and maintain protection of the proprietary aspects of our technologies. We rely on a combination of patents, trademarks, trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights.

It is our policy to require our employees, consultants, contractors, outside scientific collaborators and other advisors to execute non-disclosure and assignment of invention agreements on commencement of their employment or engagement. Agreements with our employees also forbid them from using the proprietary rights of third parties in their work for us. We also require third parties that receive our confidential data or material to enter into confidentiality or material transfer agreements.

As of June 30, 2016, we held 13 issued U.S. patents and had 18 pending U.S. patent applications, as well as 17 international patents issued in Europe, Mexico, Australia, Canada, Asia, China and Israel and 37 pending international patent applications in Australia, Canada, Europe, Asia, the Middle East and South America. Our issued patents expire between the years 2023 and 2032, and are directed to various features and combinations of features of the Obalon balloon system technology, including the apparatus for connecting the balloon to an inflation catheter, the structure and composition of the balloon wall, and the composition of the initial fill gas. As we continue to research and develop our Obalon balloon system technology, we intend to file additional U.S. and foreign patent applications related to the design, manufacture and therapeutic uses of our balloon and navigation devices.

Our patent applications may not result in issued patents and our patents may not be sufficiently broad to protect our technology. Any patents issued to us may be challenged by third parties as being invalid or unenforceable, or third parties may independently develop similar or competing technology that does not infringe our patents. The laws of certain foreign countries do not protect our intellectual property rights to the same extent as do the laws of the United States.

As of June 30, 2016, we held one registered U.S. trademark and eight registered marks in Europe, Asia and Mexico. We have three pending U.S. trademark applications and 11 pending marks outside the United States, including in Europe, the Middle East, Asia and Mexico.

MANUFACTURING

All of our products are manufactured or assembled in-house using components and sub-assemblies at our facilities in Carlsbad, California. We rely on single suppliers for the extruded film, swallowable capsule, molded silicone valve used to manufacture our Obalon balloons and the hydrophilic coating for our catheters. Our suppliers have no contractual obligations to supply us with, and we are not contractually obligated to purchase from them, any of our supplies. Order quantities and lead times for components purchased from our suppliers are based on our forecasts derived from historical demand and anticipated future demand. Lead times for components may vary significantly depending on the size of the order, time required to fabricate and test the components, specific supplier requirements and current market demand for the components and subassemblies. To date, we have not experienced significant delays in obtaining any of our components or subassemblies. However, these components are critical to our

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products and there are relatively few alternative sources of supply. We do not carry a significant inventory of these components, and identifying and qualifying additional or replacement suppliers for any of the components or sub-assemblies used in our products could involve significant time and cost, and may delay our commercialization efforts.

We have registered with the FDA as a medical device manufacturer and have obtained a manufacturing license from the Center for Devices and Radiological Health. We and our component suppliers are required to manufacture our products in compliance with the FDA's Quality System Regulation, or QSR, in 21 CFR part 820 of the Federal Food, Drug and Cosmetic Act. The QSR regulates extensively the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. The FDA enforces the QSR through periodic unannounced inspections that may include the manufacturing facilities of our subcontractors. Since we began manufacturing onsite, our quality system has undergone 13 external audits, the last of which occurred in May 2016 and resulted in no Form 483 observations.

Although we expect our third-party suppliers to supply us with components that meet our specifications and comply with regulatory and quality requirements, we do not control our suppliers outside of our agreements, as they operate and oversee their own businesses. There is a risk that our suppliers will not always act consistent with our best interests, and may not always supply components that meet our needs. Any significant delay or interruption in the supply of components or sub-assemblies, or our inability to obtain substitute components, sub-assemblies or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and harm our business.

Additionally, we will need to increase our manufacturing capabilities in order to satisfy expected demand for our Obalon balloon system, and we have no experience manufacturing our Obalon balloon system in such quantities. If we are unable to keep up with demand for our Obalon balloon system, our revenue could be impaired, market acceptance for our Obalon balloon system could be harmed and our customers might instead purchase our competitors' products.

GOVERNMENT REGULATION

Our products and operations are subject to extensive and rigorous regulation by the FDA and other federal, state and local authorities, as well as foreign regulatory authorities. The FDA regulates, among other things, the research, development, testing, design, manufacturing, approval, labeling, storage, recordkeeping, advertising, promotion and marketing, distribution, post approval monitoring and reporting and import and export of medical devices (such as the Obalon balloon system) in the United States to assure the safety and effectiveness of medical products for their intended use. The Federal Trade Commission also regulates the advertising of our products in the United States. Further, we are subject to laws directed at preventing fraud and abuse, which subject our sales and marketing, training and other practices to government scrutiny.

Regulatory system for medical devices in the United States

Unless an exemption applies, each new or significantly modified medical device we seek to commercially distribute in the United States will require either a premarket notification to the FDA requesting permission for commercial distribution under Section 510(k) of the Federal Food, Drug and Cosmetic Act, or FDCA, also referred to as a 510(k) clearance, or approval from the FDA of a PMA application. Both the 510(k) clearance and PMA processes can be resource intensive, expensive, and lengthy, and require payment of significant user fees, unless an exemption is available.

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Device classification

Under the FDCA, medical devices are classified into one of three classes—Class I, Class II or Class III—depending on the degree of risk associated with each medical device and the extent of control needed to provide reasonable assurances with respect to safety and effectiveness.

Class I devices are those for which safety and effectiveness can be reasonably assured by adherence to a set of regulations, referred to as General Controls, which require compliance with the applicable portions of the FDA's Quality System Regulation, or QSR, facility registration and product listing, reporting of adverse events and malfunctions, and appropriate, truthful and non-misleading labeling and promotional materials. Some Class I devices, also called Class I reserved devices, also require premarket clearance by the FDA through the 510(k) premarket notification process described below. Most Class I products are exempt from the premarket notification requirements.

Class II devices are those that are subject to the General Controls, as well as Special Controls, which can include performance standards, guidelines and postmarket surveillance. Most Class II devices are subject to premarket review and clearance by the FDA. Premarket review and clearance by the FDA for Class II devices is accomplished through the 510(k) premarket notification process. Under the 510(k) process, the manufacturer must submit to the FDA a premarket notification, demonstrating that the device is "substantially equivalent," as defined in the statute, to either:

- Ø a device that was legally marketed prior to May 28, 1976, the date upon which the Medical Device Amendments of 1976 were enacted, or
- Ø another commercially available, similar device that was cleared through the 510(k) process.

To be "substantially equivalent," the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes required to support substantial equivalence.

After a 510(k) notice is submitted, the FDA determines whether to accept it for substantive review. If it lacks necessary information for substantive review, the FDA will refuse to accept the 510(k) notification. If it is accepted for filing, the FDA begins a substantive review. By statute, the FDA is required to complete its review of a 510(k) notification within 90 days of receiving the 510(k) notification. As a practical matter, clearance often takes longer, and clearance is never assured. Although many 510(k) premarket notifications are cleared without clinical data, the FDA may require further information, including clinical data, to make a determination regarding substantial equivalence, which may significantly prolong the review process. If the FDA agrees that the device is substantially equivalent, it will grant clearance to commercially market the device.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a new or major change in its intended use, will require a new 510(k) clearance or, depending on the modification, could require a PMA application. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with a manufacturer's determination regarding whether a new premarket submission is required for the modification of an existing device, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or approval of a PMA application is obtained. If the FDA requires a new 510(k) clearance or approval of a PMA application for any modifications to a previously cleared product, the applicant may be required to cease marketing or recall the modified device until clearance or

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approval is received. In addition, in these circumstances, the FDA can impose significant regulatory fines or penalties for failure to submit the requisite PMA application(s). In addition, the FDA is currently evaluating the 510(k) process and may make substantial changes to industry requirements.

If the FDA determines that the device is not “substantially equivalent” to a predicate device, or if the device is automatically classified into Class III, the device sponsor must then fulfill the much more rigorous premarketing requirements of the PMA approval process, or seek reclassification of the device through the *de novo* process. Pursuant to amendments to the statute in 2012, a manufacturer can also submit a petition for direct *de novo* review if the manufacturer is unable to identify an appropriate predicate device and the new device or new use of the device presents a moderate or low risk.

Class III devices include devices deemed by the FDA to pose the greatest risk such as life-supporting or life-sustaining devices, or implantable devices, in addition to those deemed novel and not substantially equivalent following the 510(k) process. The safety and effectiveness of Class III devices cannot be reasonably assured solely by the General Controls and Special Controls described above. Therefore, these devices are subject to the PMA application process, which is generally more costly and time consuming than the 510(k) process. Through the PMA application process, the applicant must submit data and information demonstrating reasonable assurance of the safety and effectiveness of the device for its intended use to the FDA’s satisfaction. Accordingly, a PMA application typically includes, but is not limited to, extensive technical information regarding device design and development, pre-clinical and clinical trial data, manufacturing information, labeling and financial disclosure information for the clinical investigators in device studies. The PMA application must provide valid scientific evidence that demonstrates to the FDA’s satisfaction a reasonable assurance of the safety and effectiveness of the device for its intended use.

The investigational device process

In the United States, absent certain limited exceptions, human clinical trials intended to support medical device clearance or approval require an IDE application. Some types of studies deemed to present “non-significant risk” are deemed to have an approved IDE once certain requirements are addressed and IRB approval is obtained. If the device presents a “significant risk” to human health, as defined by the FDA, the sponsor must submit an IDE application to the FDA and obtain IDE approval prior to commencing the human clinical trials. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of subjects. Generally, clinical trials for a significant risk device may begin once the IDE application is approved by the FDA and the study protocol and informed consent are approved by appropriate institutional review boards at the clinical trial sites. There can be no assurance that submission of an IDE will result in the ability to commence clinical trials, and although the FDA’s approval of an IDE allows clinical testing to go forward for a specified number of subjects, it does not bind the FDA to accept the results of the trial as sufficient to prove the product’s safety and efficacy, even if the trial meets its intended success criteria.

All clinical trials must be conducted in accordance with the FDA’s IDE regulations that govern investigational device labeling, prohibit promotion and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. Clinical trials must further comply with the FDA’s regulations for institutional review board approval and for informed consent and other human subject protections. Required records and reports are subject to inspection by the FDA. The results of clinical testing may be unfavorable, or, even if the intended safety and efficacy success criteria are achieved, may not be considered sufficient for the FDA to grant marketing approval or clearance of a

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product. The commencement or completion of any clinical trial may be delayed or halted, or be inadequate to support approval of a PMA application, for numerous reasons, including, but not limited to, the following:

- Ø the FDA or other regulatory authorities do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- Ø patients do not enroll in clinical trials at the rate expected;
- Ø patients do not comply with trial protocols;
- Ø patient follow-up is not at the rate expected;
- Ø patients experience adverse events;
- Ø patients die during a clinical trial, even though their death may not be related to the products that are part of the trial;
- Ø device malfunctions occur with unexpected frequency or potential adverse consequences;
- Ø side effects or device malfunctions of similar products already in the market that change the FDA's view toward approval of new or similar PMAs or result in the imposition of new requirements or testing;
- Ø institutional review boards and third-party clinical investigators may delay or reject the trial protocol;
- Ø third-party clinical investigators decline to participate in a trial or do not perform a trial on the anticipated schedule or consistent with the clinical trial protocol, investigator agreement, investigational plan, good clinical practices, the IDE regulations, or other FDA or IRB requirements;
- Ø third-party investigators are disqualified by the FDA;
- Ø we or third-party organizations do not perform data collection, monitoring and analysis in a timely or accurate manner or consistent with the clinical trial protocol or investigational or statistical plans, or otherwise fail to comply with the IDE regulations governing responsibilities, records, and reports of sponsors of clinical investigations;
- Ø third-party clinical investigators have significant financial interests related to us or our study such that the FDA deems the study results unreliable, or the company or investigators fail to disclose such interests;
- Ø regulatory inspections of our clinical trials or manufacturing facilities, which may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- Ø changes in government regulations or administrative actions;
- Ø the interim or final results of the clinical trial are inconclusive or unfavorable as to safety or efficacy; or
- Ø the FDA concludes that our trial design is unreliable or inadequate to demonstrate safety and efficacy.

The PMA approval process

Following receipt of a PMA application, the FDA conducts an administrative review to determine whether the application is sufficiently complete to permit a substantive review. If it is not, the agency will refuse to file the PMA. If it is, the FDA will accept the application for filing and begin the review. The FDA, by statute and by regulation, has 180 days to review a filed PMA application, although the review of an application more often occurs over a significantly longer period of time. During this review period, the FDA may request additional information or clarification of information already provided, and the

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FDA may issue a major deficiency letter to the applicant, requesting the applicant's response to deficiencies communicated by the FDA. The FDA considers a PMA or PMA supplement to have been voluntarily withdrawn if an applicant fails to respond to an FDA request for information (e.g., major deficiency letter) within a total of 360 days. Before approving or denying a PMA, an FDA advisory committee may review the PMA at a public meeting and provide the FDA with the committee's recommendation on whether the FDA should approve the submission, approve it with specific conditions, or not approve it. Prior to approval of a PMA, the FDA may conduct a bioresearch monitoring inspection of the clinical trial data and clinical trial sites, and a QSR inspection of the manufacturing facility and processes. Overall, the FDA review of a PMA application generally takes between one and three years, but may take significantly longer. The FDA can delay, limit or deny approval of a PMA application for many reasons, including:

- ◊ the device may not be shown safe or effective to the FDA's satisfaction;
- ◊ the data from pre-clinical studies and/or clinical trials may be found unreliable or insufficient to support approval;
- ◊ the manufacturing process or facilities may not meet applicable requirements; and
- ◊ changes in FDA approval policies or adoption of new regulations may require additional data.

If the FDA evaluation of a PMA is favorable, the FDA will issue either an approval letter, or an approvable letter, the latter of which usually contains a number of conditions that must be met in order to secure final approval of the PMA. When and if those conditions have been fulfilled to the satisfaction of the FDA, the agency will issue a PMA approval letter authorizing commercial marketing of the device, subject to the conditions of approval and the limitations established in the approval letter. If the FDA's evaluation of a PMA application or manufacturing facilities is not favorable, the FDA will deny approval of the PMA or issue a not approvable letter. The FDA also may determine that additional tests or clinical trials are necessary, in which case the PMA approval may be delayed for several months or years while the trials are conducted and data is submitted in an amendment to the PMA, or the PMA is withdrawn and resubmitted when the data are available. The PMA process can be expensive, uncertain and lengthy and a number of devices for which the FDA approval has been sought by other companies have never been approved by the FDA for marketing.

New PMA applications or PMA supplements are required for modification to the manufacturing process, equipment or facility, quality control procedures, sterilization, packaging, expiration date, labeling, device specifications, ingredients, materials or design of a device that has been approved through the PMA process. PMA supplements often require submission of the same type of information as an initial PMA application, except that the supplement is limited to information needed to support any changes from the device covered by the approved PMA application and may or may not require as extensive technical or clinical data or the convening of an advisory panel, depending on the nature of the proposed change.

In approving a PMA application, as a condition of approval, the FDA may also require some form of postmarket studies or postmarket surveillance, whereby the applicant follows certain patient groups for a number of years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional or longer term safety and effectiveness data for the device. The FDA may also require postmarket surveillance for certain devices cleared under a 510(k) notification, such as implants or life-supporting or life-sustaining devices used outside a device user facility. The FDA may also approve a PMA application with other post-approval conditions intended to ensure the safety and effectiveness of the device, such as, among other things, restrictions on labeling, promotion, sale, distribution and use. Intragastric balloons, including the Obalon balloon

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system, are considered Class III medical devices. In order to support a PMA application, the FDA required us to conduct a large, rigorous and expensive, double-blinded, randomized, sham-controlled trial. We will be required to file new PMA applications or PMA supplement applications for modifications to our PMA-approved Obalon balloon system or any of its components, including modifications to our manufacturing processes, device labeling and device design.

Pervasive and continuing FDA regulation

After the FDA permits a device to enter commercial distribution, numerous regulatory requirements continue to apply. These include:

- Ø the FDA's QSR, which requires manufacturers, including third party manufacturers, to follow stringent design, testing, production, control, supplier/contractor selection, complaint handling, documentation and other quality assurance procedures during all aspects of the manufacturing process;
- Ø labeling regulations, unique device identification requirements and FDA prohibitions against the promotion of products for uncleared, unapproved or off-label uses;
- Ø advertising and promotion requirements;
- Ø restrictions on sale, distribution or use of a device;
- Ø PMA annual reporting requirements;
- Ø PMA approval of product modifications;
- Ø medical device reporting, or MDR, regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur;
- Ø medical device correction and removal reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;
- Ø recall requirements, including a mandatory recall if there is a reasonable probability that the device would cause serious adverse health consequences or death;
- Ø an order of repair, replacement or refund;
- Ø device tracking requirements; and
- Ø post-market surveillance regulations, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device.

The MDR regulations require that we report to the FDA any incident in which our product may have caused or contributed to a death or serious injury or in which our product malfunctioned and, if the malfunction were to recur, would likely cause or contribute to death or serious injury.

We have registered with the FDA as a medical device manufacturer and have obtained a manufacturing license from the California Department of Health Services, or CDHS. The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA and the Food and Drug Branch of CDHS to determine our compliance with the QSR and other applicable regulations, and these inspections may include the manufacturing facilities of our suppliers. BSI, our European Notified Body, most recently inspected our facility in 2015 and found zero non-conformances. Our current facility has been inspected by the FDA in 2014 and 2016, and four observations were noted

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in the first inspection and zero observations were noted in the second inspection. Responses to the observations in the 2014 FDA audit were accepted by the FDA and no response was required by us in the 2016 inspection. We believe that we are in substantial compliance with the QSR.

Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include any of the following sanctions:

- Ø warning letters, fines, injunctions, consent decrees and civil penalties;
- Ø unanticipated expenditures, repair, replacement, refunds, recall or seizure of our products;
- Ø operating restrictions, partial suspension or total shutdown of production;
- Ø the FDA's refusal of our requests for 510(k) clearance or premarket approval of new products, new intended uses or modifications to existing products;
- Ø the FDA's refusal to issue certificates to foreign governments needed to export products for sale in other countries;
- Ø withdrawing 510(k) clearance or premarket approvals that have already been granted; and
- Ø criminal prosecution.

Regulatory system for medical devices in Europe

The European Union consists of 25 member states and has a coordinated system for the authorization of medical devices. The European Union Medical Devices Directive, or MDD, sets out the basic regulatory framework for medical devices in the European Union. This directive has been separately enacted in more detail in the national legislation of the individual member states of the European Union.

The system of regulating medical devices operates by way of a certification for each medical device. Each certificated device is marked with CE mark which shows that the device has a Certificat de Conformité. There are national bodies known as Competent Authorities in each member state which oversee the implementation of the MDD within their jurisdiction. The means for achieving the requirements for CE mark varies according to the nature of the device. Devices are classified in accordance with their perceived risks, similarly to the U.S. system. The class of a product determines the requirements to be fulfilled before CE mark can be placed on a product, known as a conformity assessment. Conformity assessments for our products are carried out as required by the MDD. Each member state can appoint Notified Bodies within its jurisdiction. If a Notified Body of one member state has issued a Certificat de Conformité, the device can be sold throughout the European Union without further conformance tests being required in other member states.

According to the MDD, the Obalon balloon system, when delivered with a porcine capsule, is considered a Class III product. The Obalon balloon system when delivered with a cellulose-based capsule is considered a Class IIb product.

Regulatory frameworks for medical devices in certain countries in the Middle East

Unlike Europe, while the Gulf Cooperation Council, or GCC, jurisdictions often work together to purchase certain medical products in a coordinated fashion for government hospitals, there is not a coordinated system for the authorization of medical devices. Most GCC jurisdictions require that the official registered distributor of a product be wholly owned by nationals of that particular GCC jurisdiction.

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Kingdom of Saudi Arabia, or KSA

The most pertinent regulation is the Interim Regulation for Medical Devices, issued by the Saudi Food & Drug Authority, or SFDA, Board of Directors' Decree number 1-8-1429 dated approximately December 27, 2008 and the implementing regulations of the same. The SFDA is an independent regulatory body that is responsible for the authorization of medical devices, and current guidelines are generally based on pre-existing approval in one of the five founding member nations of the Global Harmonization Task Force, or GHTF, which are Australia, Canada, United States, European Union and Japan. There are no overt requirements for the provision of safety and effectiveness data in the form of clinical trials or other studies but these would likely come as a part of the approvals described above that are used as a basis to support approval within the KSA. The SFDA reserves its rights to require its own independent clinical trials as it deems necessary or appropriate. Regulatory authorization is required for all medical devices, regardless of device class. A potential exception to this requirement is for medical devices that were designed and constructed by local health care facility and staff for internal use. Similar to the United States, the SFDA requires post market surveillance to ensure safety and quality. This program is meant to be conducted by the Authorized Representative. With respect to the use of medical devices, it is the responsibility of the health care institution to inform the manufacturer and the SFDA of any adverse events associated with this use. We have appointed Al Sultan Saudi Medical Company as our responsible Authorized Representative for the KSA. Our Medical Device Marketing Authorisation was renewed on July 26, 2016 and expires on May 14, 2020. In KSA it is possible for a foreign party to establish a Technical & Scientific Office and register the medical device, while working with a locally licensed Authorized Representative to conduct sales of such approved medical devices.

Kuwait

Medical devices in Kuwait are regulated by the Medicines and Medical Supplies, Pharmaceuticals and Herbal Medicines Registration and Control Administration Department in the Ministry of Health.

In order for any company/manufacturer to sell a medical device in Kuwait, the specific medical device must be approved for use and registered in Kuwait with the Ministry of Health. The manufacturer of the device, through its agent/distributor should submit an application to the Ministry of Health for the approval and registration of the device. The documents required to register a medical device with the Ministry of Health in summary include: (i) the original Manufacturing License and Good Manufacturing Practice certificates; (ii) the original Free Sale Certificate which should mention the trade name, scientific name, indications, and detailed composition for active and inactive ingredients and which should be issued by the health authority in the country of origin of the device; (iii) the status of registration of the product in the country of origin; (iv) the original letter of appointment of an exclusive agent/distributor for the device; (v) a list of countries where the product is registered with registration dates and numbers; (vi) a sample of the product with information about the product on the outer and inner packaging in English or Arabic (the information on the packaging should include: the name of the product, its content/composition, uses, batch number, manufacturing date, expiry date, storage conditions, and instructions on use); (vii) a certificate of analysis of the finished product; (viii) safety and efficacy studies from an approved international authority (and/or clinical studies if applicable); and (ix) any other information the Ministry of Health may require. Once all documents are in order and the Ministry of Health does not require any further information, it will register the device under the names of the manufacturer and the relevant agent/distributor.

The promotion, distribution and sale of medical devices in Kuwait can only be done by a Kuwaiti entity that is appointed by the manufacturer of the device as its exclusive agent/distributor for Kuwait. Such agent/distributor must be authorized by and registered with the Medicines and Medical Supplies,

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Pharmaceuticals and Herbal Medicines Registration and Control Administration Department in the Ministry of Health and the Ministry of Commerce and Industry to do so. The device may be sold in licensed pharmacies and other places approved by the Ministry of Health.

We have appointed Bader as our exclusive agent/distributor in Kuwait.

United Arab Emirates, or UAE

The most pertinent regulation is UAE Federal Law No. 4 of 1983 for the Pharmaceutical Profession and Institutions and to Medical Device Regulations. There are many similarities between the SFDA and the Registration and Drug Control Department that is run out of the Ministry of Health & Prevention of the UAE. Applications for registration of medical devices in the UAE are done with the UAE Ministry of Health Registration & Drug Control Department and must include data on effectiveness in addition to safety (a nod to the requirements of the FDA). The UAE body has its own device classification system that is most closely related to that used by the European Union, defined as class 1, low risk; class 2, medium risk but nonimplantable; class 3, medium risk but implantable; and class 4, high risk. The Obalon balloon system is considered a Class 4 (high risk) device when delivered with a porcine-based gelatin capsule. We have appointed Sohail Faris Medical Equipment Trading as the responsible Authorized Representative for the UAE.

Privacy and security laws

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, or HIPAA, directed the Secretary of the U.S. Department of Health and Human Services, or HHS, to promulgate regulations establishing protections for the privacy and security of individually identifiable health information, known as “protected health information” and prescribing standard requirements for electronic health care transactions. HIPAA generally requires certain entities, referred to as “covered entities” (including most healthcare providers, healthcare clearing houses and health plans), to comply with established standards, including standards regarding the privacy and security of protected health information, or PHI. HIPAA further requires that covered entities enter into agreements meeting certain regulatory requirements with their “business associates,” as such term is defined by HIPAA, which, among other things, obligate the business associates to safeguard the covered entity’s PHI against improper use and disclosure.

The American Recovery and Economic Reinvestment Act of 2009, or ARRA, signed into law by President Obama on February 17, 2009, contained significant changes to the privacy and security provisions of HIPAA, including major changes to the enforcement provisions. Among other things, ARRA significantly increased the amount of civil monetary penalties that can be imposed for HIPAA violations. ARRA also authorized state attorneys general to bring civil enforcement actions under HIPAA. These enhanced penalties and enforcement provisions went into effect immediately upon enactment of ARRA. ARRA also required that HHS promulgate regulations requiring that certain notifications be made to individuals, to HHS and potentially to the media in the event of certain types of breaches of the privacy of protected health information. These breach notification regulations went into effect on September 23, 2009, and HHS began to enforce violations on February 22, 2010. Violations of the breach notification provisions of HIPAA can trigger the increased civil monetary penalties described above.

The Health Information Technology for Economic and Clinical Health Act, or HITECH, was also enacted in conjunction with ARRA. On January 25, 2013, HHS issued final modifications to the HIPAA Privacy, Security, and Enforcement Rules mandated by HITECH, which had been previously issued as a proposed rule on July 14, 2010. Among other things, these modifications make business associates of

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covered entities directly liable for compliance with certain HIPAA requirements, strengthen the limitations on the use and disclosure of protected health information without individual authorizations, and adopt the additional HITECH enhancements, including enforcement of noncompliance with HIPAA due to willful neglect. The changes to HIPAA enacted as part of ARRA reflect a Congressional intent that HIPAA's privacy and security provisions be more strictly enforced. It is likely that these changes will stimulate increased enforcement activity and enhance the potential that health care providers will be subject to financial penalties for violations of HIPAA.

In addition to the federal laws and regulations, there are a number of state laws regarding the privacy and security of health information and personal data. The compliance requirements of these laws, including additional breach reporting requirements, and the penalties for violation, vary widely, and new privacy and security laws in this area are evolving.

We believe we are not a covered entity for purposes of HIPAA, and we believe that we generally do not conduct our business in a manner that would cause us to be a business associate under HIPAA. Although we do not believe the business is subject to HIPAA, we nevertheless are committed to maintaining the security and privacy of patients' health information.

Anti-kickback statutes

The federal Anti-Kickback Statute prohibits persons from (among other things) knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce the referral of an individual, or the recommending, furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program such as Medicare or Medicaid.

Courts have interpreted the Anti-Kickback Statute quite broadly, holding that the statute will be violated if even one purpose of a payment – though not its sole or primary purpose – is to induce an act prohibited by the statute with a willful intent to act improperly. The statute prohibits many arrangements and practices that are otherwise lawful in businesses outside of the healthcare industry. Prosecutors may infer intent from the surrounding circumstances and, because courts have interpreted the statute to be violated if even one purpose of a payment is to induce the purchase of items or services paid for by federal healthcare programs, prosecutors have broad discretion in choosing arrangements to prosecute under the statute. There are statutory exceptions and regulatory “safe harbors” available to protect certain appropriately structured arrangements that otherwise would implicate the Anti-Kickback Statute. Those who structure their business arrangements to satisfy all of the criteria of a safe harbor are protected from liability under the statute.

Penalties for violation of the Anti-Kickback Statute are severe and may include, in addition to the fines and jail time described above, penalties imposed under the Civil Monetary Penalties Law, or the CMP Law, including exclusion from participation in Federal healthcare programs, civil monetary penalties of up to \$50,000 for each improper act, and damages of up to three times the amount of remuneration at issue (regardless of whether some of the remuneration was for a lawful purpose). Because we do not anticipate that the Obalon balloon system will be reimbursed by any federal healthcare program, we do not believe that we will be subject to the federal Anti-Kickback Statute.

Many states have adopted laws similar to the Anti-Kickback Statute, however, and some of these state prohibitions apply to arrangements involving healthcare items or services reimbursed by any source, and not only by Medicare, Medicaid or another federal healthcare program. These state laws do not always have the same exceptions or safe harbors of the federal Anti-Kickback Statute. The business may be subject to some of these laws.

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Government officials have focused recent enforcement efforts on the marketing of healthcare services and products, among other activities, and have brought cases against companies, and certain individual sales, marketing and executive personnel, for allegedly offering unlawful inducements to potential or existing customers in an attempt to procure their business.

False claims laws

The federal False Claims Act imposes liability on any individual or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The *qui tam* or “whistleblower” provisions of the False Claims Act allow a private individual to bring actions on behalf of the federal government alleging that the defendant has violated the False Claims Act and to share in any monetary recovery. In recent years, the number of lawsuits brought against healthcare industry participants by private individuals has increased dramatically.

When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties of between \$5,500 and \$11,000 for each separate instance of false claim. As part of any settlement, the government may ask the entity to enter into a corporate integrity agreement, which imposes certain compliance, certification and reporting obligations. There are many potential bases for liability under the False Claims Act. Liability arises, primarily, when an entity knowingly submits, or causes another to submit, a false claim for reimbursement to the federal government. The federal government has used the False Claims Act to assert liability on the basis of inadequate care, kickbacks and other improper referrals, and the provision of inaccurate reimbursement coding advice, in addition to the more predictable allegations as to misrepresentations with respect to the services rendered. In addition, companies have been sued under the False Claims Act in connection with the off-label promotion of products.

Various states have also enacted false claims laws that are analogous to the federal False Claims Act. Many of these state laws apply to claims submitted to any third-party payor and are not limited to claims submitted to a federal healthcare program.

Because we do not expect the Obalon balloon system to be reimbursed by federal healthcare programs or any other third-party payor, we do not believe that the business generally will be subject to many of these laws.

Transparency laws

The federal Physician Payment Sunshine Act, or the Sunshine Act, which was enacted as part of the Patient Protection and Affordable Care Act, or the PPACA, generally requires certain manufacturers of a drug, device, biologic or other medical supply that is covered by Medicare, Medicaid or the Children’s Health Insurance Program and applicable group purchasing organizations to report on an annual basis: (i) certain payments and other transfers of value given to physicians and teaching hospitals and (ii) any ownership or investment interest that physicians, or their immediate family members, have in their company. The payments required to be reported include the cost of meals provided to a physician, travel reimbursements and other transfers of value, including those provided as part of contracted services such as speaker programs, advisory boards, consultation services and clinical trial services. Under the statute, the federal government makes reported information available to the public. Failure to comply with the reporting requirements can result in significant civil monetary penalties ranging from \$1,000 to \$10,000 for each payment or other transfer of value that is not reported (up to a maximum per annual report of \$150,000) and from \$10,000 to \$100,000 for each knowing failure to report (up to a maximum per annual report of \$1 million). Additionally, there are criminal penalties if an entity intentionally makes

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false statements in the reports. Because we do not expect the Obalon balloon system to be covered or reimbursed by any federal healthcare program, we do not believe that our business will be subject to the federal Sunshine Act.

There has been a recent trend of separate state regulation of payments and transfers of value by manufacturers of medical devices to healthcare professionals and entities, however, and some state transparency laws apply more broadly than does the federal Sunshine Act. Our business may be subject to some of these state laws.

Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act, or FCPA, prohibits U.S. businesses and their representatives from offering to pay, paying, promising to pay or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business. The FCPA also obligates companies whose securities are listed in the United States to comply with accounting provisions requiring us to maintain books and records, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the corporation, including international subsidiaries, if any, and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements. The scope of the FCPA includes interactions with certain healthcare professionals in many countries.

International laws

In Europe, and throughout the world, other countries have enacted anti-bribery laws and/or regulations similar to the FCPA. Violations of any of these anti-bribery laws, or allegations of such violations, could have a negative impact on our business, results of operations and reputation.

There are also international privacy laws that impose restrictions on the access, use, and disclosure of health information. All of these laws may impact our business. Our failure to comply with these privacy laws or significant changes in the laws restricting our ability to obtain required patient information could significantly impact our business and our future business plans.

U.S. healthcare reform

Changes in healthcare policy could increase our costs and subject us to additional regulatory requirements that may interrupt commercialization of the Obalon balloon system. By way of example, PPACA substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacted the medical device industry. PPACA, among other things, imposed a 2.3% excise tax on any entity that manufactures or imports medical devices offered for sale in the United States, with limited exceptions. Although the excise tax has been suspended for 2016 and 2017, absent further legislative action, the tax will be reinstated starting January 1, 2018.

There will continue to be proposals by legislators at both the federal and state levels, regulators and third party payors to reduce costs while expanding individual healthcare benefits. Certain of these changes could impose additional limitations on the prices we will be able to charge and/or patients' willingness to pay for the Obalon balloon system. While in general it is too early to predict what effect, if any, PPACA and its implementation, or any future healthcare reform legislation or policies will have on our business, current and future healthcare reform legislation and policies could have a material adverse effect on our business and financial condition.

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EMPLOYEES

As of June 30, 2016, we had 51 employees, including 17 in manufacturing and operations, one in sales and marketing, ten in research and development, 16 in clinical affairs, regulatory affairs and quality assurance and seven in finance, general administrative and executive administration. All 51 employees are full time employees. None of our employees are represented by a labor union or are parties to a collective bargaining agreement, and we believe that our employee relations are good.

FACILITIES

Our principal executive offices are located in a 17,500 square foot facility Carlsbad, California. The term of the lease for our facility extends through March 2017, and we are currently discussing extension with our landlord. Our facility houses our research and development, sales, marketing, manufacturing, finance and administrative activities. We believe that our current facilities are adequate for our current and anticipated future needs through 2018.

LEGAL PROCEEDINGS

From time to time, we are involved in legal proceedings in the ordinary course of business. We are currently not a party to any legal proceedings that we believe would have a material adverse effect on our business, financial condition or results of operations.

Management

EXECUTIVE OFFICERS AND DIRECTORS

The following table provides information regarding our executive officers and directors as of August 31, 2016:

Name	Age	Position
Executive Officers:		
Andrew Rasdal	58	President, Chief Executive Officer and Director
William Plovanic	47	Chief Financial Officer
Mark Brister	54	Vice President of Research and Development
Nooshin Hussainy	58	Vice President of Finance
Steve Johnson	58	Vice President of Operations
Lisa Metzner	47	Vice President of Marketing
Matthew Norwood	41	Vice President of Sales
Amy VandenBerg	41	Vice President of Regulatory and Clinical Affairs
Donald Young	58	Vice President of Quality Assurance
Non-Employee Directors:		
Kim Kamdar(1)(2)	49	Chairperson of the Board of Directors
Ray Dittamore(2)(3)	73	Director
Douglas Fisher(1)	40	Director
Les Howe(1)(3)	72	Director
Sharon Stevenson(3)	67	Director

(1) Member of the Nominating and Corporate Governance Committee

(2) Member of the Compensation Committee

(3) Member of the Audit Committee

EXECUTIVE OFFICERS

Andrew Rasdal has served as our President and Chief Executive Officer and a member of our board of directors since June 2008. Previously, Mr. Rasdal was the President and Chief Executive Officer at DexCom, Inc., a medical device company, from January 2002 until June 2007. Prior to DexCom, Mr. Rasdal served as President of Vascular and Senior Vice President for Medtronic, Inc., a medical technology development company, from 1999 to 2002. Prior to Medtronic, Mr. Rasdal served as Vice President of Marketing at Arterial Vascular Engineering, Inc., or AVE (acquired by Medtronic), a coronary stent company, from 1997 to 1999. Mr. Rasdal has also served in various senior positions at EP Technologies, Inc., SCIMED Life Systems, Inc. and Advanced Cardiovascular Systems, Inc. Mr. Rasdal holds a B.S. from San Jose State University and an M.M. from the Kellogg School of Management at Northwestern University. Our board of directors believes that Mr. Rasdal should serve as a director due to his deep understanding of our company and product and his significant experience in the medical technology industry.

William Plovanic has served as our Chief Financial Officer since March 2016. Previously, Mr. Plovanic served as Managing Director, Medical Technology Equity Research at Canaccord Genuity Inc., an investment bank, from February 2007 to March 2016. Prior to Canaccord Genuity, Mr. Plovanic served in various roles at First Albany Capital Inc. from February 2001 to February 2007, including as Managing Director, Equity Research. Mr. Plovanic holds a B.S. from Bradley University and is a CFA charterholder.

Management

Mark Brister has served as our Vice President of Research and Development since June 2008. Prior to joining us, Mr. Brister served as the Vice President of Research and Development for DexCom from 2003 to 2008. Prior to DexCom, Mr. Brister served as Vice President Vascular Research and Development for Medtronic from 1999 to 2003. Prior to Medtronic, Mr. Brister served as Vice President of Research and Development and Director of Operations for Arterial Vascular Engineering from 1993 to 1999.

Nooshin Hussainy has served as our Vice President of Finance since December 2011. Prior to joining us, Ms. Hussainy served as the Vice President of Accounting and Corporate Controller at GenMark Diagnostics, Inc., a molecular diagnostics company, from April 2010 to September 2011. Prior to GenMark Diagnostics, Ms. Hussainy served as the Vice President of Accounting and Corporate Controller at ACTIVE Network, LLC, a worldwide registration software and advertising company, from 2008 to 2010. Ms. Hussainy previously served as the Corporate Controller at DexCom from 2003 to 2008 and at Entropia, Inc. from 2001 to 2003. Ms. Hussainy has also served as the Assistant Controller at Thermolase Corporation. Ms. Hussainy holds a B.A. from National University.

Steve Johnson has served as our Vice President of Operations since January 2014. Prior to joining us, Mr. Johnson served as the consulting Vice President of Operations at Silk Road Medical, a medical device company, from June 2013 to January 2014. Prior to Silk Road Medical, Mr. Johnson served as the Chief Operating Officer and Senior Vice President of Manufacturing and Product Development at iRhythm Technologies, Inc., a privately held digital health company from January 2011 to December 2012. Prior to iRhythm Technologies, Mr. Johnson served as Senior Vice President, Operations at Aptus Endosystems, Inc., a medical device company, from September 2008 to August 2009. Mr. Johnson has also served as the Senior Vice President, Operations and Vice President of Manufacturing at Heartport, Inc., as well as the Vice President of Manufacturing at Guidant (acquired by Abbott Vascular). Mr. Johnson holds a B.S. from Kettering University.

Lisa Metzner has served as our Vice President of Marketing since June 2016. Prior to joining us, Ms. Metzner served as Senior Director, North America Marketing at ZELTIQ Aesthetics Inc., a medical technology company, from March 2013 to June 2016. Prior to ZELTIQ, Ms. Metzner served as Director, Aesthetics Consumer Marketing at Medicis Pharmaceutical Corporation (a division of Valeant Pharmaceuticals International, Inc.), a medical cosmetics company, from August 2011 to March 2013. Prior to Medicis, Ms. Metzner served as the Principal/Marketing Consultant at Rosas Consulting Group, LLC, a marketing and branding firm, from March 2009 to September 2011. Ms. Metzner has also served as the Senior Marketing Manager, Global Markets with ConAgra Foods, Inc., a food and consumer products company, from June 1998 to September 2006, and as the Senior Manager, Consumer Marketing with Allergan, Plc, a global pharmaceutical company, from September 2006 to February 2009. Ms. Metzner holds a B.A. from the University of Wisconsin-Whitewater and an M.B.A. from Pepperdine University.

Matthew Norwood has served as our Vice President of Sales since July 2016. Prior to joining us, Mr. Norwood served as Area Director of Sales at Merz North America, a medical products company, from November 2014 to July 2016. Prior to Merz, Mr. Norwood held various positions at Ulthera, Inc., a medical device company, from October 2010 to November 2014, including as the Sales Director and South Texas Territory Manager. Prior to Ulthera, Mr. Norwood also held various positions at Ethicon Inc., a subsidiary of Johnson & Johnson that designs medical devices, from February 2005 to October 2010, including as the Market Development Manager and the Senior Full Line Sales Representative. Prior to Ethicon, Mr. Norwood held various positions at Merck & Co., Inc., d.b.a Merck Sharp & Dohme, including as the Osteoporosis Specialty Representative and as a Professional Representative. Mr. Norwood holds a B.A. from Saint Edward's University.

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Amy VandenBerg has served as our Vice President of Regulatory Affairs since February 2012 and assumed the position of Vice President of Clinical and Regulatory Affairs in November 2014. Ms. VandenBerg joined us in 2008 as Director of Regulatory Affairs. Prior to joining us, Ms. VandenBerg held positions of increasing leadership at other medical device companies, including DexCom and Cygnus, Inc. Ms. VandenBerg has more than 18 years of experience with a focus on medical device quality systems, clinical affairs as well as domestic and international regulatory affairs. Ms. VandenBerg holds a B.S. from St. Mary's College of California.

Donald Young has served as our Vice President of Quality Assurance since June 2016. Prior to joining us, Mr. Young served as Director of Quality Assurance and Regulatory Affairs at CareFusion Corporation (acquired by Becton Dickinson), a medical technology company that manufactures medical supplies, devices and lab equipment, from 2011 to 2016. Prior to CareFusion, Mr. Young served as Vice President of Quality Assurance and Regulatory Affairs at Flex Medical, a division of Flextronics International Ltd. (formerly Avail Medical Products, Inc. and Pacific Device Inc.) from 2000 to 2011 (and prior positions in quality assurance since 1990). Mr. Young holds a B.S. from Rutgers University (College of Engineering).

NON-EMPLOYEE DIRECTORS

Kim Kamdar, Ph.D. has served as a member of our board of directors since January 2008. Dr. Kamdar is currently a partner at Domain Associates, LLC, a venture capital firm, where she has worked since 2005. Prior to Domain, Dr. Kamdar was a Kauffman Fellow with MPM Capital, as well as a research director at Novartis International AG. Dr. Kamdar serves on the board of Epic Sciences, Inc., Neothetics, Inc., Omniome, Inc., ROX Medical, Inc., Sera Prognostics, Inc., Syndax Pharmaceuticals, Inc. and Tragara Pharmaceuticals, Inc. Dr. Kamdar also previously served on the board of directors of Ariosa Diagnostics, Inc., a molecular diagnostics company, from 2010 until it was sold to Roche in January 2015. Ms. Kamdar serves as an advisory board member of Scripps Medicine and of Evolve India Life Sciences Fund. She is also a board member of San Diego's CONNECT Foundation. Dr. Kamdar holds a B.A. from Northwestern University and a Ph.D. from Emory University. Our board of directors believes that Dr. Kamdar's extensive experience advising medical device companies qualifies her to serve on our board of directors.

Raymond Dittamore has served as a member of our board of directors since March 2016. Mr. Dittamore retired in June 2001 as a partner of Ernst & Young LLP, an international public accounting firm, after 35 years of service. Mr. Dittamore currently serves on the board of directors of QUALCOMM Incorporated, a semiconductor and telecommunications equipment company. Mr. Dittamore previously served on the boards of directors of Life Technologies Corporation, Gen-Probe Incorporation and Digirad Corporation. Mr. Dittamore holds a B.S. degree in accounting from San Diego State University. Our board of directors believes that Mr. Dittamore's extensive auditing and accounting experience as well as his industry knowledge qualifies him to serve on our board of directors.

Douglas Fisher has served as a member of our board since May 2012. Dr. Fisher is currently an Executive in Residence at InterWest Partners LLC, a venture capital firm, where he has worked since March 2009. Dr. Fisher also serves as the Chief Business Officer at Sera Prognostics, Inc., where he has worked since January 2015. Prior to joining InterWest, Dr. Fisher served as Vice President of New Leaf Venture Partners LLC, a private equity and venture capital firm, from January 2006 to March 2009. Prior to joining New Leaf, Dr. Fisher was a project leader with The Boston Consulting Group, Inc., a global management consulting firm, from November 2003 to February 2006. Dr. Fisher currently serves on the board of Gynesonics, Inc., Indi Molecular, Inc. and QuatRx Pharmaceuticals Company and

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previously served on the board of Cardiac Dimensions, PMV Pharmaceuticals, Inc., and Sera Prognostics, Inc. Dr. Fisher holds an A.B. and a B.S. from Stanford University, an M.D. from the University of Pennsylvania School of Medicine and an M.B.A. from The Wharton School of the University of Pennsylvania. Our board of directors believes that Dr. Fisher's extensive experience in the medical device industry qualifies him to serve on our board of directors.

Les Howe has served as a member of our board of directors since January 2016. Mr. Howe served as the Chief Executive Officer of Consumer Networks LLC, an internet marketing and promotions company, from December 2001 to May 2007. From July 1967 to September 1997, Mr. Howe held several positions at KPMG Peat Marwick LLP, an international auditing and accounting firm, and served as area managing partner/managing partner of their Los Angeles office from May 1994 to September 1997. Mr. Howe currently serves as the lead director of the board of directors of NuVasive, Inc., and has previously served on the board of directors of P.F. Chang's China Bistro, Inc., dj Orthopedics, Inc. and Jamba, Inc. Mr. Howe holds a B.S. and B.A. from the University of Arkansas. Our board of directors believes that Mr. Howe's extensive auditing and accounting experience qualifies him to serve on our board of directors.

Sharon Stevenson, DVM Ph.D. has served as a member of our board since January 2008. Dr. Stevenson is currently a Co-Founder and Managing Director of Okapi Venture Capital, a venture capital company, where she has worked since 2005. Prior to founding Okapi, Dr. Stevenson was the Senior Vice President of Technology and Planning for SkinMedica, Inc. (acquired by Allergan, Inc.) from 2003 to 2004. Prior to SkinMedica, Dr. Stevenson was a Principal with Domain Associates, LLC from 2000 to 2003. While at Domain, Dr. Stevenson also served as President and Chief Financial Officer of Volcano Corporation. Dr. Stevenson currently serves on the board of WiserCare, Inc., BioTrace Medical, Inc. and Focal Therapeutics, Inc., and has previously served on the board of directors of Helixis, Inc. (acquired by Illumina), OrthAlign, Inc. and PathCentral, Inc. Dr. Stevenson holds a Master of Science in Veterinary Pathology and Doctor of Veterinary Medicine from The Ohio State University, an M.B.A from the UCLA Anderson Graduate School of Management and a Ph.D. in Comparative Pathology from the University of California, Davis. Our board of directors believes that Dr. Stevenson's extensive industry experience and experience advising medical aesthetic companies qualifies her to serve on our board of directors.

ELECTION OF OFFICERS

Our executive officers are appointed by, and serve at the discretion of, our board of directors. There are no family relationships among any of our directors or executive officers.

BOARD OF DIRECTORS

Our current certificate of incorporation and voting agreement among certain investors provide that our board shall consist of seven directors, of which one director shall be elected by holders of our common stock, two directors shall be elected by holders of our preferred stock and all other directors shall be elected by the holders of our common stock and of every other class or series of voting stock (including all convertible preferred stock) voting together as a single class on an as-converted to common stock basis. Our board of directors currently consists of six members. Mr. Fisher and Dr. Kamdar are the designees of our preferred stock, Mr. Rasdal is the designee of our common stock and Dr. Stevenson, Mr. Howe and Mr. Dittamore are designees of our common stock and preferred stock voting together, with the one remaining designee of our common stock and preferred stock voting together remaining vacant.

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The voting agreement and the provisions of our certificate of incorporation by which Drs. Fisher, Kamdar and Stevenson and Messrs. Rasdal, Howe and Dittamore were elected will terminate in connection with our initial public offering and there will be no contractual obligations regarding the election of our directors.

Each of our current directors will continue to serve until the election and qualification of his or her successor, or until his or her earlier death, resignation or removal.

CLASSIFIED BOARD OF DIRECTORS

Our restated certificate of incorporation and restated bylaws that will be in effect immediately prior to the closing of this offering provide for a classified board of directors consisting of three classes of directors, each serving staggered three-year terms. As a result, one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Our directors will be divided among the three classes as follows.

- Ø the Class I directors will be _____ and _____, and their terms will expire at the first annual meeting of stockholders following this offering;
- Ø the Class II directors will be _____ and _____, and their terms will expire at the second annual meeting of stockholders following this offering; and
- Ø the Class III directors will be _____ and _____, and their terms will expire at the third annual meeting of stockholders following this offering.

Each director’s term continues until the election and qualification of his or her successor, or his or her earlier death, resignation or removal. Our restated certificate of incorporation and restated bylaws that will be in effect immediately prior to the closing of this offering will authorize only our board of directors to fill vacancies on our board of directors. Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors.

The classification of our board of directors may have the effect of delaying or preventing a change of our management or a change in control of our company. Our directors will only be able to be removed for cause by the affirmative vote of the holders of at least two-thirds of our outstanding voting stock. See “Description of capital stock—Anti-takeover provisions—Restated certificate of incorporation and restated bylaws provisions.”

DIRECTOR INDEPENDENCE

In connection with this offering, we have applied to list our common stock on The NASDAQ Global Market, or NASDAQ. Under NASDAQ rules, independent directors must comprise a majority of a listed company’s board of directors within a specified period of the closing of this offering. In addition, NASDAQ rules require that, subject to specified exceptions, each member of a listed company’s audit, compensation and nominating and corporate governance committees be independent. Under NASDAQ rules, a director will only qualify as an “independent director” if, in the opinion of that company’s board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act. In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not,

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other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee: (i) accept, directly or indirectly, any consulting, advisory or other compensatory fee from the listed company or any of its subsidiaries; or (ii) be an affiliated person of the listed company or any of its subsidiaries.

Our board of directors has undertaken a review of the independence of each director and considered whether each director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. As a result of this review, our board of directors determined that Drs. Fisher, Kamdar and Stevenson and Messrs. Dittamore and Howe, representing five of our six directors, are “independent directors” as defined under the applicable rules and regulations of the Securities and Exchange Commission, or the SEC, and the listing requirements and rules of NASDAQ. In making these determinations, our board of directors reviewed and discussed information provided by the directors and us with regard to each director’s business and personal activities and relationships as they may relate to us and our management, including the beneficial ownership of our capital stock by each non-employee director and the transactions involving them described in the section entitled “Certain relationships and related-party transactions.”

COMMITTEES OF THE BOARD OF DIRECTORS

Our board of directors has an audit committee, a compensation committee and a nominating and corporate governance committee, each of which will have the composition and responsibilities described below as of the closing of our initial public offering. Members serve on these committees until their resignation or until otherwise determined by our board of directors. Each committee will operate under a charter approved by our board of directors. Following this offering, copies of each committee’s charter will be posted on the investor relations section of our website at www.obalon.com. The information contained on, or that can be accessed through, our website is not part of, and is not incorporated by reference into, this prospectus.

Audit committee

Our audit committee is comprised of Messrs. Howe and Dittamore and Ms. Stevenson. Mr. Howe is the chairperson of our audit committee. The composition of our audit committee meets the requirements for independence under the current NASDAQ listing standards and SEC rules and regulations. Each member of our audit committee meets the requirements for financial literacy under the applicable rules and regulations of the SEC and NASDAQ. In addition, our board of directors has determined that Mr. Howe is an “audit committee financial expert” as defined in Item 407(d)(5)(ii) of Regulation S-K promulgated under the Securities Act of 1933, as amended, or the Securities Act. This designation does not impose any duties, obligations or liabilities that are greater than are generally imposed on members of our audit committee and our board of directors. Our audit committee is responsible for, among other things:

- Ø our accounting and financial reporting processes, including our financial statement audits and the integrity of our financial statements;
- Ø our compliance with legal and regulatory requirements;
- Ø reviewing and approving related-person transactions;
- Ø selecting and hiring our independent registered public accounting firm;
- Ø the qualifications, independence and performance of our independent auditors; and
- Ø the preparation of the audit committee report to be included in our annual proxy statement.

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Compensation committee

Our compensation committee is comprised of Mr. Dittamore and Ms. Kamdar. Mr. Dittamore is the chairperson of our compensation committee. The composition of our compensation committee meets the requirements for independence under the current NASDAQ listing standards and SEC rules and regulations. Each member of this committee is (i) an outside director, as defined pursuant to Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code, and (ii) a non-employee director, as defined in Rule 16b-3 promulgated under the Exchange Act. Our compensation committee is responsible for, among other things:

- Ø evaluating, recommending, approving and reviewing executive officer compensation arrangements, plans, policies and programs;
- Ø evaluating and recommending non-employee director compensation arrangements for determination by our board of directors;
- Ø administering our cash-based and equity-based compensation plans; and
- Ø overseeing our compliance with regulatory requirements associated with the compensation of directors, officers and employees.

Nominating and corporate governance committee

Our nominating and corporate governance committee is comprised of Messrs. Howe and Fisher and Ms. Kamdar. Ms. Kamdar is the chairperson of our nominating and corporate governance committee. The composition of our nominating and corporate governance committee meets the requirements for independence under the current NASDAQ listing standards and SEC rules and regulations. Our nominating and corporate governance committee is responsible for, among other things:

- Ø identifying, considering and recommending candidates for membership on our board of directors;
- Ø overseeing the process of evaluating the performance of our board of directors; and
- Ø advising our board of directors on other corporate governance matters.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

None of the members of our compensation committee has at any time been one of our officers or employees, and none of our executive officers has served as a member of the board of directors, or as a member of the compensation or similar committee, of any entity that has one or more executive officers who served on our board of directors or compensation committee during the year ended December 31, 2015.

CODE OF BUSINESS CONDUCT AND ETHICS

Our board of directors intends to adopt a code of business conduct and ethics that will become effective upon the closing of this offering that applies to all of our employees, officers and directors, including our Chief Executive Officer, Chief Financial Officer and other executive and senior financial officers. The full text of our code of conduct will be posted on the investor relations section of our website at www.obalon.com. The reference to our website address in this prospectus does not include or incorporate by reference the information on our website into this prospectus. We intend to disclose future amendments to certain provisions of our code of conduct, or waivers of these provisions, on our website or in public filings to the extent required by the applicable rules and exchange requirements.

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LIMITATIONS ON LIABILITY AND INDEMNIFICATION MATTERS

Our restated certificate of incorporation that will become effective immediately prior to the closing of this offering contains provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by the Delaware General Corporation Law, or DGCL. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for:

- Ø any breach of the director's duty of loyalty to us or our stockholders;
- Ø any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- Ø unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- Ø any transaction from which the director derived an improper personal benefit.

Our restated certificate of incorporation and our restated bylaws that will become effective immediately prior to the closing of this offering require us to indemnify our directors and officers to the maximum extent not prohibited by the DGCL and allow us to indemnify other employees and agents as set forth in the DGCL. Subject to certain limitations, our restated bylaws also require us to advance expenses incurred by our directors and officers for the defense of any action for which indemnification is required or permitted.

We have entered, and intend to continue to enter, into separate indemnification agreements with our directors, officers and certain of our key employees, in addition to the indemnification provided for in our restated certificate of incorporation and restated bylaws. These agreements, among other things, require us to indemnify our directors, officers and key employees for certain expenses, including attorneys' fees, judgments, penalties, fines and settlement amounts actually incurred by these individuals in any action or proceeding arising out of their service to us or any of our subsidiaries or any other company or enterprise to which these individuals provide services at our request. Subject to certain limitations, our indemnification agreements also require us to advance expenses incurred by our directors, officers and key employees for the defense of any action for which indemnification is required or permitted.

We believe that provisions of our restated certificate of incorporation, bylaws and indemnification agreements are necessary to attract and retain qualified directors, officers and key employees. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our restated certificate of incorporation and restated bylaws may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions.

At present, there is no pending litigation or proceeding involving any of our directors or executive officers as to which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

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Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers or persons controlling us, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

NON-EMPLOYEE DIRECTOR COMPENSATION

We did not pay any fees to, make any equity awards or non-equity awards to or pay any other compensation to the non-employee members of our board of directors in the year ended December 31, 2015. Additionally, none of our non-employee directors held any outstanding equity awards as of December 31, 2015. Mr. Rasdal, our Chief Executive Officer, received no compensation for his service as a director in the year ended December 31, 2015.

In connection with their appointments to our board of directors, in January and March 2016, we granted to each of Mr. Howe and Mr. Dittamore, respectively, an option to purchase 75,000 shares of common stock with an exercise price of \$0.32 per share. These stock options will vest with respect to one quarter of the underlying shares on the first anniversary of their respective appointment dates, with the remaining shares vesting in equal monthly installments over the following 36 months, subject to acceleration upon a “change of control” of our company, as defined in the applicable award agreement. Each of the stock options may be exercised early at the option of the holder.

In August 2016, our board of directors approved non-employee director compensation that will provide each of our non-employee directors with an annual retainer of \$35,000. Additionally, the chairperson of our board of directors will receive an additional annual payment of \$25,000; the chairpersons of our audit, compensation and nominating and corporate governance committees will receive an additional annual payment of \$17,500, \$12,500 and \$7,500, respectively; and the other members of our audit, compensation and nominating and corporate governance committees will receive an additional annual payment of \$7,500, \$5,000 and \$5,000, respectively.

Each of our non-employee directors will also receive an annual stock option grant to purchase a number of shares of common stock with a value of \$100,000 (determined using the Black-Scholes option value based on the 30-day trading average stock price), which stock option will vest in full on the one-year anniversary of the grant date, subject to the director’s continued service. Additionally, new non-employee directors will receive a stock option to purchase a number of shares of common stock with a value of \$300,000 (determined using the Black-Scholes option value based on the 30-day trading average stock price), which stock option will vest in equal monthly installments over three years, subject to the director’s continued service.

Executive compensation

The following tables and accompanying narrative disclosure set forth information about the compensation provided to certain of our executive officers during the year ended December 31, 2015. These executive officers, who include our principal executive officer and the two most highly-compensated executive officers (other than our principal executive officer) who were serving as executive officers as of December 31, 2015, the end of our last completed fiscal year, were:

- Ø Andrew Rasdal, President, Chief Executive Officer and Director;
- Ø Mark Brister, Vice President of Research and Development; and
- Ø Amy VandenBerg, Vice President of Regulatory and Clinical Affairs.

We refer to these individuals in this section as our “Named Executive Officers.”

SUMMARY COMPENSATION TABLE

The following table presents summary information regarding the total compensation that was awarded to, earned by or paid to our Named Executive Officers for services rendered during the year ended December 31, 2015.

Name and principal position	Salary	Option awards(1)	Non-equity incentive plan awards(2)	Total
Andrew Rasdal President and Chief Executive Officer	\$400,000	\$98,794	\$100,000	\$598,794
Mark Brister Vice President of Research and Development	\$275,000	\$28,147	\$68,750	\$371,897
Amy VandenBerg Vice President of Regulatory and Clinical Affairs	\$260,000	\$22,890	\$65,000	\$347,890

- (1) The amounts shown represent the aggregate grant date fair value of stock options granted to each Named Executive Officer, as computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718. For a discussion of valuation assumptions used in the calculations, see Notes 2 and 7 to our audited consolidated financial statements included elsewhere in this prospectus. Note that the amounts reported in this column reflect the accounting cost for these stock options, and do not correspond to the actual economic value that may be received by our Named Executive Officers from the options.
- (2) For additional information regarding the non-equity incentive plan compensation, see “—Non-equity incentive plan awards.”

Non-equity incentive plan awards

Annual bonuses for our executive officers are based on the achievement of corporate performance objectives. In 2015, these objectives included the completion of certain clinical development milestones related to our U.S. pivotal trial, improvements in product metrics as measured by specific reductions in failure and complaint rates, as well as the achievement of certain operational and financial targets. In January 2016, based on the achievement of these corporate performance objectives as of December 31, 2015, our board of directors determined to award bonuses equal to 25% of each executive officer’s base salary. For 2015, each of Mr. Rasdal, Mr. Brister and Ms. VandenBerg were awarded the bonuses

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Executive compensation

reflected in the table above, which represented 25% of each individual's 2015 base salary of \$400,000, \$275,000 and \$260,000, respectively.

Equity awards

In February 2015, our board of directors granted to each of Mr. Rasdal, Mr. Brister and Ms. Vandenberg options to purchase 663,157, 188,939 and 153,651 shares of common stock, respectively, each with an exercise price of \$0.26 per share. One quarter of the shares underlying each of the options vested on January 1, 2016, with the remaining shares vesting in equal monthly installments over the following 36 months, subject to the respective individual's continued status as a service provider as of each vesting date. Each of the stock options may be exercised early at the option of the holder.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END TABLE

The following table presents, for each of the Named Executive Officers, information regarding outstanding stock options held as of December 31, 2015. All stock options are early exercisable for shares of our restricted common stock. As of December 31, 2015, no options have been early exercised.

Name	Grant date	Vesting commencement date	Option Awards		Option exercise price (\$)	Option expiration date
			Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable		
Andrew Rasdal	1/27/2010	12/24/2009	76,121(1)	—	\$0.30	1/27/2020
	1/26/2011	9/8/2010	107,915(1)	—	\$0.45	1/26/2021
	11/16/2011	11/16/2011	183,332(1)	—	\$0.45	11/16/2021
	8/14/2012	6/14/2012	666,666(2)(3)	—	\$0.63	8/14/2022
	2/12/2015	1/1/2015	663,157(2)(3)	—	\$0.26	2/12/2025
Mark Brister	7/7/2008	6/16/2008	80,500(1)	—	\$0.60	7/17/2018
	2/3/2009	2/3/2009	20,000(1)	—	\$0.30	2/3/2019
	1/27/2010	12/24/2009	27,160(1)	—	\$0.30	1/27/2020
	1/26/2011	9/8/2010	38,504(1)	—	\$0.45	1/26/2021
	11/16/2011	11/16/2011	41,666(1)	—	\$0.45	11/16/2021
	8/14/2012	6/14/2012	181,666(2)(3)	—	\$0.63	8/14/2022
Amy Vandenberg	2/12/2015	1/1/2015	188,939(2)(3)	—	\$0.26	2/12/2025
	12/15/2008	12/15/2008	11,666(1)	—	\$0.30	12/15/2018
	1/27/2010	12/24/2009	3,153(1)	—	\$0.30	1/27/2020
	1/26/2011	9/8/2010	4,470(1)	—	\$0.45	1/26/2021
	7/27/2011	7/13/2011	28,333(1)	—	\$0.45	7/27/2021
	4/10/2012	2/13/2012	30,301(2)(4)	—	\$0.45	4/10/2022
	8/14/2012	6/14/2012	98,333(2)(4)	—	\$0.63	8/14/2022
	12/19/2014	11/17/2014	35,421(2)(4)	—	\$0.26	12/19/2024
	2/12/2015	1/1/2015	153,651(2)(4)	—	\$0.26	2/12/2025

(1) Option is fully vested as of December 31, 2015.

(2) One-quarter of the shares underlying such option will vest on the first anniversary of the option vesting commencement date, with the remaining shares vesting in equal monthly installments for the following 36 months.

(footnotes continued on following page)

Executive compensation

- (3) 100% of all unvested shares subject to the option will vest and become exercisable in the event that we engage in a change of control transaction (as defined in the applicable award agreement).
- (4) In the event that the holder is terminated by us without cause or resigns for good reason (each, as defined in the applicable award agreement), at any time during the period beginning on the closing of an acquisition (as defined in the applicable award agreement), and ending on the first anniversary of such closing, then 100% of any unvested shares subject to the stock options will automatically vest, subject to such holder executing and not rescinding a general release of claims.

EMPLOYMENT AGREEMENTS

We intend to enter into new employment agreements with certain senior management personnel in connection with this offering, including our Named Executive Officers. We expect that each of these agreements will provide for at-will employment and include each officer's base salary, a discretionary annual incentive bonus opportunity and standard employee benefit plan participation. We also expect these agreements to provide for severance benefits upon termination of employment or a change of control of our company.

EMPLOYEE BENEFIT AND STOCK COMPENSATION PLANS

2008 equity incentive plan

Our board of directors adopted our 2008 Equity Incentive Plan, or the 2008 Plan, in February 2008. The 2008 Plan provides for the grant of incentive stock options, which qualify for favorable tax treatment to their recipients under Section 422 of the Code, and nonstatutory stock options, as well as for the issuance of shares of restricted stock. We may grant incentive stock options only to our employees, including officers and directors who are also employees. We may grant nonstatutory stock options to our employees, officers, directors and consultants. We have only granted stock options under our 2008 Plan.

Our 2008 Plan is administered by our board of directors. Our board of directors has the authority to construe and interpret our 2008 Plan, grant awards, determine the terms of such awards and make all other determinations necessary or advisable for the administration of the 2008 Plan.

The exercise price of each stock option must be at least equal to the fair market value of our common stock on the date of grant. The exercise price of incentive stock options granted to 10% stockholders must be at least equal to 110% of the fair market value of our common stock on the date of grant. The maximum permitted term of options granted under our 2008 Plan is ten years from the date of grant, except that the maximum permitted term of incentive stock options granted to 10% stockholders is five years from the date of grant.

Options granted under our 2008 Plan to date generally vest over a four-year period subject to the optionee's continued service through certain vesting dates and may not be transferred in any manner other than by will or by the laws of descent and distribution or as determined by our board of directors. Unless otherwise permitted by our board of directors, stock options may be exercised during the lifetime of the optionee only by the optionee or the optionee's guardian or legal representative. The 2008 Plan provides that options generally may be exercised for a period of three months after the termination of the optionee's service to us for any reason other than due to death or disability, and for a period of six months in the case of death or disability, or such longer period as our board of directors may provide. Options granted under our 2008 Plan to date generally may be exercised for a period of ninety days after the termination of the optionee's service to us for any reason other than due to death or disability, and for a period of one year in the case of death or disability.

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Executive compensation

In the event of a merger or change in control (as defined in the 2008 Plan), the 2008 Plan provides that awards may be assumed or substituted by the successor or acquiring entity. If any surviving or acquiring corporation fails to assume or substitute such awards, awards held by participants whose continuous service has not terminated will accelerate vesting in full prior to the transaction. All awards will terminate at or prior to the date of the transaction. A stock option shall be considered assumed if, following the transaction, the stock option confers the right to receive a payment, if any, equal to the consideration payable to a holder of common stock for each share underlying the stock option less the exercise price otherwise payable in connection with the stock option.

In the event there is a specified type of change in our capital structure without our receipt of consideration, such as a stock split, our board of directors may (in its sole discretion) make appropriate adjustments to the number of shares reserved under our 2008 Plan, and the number of shares and exercise price, if applicable, of all outstanding stock options under our 2008 Plan.

As of June 30, 2016, we had reserved 8,667,434 shares of our common stock for issuance under our 2008 Plan, which was reduced to 6,902,215 shares on July 17, 2016. As of June 30, 2016, options to purchase 5,126,449 of these shares were outstanding and 3,063,416 of these shares were available for grant. We will cease issuing awards under the 2008 Plan upon the effective date of the 2016 Equity Incentive Plan, or the 2016 Plan. The 2016 Plan will become effective on the date immediately prior to the effective date of the registration statement of which this prospectus is a part. As a result, we will not grant any additional options under the 2008 Plan following that date, and the 2008 Plan will terminate at that time. However, any outstanding options granted under the 2008 Plan will remain outstanding, subject to the terms of the 2008 Plan and stock option agreements, until such outstanding options are exercised or until they terminate or expire by their terms.

2016 equity incentive plan

We intend to adopt the 2016 Plan, which we expect to become effective on the date immediately prior to the effective date of the registration statement of which this prospectus is a part and serve as the successor to the 2008 Plan. We have reserved _____ shares of our common stock to be issued under the 2016 Plan. The number of shares reserved for issuance under the 2016 Plan will increase automatically on January 1 of each of our calendar years beginning 2017 and continuing through 2026 by the number of shares equal to 4% of the total outstanding shares of our common stock and common stock equivalents as of the immediately preceding December 31. However, our board of directors may reduce the amount of the increase in any particular year. In addition, the following shares of our common stock will be available for grant and issuance under the 2016 Plan:

- Ø shares subject to options or stock appreciation rights, or SARs, granted under the 2016 Plan that cease to be subject to the option or SAR for any reason other than exercise of the option or SAR;
 - Ø shares subject to awards granted under the 2016 Plan that are subsequently forfeited or repurchased by us at the original issue price;
 - Ø shares subject to awards granted under the 2016 Plan that otherwise terminate without shares being issued;
 - Ø shares surrendered, cancelled, or exchanged for cash or a different award (or combination thereof);
 - Ø shares subject to awards under the 2016 Plan that are used to pay the exercise price of an award or withheld to satisfy the tax withholding obligations related to any award;
 - Ø shares reserved but not issued or subject to outstanding awards under the 2008 Plan on the effective date of the 2016 Plan;
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Executive compensation

- Ø shares issuable upon the exercise of options or subject to other awards under the 2008 Plan prior to the date of this prospectus that cease to be subject to such options or other awards by forfeiture or otherwise after the effective date of the 2016 Plan;
- Ø shares issued under the 2008 Plan that are repurchased by us at the original issue price or are forfeited after the effective date of the 2016 Plan; and
- Ø shares subject to awards under the 2008 Plan that are used to pay the exercise price of an option or withheld to satisfy the tax withholding obligations related to any award.

The 2016 Plan authorizes the award of stock options, restricted stock, or RSAs, SARs, restricted stock units, or RSUs, performance awards and stock bonuses. No person will be eligible to receive more than _____ shares in any calendar year under the 2016 Plan other than a new employee of ours, who will be eligible to receive no more than _____ shares under the plan in the calendar year in which the employee commences employment. No participant will be eligible to receive more than \$ _____ in performance awards in any calendar year. No more than _____ shares will be issued pursuant to the exercise of incentive stock options. The aggregate number of shares of our common stock that may be subject to awards granted to any one non-employee director pursuant to the 2016 Plan in any calendar year shall not exceed _____.

The 2016 Plan will be administered by our compensation committee, all of the members of which are outside directors as defined under applicable federal tax laws, or by our board of directors acting in place of our compensation committee. The compensation committee will have the authority to construe and interpret the 2016 Plan, grant awards and make all other determinations necessary or advisable for the administration of the plan.

The 2016 Plan will provide for the grant of awards to our employees, directors, consultants, independent contractors and advisors, provided the consultants, independent contractors, non-employee directors and advisors render services not in connection with the offer and sale of securities in a capital-raising transaction. The exercise price of stock options must be at least equal to the fair market value of our common stock on the date of grant. The compensation committee has the authority to reprice any outstanding stock option or SAR (by reducing the exercise price of any outstanding option or SAR, canceling an option or SAR in exchange for cash or another equity award) under the 2016 Plan without the approval of our stockholders.

We anticipate that, in general, options will vest over a four-year period. Options may vest based on time or achievement of performance conditions. Our compensation committee may provide for options to be exercised only as they vest or to be immediately exercisable with any shares issued on exercise being subject to our right of repurchase that lapses as the shares vest. The maximum term of options granted under the 2016 Plan is ten years.

An RSA is an offer by us to sell shares of our common stock subject to restrictions, which may vest based on time or achievement of performance conditions. The price, if any, of an RSA will be determined by the compensation committee. Unless otherwise determined by the compensation committee at the time of award, vesting will cease on the date the holder no longer provides services to us and unvested shares will be forfeited to or repurchased by us.

SARs provide for a payment, or payments, in cash or shares of our common stock, to the holder based upon the difference between the fair market value of our common stock on the date of exercise and the stated exercise price at grant up to a maximum amount of cash or number of shares. SARs may vest based on time or achievement of performance conditions.

Executive compensation

RSUs represent the right to receive shares of our common stock at a specified date in the future, subject to forfeiture of that right because of termination of employment or failure to achieve certain performance conditions. If an RSU has not been forfeited, then on the date specified in the RSU agreement, we will deliver to the holder of the RSU shares of our common stock (which may be subject to additional restrictions), cash or a combination of our common stock and cash. We anticipate that, in general, RSUs will vest over a four-year period.

Performance awards cover a number of shares of our common stock that may be settled upon achievement of the pre-established performance conditions as provided in the 2016 Plan in cash or by issuance of the underlying shares or other property (or any combination thereof). These awards are subject to forfeiture prior to settlement due to termination of employment or failure to achieve the performance conditions.

Stock bonuses may be granted as additional compensation for past or future service or performance, and therefore, no payment will be required for any shares awarded under a stock bonus. Unless otherwise determined by the compensation committee at the time of award, vesting will cease on the date the holder no longer provides services to us and unvested shares (if any) will be forfeited to us.

The 2016 Plan permits the grant of performance-based awards that may qualify as performance-based compensation that is not subject to the \$1.0 million limitation on income tax deductibility imposed by Section 162(m) of the Code. Our compensation committee may structure awards so that the cash, stock or other property will be paid or issued only following the achievement of certain pre-established performance goals during a designated performance period.

Awards granted under the 2016 Plan may not be transferred in any manner other than by will or by the laws of descent and distribution or as determined by our compensation committee. Unless otherwise permitted by our compensation committee, stock options may be exercised during the lifetime of the optionee only by the optionee or the optionee's guardian or legal representative. Options granted under the 2016 Plan generally may be exercised for a period of three months after the termination of the optionee's service to us, for a period of 12 months in the case of death or disability, or such longer period as our compensation committee may provide. Options generally terminate immediately upon termination of employment for cause.

In the event there is a specified type of change in our capital structure without our receipt of consideration, such as a stock split, appropriate adjustments will be made to the number of shares reserved under the 2016 Plan, the maximum number of shares that can be granted in a calendar year and the number of shares and exercise price, if applicable, of all outstanding awards under the 2016 Plan.

If we are party to a merger or consolidation, sale of all or substantially all assets or similar change in control transaction, outstanding awards, including any vesting provisions, may be continued, assumed or substituted by the successor company. In the alternative, outstanding awards may be replaced at their full value with cash (or cash equivalents) or securities of the successor entity (or its parent). Outstanding awards may also be cancelled in exchange for no consideration and/or vesting may be accelerated in full or in part. Outstanding awards that are not converted, assumed, substituted or replaced will be exercisable for a period of time determined by the committee, and those awards will terminate upon expiration of such period to the extent not exercised. Awards held by non-employee directors will immediately vest as to all or any portion of the shares subject to the stock award and will become exercisable at such times and on such conditions as the compensation committee determines.

Executive compensation

The 2016 Plan will terminate ten years from the date our board of directors approved it, unless it is terminated earlier by our board of directors. Our board of directors may amend or terminate the 2016 Plan at any time. If our board of directors amends the 2016 Plan, it does not need to ask for stockholder approval of the amendment unless required by applicable law.

2016 employee stock purchase plan

We intend to adopt a 2016 Employee Stock Purchase Plan, or the 2016 ESPP, in order to enable eligible employees to purchase shares of our common stock at a discount following the date of this offering. Purchases will be accomplished through participation in discrete offering periods. The 2016 ESPP is intended to qualify as an employee stock purchase plan under Section 423 of the Code. We have reserved _____ shares of our common stock for issuance under the 2016 ESPP. The number of shares reserved for issuance under the 2016 ESPP will increase automatically on January 1 of each calendar year by the number of shares equal to 1% of the total outstanding shares of our common stock and common stock equivalents as of the immediately preceding December 31. However, our board of directors or compensation committee may reduce the amount of the increase in any particular year. The aggregate number of shares issued over the term of the 2016 ESPP will not exceed _____ shares of our common stock.

Our compensation committee will administer the 2016 ESPP. Our employees generally are eligible to participate in the 2016 ESPP. Our compensation committee may in its discretion elect to exclude employees who work fewer than 20 hours per week or five months in a calendar year. Employees who are 5% stockholders, or would become 5% stockholders as a result of their participation in the 2016 ESPP, are ineligible to participate in the 2016 ESPP. We may impose additional restrictions on eligibility. Under the 2016 ESPP, eligible employees will be able to acquire shares of our common stock by accumulating funds through payroll deductions. Our eligible employees will be able to select a rate of payroll deduction between 1% and 15% of their eligible cash compensation. We will also have the right to amend or terminate the 2016 ESPP at any time. The 2016 ESPP will terminate on the tenth anniversary of the effective date of this offering, unless it is terminated earlier by our board of directors.

The 2016 ESPP is implemented through a series of offering periods with durations of not more than 27 months under which our employees who meet the eligibility requirements for participation in that offering period will automatically be granted a nontransferable option to purchase shares in that offering period. For subsequent offering periods, new participants will be required to enroll in a timely manner. Once an employee is enrolled, participation will be automatic in subsequent offering periods. Except for the first offering period, each offering period will run for six months. The first offering period began upon the effective date of this offering and will end on _____, or another date selected by our compensation committee, but no more than 27 months after the commencement of the initial offering period. Thereafter, a six-month offering period will commence on each _____ and _____, or another date selected by our compensation committee. An employee's participation automatically ends upon termination of employment for any reason.

No participant will have the right to purchase shares of our common stock in an amount, when aggregated with purchase rights under all our employee stock purchase plans that are also in effect in the same calendar year, that have a fair market value of more than \$25,000, determined as of the first day of the applicable purchase period, for each calendar year in which that right is outstanding. In addition, no participant will be permitted to purchase more than _____ shares during any one purchase period or a lesser amount determined by our compensation committee. The purchase price for shares of our common stock purchased under the 2016 ESPP will be 85% of the lesser of the fair market value of our common

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Executive compensation

stock on (i) the first trading day of the applicable offering period and (ii) the last trading day of each purchase period in the applicable offering period. The fair market value of our common stock for purposes of our first offering period under the 2016 ESPP will be the price at which shares are first sold to the public under this offering.

If we experience a change of control transaction, any offering period that commenced prior to the closing of the proposed change of control transaction will be shortened and terminated on a new purchase date. The new purchase date will occur prior to the closing of the proposed change of control transaction and the 2016 ESPP will then terminate on the closing of the proposed change of control.

401(k) plan

We sponsor a retirement plan intended to qualify for favorable tax treatment under Section 401(a) of the Code, containing a cash or deferred feature that is intended to meet the requirements of Section 401(k) of the Code. U.S. employees who have attained at least 21 years of age are generally eligible to participate in the plan the first day of the month that coincides with or next follows the day you become an eligible employee. The plan is subject to certain eligibility requirements. Participants may make pre-tax contributions to the plan from their eligible earnings up to the statutorily prescribed annual limit on pre-tax contributions under the Code. Participants who are 50 years of age or older may contribute additional amounts based on the statutory limits for catch-up contributions. Pre-tax contributions by participants and the income earned on those contributions are generally not taxable to participants until withdrawn. Plan participants may contribute Roth Contributions which are withheld from the paycheck with “after tax” contributions and are generally tax free when they are withdrawn from the plan. Participant contributions are held in trust as required by law. No minimum benefit is provided under the plan. An employee’s interest in his or her pre-tax deferrals is 100% vested when contributed. Although the plan provides for a discretionary employer matching contribution, to date we have not made such a contribution on behalf of employees. The plan permits all eligible plan participants to contribute between 1% and 100% of eligible compensation, on a pre-tax basis, into their accounts.

Certain relationships and related-party transactions

The following is a summary of transactions since January 1, 2013 to which we have been or will be a party in which the amount involved exceeded or will exceed \$120,000 and in which any of our directors, executive officers or beneficial holders of more than 5% of any class of our capital stock, or any immediate family member of, or person sharing a household with, any of these individuals, had or will have a direct or indirect material interest, other than compensation arrangements that are described under the section of this prospectus captioned “Management—Non-employee director compensation” and “Executive compensation.”

EQUITY FINANCINGS

Series D convertible preferred stock financing

In three closings in August 2014, November 2014 and December 2014, we issued and sold an aggregate of 7,924,414 shares of our Series D convertible preferred stock at a purchase price of \$2.5983 per share for an aggregate purchase price of approximately \$20.6 million. Each share of our Series D convertible preferred stock will convert automatically into one share of our common stock immediately prior to the closing of this offering.

The purchasers of our Series D convertible preferred stock are entitled to specified registration rights. For additional information, see “Description of capital stock—Registration rights.” The following table summarizes the Series D convertible preferred stock purchased by our directors, executive officers and beneficial holders of more than 5% of our capital stock. The terms of these purchases were the same for all purchasers of our Series D convertible preferred stock.

Name of stockholder	Shares of Series D convertible preferred stock	Total purchase price
Bader Sultan & Bros. Co. W.L.L.(1)	2,540,122	\$6,599,999
Domain Partners VII, L.P.(2)	1,731,902	\$4,500,001
InterWest Partners X, L.P.(3)	1,347,035	\$3,500,001
Okapi Ventures II, L.P.(4)	346,380	\$ 899,999

- (1) Bader Sultan & Bros. Co. W.L.L. is the sole distributor of our products in the Middle East.
- (2) Kim Kamdar, a member of our board of directors, is a member of One Palmer Square Associates VII, L.L.C., the general partner of Domain Partners VII, L.P.
- (3) Douglas Fisher, a member of our board of directors, is an Executive in Residence at InterWest Partners LLC, an affiliate of InterWest Partners X, L.P.
- (4) Sharon Stevenson, a member of our board of directors, is a managing director of Okapi Venture Partners II, LLC, which is the general partner of Okapi Ventures II, L.P.

Series E convertible preferred stock financing

In two closings in April 2016 and May 2016, we issued and sold an aggregate of 5,557,649 shares of our Series E convertible preferred stock at a purchase price of \$2.8597 per share for an aggregate purchase price of approximately \$15.8 million. Each share of our Series E convertible preferred stock will convert automatically into one share of our common stock immediately prior to the closing of this offering.

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Certain relationships and related-party transactions

The purchasers of our Series E convertible preferred stock are entitled to specified registration rights. For additional information, see “Description of capital stock—Registration rights.” The following table summarizes the Series E convertible preferred stock purchased by our directors, executive officers and beneficial holders of more than 5% of our capital stock. The terms of these purchases were the same for all purchasers of our Series E convertible preferred stock.

Name of stockholder	Shares of Series E convertible preferred stock	Total purchase price
Bader Sultan & Bros. Co. W.L.L.(1)	448,298	\$1,281,998
Domain Partners VII, L.P.(2)	1,398,748	\$4,000,000
InterWest Partners X, L.P.(3)	1,084,029	\$3,099,998
Entities affiliated with Okapi Ventures(4)	312,969	\$ 894,997

- (1) Bader Sultan & Bros. Co. W.L.L. is the sole distributor of our products in the Middle East.
- (2) Kim Kamdar, a member of our board of directors, is a member of One Palmer Square Associates VII, L.L.C., the general partner of Domain Partners VII, L.P.
- (3) Douglas Fisher, a member of our board of directors, is an Executive in Residence at InterWest Partners LLC, an affiliate of InterWest Partners X, L.P.
- (4) Consists of 174,843 shares purchased by Okapi Ventures II, L.P. and 138,126 shares purchased by Okapi Ventures, L.P. Sharon Stevenson, a member of our board of directors, is a managing director of Okapi Venture Partners II, LLC and Okapi Venture Partners, LLC, which are the general partners of Okapi Ventures II, L.P. and Okapi Ventures, L.P., respectively.

TRANSACTIONS WITH BADER

In June 2013, we entered into a distribution agreement with Bader Sultan & Bros. Co. W.L.L., or Bader, a healthcare products distributor based in Sufat, Kuwait. Pursuant to the distribution agreement, we appointed Bader as the exclusive distributor of our products in the Middle East. Sales to Bader for the years ended December 31, 2013, 2014 and 2015 and the six months ended June 30, 2016 totaled \$0.2 million, \$1.9 million, \$3.8 million and \$1.8 million, respectively.

In August 2014, Bader became a stockholder. For additional information, please see “—Series D convertible preferred stock financing” and “—Series E convertible preferred stock financing” As of June 30, 2016, Bader owned approximately 9.4% of our outstanding capital stock on an as-converted to common stock basis.

FOURTH AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT

We have entered into an investors’ rights agreement with certain holders of our common stock and holders of our convertible preferred stock, including entities with which certain of our directors are affiliated. These stockholders are entitled to rights with respect to the registration of their shares following our initial public offering under the Securities Act. For a description of these registration rights, see “Description of capital stock—Registration rights.”

INDEMNIFICATION AGREEMENTS

In connection with this offering, we intend to enter into new indemnification agreements with each of our directors and executive officers. The indemnification agreements, our restated certificate of

Certain relationships and related-party transactions

incorporation and our restated bylaws will require us to indemnify our directors to the fullest extent not prohibited by Delaware law. Subject to certain limitations, our restated bylaws also require us to advance expenses incurred by our directors and officers. For more information regarding these agreements, see “Management—Limitations on liability and indemnification matters.”

REVIEW, APPROVAL OR RATIFICATION OF TRANSACTIONS WITH RELATED PARTIES

In connection with this offering, we intend to adopt a written related-person transactions policy that provides that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of our common stock, and any members of the immediate family or affiliates of the foregoing persons, are not permitted to enter into a material related-person transaction with us without the review and approval of our audit committee, or a committee composed solely of independent directors in the event it is inappropriate for our audit committee to review such transaction due to a conflict of interest. The policy provides that any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of our common stock or with any of their immediate family members or affiliates, in which the amount involved exceeds \$120,000 will be presented to our audit committee (or the committee composed solely of independent directors, if applicable) for review, consideration and approval. In approving or rejecting any such proposal, we expect that our audit committee (or the committee composed solely of independent directors, if applicable) will consider the relevant facts and circumstances available and deemed relevant to the audit committee (or the committee composed solely of independent directors, if applicable), including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person’s interest in the transaction.

Principal stockholders

The following table and accompanying footnotes set forth certain information with respect to the beneficial ownership of our common stock at August 31, 2016, and as adjusted to reflect the shares of common stock to be issued and sold in this offering assuming no exercise of the underwriters’ option to purchase additional shares, for:

- Ø each of our directors;
- Ø each of our Named Executive Officers;
- Ø all of our current directors and executive officers as a group; and
- Ø each person, or group of affiliated persons, who beneficially owned more than 5% of our outstanding common stock.

We have determined beneficial ownership in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Except as indicated by the footnotes below, we believe, based on information furnished to us, that the persons and entities named in the table below have sole voting and sole investment power with respect to all shares of common stock that they beneficially owned, subject to applicable community property laws.

Beneficial ownership prior to this offering is based on 33,952,440 shares of common stock outstanding as of August 31, 2016, assuming the automatic conversion of all outstanding shares of our convertible preferred stock into 30,045,279 shares of common stock. Beneficial ownership after this offering is based on _____ shares of common stock outstanding, assuming (i) the automatic conversion of all outstanding shares of our convertible preferred stock into 30,045,279 shares of common stock as described above, (ii) the issuance of _____ shares of common stock in this offering and (iii) _____ shares that we expect to issue upon the automatic net exercise of warrants immediately prior to the closing of this offering, based on an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus. In computing the number of shares of common stock beneficially owned by a person and the percentage ownership of that person, we deemed to be outstanding all shares of common stock subject to options, warrants or other rights held by that person or entity that are currently exercisable or that will become exercisable within 60 days of August 31, 2016. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Obalon Therapeutics, Inc., 5421 Avenida Encinas, Suite F, Carlsbad, California 92008.

The table below does not reflect any shares that may be purchased by our directors, executive officers or significant stockholders pursuant to the directed share program.

Principal stockholders

Name of beneficial owner	Beneficial ownership prior to this offering		Beneficial ownership after this offering	
	Number	Percentage	Number	Percentage
5% or Greater Stockholders				
Entities affiliated with Domain Partners(1)	11,761,634	34.6%		
InterWest Partners X, L.P.(2)	7,114,685	21.0%		
Bader Sultan & Bros. Co. W.L.L.(3)	2,988,420	8.8%		
Entities affiliated with Okapi Venture Capital(4)	2,585,382	7.7%		
Named Executive Officers and Directors				
Andrew Rasdal(5)	2,403,857	6.9%		
Mark Brister(6)	698,435	2.0%		
Amy VandenBerg(7)	465,328	1.4%		
Ray Dittamore(8)	75,000	*		
Douglas Fisher	—	—		
Les Howe(8)	75,000	*		
Kim Kamdar	—	—		
Sharon Stevenson(4)	2,585,382	7.7%		
All executive officers and directors as a group (14 persons)(9)	7,977,990	21.6%		

* Represents beneficial ownership of less than one percent.

- (1) Represents (a)(i) 11,559,328 shares of common stock held by Domain Partners VII, L.P., or Domain Partners, and (ii) 57,563 shares underlying warrants to purchase common stock held by Domain Partners, which are exercisable within 60 days of August 31, 2016 and (b)(i) 143,761 shares held by DP VII Associates, L.P., or DP Associates, and (ii) 982 shares underlying warrants to purchase common stock held by DP Associates, which are exercisable within 60 days of August 31, 2016. One Palmer Square Associates VII, L.L.C., or One Palmer Square, is the general partner of each of Domain Partners and DP Associates. James C. Blair, Brian H. Dovey, Jesse I. Treu, Nicole Vitullo and Brian K. Halak are the managing members of One Palmer Square, and share voting and investment power over the shares. The address of One Palmer Square is One Palmer Square, Suite 515, Princeton, New Jersey 08542.
- (2) Represents shares of common stock held by InterWest Partners X, L.P., or IW10. InterWest Management Partners X, LLC, or IMP10, is the general partner of IW10. Philip T. Gianos, W. Stephen Holmes, Gilbert H. Kliman and Arnold L. Oronsky are the managing directors of IMP10, and Keval Desai and Khalad A. Nasr are venture members of IMP10, and all of these individuals share voting and investment power over the shares. The address of InterWest Partners is 2710 Sand Hill Road, Suite 200, Menlo Park, California 94025.
- (3) Represents shares of common stock held by Bader Sultan & Bros. Co. W.L.L., or Bader, of which Anwar Sultan Al-Essa is a managing director and has voting and investment power over the shares. The address of Bader is P.O. Box 867, 13009 Kuwait.
- (4) Represents (i)(a) 1,584,088 shares of common stock held by Okapi Ventures, L.P., or OV, and (b) 11,709 shares underlying warrants to purchase common stock held by OV that are exercisable within 60 days of August 31, 2016 and (ii) 989,585 shares held by Okapi Ventures II, L.P., or OVII. Okapi Venture Partners, LLC and Okapi Venture Partners II, LLC are the general partners of OV and OVII, respectively. Sharon Stevenson, a member of our board of directors, and B. Marc Averitt, are the managing directors of Okapi Venture Partners, LLC and Okapi Venture Partners II, LLC, and share voting and investment power over the shares. The address of Okapi Venture Capital is 1590 South Coast Highway, No. 10, Laguna Beach, California 92651.

(footnotes continued on following page)

Principal stockholders

- (5) Represents (i) 1,024,781 shares of common stock held by Mr. Rasdal, (ii) 281,666 shares of common stock held by The Rasdal Family Trust dated December 10, 1996, of which Mr. Rasdal and his spouse serve as trustees, and (iii) 1,097,410 shares underlying options to purchase common stock held by Mr. Rasdal that are exercisable within 60 days of August 31, 2016, of which 753,756 shares are unvested but early exercisable.
 - (6) Represents (i) 465,348 shares of common stock and (ii) 233,087 shares underlying options to purchase common stock that are exercisable within 60 days of August 31, 2016, of which 213,779 shares are unvested but early exercisable.
 - (7) Represents 465,328 shares underlying options to purchase common stock that are exercisable within 60 days of August 31, 2016, of which 194,462 shares are unvested but early exercisable.
 - (8) Represents 75,000 shares underlying options to purchase common stock that are exercisable within 60 days of August 31, 2016, all of which shares are unvested but early exercisable.
 - (9) Represents (i) 5,066,461 shares of common stock, (ii) 11,709 shares underlying warrants to purchase common stock that are exercisable within 60 days of August 31, 2016 and (iii) 2,899,820 shares underlying options to purchase common stock that are exercisable within 60 days of August 31, 2016, of which 2,625,554 shares are unvested but early exercisable. Such shares are held by our executive officers, who are Andrew Rasdal, William Plovanic, Mark Brister, Nooshin Hussainy, Steve Johnson, Lisa Metzner, Matthew Norwood, Amy VandenBerg and Donald Young, and our directors, who are Kim Kamdar, Ray Dittamore, Douglas Fisher, Les Howe and Sharon Stevenson.
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Description of capital stock

The following is a summary of the rights of our common and preferred stock and some of the provisions of our restated certificate of incorporation and restated bylaws, which will become effective immediately prior to the closing of this offering, and of the Delaware General Corporation Law, or DGCL. Immediately prior to the closing of this offering, and upon the filing of our restated certificate of incorporation, our authorized capital stock will consist of _____ shares of common stock, \$0.001 par value per share, and _____ shares of undesignated preferred stock, \$0.001 par value per share.

As of June 30, 2016, there were 1,684,465 shares of our common stock outstanding. Pursuant to the provisions of our current certificate of incorporation, all of our outstanding convertible preferred stock will automatically convert into an aggregate of 30,045,279 shares of common stock effective immediately prior to the closing of this offering. Each series of our convertible preferred stock will convert to common stock at a ratio of 1:1, except for our Series A convertible preferred stock, which will convert at a ratio of 1:1.32784. Based on the number of shares of common stock outstanding as of June 30, 2016, and assuming the conversion of all outstanding shares of our convertible preferred stock into shares of our common stock, as of June 30, 2016, there were 31,729,744 shares of our common stock issued and outstanding, held by approximately 42 stockholders of record, and no shares of our preferred stock outstanding.

COMMON STOCK

Voting rights

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. We do not intend to provide for cumulative voting for the election of directors in our restated certificate of incorporation. Accordingly, holders of a majority of the shares of our common stock will be able to elect all of our directors. Our restated certificate of incorporation will establish a classified board of directors, to be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Subject to the supermajority votes for some matters, other matters shall be decided by the affirmative vote of our stockholders having a majority in voting power of the votes cast by the stockholders present or represented and voting on such matter. Our restated certificate of incorporation and restated bylaws will also provide that our directors may be removed only for cause and only by the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon. In addition, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon is required to amend or repeal, or to adopt any provision inconsistent with, several of the provisions of our restated certificate of incorporation. See “—Anti-takeover provisions— Restated certificate of incorporation and restated bylaws provisions.”

Dividend rights

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine. See “Dividend policy.”

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Description of capital stock

No preemptive or similar rights

Our common stock is not entitled to preemptive or subscription rights, and is not subject to conversion, redemption or sinking fund provisions. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock that we may designate and issue in the future.

Right to receive liquidation distributions

Upon our liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

PREFERRED STOCK

Pursuant to the provisions of our current certificate of incorporation, all of our outstanding convertible preferred stock will automatically convert into common stock immediately prior to the closing of this offering. As a result, each currently outstanding share of convertible preferred stock will be converted into common stock at a ratio of 1:1, except for the Series A convertible preferred stock, which will convert at a ratio of 1:1.32784.

Pursuant to our restated certificate of incorporation that will become effective immediately prior to the closing of this offering, our board of directors will be authorized, subject to limitations prescribed by Delaware law, to issue from time to time up to _____ shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each series and to fix the designation, powers, preferences and rights of the shares of each series and any of their qualifications, limitations or restrictions, in each case without further vote or action by our stockholders. Our board of directors will also be able to increase or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may be able to authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of our company and might adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. We have no current plan to issue any shares of preferred stock.

STOCK OPTIONS

As of June 30, 2016, we had outstanding options to purchase an aggregate of 5,126,449 shares of our common stock, with a weighted-average exercise price of approximately \$0.48 per share. Subsequent to June 30, 2016, we issued options to purchase an aggregate of 655,675 shares of our common stock, with an exercise price of \$0.97 per share.

WARRANTS

As of June 30, 2016, we had outstanding (i) three warrants to purchase an aggregate of 70,254 shares of our Series C convertible preferred stock at an exercise price of \$2.1351 per share, which expire in _____

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Description of capital stock

February 2019, (ii) a warrant to purchase 25,210 shares of our Series C-1 convertible preferred stock at an exercise price of \$3.57 per share, which expires in June 2023, and (iii) a warrant to purchase 80,822 shares of our Series D convertible preferred stock at an exercise price of \$2.5983 per share, which expires in October 2024. Subsequent to June 30, 2016, we issued a warrant to purchase that number of shares of our Series E convertible preferred stock, at a purchase price of \$2.8597 per share, equal to 3.0% of the total additional amount of debt drawn under our loan and security agreement with Pacific Western Bank (up to \$5.0 million) divided by the purchase price, which will only be exercisable in the event that we borrow such additional amount and expires in March 2017. Such warrant is exercisable to purchase a maximum of 52,453 shares, depending on the amount of debt drawn. Each of these warrants has a cashless exercise provision under which the holder, in lieu of paying the exercise price in cash, can surrender the warrant and receive a net number of shares based on the fair market value of such stock at the time of exercise, after deducting the aggregate exercise price. Pursuant to their terms, upon the closing of this offering, each of these warrants will convert into a warrant to purchase the same number of shares of common stock at its original exercise price.

As of June 30, 2016, we also had outstanding two warrants to purchase an aggregate of 71,200 shares of our Series D convertible preferred stock at an exercise price of \$2.5983 per share. Each of these warrants has a cashless exercise provision under which the holder, in lieu of payment of the exercise price in cash, can surrender the warrant and receive a net number of shares based on the fair market value of such stock at the time of exercise, after deducting the aggregate exercise price. Pursuant to their terms, immediately prior to the closing of this offering, each of these warrants will automatically be exercised on a cashless basis based upon a market price per share of our common stock equal to the per share offering price to the public in this offering, unless earlier exercised.

REGISTRATION RIGHTS

The holders of certain outstanding shares of our common stock and the holders of shares of our common stock issuable upon conversion of our convertible preferred stock, or their permitted transferees, are entitled to rights with respect to the registration of these shares under the Securities Act. These shares are referred to as registrable securities. Upon the closing of this offering, there will be approximately registrable securities outstanding. These rights are provided under the terms of an investors' rights agreement between us and the holders of these shares, which was entered into in connection with our preferred stock financings, and include demand registration rights, Form S-3 registration rights and piggyback registration rights. In any registration made pursuant to such investors' rights agreement, all fees and expenses of underwritten registrations, including reasonable fees and disbursements of one counsel to the selling stockholders, will be borne by us and all selling expenses, including estimated underwriting discounts and selling commissions, will be borne by the holders of the shares being registered.

The registration rights described below will terminate, as to each holder of registrable securities, on the date when such holder can sell all of its registrable securities in a single transaction pursuant to Rule 144 of the Securities Act.

Demand registration rights

Under the terms of the investors' rights agreement, if we receive a written request, at any time after 6 months following the effective date of this offering, from the holders of at least 35% of the then-outstanding registrable securities, that we file a registration statement under the Securities Act covering the registration of outstanding registrable securities, then we will be required to use all reasonable efforts to register, as soon as practicable, and in any event within 90 days of such written request, all of the

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Description of capital stock

shares requested to be registered for public resale, if the amount of registrable securities to be registered has an aggregate value of no less than \$10.0 million. We are required to effect only two registrations pursuant to this provision of the investors' rights agreement. We may postpone the filing of a registration statement no more than once during any 12-month period for up to 90 days if our board of directors determines that the filing would be detrimental to us. We are not required to effect a demand registration under certain additional circumstances specified in the investors' rights agreement.

Form S-3 registration rights

The holders of at least 20% of the then-outstanding registrable securities can request that we register all or part of their shares on Form S-3 if we are eligible to file a registration statement on Form S-3 and if the aggregate price to the public of the shares offered is at least \$1.0 million. We shall not be obligated to effect a registration if we have effected two registrations within the 12-month period immediately preceding the date of the request. We may postpone the filing of a registration statement no more than once during any 12-month period for up to 90 days if our board of directors determines that the filing would be detrimental to us or our stockholders. We are not required to effect a registration on Form S-3 under certain additional circumstances specified in the investors' rights agreement.

Piggyback registration rights

In connection with this offering, holders of our registrable securities were entitled to, and the necessary percentage of holders waived, their rights to notice of this offering and to include their registrable securities in this offering. If we register any of our securities for public sale in another offering, holders of registrable securities will have the right to include their shares in the registration statement. However, this right does not apply to a registration relating solely to employee benefit plans, a registration relating solely to a merger, acquisition or exchange, or a registration relating to convertible debt transactions. If the total number of securities requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by us) that the underwriters in their sole discretion determine is compatible with the success of the offering, then we will be required to include in the offering only that number of securities the underwriters determine will not jeopardize the success of the offering. In this case, the number of shares held by the selling stockholders to be registered will be allocated on a pro rata basis based on the total number of registrable securities held by each selling stockholder. However, the number of shares to be registered by these holders cannot be reduced below 30% of the total shares covered by the registration statement, other than in the initial public offering.

ANTI-TAKEOVER PROVISIONS

The provisions of Delaware law, our restated certificate of incorporation and our restated bylaws, as we expect they will be in effect immediately prior to the closing of this offering, could have the effect of delaying, deferring or discouraging another person from acquiring control of our company. These provisions, which are summarized below, may have the effect of discouraging takeover bids. They are also designed, in part, to encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire us because negotiation of these proposals could result in an improvement of their terms.

Description of capital stock

Delaware law

We are subject to the provisions of Section 203 of the DGCL, or Section 203, regulating corporate takeovers. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years following the date on which the person became an interested stockholder unless:

- Ø prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- Ø upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, (i) shares owned by persons who are directors and also officers and (ii) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- Ø at or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66.67% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction or series of transactions together resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation’s outstanding voting stock. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. We also anticipate that Section 203 may also discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

Restated certificate of incorporation and restated bylaws provisions

Our restated certificate of incorporation and our restated bylaws, as we expect they will be in effect immediately prior to the closing of this offering, include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our company, including the following:

- Ø *Board of Directors Vacancies.* Our restated certificate of incorporation and restated bylaws will authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors will be permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors but promotes continuity of management.
 - Ø *Classified Board.* Our restated certificate of incorporation and restated bylaws will provide that our board of directors will be classified into three classes of directors, each with staggered three-year terms. A third party may be discouraged from making a tender offer or otherwise attempting to obtain control of us as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors. See “Management—Board of directors.”
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Description of capital stock

- Ø *Stockholder Action; Special Meetings of Stockholders.* Our restated certificate of incorporation will provide that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. As a result, a holder controlling a majority of our capital stock would not be able to amend our restated bylaws or remove directors without holding a meeting of our stockholders called in accordance with our restated bylaws. Further, our restated bylaws and restated certificate of incorporation will provide that special meetings of our stockholders may be called only by a majority of our board of directors, the chairman of our board of directors, our Chief Executive Officer or our President, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.
 - Ø *Advance Notice Requirements for Stockholder Proposals and Director Nominations.* Our restated bylaws will provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our restated bylaws also will specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions might also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.
 - Ø *No Cumulative Voting.* The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our restated certificate of incorporation will not provide for cumulative voting.
 - Ø *Directors Removed Only for Cause.* Our restated certificate of incorporation will provide that stockholders may remove directors only for cause and only by the affirmative vote of the holders of at least two-thirds of our outstanding common stock.
 - Ø *Amendment of Charter Provisions.* Any amendment of the above expected provisions in our restated certificate of incorporation would require approval by holders of at least two-thirds of our outstanding common stock.
 - Ø *Issuance of Undesignated Preferred Stock.* Our board of directors has the authority, without further action by the stockholders, to issue up to _____ shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or other means.
 - Ø *Choice of Forum.* Our restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the exclusive forum for: any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the DGCL, our restated certificate of incorporation or our restated bylaws; any action to interpret, apply, enforce or determine the validity of our restated certificate of incorporation or our restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable.
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Description of capital stock

EXCHANGE LISTING

We have applied to list our common stock on The NASDAQ Global Market under the symbol “OBLN.”

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC. The transfer agent’s address is 6201 15th Avenue, Brooklyn, New York 11219, and its telephone number is (800) 937-5449.

Shares eligible for future sale

Prior to this offering, there has not been a public market for shares of our common stock, and we cannot predict the effect, if any, that market sales of shares of our common stock or the availability of shares of our common stock for sale will have on the market price of our common stock prevailing from time to time. Nevertheless, sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding options, in the public market following this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities.

Upon the completion of this offering, we will have a total of _____ shares of our common stock outstanding, based on _____ shares outstanding as of June 30, 2016, which assumes (i) the automatic conversion of shares of our convertible preferred stock outstanding as of June 30, 2016 into an aggregate of 30,045,279 shares of our common stock immediately prior to the closing of this offering, (ii) the issuance of _____ shares of common stock that we expect to issue upon the automatic net exercise of warrants immediately prior to the closing of this offering, based on an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (iii) the sale and issuance of _____ shares of our common stock in this offering. Of these outstanding shares, all of the shares of common stock sold in this offering will be freely tradable, except that any shares purchased in this offering by our affiliates, as that term is defined in Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, would only be able to be sold in compliance with the Rule 144 limitations described below.

The remaining outstanding shares of our common stock will be deemed “restricted securities” as defined in Rule 144. Restricted securities may be sold in the public market only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 promulgated under the Securities Act, which rules are summarized below. In addition, substantially all of our security holders have entered into lock-up agreements with the underwriters under which they have agreed, subject to specific exceptions, not to sell any of our stock for at least 180 days following the date of this prospectus, as described below. As a result of these agreements and the provisions of our investors’ rights agreement described above under “Description of capital stock—Registration rights,” subject to the provisions of Rule 144 or Rule 701, shares will be available for sale in the public market as follows:

- Ø beginning on the date of this prospectus, all of the shares sold in this offering will be immediately available for sale in the public market; and
- Ø beginning 181 days after the date of this prospectus, _____ additional shares will become eligible for sale in the public market, of which _____ shares will be held by affiliates and subject to the volume and other restrictions of Rule 144, as described below.

The amounts above do not reflect any shares purchased by our directors and executive officers pursuant to the directed share program that will be subject to lock-up agreements.

LOCK-UP AGREEMENTS

All of our directors and officers and the holders of more than 95% of our capital stock are subject to lock-up agreements that prohibit them from offering for sale, selling, contracting to sell, granting any option for the sale of, transferring or otherwise disposing of any shares of our common stock, options or warrants to acquire shares of our common stock or any security or instrument related to our common stock, or entering into any swap, hedge or other arrangement that transfers any of the economic consequences of ownership of our common stock, for a period of 180 days following the date of this

Shares eligible for future sale

prospectus without the prior written consent of the underwriters, subject to certain exceptions. See “Underwriting.”

RULE 144

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements for at least 90 days, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person would be entitled to sell those shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell upon expiration of the lock-up agreements described above, within any three-month period, a number of shares that does not exceed the greater of:

- Ø 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; or
- Ø the average reported weekly trading volume of our common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to that sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

RULE 701

Rule 701 generally allows a stockholder who purchased shares of our common stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required by that rule to wait until 90 days after the date of this prospectus before selling those shares pursuant to Rule 701 and are subject to the lock-up agreements described above.

STOCK OPTIONS

In connection with this offering, we intend to file a registration statement on Form S-8 under the Securities Act covering all of the shares of our common stock subject to outstanding options and the shares of our common stock reserved for issuance under our stock plans. We expect to file this registration statement as soon as permitted under the Securities Act. However, the shares registered on Form S-8 may be subject to the volume limitations and the manner of sale, notice and public information requirements of Rule 144 and will not be eligible for resale until expiration of the lock-up agreements to which they are subject.

REGISTRATION RIGHTS

We have granted demand, piggyback and Form S-3 registration rights to certain of our stockholders to sell our common stock. Registration of the sale of these shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. For a further description of these rights, see “Description of capital stock—Registration rights.”

Material U.S. federal income tax consequences to non-U.S. holders of common stock

This section summarizes the material U.S. federal income tax considerations relating to the acquisition, ownership and disposition of our common stock by “non-U.S. holders” (as defined below) pursuant to this offering. This summary does not provide a complete analysis of all potential U.S. federal income tax considerations relating thereto. The information provided below is based upon provisions of the Internal Revenue Code of 1986, as amended, or Code, Treasury regulations promulgated thereunder, administrative rulings and judicial decisions currently in effect. These authorities may change at any time, possibly retroactively, or the Internal Revenue Service, or IRS, might interpret the existing authorities differently. In either case, the tax considerations of owning or disposing of our common stock could differ from those described below. As a result, we cannot assure you that the tax consequences described in this discussion will not be challenged by the IRS or will be sustained by a court if challenged by the IRS.

This summary does not address the tax considerations arising under the laws of any non-U.S., state or local jurisdiction, or under U.S. federal gift and estate tax laws, except to the limited extent provided below. In addition, this discussion does not address tax considerations applicable to an investor’s particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

- Ø banks, insurance companies or other financial institutions;
- Ø partnerships, or entities or arrangements treated as partnerships or other pass-through entities for U.S. federal tax purposes (or investors in such entities);
- Ø corporations that accumulate earnings to avoid U.S. federal income tax;
- Ø persons subject to the alternative minimum tax or the Medicare contribution tax on net investment income;
- Ø tax-exempt organizations or tax-qualified retirement plans;
- Ø controlled foreign corporations or passive foreign investment companies;
- Ø persons who acquired our common stock as compensation for services;
- Ø dealers in securities or currencies;
- Ø traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- Ø persons that own, or are deemed to own, more than 5% of our capital stock (except to the extent specifically set forth below);
- Ø U.S. expatriates and former citizens or long-term residents of the United States;
- Ø persons who hold our common stock as a position in a hedging transaction, “straddle,” “conversion transaction” or other risk reduction transaction;
- Ø persons who do not hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, for investment purposes); or
- Ø persons deemed to sell our common stock under the constructive sale provisions of the Code.

In addition, if a partnership or entity classified as a partnership for U.S. federal income tax purposes is a beneficial owner of our common stock, the tax treatment of a partner in the partnership or an owner of

Material U.S. federal income tax consequences to non-U.S. holders of common stock

the entity will depend upon the status of the partner or other owner and the activities of the partnership or other entity. Accordingly, this summary does not address tax considerations applicable to partnerships that hold our common stock, and partners in such partnerships should consult their tax advisors.

INVESTORS CONSIDERING THE PURCHASE OF OUR COMMON STOCK SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPLICATION OF THE U.S. FEDERAL INCOME AND ESTATE TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES OF FOREIGN, STATE OR LOCAL LAWS, AND TAX TREATIES

NON-U.S. HOLDER DEFINED

For purposes of this summary, a “non-U.S. holder” is any holder of our common stock, other than a partnership, that is not:

- Ø an individual who is a citizen or resident of the United States;
- Ø a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized under the laws of the United States, any state therein or the District of Columbia;
- Ø a trust if it (1) is subject to the primary supervision of a U.S. court and one of more U.S. persons have authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person; or
- Ø an estate whose income is subject to U.S. income tax regardless of source.

If you are a non-U.S. citizen who is an individual, you may, in many cases, be deemed to be a resident alien, as opposed to a nonresident alien, by virtue of being present in the United States for at least 31 days in the calendar year and for an aggregate of at least 183 days during a three- year period ending in the current calendar year. For these purposes, all the days present in the current year, one-third of the days present in the immediately preceding year, and one-sixth of the days present in the second preceding year are counted. Resident aliens are subject to U.S. federal income tax as if they were U.S. citizens. Such an individual is urged to consult his or her own tax advisor regarding the U.S. federal income tax consequences of the ownership or disposition of our common stock.

DIVIDENDS

We do not expect to declare or make any distributions on our common stock in the foreseeable future and the terms of our credit facility currently restrict our ability to pay dividends. If we do pay dividends on shares of our common stock, however, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Distributions in excess of our current and accumulated earnings and profits will constitute a return of capital that is applied against and reduces, but not below zero, a non-U.S. holder’s adjusted tax basis in shares of our common stock. Any remaining excess will be treated as gain realized on the sale or other disposition of our common stock. See “—Sale of Common Stock.”

Any dividend paid to a non-U.S. holder on our common stock that is not effectively connected with a non-U.S. holder’s conduct of a trade or business in the United States will generally be subject to U.S. withholding tax at a 30% rate. The withholding tax might apply at a reduced rate under the terms of an applicable income tax treaty between the United States and the non-U.S. holder’s country of residence subject to the discussion below regarding the Foreign Account Tax Compliance Act. You should consult your tax advisors regarding your entitlement to benefits under a relevant income tax treaty. Generally, in

Material U.S. federal income tax consequences to non-U.S. holders of common stock

order for us or our paying agent to withhold tax at a lower treaty rate, a non-U.S. holder must certify its entitlement to treaty benefits. A non-U.S. holder generally can meet this certification requirement by providing a Form W-8BEN or Form W-8BEN-E (or any successor form) or appropriate substitute form to us or our paying agent. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the holder's behalf, the holder will be required to provide appropriate documentation to the agent. The holder's agent will then be required to provide certification to us or our paying agent, either directly or through other intermediaries. If you are eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty, you may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the IRS in a timely manner.

Dividends received by a non-U.S. holder that are effectively connected with a U.S. trade or business conducted by the non-U.S. holder, and if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, are attributable to a permanent establishment maintained by the non-U.S. holder in the United States, are not subject to U.S. withholding tax. To obtain this exemption, a non-U.S. holder must provide us or our paying agent with an IRS Form W-8ECI properly certifying such exemption. Such effectively connected dividends, although not subject to withholding tax, are taxed at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. In addition to being taxed at graduated tax rates, dividends received by corporate non-U.S. holders that are effectively connected with a U.S. trade or business of the corporate non-U.S. holder may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable tax treaty.

SALE OF COMMON STOCK

Subject to the discussion below regarding Backup Withholding and the Foreign Account Tax Compliance Act, non-U.S. holders will generally not be subject to U.S. federal income tax on any gains realized on the sale, exchange or other disposition of our common stock unless:

- Ø the gain (i) is effectively connected with the conduct by the non-U.S. holder of a U.S. trade or business and (ii) if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, is attributable to a permanent establishment maintained by the non-U.S. holder in the United States (in which case the special rules described below apply);
- Ø the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of the sale, exchange or other disposition of our common stock, and certain other requirements are met (in which case the gain would be subject to a flat 30% tax, or such reduced rate as may be specified by an applicable income tax treaty, which may be offset by U.S. source capital losses, even though the individual is not considered a resident of the United States); or
- Ø the rules of the Foreign Investment in Real Property Tax Act, or FIRPTA, treat the gain as effectively connected with a U.S. trade or business.

The FIRPTA rules may apply to a sale, exchange or other disposition of our common stock if we are, or were within the shorter of the five-year period preceding the disposition and the non-U.S. holder's holding period, a "U.S. real property holding corporation," or USRPHC. In general, we would be a USRPHC if interests in U.S. real estate comprised at least half of the value of our business assets. We do not believe that we are a USRPHC and we do not anticipate becoming one in the future. Even if we become a USRPHC, as long as our common stock is regularly traded on an established securities market, such common stock will be treated as U.S. real property interests only if beneficially owned by a non-U.S. holder that actually or constructively owned more than 5% of our outstanding common stock at some time within the five-year period preceding the disposition.

Material U.S. federal income tax consequences to non-U.S. holders of common stock

If any gain from the sale, exchange or other disposition of our common stock, (i) is effectively connected with a U.S. trade or business conducted by a non-U.S. holder and (ii) if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, is attributable to a permanent establishment maintained by such non-U.S. holder in the United States, then the gain generally will be subject to U.S. federal income tax at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. If the non-U.S. holder is a corporation, under certain circumstances, that portion of its earnings and profits that is effectively connected with its U.S. trade or business, subject to certain adjustments, generally would be subject also to a "branch profits tax." The branch profits tax rate is 30%, although an applicable income tax treaty between the United States and the non-U.S. holder's country of residence might provide for a lower rate.

U.S. FEDERAL ESTATE TAX

The estates of nonresident alien individuals generally are subject to U.S. federal estate tax on property with a U.S. situs. Because we are a U.S. corporation, our common stock will be U.S. situs property and therefore will be included in the taxable estate of a nonresident alien decedent, unless an applicable estate tax treaty between the United States and the decedent's country of residence provides otherwise.

BACKUP WITHHOLDING AND INFORMATION REPORTING

The Code and the Treasury regulations require those who make specified payments to report the payments to the IRS. Among the specified payments are dividends and proceeds paid by brokers to their customers. The required information returns enable the IRS to determine whether the recipient properly included the payments in income. This reporting regime is reinforced by "backup withholding" rules. These rules require the payors to withhold tax from payments subject to information reporting if the recipient fails to cooperate with the reporting regime by failing to provide his taxpayer identification number to the payor, furnishing an incorrect identification number, or failing to report interest or dividends on his returns. The backup withholding tax rate is currently 28%. The backup withholding rules do not apply to payments to corporations, whether domestic or foreign, provided they establish such exemption.

Payments to non-U.S. holders of dividends on common stock generally will not be subject to backup withholding, and payments of proceeds made to non-U.S. holders by a broker upon a sale of common stock will not be subject to information reporting or backup withholding, in each case so long as the non-U.S. holder certifies its nonresident status (and we or our paying agent do not have actual knowledge or reason to know the holder is a U.S. person or that the conditions of any other exemption are not, in fact, satisfied) or otherwise establishes an exemption. The certification procedures to claim treaty benefits described under "—Dividends" will generally satisfy the certification requirements necessary to avoid the backup withholding tax. We must report annually to the IRS any dividends paid to each non-U.S. holder and the tax withheld, if any, with respect to these dividends. Copies of these reports may be made available to tax authorities in the country where the non-U.S. holder resides.

Under the Treasury regulations, the payment of proceeds from the disposition of shares of our common stock by a non-U.S. holder made to or through a U.S. office of a broker generally will be subject to information reporting and backup withholding unless the beneficial owner certifies, under penalties of perjury, among other things, its status as a non-U.S. holder (and the broker does not have actual knowledge or reason to know the holder is a U.S. person) or otherwise establishes an exemption. The payment of proceeds from the disposition of shares of our common stock by a non-U.S. holder made to or through a non-U.S. office of a broker generally will not be subject to backup withholding and information reporting, except as noted below. Information reporting, but not backup withholding, will

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Material U.S. federal income tax consequences to non-U.S. holders of common stock

apply to a payment of proceeds, even if that payment is made outside of the United States, if you sell our common stock through a non-U.S. office of a broker that is:

- Ø a U.S. person (including a foreign branch or office of such person);
- Ø a “controlled foreign corporation” for U.S. federal income tax purposes;
- Ø a foreign person 50% or more of whose gross income from certain periods is effectively connected with a U.S. trade or business; or
- Ø a foreign partnership if at any time during its tax year (i) one or more of its partners are U.S. persons who, in the aggregate, hold more than 50% of the income or capital interests of the partnership or (ii) the foreign partnership is engaged in a U.S. trade or business;

unless the broker has documentary evidence that the beneficial owner is a non-U.S. holder and certain other conditions are satisfied, or the beneficial owner otherwise establishes an exemption (and the broker has no actual knowledge or reason to know to the contrary).

Backup withholding is not an additional tax. Any amounts withheld from a payment to a holder of common stock under the backup withholding rules can be credited against any U.S. federal income tax liability of the holder and may entitle the holder to a refund, provided that the required information is furnished to the IRS in a timely manner.

FOREIGN ACCOUNT TAX COMPLIANCE ACT

A U.S. federal withholding tax of 30% may apply to dividends and the gross proceeds of a disposition of our common stock paid to a foreign financial institution (as specifically defined by the applicable rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). This U.S. federal withholding tax of 30% will also apply to dividends and the gross proceeds of a disposition of our common stock paid to a non-financial foreign entity unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding direct and indirect U.S. owners of the entity. The 30% federal withholding tax described in this paragraph cannot be reduced under an income tax treaty with the United States or by providing an IRS Form W-8BEN or similar documentation. The withholding tax described above will not apply if the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from the rules. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. Holders should consult with their own tax advisors regarding the possible implications of the withholding described herein.

The withholding provisions described above generally apply to proceeds from a sale or other disposition of common stock if such sale or other disposition occurs on or after January 1, 2019 and to payments of dividends on our common stock.

THE PRECEDING DISCUSSION OF U.S. FEDERAL TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE TO ANY NON-U.S. HOLDER IN ITS PARTICULAR CIRCUMSTANCES. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

Underwriting

We are offering the shares of our common stock described in this prospectus through the underwriters named below. UBS Securities LLC, Canaccord Genuity Inc. and Stifel, Nicolaus & Company, Incorporated are acting as joint book-running managers of this offering and as representatives of the underwriters. We have entered into an underwriting agreement with the representatives. Subject to the terms and conditions of the underwriting agreement, each of the underwriters has severally agreed to purchase, and we have agreed to sell to the underwriters, the number of shares of common stock listed next to its name in the following table.

Underwriters	Number of shares
UBS Securities LLC	
Canaccord Genuity Inc.	
Stifel, Nicolaus & Company, Incorporated	
BTIG, LLC	
Total	

The underwriting agreement provides that the underwriters must buy all of the shares of common stock if they buy any of them. However, the underwriters are not required to pay for the shares covered by the underwriters’ option to purchase additional shares as described below.

Our common stock is offered subject to a number of conditions, including:

- Ø receipt and acceptance of our common stock by the underwriters; and
- Ø the underwriters’ right to reject orders in whole or in part.

We have been advised by the representatives that the underwriters intend to make a market in our common stock but that they are not obligated to do so and may discontinue making a market at any time without notice.

In connection with this offering, certain of the underwriters or securities dealers may distribute prospectuses electronically.

OPTION TO PURCHASE ADDITIONAL SHARES

We have granted the underwriters an option to buy up to an aggregate of _____ additional shares of our common stock. The underwriters have 30 days from the date of this prospectus to exercise this option. If the underwriters exercise this option, they will each purchase additional shares of common stock approximately in proportion to the amounts specified in the table above.

UNDERWRITING DISCOUNT

Shares sold by the underwriters to the public will initially be offered at the initial offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$ _____ per share from the initial public offering price. Sales of shares made outside of the United States may be made by affiliates of the underwriters. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling

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terms. Upon execution of the underwriting agreement, the underwriters will be obligated to purchase the shares at the prices and upon the terms stated therein.

The following table shows the per share and total underwriting discount we will pay to the underwriters assuming both no exercise and full exercise of the underwriters’ option to purchase up to additional shares.

	No exercise	Full exercise
Per share	\$	\$
Total	\$	\$

We estimate that the total expenses of the offering payable by us, not including the underwriting discount, will be approximately \$ million. We have also agreed to reimburse the underwriters for certain of their expenses, including in connection with the clearance of this offering with the Financial Industry Regulatory Authority, Inc., in an amount up to .

DIRECTED SHARE PROGRAM

At our request, the underwriters have reserved up to 5% of the common stock being offered by this prospectus for sale at the initial public offering price to our directors, officers, employees and other individuals associated with us and members of their families. The sales will be made by UBS Financial Services Inc., a selected dealer affiliated with UBS Securities LLC, an underwriter of this offering, through a directed share program. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of common stock. Any shares sold in the directed share program to our directors or executive officers will be subject to the lock-up agreements described in “— No sales of similar securities” below.

NO SALES OF SIMILAR SECURITIES

We, our executive officers and directors, and the holders of more than 95% of our capital stock have entered into lock-up agreements with the underwriters. Under the lock-up agreements, subject to certain exceptions, we and each of these persons may not, without the prior written approval of UBS Securities LLC, Canaccord Genuity Inc. and Stifel, Nicolaus & Company, Incorporated, offer, sell, contract to sell, pledge, or otherwise dispose of, directly or indirectly, or hedge our common stock or securities convertible into or exchangeable or exercisable for our common stock. These restrictions will be in effect for a period ending on and including the date that is 180 days after the date of this prospectus.

UBS Securities LLC, Canaccord Genuity Inc. and Stifel, Nicolaus & Company, Incorporated may, at any time and in their sole discretion, release some or all the securities from these lock-up agreements. If the restrictions under the lock-up agreements are waived, shares of our common stock may become available for resale into the market, subject to applicable law, which could reduce the market price of our common stock.

INDEMNIFICATION

We have agreed to indemnify the several underwriters against certain liabilities, including certain liabilities under the Securities Act. If we are unable to provide this indemnification, we have agreed to contribute to payments the underwriters may be required to make in respect of those liabilities.

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EXCHANGE LISTING

We have applied to list our common stock on The NASDAQ Global Market under the symbol “OBLN.”

PRICE STABILIZATION, SHORT POSITIONS

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our common stock during and after this offering, including:

- Ø stabilizing transactions;
- Ø short sales;
- Ø purchases to cover positions created by short sales;
- Ø imposition of penalty bids; and
- Ø syndicate covering transactions.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of our common stock while this offering is in progress. Stabilization transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. These transactions may also include making short sales of our common stock, which involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering and purchasing shares of common stock on the open market to cover short positions created by short sales. Short sales may be “covered short sales,” which are short positions in an amount not greater than the underwriters’ option to purchase additional shares referred to above, or may be “naked short sales,” which are short positions in excess of that amount.

The underwriters may close out any covered short position by either exercising their option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Naked short sales are short sales made in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchased in this offering.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

These stabilizing transactions, short sales, purchases to cover positions created by short sales, the imposition of penalty bids and syndicate covering transactions may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result of these activities, the price of our common stock may be higher than the price that otherwise might exist in the open market. The underwriters may carry out these transactions on _____, in the over-the-counter market or otherwise. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on _____.

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the price of the shares. Neither we, nor any of the underwriters make any representation that the underwriters will engage in these stabilization transactions or that any transaction, once commenced, will not be discontinued without notice.

DETERMINATION OF OFFERING PRICE

Prior to this offering, there was no public market for our common stock. The initial public offering price will be determined by negotiation among us and the representatives of the underwriters. The principal factors to be considered in determining the initial public offering price include:

- Ø the information set forth in this prospectus and otherwise available to the representatives;
- Ø our history and prospects and the history and prospects for the industry in which we compete;
- Ø our past and present financial performance;
- Ø our prospects for future earnings and the present state of our development;
- Ø the general condition of the securities market at the time of this offering;
- Ø the recent market prices of, and demand for, publicly traded common stock of generally comparable companies; and
- Ø other factors deemed relevant by the underwriters and us.

The estimated public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors. Neither we nor the underwriters can assure investors that an active trading market will develop for our common stock or that the common stock will trade in the public market at or above the initial public offering price.

AFFILIATIONS

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriters and their affiliates may from time to time in the future engage with us and perform services for us or in the ordinary course of their business for which they will receive customary fees and expenses. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of us. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of these securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in these securities and instruments.

ELECTRONIC DISTRIBUTION

A prospectus in electronic format may be made available on the Internet sites or through other online services maintained by one or more of the underwriters participating in this offering, or by their affiliates. In those cases, prospective investors may view offering terms online and, depending upon the particular underwriter, prospective investors may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of shares for sale to online brokerage account holders.

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Any such allocation for online distributions will be made by the underwriters on the same basis as other allocations. Other than the prospectus in electronic format, the information on any underwriter's website and any information contained in any other website maintained by an underwriter is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or any underwriter in its capacity as underwriter and should not be relied upon by investors.

NOTICE TO PROSPECTIVE INVESTORS

European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State") an offer to the public of any shares of common stock which are the subject of the offering contemplated by this prospectus, or Shares, may not be made in that Relevant Member State except that an offer to the public in that Relevant Member State of any Shares may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

- (a) to any legal entity which is a qualified investor as defined under the Prospectus Directive;
- (b) by the underwriters to fewer than 100, or, if the Relevant Member State has implemented the relevant provisions of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the representatives of the underwriters for any such offer; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of Shares shall result in a requirement us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer to the public" in relation to any Shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any Shares to be offered so as to enable an investor to decide to purchase any Shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State. The expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in each Relevant Member State and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

The EEA selling restriction is in addition to any other selling restrictions set out in this prospectus.

United Kingdom

This prospectus is only being distributed to and is only directed at: (1) persons who are outside the United Kingdom; (2) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, or the Order; or (3) high net worth companies, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order, or all such persons falling within (1)-(3) together being referred to as relevant persons. The shares are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such shares will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this prospectus or any of its contents.

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Canada

The securities may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 Underwriting Conflicts, or NI 33-105, the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Australia

This prospectus is not a formal disclosure document and has not been, nor will be, lodged with the Australian Securities and Investments Commission. It does not purport to contain all information that an investor or their professional advisers would expect to find in a prospectus or other disclosure document (as defined in the Corporations Act 2001 (Australia)) for the purposes of Part 6D.2 of the Corporations Act 2001 (Australia) or in a product disclosure statement for the purposes of Part 7.9 of the Corporations Act 2001 (Australia), in either case, in relation to the securities.

The securities are not being offered in Australia to "retail clients" as defined in sections 761G and 761GA of the Corporations Act 2001 (Australia). This offering is being made in Australia solely to "wholesale clients" for the purposes of section 761G of the Corporations Act 2001 (Australia) and, as such, no prospectus, product disclosure statement or other disclosure document in relation to the securities has been, or will be, prepared.

This prospectus does not constitute an offer in Australia other than to persons who do not require disclosure under Part 6D.2 of the Corporations Act 2001 (Australia) and who are wholesale clients for the purposes of section 761G of the Corporations Act 2001 (Australia). By submitting an application for our securities, you represent and warrant to us that you are a person who does not require disclosure under Part 6D.2 and who is a wholesale client for the purposes of section 761G of the Corporations Act 2001 (Australia). If any recipient of this prospectus is not a wholesale client, no offer of, or invitation to apply for, our securities shall be deemed to be made to such recipient and no applications for our securities will be accepted from such recipient. Any offer to a recipient in Australia, and any agreement arising from acceptance of such offer, is personal and may only be accepted by the recipient. In addition, by applying for our securities you undertake to us that, for a period of 12 months from the date of issue of the securities, you will not transfer any interest in the securities to any person in Australia other than to a person who does not require disclosure under Part 6D.2 and who is a wholesale client.

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Hong Kong

The contents of this prospectus have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this prospectus, you should obtain independent professional advice. Please note that (i) our securities may not be offered or sold in Hong Kong, by means of this prospectus or any document other than to “professional investors” within the meaning of Part I of Schedule 1 of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) (SFO) and any rules made thereunder, or in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong) (CO) or which do not constitute an offer or invitation to the public for the purpose of the CO or the SFO, and (ii) no advertisement, invitation or document relating to our securities may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere) which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the securities which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the SFO and any rules made thereunder.

Japan

Our securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and our securities will not be offered or sold, directly or indirectly, in Japan, or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan, or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of our securities may not be circulated or distributed, nor may our securities be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (SFA), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where our securities are subscribed or purchased under Section 275 by a relevant person which is:

- (a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor, securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries’

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rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired our securities pursuant to an offer made under Section 275 except:

- (1) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;
- (2) where no consideration is or will be given for the transfer;
- (3) where the transfer is by operation of law; or
- (4) as specified in Section 276(7) of the SFA.

Switzerland

This Prospectus does not constitute an issue prospectus pursuant to Article 652a or Article 1156 of the Swiss Code of Obligations (CO) and the shares will not be listed on the SIX Swiss Exchange. Therefore, the Prospectus may not comply with the disclosure standards of the CO and/or the listing rules (including any prospectus schemes) of the SIX Swiss Exchange. Accordingly, the shares may not be offered to the public in or from Switzerland, but only to a selected and limited circle of investors, which do not subscribe to the shares with a view to distribution.

Greece

The securities have not been approved by the Hellenic Capital Markets Commission for distribution and marketing in Greece. This document and the information contained therein do not and shall not be deemed to constitute an invitation to the public in Greece to purchase the securities. The securities may not be advertised, distributed, offered or in any way sold in Greece except as permitted by Greek law.

Dubai International Finance Centre

This prospectus relates to an Exempt Offer in accordance with the Markets Rules of the Dubai Financial Services Authority. This prospectus is intended for distribution only to Professional Clients who are not natural persons. It must not be delivered to, or relied on by, any other person. The Dubai Financial Services Authority has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The Dubai Financial Services Authority has not approved this document nor taken steps to verify the information set out in it, and has no responsibility for it. The securities to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this document you should consult an authorized financial adviser.

Legal matters

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Fenwick & West LLP, San Francisco, California. Certain legal matters relating to the offering will be passed upon for the underwriters by Latham & Watkins LLP, Costa Mesa, California.

Experts

The consolidated financial statements of Obalon Therapeutics, Inc. as of December 31, 2014 and 2015, and for each of the years in the two-year period ended December 31, 2015, have been included herein and in the registration statement in reliance upon the report of KPMG LLP, an independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

Change in accountants

In October 2015, we retained KPMG LLP as our independent registered public accounting firm. Our independent auditing firm was previously Ernst & Young LLP. The decision to dismiss Ernst & Young LLP and appoint KPMG LLP was approved by our board of directors, effective as of August 4, 2015. Subsequent to KPMG LLP's appointment, we engaged KPMG LLP to reaudit our consolidated financial statements as of and for the year ended December 31, 2014, which had previously been audited by Ernst & Young LLP.

The reports of Ernst & Young LLP on our consolidated financial statements did not contain any adverse opinion or disclaimer of opinion, nor were such reports qualified or modified as to uncertainty, audit scope or accounting principles. We had no disagreements with Ernst & Young LLP on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to its satisfaction, would have caused Ernst & Young LLP to make reference in connection with its opinion to the subject matter of the disagreement during its audit of the two years ended December 31, 2014. During the two most recent fiscal years preceding our discharge of Ernst & Young LLP, and the subsequent interim period through August 4, 2015, there were no "reportable events" as such term is defined in Item 304(a)(1)(v) of Regulation S-K.

During the two years ended December 31, 2014 and through the period ended August 4, 2015, we did not consult with KPMG LLP on matters that involved the application of accounting principles to a specified transaction, either completed or proposed, the type of audit opinion that might be rendered on our financial statements or any other matter that was the subject of a disagreement as that term is used in Item 304 (a)(1)(iv) of Regulation S-K and the related instructions to Item 304 of Regulation S-K or a reportable event as that term is used in Item 304(a)(1)(v) and the related instructions to Item 304 of Regulation S-K.

We have provided Ernst & Young LLP with a copy of the foregoing disclosure and have requested that Ernst & Young LLP furnish us with a letter addressed to the SEC stating whether or not Ernst & Young LLP agrees with the above statements and, if not, stating the respects in which it does not agree. A copy of the letter dated August 4, 2016, furnished by Ernst & Young LLP in response to that request, is filed as an exhibit to the registration statement of which this prospectus is a part.

Additional information

We have filed with the Securities and Exchange Commission, or the SEC, a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits filed therewith. For further information about us and the common stock offered hereby, reference is made to the registration statement and the exhibits filed therewith. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and in each instance we refer you to the copy of such contract or other document filed as an exhibit to the registration statement. A copy of the registration statement and the exhibits filed therewith may be inspected without charge at the public reference room maintained by the SEC, located at 100 F Street, NE, Washington, DC 20549, and copies of all or any part of the registration statement may be obtained from that office. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC also maintains a website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the website is www.sec.gov.

We currently do not file periodic reports with the SEC. Upon the closing of our initial public offering, we will be required to file periodic reports, proxy statements and other information with the SEC pursuant to the Exchange Act. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference facilities and the website of the SEC referred to above.

We also maintain a website at www.obalon.com. Upon completion of this offering, you may access these materials at our website free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Information contained on our website is not a part of this prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

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Report of Independent Registered Public Accounting Firm

The Board of Directors
Obalon Therapeutics, Inc.:

We have audited the accompanying consolidated balance sheets of Obalon Therapeutics, Inc. and subsidiaries as of December 31, 2014 and 2015, and the related consolidated statements of operations and comprehensive loss, convertible preferred stock and stockholders' deficit, and cash flows for each of the years in the two-year period ended December 31, 2015. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Obalon Therapeutics, Inc. and subsidiaries as of December 31, 2014 and 2015, and the results of their operations and their cash flows for each of the years in the two-year period ended December 31, 2015, in conformity with U.S. generally accepted accounting principles.

/s/ KPMG LLP

San Diego, California
May 4, 2016

OBALON THERAPEUTICS, INC.
CONSOLIDATED BALANCE SHEETS

(in thousands, except shares and par value data)

	December 31,	
	2014	2015
Assets		
Current assets:		
Cash and cash equivalents	\$ 6,902	\$ 3,356
Short-term investments	12,342	9,175
Accounts receivable, net	99	—
Accounts receivable, related party	155	636
Inventory	445	363
Other current assets	293	273
Total current assets	20,236	13,803
Property and equipment, net	483	418
Total assets	\$ 20,719	\$ 14,221
Liabilities, Convertible Preferred Stock and Stockholders' Deficit		
Current liabilities:		
Accounts payable and accrued expenses	\$ 181	\$ 549
Accrued compensation	239	1,250
Accrued clinical expenses	15	913
Other current liabilities	381	493
Customer deposit from related party	—	1,283
Current portion of long-term loan	—	747
Warrant liability	56	332
Total current liabilities	872	5,567
Long-term loan, excluding current portion	4,877	9,094
Total liabilities	5,749	14,661

Commitments and contingencies (See Note 10)

Convertible preferred stock		
Series A convertible preferred stock, \$0.001 par value; 2,333,332 shares authorized, 2,333,332 shares issued and outstanding at December 31, 2014 and 2015, respectively; liquidation preference of \$7,000	6,773	6,773
Series B convertible preferred stock, \$0.001 par value; 4,333,332 shares authorized, 4,333,332 shares issued and outstanding at December 31, 2014 and 2015, respectively; liquidation preference of \$6,500	6,454	6,454
Series C convertible preferred stock, \$0.001 par value; 7,809,939 shares authorized, 7,738,752 shares issued and outstanding at December 31, 2014 and 2015, respectively; liquidation preference of \$16,523	16,393	16,393
Series C-1 convertible preferred stock, \$0.001 par value; 2,783,334 shares authorized, 1,392,832 shares issued and outstanding at December 31, 2014 and 2015, respectively; liquidation preference of \$5,000	4,984	4,984
Series D convertible preferred stock, \$0.001 par value; 11,546,013 shares authorized, 7,924,414 shares issued and outstanding at December 31, 2014 and 2015, respectively; liquidation preference of \$41,180	20,222	20,095
	54,826	54,699

OBALON THERAPEUTICS, INC.

	December 31,	
	2014	2015
Stockholders' deficit:		
Common stock, par value \$0.001; 35,000,000 shares authorized, 1,547,123 and 1,667,899 shares issued and outstanding at December 31, 2014 and 2015, respectively	2	2
Additional paid-in capital	732	1,001
Other comprehensive (loss) income	(5)	—
Accumulated deficit	(40,585)	(56,142)
Total stockholders' deficit	(39,856)	(55,139)
Total liabilities, convertible preferred stock and stockholders' deficit	<u>\$ 20,719</u>	<u>\$ 14,221</u>

See accompanying notes to consolidated financial statements.

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OBALON THERAPEUTICS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

(in thousands, except shares and per share data)

	Year ended December 31,	
	2014	2015
Revenue:		
Revenue	\$ 1,683	\$ 216
Revenue, related party	1,856	3,823
Total revenue	3,539	4,039
Cost of revenue	2,912	2,503
Gross profit	627	1,536
Operating expenses:		
Research and development	5,767	12,978
Selling, general and administrative	4,700	3,491
Total operating expenses	10,467	16,469
Loss from operations	(9,840)	(14,933)
Interest expense, net	(220)	(549)
Gain (loss) from change in fair value of warrant liability	167	(34)
Other income (expense), net	3	(41)
Net loss	(9,890)	(15,557)
Other comprehensive income	9	5
Net loss and comprehensive loss	\$ (9,881)	\$ (15,552)
Net loss per share, basic and diluted	\$ (6.42)	\$ (9.36)
Weighted-average common shares outstanding, basic and diluted	1,541,166	1,662,255
Pro forma net loss per share, basic and diluted (unaudited)		\$
Pro forma weighted-average common shares outstanding, basic and diluted (unaudited)		

See accompanying notes to consolidated financial statements.

OBALON THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
Years ended December 31, 2014 and 2015

(in thousands, except shares and per share data)

	Series A convertible preferred stock		Series B convertible preferred stock		Series C convertible preferred stock		Series C-1 convertible preferred stock		Series D convertible preferred stock		Common stock		Additional paid-in capital	Accumulated other comprehensive (loss) income	Accumulated deficit	Total stockholders' deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount				
Balance at December 31, 2013	2,333,332	\$ 6,773	4,333,332	\$ 6,454	7,738,752	\$ 16,393	1,392,832	\$ 4,984	—	\$ —	1,534,694	\$ 2	\$ 539	\$ (14)	\$ (30,695)	\$ (30,168)
Issuance of common stock for cash	—	—	—	—	—	—	—	—	—	—	12,429	—	8	—	—	8
Issuance of preferred stock at \$2.5983 per share, net of issuance costs of \$368	—	—	—	—	—	—	—	—	7,924,414	20,222	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	185	—	—	185
Foreign currency translation adjustment and other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	—	—	9	—	9
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(9,890)	(9,890)
Balance at December 31, 2014	2,333,332	\$ 6,773	4,333,332	\$ 6,454	7,738,752	\$ 16,393	1,392,832	\$ 4,984	7,924,414	\$ 20,222	1,547,123	\$ 2	\$ 732	\$ (5)	\$ (40,585)	\$ (39,856)
Issuance of common stock for cash	—	—	—	—	—	—	—	—	—	—	120,776	—	62	—	—	62
Issuance of warrants in connection with preferred stock financing	—	—	—	—	—	—	—	—	—	(127)	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	207	—	—	207
Foreign currency translation adjustment and other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	—	—	5	—	5
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(15,557)	(15,557)
Balance at December 31, 2015	2,333,332	\$ 6,773	4,333,332	\$ 6,454	7,738,752	\$ 16,393	1,392,832	\$ 4,984	7,924,414	\$ 20,095	1,667,899	\$ 2	\$ 1,001	\$ —	\$ (56,142)	\$ (55,139)

See accompanying notes to consolidated financial statements.

OBALON THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Year ended December 31,	
	2014	2015
Operating activities:		
Net loss	\$ (9,890)	\$ (15,557)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	166	167
Stock-based compensation	185	207
Loss on disposal of fixed assets	5	19
Change in fair value of warrant liability	(167)	34
Amortization (accretion) of investment premium (discount), net	64	260
Amortization of debt discount	41	79
Change in operating assets and liabilities:		
Accounts receivable, net	83	96
Accounts receivable from related party	4	(481)
Inventory	(166)	77
Other current assets	(109)	27
Accounts payable and accrued expenses	(33)	370
Accrued compensation	33	1,018
Accrued clinical expenses	(129)	898
Other current liabilities	6	111
Customer deposit from related party	—	1,283
Net cash used in operating activities	(9,907)	(11,392)
Investing activities:		
Purchases of short-term investments	(12,400)	(18,590)
Maturities of short-term investments	4,250	21,500
Sales of short-term investments	500	—
Purchase of property and equipment	(268)	(139)
Proceeds from disposal of property and equipment	—	6
Net cash (used in) provided by investing activities	(7,918)	2,777
Financing activities:		
Issuance of preferred stock for cash, net of offering costs	13,622	—
Issuance of preferred stock to related party for cash	6,600	—
Proceeds from long-term loan, net of issuance costs	4,958	5,000
Repayments on long-term loan	(3,000)	—
Sale of common stock	8	62
Net cash provided by financing activities	22,188	5,062
Effect of exchange rate changes on cash and cash equivalents	12	7
Net increase (decrease) in cash and cash equivalents	4,375	(3,546)
Cash and cash equivalents at beginning of period	2,527	6,902
Cash and cash equivalents at end of period	\$ 6,902	\$ 3,356
Supplemental cash flow information:		
Interest paid	\$ 164	\$ 475
Income taxes paid	\$ 1	\$ 2

See accompanying notes to consolidated financial statements.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Basis of Presentation

Obalon Therapeutics, Inc., or the Company, was incorporated in the state of Delaware on January 2, 2008. The Company is a commercial-stage medical device company focused on developing and commercializing innovative medical devices to treat obese and overweight people by facilitating weight loss. Using its patented technology, the Company has developed the Obalon balloon system, the first swallowable, gas-filled intragastric balloon designed to provide progressive and sustained weight loss in obese and overweight patients.

The consolidated financial statements include the accounts of Obalon Therapeutics, Inc., and its wholly owned subsidiaries, Obalon Italy SRL and Obalon Therapeutics, LLC. Obalon Therapeutics, LLC is a shell Company, which owns 99% of Obalon Mexico DE RL CV. All intercompany balances and transactions have been eliminated in consolidation.

The accompanying consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The Company's principal operations are located in Carlsbad, California and it operates in one business segment. The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern.

As of December 31, 2015, the Company has devoted a substantial portion of its efforts to product development, raising capital, and building infrastructure. The Company has incurred operating losses and has experienced negative cash flows from operations since its inception. In July 2012, the Company realized initial revenue from its planned principal operations. The Company recognized revenue, including revenue from related parties, of \$3.5 million and \$4.0 million for the years ended December 31, 2014 and 2015, respectively. Prior to 2014, the Company was considered to be in the development stage. However, the Company has not yet established an ongoing source of revenue sufficient to cover its operating costs and has funded its activities to date almost exclusively from debt and equity financings. As of December 31, 2015, the Company had not yet obtained U.S. Food and Drug Administration, or FDA, approval to sell its products in the United States. All sales are to customers outside of the United States, mainly in the Middle East.

As reflected in the accompanying consolidated financial statements, the Company has a limited operating history and the sales and income potential of the Company's business are unproven. The Company has experienced net losses since its inception and, as of December 31, 2015, had an accumulated deficit of \$56.1 million. Based on the Company's current plan of expenditures for its research and development, clinical trial, and other operating costs, the Company expects to continue to incur net losses for the foreseeable future. Over that period, the Company may need to raise additional debt or equity financing to fund its operations. If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, suspend or curtail planned programs, and/or cease operations. Any of these actions could materially harm the Company's business, results of operations, financial condition, and future prospects. The Company believes that cash and short-term investments, including the additional amounts raised as described in note 12 are sufficient to satisfy the Company's operations for at least the next twelve months.

Reverse Stock Split

In February 2014, the board of directors of the Company approved a three for one reverse stock split of the Company's common and preferred stock. All share and per share information included in the

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

accompanying consolidated financial statements and notes to the consolidated financial statements give retroactive effect to this reverse stock split for the Company's common and preferred stock.

2. Summary of Significant Accounting Policies*Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant items subject to such estimates and assumptions include the warrant liability, stock-based compensation, and income tax uncertainties.

Cash and Cash Equivalents

The Company considers all highly liquid investments with original maturities of three months or less at the date of purchase to be cash equivalents. Cash and cash equivalents include cash in readily available checking and money market accounts.

Foreign Currency

The functional currency of a foreign operation is considered to be the local country's currency. Consequently, assets and liabilities of operations outside the United States are translated into U.S. dollars, and the effects of foreign currency translation adjustments are included as a component of accumulated other comprehensive loss.

Short-Term Investments

The Company classifies its investments as available-for-sale and records such assets at estimated fair value on the balance sheet, with unrealized gains and losses, if any, reported as a component of other comprehensive loss within the consolidated statements of operations and comprehensive loss. All of the Company's short-term investments are U.S. Treasury notes with maturities of less than one year. For the years ended December 31, 2014 and 2015, unrealized losses were immaterial amounts, respectively. Realized gains and losses would be calculated on the specific-identification method and recorded as interest income. There have been no material realized gains and losses for the years ended December 31, 2014 and 2015. The Company periodically reviews available-for-sale securities for other-than-temporary declines in fair value below the cost basis whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable.

Fair Value Measurements

The carrying values of the Company's financial instruments, including cash and cash equivalents, accounts receivable, accounts receivable from related party, accounts payable, and accrued expenses approximate their fair values due to the short maturity of these instruments. The carrying value of the term loan approximates its fair value as the interest rate and other terms are that which is currently available to the Company.

The Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible. The Company determines fair value based on

OBALON THERAPEUTICS, INC.**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels in accordance with authoritative accounting guidance:

- Ø Level 1 inputs: Observable inputs such as unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date.
- Ø Level 2 inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Ø Level 3 inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

Accounts Receivable

Receivables are unsecured and are carried at net realizable value including an allowance for estimated uncollectible amounts. Trade credit is generally extended on a short-term basis; thus trade receivables do not bear interest, although a finance charge may be applied to such receivables that are more than 30 days past due. The allowance for doubtful accounts is based on the Company's assessment of the collectability of customer accounts. The Company regularly reviews the allowance by considering factors such as historical expense, credit quality, the age of the account receivable balances, and current economic conditions that may affect a customer's ability to pay. Amounts determined to be uncollectible are charged or written off against the reserve. The Company's allowance for doubtful accounts was \$0.1 million and \$0 at December 31, 2014 and 2015, respectively.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash equivalents and trade accounts receivable, which are generally not collateralized. The Company limits its exposure to credit loss by placing its cash equivalents with high credit quality financial institutions and investing in high quality short-term debt instruments. The Company's customers consist of distributors. The Company establishes customer credit policies related to its accounts receivable based on historical collection experiences within the various markets in which the Company operates, historical past-due amounts, and any specific information that the Company becomes aware of such as bankruptcy or liquidity issues of customers.

The following table summarizes certain financial data for the customers who accounted for 10.0% or more of sales and accounts receivable.

	Year ended December 31,	
	2014	2015
Single largest customer:		
Revenue, related party	52.4%	94.7%
Accounts receivable, related party	61.0%	100.0%
Second largest customer:		
Revenue	10.0%	N/A
Accounts receivable	2.6%	N/A

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)***Inventory***

Inventory is stated at the lower of cost (which approximates actual cost on a first-in, first-out basis) or net realizable value, computed on a standard cost basis. Inventory that is obsolete or is in excess of forecasted usage is written down to its estimated net realizable value based on assumptions about future demand. Inventory write-downs are charged to cost of revenue and establish a new cost basis for the inventory.

Property and Equipment

Property and equipment are stated at cost and depreciated over the estimated useful lives of the assets. Maintenance and repairs are charged to expense as incurred. Assets not yet placed in use are not depreciated.

The useful lives of the property and equipment are as follows:

Computer hardware	3 years
Computer software	Shorter of 3 years or life of software
Furniture and fixtures	5 years
Scientific equipment	5 years
Leasehold improvements	Shorter of lease term or useful life

Impairment of Long-Lived Assets

The Company evaluates property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the carrying amount to the future undiscounted net cash flows, which the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured as the difference between the carrying amount and the fair value of the impaired asset. The Company did not recognize any material impairment losses for the respective years ended December 31, 2014 and 2015.

Research and Development Costs

All research and development costs are charged to expense as incurred. Research and development expenses primarily include (i) payroll and related costs associated with research and development performed, (ii) costs related to clinical and preclinical testing of our technologies under development, and (iii) other research and development expenses.

Clinical Trial Expenses

The Company enters into contracts with third party hospitals and doctors to perform clinical trial activities. The Company accrues expenses for clinical trial activities performed by third parties based on estimates of work performed by each third party as of the balance sheet date. The Company's clinical trial expense is primarily driven by patient visits to the third party hospitals and doctors. As such, the Company uses the estimated patient visits based on third-party reporting and the contractually agreed upon cost for each visit to calculate its clinical accrual.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)***Stock-Based Compensation***

Stock-based awards issued to employees and directors, including stock options, are recorded at fair value as of the grant date using the Black-Scholes option pricing model and recognized as expense on a straight-line basis over the employee's or director's requisite service period (generally the vesting period). Because non-cash stock compensation expense is based on awards ultimately expected to vest, it is reduced by an estimate for future forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from estimates.

Stock-based awards and stock options issued to nonemployee consultants are recorded at fair value and remeasured at the end of each period as they vest using the Black-Scholes option pricing model. Expense is recognized over the vesting period, which is generally the same as the service period.

Income Taxes

Income taxes are accounted for under the asset-and-liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

The Company accounts for interest and penalties related to income tax matters, if any, as a component of income tax expense or benefit.

Revenue Recognition

Revenue relates to sales of components of the Obalon balloon system, which includes the balloon and accessory kit, EzFill inflation system, pre-filled can of gas and placebo capsule.

The Company recognizes revenue when (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred, (iii) the selling price is fixed or determinable and (iv) collectability is reasonably assured. Determination of criteria (iii) and (iv) are based on management's judgments regarding the fixed nature of the selling prices of the products delivered and the collectability of those amounts. The Company does not provide for rights of return to customers on product sales, with the exception of products that fail to conform to the Company's specifications. As these non-conforming returns have historically been immaterial, the Company does not record a provision for returns. The Company does not have any post shipment obligations or acceptance provisions within its customer contracts. The Company occasionally offers discounts off its standard prices to non-distributor customers, which are agreed upon and known at the time of sale. In these cases, revenue is recognized net of these discounts. Shipping charges billed to customers are included in product revenue and the related shipping costs are included in cost of revenue.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)***Product Warranty***

The Company warrants its products to be of good quality and free from defects in design, materials, or workmanship for approximately one year from the date of purchase. The Company accrues for the estimated future costs of repair or replacement upon shipment. The warranty accrual is recorded to cost of revenue and is based on historical and forecasted trends in the volume of product failures during the warranty period and the cost to repair or replace the equipment.

It is possible that the Company's underlying assumptions will not reflect the actual experience and in that case, future adjustments will be made to the recorded warranty obligation. The warranty accrual as of December 31, 2014 and 2015 was immaterial and was included in other current liabilities.

Advertising Costs

Advertising costs are expensed as incurred and included in selling, general and administrative expense. Advertising costs for the years ended December 31, 2014 and 2015 were approximately \$0.3 million for both periods.

Preferred Stock Warrants

The fair value of preferred stock warrants issued in conjunction with debt issuances is initially recorded as a warrant liability and debt discount. The fair value of preferred stock warrants issued in conjunction with equity financing is initially recorded as a warrant liability and reduction of the proceeds received. The fair value of the warrants is estimated using the Black-Scholes option pricing model based on the estimated fair value of the preferred stock at the valuation date, the remaining contractual term of the warrant, risk-free interest rates, and expected dividends and expected volatility of the price of the underlying preferred stock. The warrant liability is remeasured each reporting period with changes in fair value being recognized in the consolidated statements of operations and comprehensive loss. The debt discount associated with the initial warrant fair value is being amortized to interest expense using the effective-interest method in the Company's consolidated statements of operations and comprehensive loss over the term of the debt.

Net Loss per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period without consideration for common stock equivalents. Diluted net loss per share is the same as basic net loss per common share, since the effects of potentially dilutive securities are anti-dilutive.

Dilutive common stock equivalents are comprised of convertible preferred stock, warrants and unexercised stock options outstanding under the Company's equity plan.

(Unaudited) Pro Forma Net Loss per Share

Pro forma basic and diluted net loss per share has been computed to give effect to: (i) the assumed conversion of the shares of convertible preferred stock into common stock; (ii) the automatic net exercise of certain outstanding warrants to purchase shares of preferred stock; and (iii) the automatic conversion of certain outstanding warrants to purchase shares of preferred stock into warrants to purchase shares of common stock as if such conversions had occurred at the beginning of the period. The pro forma net loss does not include the shares expected to be sold and related proceeds to be received from an initial public offering, or IPO.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)***Recent Accounting Pronouncements***

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board, or FASB, or other standard setting bodies that are adopted by the Company as of the specified effective date. Unless otherwise discussed, the Company believes that the impact of recently issued standards that are not yet effective will not have a material impact on its financial position or results of operations upon adoption.

In May 2014, the FASB issued Accounting Standard Update, or ASU, 2014-09, *Revenue from Contracts with Customers*. ASU 2014-09 outlines a comprehensive revenue recognition model and supersedes most current revenue recognition guidance. ASU 2014-09 is effective for annual reporting periods, and interim periods within those periods, beginning after December 15, 2016. Entities are able to use one of three prescribed transition methods. In August 2015, the FASB issued ASU 2015-14 to defer the effective date of ASU 2014-09 by one year and allow early adoption for all entities but not before the original public entity effective date. The Company has not yet selected a transition method as the Company is currently evaluating the impact of the amended revenue recognition guidance on its consolidated financial statements.

In August 2014, the FASB issued ASU 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*. ASU 2014-15 requires management to evaluate relevant conditions, events and certain management plans that are known or reasonably knowable that when, considered in the aggregate, raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued, for both annual and interim periods. ASU 2014-15 also requires certain disclosures around management's plans and evaluation, as well as the plans, if any, that are intended to mitigate those conditions or events that will alleviate the substantial doubt. ASU 2014-15 is effective for fiscal years ending after December 15, 2016. The Company does not anticipate that the adoption of ASU 2014-15 will have a material impact on its consolidated financial statements.

In April 2015, FASB issued ASU 2015-03, *Interest—Imputation of Interest*. This simplifies the presentation of debt issuance costs by requiring them to be presented in the balance sheet as a direct deduction from the carrying amount of the debt liability. ASU 2015-03 is effective for financial statements issued for fiscal years beginning after December 15, 2015. The Company had previously presented debt issuance costs as a direct deduction from the carrying amount of its debt liabilities. As such, the Company has early adopted the provisions of ASU 2015-03 for the years ended December 31, 2014 and 2015.

In July 2015, FASB issued ASU 2015-11, *Simplifying the Measurement of Inventory*. This update applies to companies that measure inventory on a first in, first out (FIFO) or average cost basis. Under this update, companies are to measure their inventory at the lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion. The amendments in this update are effective for fiscal years beginning after December 31, 2016 with earlier application permitted as of the beginning of an interim or annual reporting period. The Company does not expect that the adoption of this guidance will have a significant impact on the Company's financial statements.

In November 2015, the FASB issued ASU 2015-17, *Balance Sheet Classification of Deferred Taxes*, an update to Accounting Standards Codification (ASC) 740, *Income Taxes*. Current GAAP requires an entity to separate deferred income tax liabilities and assets into current and noncurrent amounts in a

OBALON THERAPEUTICS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

classified statement of financial position. To simplify the presentation of deferred income taxes, the amendments in this update require that deferred tax liabilities and assets be classified as noncurrent in a classified statement of financial position. The current requirement that deferred tax liabilities and assets of a tax-paying component of an entity be offset and presented as a single amount is not affected by the amendments in this update.

For nonpublic business entities, the amendments in this update are effective for financial statements issued for annual periods beginning after December 15, 2017, and interim periods within those annual periods. The FASB also decided to permit earlier application by all entities as of the beginning of any interim or annual reporting period. The FASB further provides that this update may be applied to all deferred tax liabilities and assets prospectively. The Company adopted this update prospectively beginning in the year ended December 31, 2015. No prior periods were retrospectively adjusted.

3. Fair Value Measurements
Instruments Recorded at Fair Value on a Recurring Basis

The Company has segregated all financial assets and liabilities that are measured at fair value on a recurring basis (at least annually) into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date in the table below.

Assets and liabilities measured at fair value on a recurring basis as of December 31, 2014 and 2015 are as follows (in thousands):

	Balance as of December 31, 2014	Fair value measurements at reporting date using		
		Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets:				
Money market funds(1)	\$ 6,588	\$ 6,588	\$ —	\$ —
U.S. Treasury bonds(2)	12,342	12,342	—	—
Total assets	<u>\$ 18,930</u>	<u>\$ 18,930</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Warrant liability	\$ 56	\$ —	\$ —	\$ 56
Total liabilities	<u>\$ 56</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 56</u>

OBALON THERAPEUTICS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

		Fair value measurements at reporting date using		
	Balance as of December 31, 2015	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets:				
Money market funds(1)	\$ 3,593	\$ 3,593	\$ —	\$ —
U.S. Treasury bonds(2)	9,175	9,175	—	—
Total assets	<u>\$ 12,768</u>	<u>\$ 12,768</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Warrant liability	\$ 332	\$ —	\$ —	\$ 332
Total liabilities	<u>\$ 332</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 332</u>

(1) Classified as cash and cash equivalents on the consolidated balance sheets.

(2) Classified as short-term investments on the consolidated balance sheets.

The Company's investments in Level 1 assets are valued based on publicly available quoted market prices for identical securities as of December 31, 2014 and 2015.

The warrant liability is recorded at fair value using the Black-Scholes option pricing model based on the following assumptions as of December 31, 2014 and 2015:

	December 31,	
	2014	2015
Assumed risk-free interest rate	1.38% - 2.17%	1.28% - 2.06%
Assumed volatility	54.48% - 72.90%	66.76% - 70.66%
Expected life	4.15 - 9.75 yrs	3.15 - 8.75 yrs
Expected dividend yield	—%	—%
Preferred stock fair value:		
Series D	\$ 2.60	\$ 2.90
Series C-1	\$ 0.62	\$ 0.77
Series C	\$ 0.48	\$ 0.59

The assumptions were determined as follows:

Assumed risk-free interest rate — Based on the average yield of U.S. Treasury bills as of the valuation date for the expected term of the award.

Assumed volatility — Based on the historical volatility of a number of publicly traded companies comparable in size, business model, industry and business description.

Expected life — Based on the remaining contractual term of warrant as of the valuation date.

Expected dividend yield — Based upon the Company's historic dividends and dividend expectations for the foreseeable future.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Preferred stock fair value — Given the absence of a public trading market, the Company considered numerous objective and subjective factors to determine the fair value of preferred stock at each valuation date. These factors included, but were not limited to, (i) contemporaneous valuations of preferred stock performed by unrelated third-party specialists; (ii) the prices for preferred stock sold to outside investors; (iii) the rights, preferences and privileges of preferred stock relative to common stock; (iv) developments in the business; and (v) the likelihood of achieving a liquidity event, such as an initial public offering or a merger or acquisition of the Company, given prevailing market conditions.

As of December 31, 2014 and 2015, reasonable changes in the unobservable inputs would not be expected to have a significant impact on the consolidated financial statements. The Company's policy is to recognize transfers between levels of the fair value hierarchy on the date of the event or change in circumstances that caused the transfer. There were no significant transfers into or out of Level 1, 2, or 3 for the years ended December 31, 2014 and 2015.

The following table provides reconciliation for all liabilities measured at fair value using significant unobservable inputs (Level 3) for the years ended December 31, 2014 and 2015 (in thousands):

	Fair value measurements at reporting date using significant unobservable inputs (Level 3)
Balance at December 31, 2013	\$ 177
Issuance of warrants for the purchase of convertible preferred stock	46
Change in fair value of warrant liability	(167)
Balance at December 31, 2014	56
Issuance of warrants for the purchase of convertible preferred stock	242
Change in fair value of warrant liability	34
Balance at December 31, 2015	<u>\$ 332</u>

Instruments Not Recorded at Fair Value on a Recurring Basis

The estimated fair value of long-term debt is determined by Level 2 inputs and is based primarily on quoted market prices for the same or similar issues. The recorded value of long-term debt approximates the current fair value because of its relatively short maturity date.

OBALON THERAPEUTICS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)
4. Net Loss per Share and (Unaudited) Pro Forma Net Loss per Share

The following table sets forth the computation of basic and diluted net loss per share of common stock (in thousands, except shares and per share data):

	Year ended December 31,	
	2014	2015
Net loss	\$ (9,890)	\$ (15,557)
Weighted-average shares used in computing net loss per share	1,541,166	1,662,255
Net loss per share, basic and diluted	\$ (6.42)	\$ (9.36)

The following table sets forth the outstanding potentially dilutive securities determined using the treasury stock and if-converted methods that have been excluded in the calculation of diluted net loss per share because to do so would be anti-dilutive (in common stock equivalent shares):

	Year ended December 31,	
	2014	2015
Convertible preferred stock, on an as-converted basis	19,298,770	24,487,630
Stock options to purchase common stock	174,114	—
Total	19,472,884	24,487,630

The following table summarizes our pro forma net loss per share (in thousands, except shares and per share data):

	Year ended December 31, 2015
Numerator:	
Net loss	\$
Change in fair value of convertible preferred stock warrants	
Pro forma net loss (unaudited)	\$
Denominator:	
Weighted-average shares used in computing net loss per share, basic and diluted	
Pro forma adjustments to reflect assumed conversion of convertible preferred stock	
Pro forma adjustments to reflect assumed conversion of convertible preferred stock warrants	
Weighted-average shares used in computing pro forma net loss per share, basic and diluted	
Pro forma net loss per share, basic and diluted (unaudited)	\$

OBALON THERAPEUTICS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)
5. Balance Sheet Details

Short-term investments consist of the following at December 31, 2014 and 2015 (in thousands):

	Maturity (in years)	Amortized cost	Gross unrealized gains	Gross unrealized losses	Estimated fair value
At December 31, 2014:					
U.S. Treasury	1 year or less	\$ 12,348	\$ —	\$ (6)	\$ 12,342
At December 31, 2015:					
U.S. Treasury	1 year or less	\$ 9,178	\$ —	\$ (3)	\$ 9,175

Inventory consist of the following (in thousands):

	December 31,	
	2014	2015
Raw materials	\$ 207	\$ 235
Work in process	204	121
Finished goods	34	7
Total	<u>\$ 445</u>	<u>\$ 363</u>

Other current assets consist of the following (in thousands):

	December 31,	
	2014	2015
Prepaid assets	\$ 234	\$ 234
Interest receivable	59	25
Other assets	—	14
Total	<u>\$ 293</u>	<u>\$ 273</u>

Property and equipment, net consist of the following (in thousands):

	December 31,	
	2014	2015
Computer equipment	\$ 247	\$ 255
Leasehold improvements	172	181
Furniture and fixtures	76	82
Scientific equipment	636	770
Construction in progress, or CIP	79	24
	1,210	1,312
Less: accumulated depreciation and amortization	(727)	(894)
Total	<u>\$ 483</u>	<u>\$ 418</u>

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Depreciation and amortization expense for the years ended December 31, 2014 and 2015 was \$0.2 million for both periods, respectively.

Other current liabilities consist of the following (in thousands):

	December 31,	
	2014	2015
Accrued legal	\$ 49	\$162
Accrued professional fees	156	195
Accrued interest	21	44
Other accrued expenses	155	92
Total	<u>\$381</u>	<u>\$493</u>

6. Term Loan

In June 2013, the Company entered into a loan and security agreement, or 2013 Loan Agreement, with Square 1 Bank allowing for borrowings up to \$3.0 million. In addition to the interest payments, Square 1 Bank received warrants for the purchase of up to 25,210 shares of the Company's Series C-1 convertible preferred stock. In October 2014, the Company amended the 2013 Loan Agreement and executed a \$10.0 million credit facility with Square 1 Bank, or 2014 Loan Agreement. The 2014 Loan Agreement was separated into two tranches, Term Loan A and Term Loan B. Term Loan A was \$5.0 million, which included the existing \$3.0 million of outstanding debt and the additional \$2.0 million that was funded upon closing of the 2014 Loan Agreement. Term Loan B was \$5.0 million and was available upon receipt of at least \$20.0 million in proceeds from the issuance and sale of the Company's equity securities to investors. Term Loan B was funded after the close of the Company's Series D financing in January 2015. As part of the 2014 Loan Agreement, the Company issued Square 1 Bank additional warrants to purchase up to 80,822 shares of its Series D convertible preferred stock at \$2.5983 per share.

The present value of the future cash flows under the 2014 Loan Agreement terms described below did not exceed the present value of the future cash flows under the 2013 Loan Agreement terms by more than 10%. As such, the Company treated this amendment as a modification and recorded the associated immaterial facility fee and the associated immaterial fair value of the warrants as a discount to the 2014 Loan Agreement. This discount and the remaining balance of debt issuance costs and debt discount of the 2013 Loan Agreement are amortized to interest expense over the remaining term of the 2014 Loan Agreement using the effective-interest method.

The interest rate under the 2014 Loan Agreement is at a variable annual rate equal to the greater of the prime rate plus 1.75% or 5.0%, and there is an interest-only period until October 31, 2016, followed by a 24-month principal and interest period. Pursuant to the 2014 Loan Agreement, the Company provided a first priority security interest in all existing and after-acquired assets, excluding intellectual property owned by the Company. As of December 31, 2015, unpaid borrowings under the 2014 Loan Agreement totaled \$10.0 million. For the year ended December 31, 2014, the Company recorded an immaterial amount related to the amortization of debt discount and \$0.1 million for the year ended December 31, 2015.

The 2014 Loan Agreement includes restrictions on, among other things, the Company's ability to incur additional indebtedness, change the name or location of the Company's business, merge with or acquire

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

other entities, pay dividends or make other distributions to holders of its capital stock, make certain investments, engage in transactions with its affiliates, create liens, sell assets, pay subordinated debt, and store certain inventory and equipment with third parties. The 2014 Loan Agreement also requires that, if the Company's total cash is less than \$5.0 million, the Company is required to maintain all its deposits, transaction accounts and primary investment accounts with Square 1 Bank, and if the Company's total cash is greater than \$5.0 million, it is required to maintain 50% of its deposits, transaction accounts and primary investment accounts with Square 1 Bank.

As of December 31, 2015, future principal payments due under the 2014 Loan Agreement are as follows (in thousands):

Year ended:	
December 31, 2016	\$ 833
December 31, 2017	5,000
December 31, 2018	4,167
Total future principal payments due under the 2014 Loan Agreement	<u>\$ 10,000</u>

7. Stock-Based Compensation

The Company adopted an Equity Incentive Plan, or the Plan, in 2008, under which 4,502,215 shares of common stock are reserved for issuance to employees, nonemployee directors, and consultants of the Company. The Plan provides for the grant of incentive stock options, nonstatutory stock options, rights to purchase restricted stock, stock appreciation rights, dividend equivalents, stock payments, and restricted stock units to eligible recipients.

Recipients of incentive stock options shall be eligible to purchase shares of the Company's common stock at an exercise price equal to no less than the estimated fair market value of such stock on the date of grant. The maximum term of options granted under the Plan is ten years. The options generally vest 25% on the first anniversary of the original vesting date, with the balance vesting monthly over the remaining three years. As of December 31, 2015, 304,366 options remained available for future grant under the Plan.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model using the assumptions noted in the following table. Given the absence of a public trading market, the Board of Directors considered numerous objective and subjective factors to determine the fair value of common stock at each grant date. These factors included, but were not limited to, (i) contemporaneous valuations of common stock performed by unrelated third-party specialists; (ii) the prices for preferred stock sold to outside investors; (iii) the rights, preferences and privileges of preferred stock relative to common stock; (iv) the lack of marketability of common stock; (v) developments in the business; and (vi) the likelihood of achieving a liquidity event, such as an initial public offering or a merger or acquisition of the Company, given prevailing market conditions. The expected life of options is based on the simplified method, which is an average of the contractual term of the options and its ordinary vesting period. The expected volatility of stock options is based upon the historical volatility of a number of publicly traded companies in similar stages of commercial development. The risk-free interest rate is based on the average yield of U.S. Treasury bills as of the valuation date for the expected

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

term of the award. The expense recognized for the portion of the award that is expected to vest has been reduced by an estimated forfeiture rate. The forfeiture rate is determined at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

	Year ended December 31,	
	2014	2015
Assumed risk-free interest rate	1.82% - 2.09%	1.57%
Assumed volatility	71.09%	61.53%
Expected option life	6.1 years	6.1 years
Expected dividend yield	—%	—%

The Company recognized stock-based compensation straight-line over the vesting term of the options. The Company recorded non-cash compensation, including non-cash compensation to employees and nonemployees in the consolidated statements of operations and comprehensive loss as follows (in thousands):

	Year ended December 31,	
	2014	2015
Cost of revenue	\$ 30	\$ 31
Research and development	45	47
Selling, general and administrative	110	129
Total	<u>\$185</u>	<u>\$207</u>

Unrecognized compensation expense at December 31, 2015 was approximately \$0.3 million, which is expected to be recognized over a weighted-average term of 2.3 years.

Equity instruments issued to nonemployees are initially recorded at their grant-date fair value and are periodically revalued using the Black-Scholes option pricing model as the equity instruments vest and are recognized as expense over the related service period. Stock-based compensation expense to nonemployees was immaterial for the years ended December 31, 2014 and 2015.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes stock option transactions for the Plan for the years ended December 31, 2014 and 2015 (in thousands, except shares and per share data):

	Number of shares	Weighted- average exercise price	Weighted- average remaining contractual life (in years)	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2013	2,686,764	\$ 0.60		
Options granted	338,004	0.73		
Options exercised	(12,429)	0.68		
Options canceled	(313,275)	0.65		
Outstanding at December 31, 2014	2,699,064	0.61		
Options granted	1,301,604	0.26		
Options exercised	(120,776)	0.52		
Options canceled	(113,046)	0.61		
Outstanding at December 31, 2015	3,766,846	\$ 0.50	7.0	\$ (747)
Vested and expected to vest, December 31, 2015	3,529,030	\$ 0.52	7.0	\$ (733)
Vested and exercisable, December 31, 2015	2,031,675	\$ 0.60	6.0	\$ (585)

The weighted-average fair value of options granted during the years ended December 31, 2015 was \$0.15. All options outstanding at year-end are exercisable under the early exercise provisions of the Plan. The intrinsic value of options exercised for the years ended December 31, 2014 and 2015 was immaterial.

Options granted under the Plan that are exercised prior to vesting are subject to repurchase by the Company at the original issue price and will vest according to the respective option agreement. For the years ended December 31, 2014 and 2015, no options were early exercised.

8. Convertible Preferred Stock and Stockholders' Deficit

Convertible Preferred Stock

During 2008, the Company entered into agreements with several investors who collectively purchased 2,333,332 shares of Series A convertible preferred stock at \$3.00 per share for cash proceeds of \$7.0 million, gross of \$0.2 million in issuance costs.

During 2009, the Company entered into agreements with several investors who collectively purchased 2,000,000 shares of Series B convertible preferred stock at \$1.50 per share for cash proceeds of \$3.0 million, gross of immaterial issuance costs. During 2011, the Company entered into agreements with several investors who collectively purchased 2,333,332 shares of Series B preferred stock at \$1.50 per share for cash proceeds of \$3.5 million, gross of immaterial issuance costs.

During 2012, the Company entered into agreements with several investors who collectively purchased 7,738,752 shares of Series C convertible preferred stock at \$2.1351 per share for cash proceeds of \$15.0 million, gross of \$0.1 million in issuance costs, and converted approximately \$2.0 million in convertible debt into shares of Series C preferred stock. In conjunction, warrants were issued for 70,254 shares of Series C preferred stock. All the warrants remain outstanding as of December 31, 2015.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

During 2012, the Company entered into agreements with several investors for the purchase of 1,392,832 shares of Series C-1 convertible preferred stock at \$3.5898 per share for cash proceeds of \$5.0 million, gross of immaterial issuance costs.

During 2013, the Company entered into a loan and security agreement with Square 1 Bank, issuing a warrant for 25,210 shares of Series C-1 preferred stock. The warrant remains outstanding as of December 31, 2015.

During 2014, the Company entered into agreements with several investors for the purchase of 7,924,414 shares of Series D convertible preferred stock at \$2.5983 per share for cash proceeds of \$20.6 million, gross of \$0.5 million in issuance costs, of which \$0.1 million is for the value of warrants. In conjunction, a warrant was issued to Square 1 Bank for 80,822 shares of Series D convertible preferred stock. During 2015, warrants were issued to investors for 71,200 shares of Series D preferred stock. All the warrants remain outstanding as of December 31, 2015.

Preferred stock is separated into two classes, Series D convertible preferred stock and Junior preferred stock. Junior preferred stock is comprised of Series A, Series B, Series C, and Series C-1 convertible preferred stock. Holders of Series D and Junior preferred stock are entitled to receive dividends, if declared by the board of directors, at rate of \$0.24 per annum for Series A shares, \$0.12 per annum for Series B shares, \$0.15 per annum for Series C shares, \$0.2871 per annum for Series C-1 shares, and \$0.2079 per annum for Series D shares. Dividends are paid in preference and priority to holders of Series D convertible preferred stock, then to holders of Junior preferred stock and lastly to holders of common stock. As of December 31, 2015, the Company's board of directors has not declared any dividends.

In the event of liquidation, the holders of preferred stock are entitled to receive liquidation preferences at the rate of \$3.00 per share for Series A shares, \$1.50 per share for Series B shares, \$2.1351 per share for Series C shares, \$3.5898 per share for series C-1 shares, and \$5.1966 per share for Series D shares. The holders of Series D convertible preferred stock are entitled to receive first preference on any liquidation distributions. Liquidation distributions to holders of Junior preferred stock are made *pari passu* and are made in preference to any payments to the holders of common stock. Preferred stock holders participate without limit with the holders of common stock for up to two times such preferred stock's original issue price.

The shares of preferred stock are convertible into shares of common stock, at the option of the holder, subject to certain anti-dilution adjustments. Each share of Series A convertible preferred stock is convertible to 1.3278 shares of common stock and each share of Series B, Series C, Series C-1 and Series D convertible preferred stock is convertible to one share of common stock. Each share of preferred stock is automatically converted into common stock immediately upon the Company's sale of its common stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, in which per share price is at least \$3.8974 (as adjusted). Each share of Series D convertible preferred stock is automatically converted into common stock immediately upon the affirmative vote of more than 67% of the holders of the then-outstanding Series D stock. Each share of Junior preferred stock is automatically converted into common stock immediately upon the affirmative vote of more than 67% of the holders of the then-outstanding Junior preferred stock voting together as a single class.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The convertible preferred stock has been classified as temporary equity in the accompanying balance sheets as the shares include provisions allowing the holder to cause redemption of the shares upon certain changes in control events that are outside of the Company's control.

The holders of Preferred Stock are entitled to one vote for each share of common stock into which such Preferred Stock could then be converted; and with respect to such vote, such holders shall have full voting rights and powers equal to the voting rights and powers of the holders of common stock.

Outstanding Warrants

At December 31, 2015, the following warrants were outstanding:

	Shares	Weighted- average exercise price	Issuance date	Expiration date
Series C	70,254	\$ 2.1351	Feb 24, 2012	Feb 24, 2019
Series C-1	25,210	3.5700	Jun 14, 2013	Jun 14, 2023
Series D	80,822	2.5983	Oct 01, 2014	Oct 01, 2024
Series D	23,092	2.5983	Mar 15, 2015	Mar 15, 2023
Series D	48,108	2.5983	Mar 16, 2015	Mar 16, 2023
Total shares	<u>247,486</u>	<u>\$ 2.5666</u>		

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consists of the following at December 31, 2015:

Conversion of preferred stock	24,487,530
Stock options issued and outstanding	3,766,846
Authorized for future option grants	274,366
Warrants outstanding	<u>247,486</u>
Total	<u>28,776,228</u>

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

9. Income Taxes

The income tax provision (benefit) consists of the following (in thousands):

	Year ended December 31,	
	2014	2015
Current:		
Federal	\$ —	\$ —
State	2	2
Foreign	14	(15)
Total current provision	<u>16</u>	<u>(13)</u>
Deferred:		
Federal	—	—
State	—	—
Foreign	—	—
Total deferred provision	<u>—</u>	<u>—</u>
Income tax provision (benefit)	<u>\$ 16</u>	<u>\$ (13)</u>

The difference between income tax benefits and income taxes computed using the U.S. federal income tax rate as of December 31, 2014 and 2015 are as follows (in thousands):

	Year ended December 31,	
	2014	2015
Federal provision (benefit)		
At statutory rates	\$(3,363)	\$(5,290)
State taxes, net of federal	1	1
Change in valuation allowance	3,364	5,291
Foreign operations	14	(15)
Income tax provision (benefit)	<u>\$ 16</u>	<u>\$ (13)</u>

Pursuant to Internal Revenue Code, or IRC, Sections 382 and 383, annual use of the Company's net operating loss and research and development credit carryforwards may be limited in the event a cumulative change in ownership of more than 50% occurs within a three-year period. The Company has not completed an IRC Section 382/383 analysis regarding the limitation of net operating loss and research and development credit carryforwards. Until this analysis has been completed, the Company has removed deferred tax assets for Federal and California net operating losses of approximately \$11.5 million and research and experimental credits of approximately \$2.1 million generated through 2015 from its deferred tax schedule, and has recorded a corresponding decrease to its valuation allowance.

OBALON THERAPEUTICS, INC.**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Significant components of the Company's deferred tax assets as are shown below:

	Year ended December 31,	
	2014	2015
Deferred tax assets:		
Foreign net operating losses	\$ 390	\$ 388
Capitalized research and development	3,160	7,420
Other	114	111
Total gross deferred tax assets	3,664	7,919
Less valuation allowance	(3,664)	(7,919)
Total deferred tax assets	\$ —	\$ —

A valuation allowance of \$3.7 million and \$7.9 million as of December 31, 2014 and 2015, respectively, has been established to offset the deferred tax assets as realization of such assets are uncertain.

At December 31, 2015, the Company had federal, state, and foreign tax net operating loss carryforwards of approximately \$31.5 million, \$13.9 million, and \$1.3 million, respectively. Each of the federal and state tax loss carryforwards will begin expiring in 2028, unless previously utilized. The foreign net operating losses, or NOLs, will begin expiring in 2023, unless previously utilized. The Company also has federal and California research and development tax credit carryforwards totaling \$1.3 million and \$1.1 million, respectively. The federal research and development tax credit carryforward will begin to expire in 2028 unless previously utilized. The California research tax credits do not expire.

Commencing with the 2013 year, the Company computed its California net operating losses, or California NOLs, under the Multistate Tax Compact apportionment rules as provided for in the California Court of Appeal's decision in *Gillette v. FTB*. That decision was overturned by the California Supreme Court on December 31, 2015. As such, it is the Company's intent to compute its California apportionment factor, and resulting California NOLs, under California's Single Sales Factor Market rules. The Company has currently adjusted its California NOLs and deferred tax assets to the Single Sales Factor state rate. The impact to the California NOLs is approximately \$10.2 million.

The Company has not provided U.S. income taxes and foreign withholding taxes on the undistributed earnings of foreign subsidiaries as of December 31, 2014 and 2015, because it intends to permanently reinvest such earnings outside the United States. If these foreign earnings on these were to be repatriated in the future, the related U.S. tax liability may be reduced by any foreign income taxes previously paid on these earnings. Due to historical losses, as of December 31, 2014 and 2015, the foreign subsidiaries do not have cumulative earnings. As of December 31, 2015, one of these entities had been dissolved and another was in the process of being dissolved.

In accordance with authoritative guidance, the impact of an uncertain income tax position on the income tax return must be recognized at the largest amount that is more-likely-than-not to be sustained upon an audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. As of December 31, 2014 and 2015, we continued to have no unrecognized tax benefits. There are no unrecognized tax benefits included on the consolidated balance sheet sheets that would, if recognized, impact the effective tax rate. We do not anticipate there will be a significant change in unrecognized tax benefits within the next 12 months.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**10. Commitments and Contingencies**

The Company's building lease will expire on March 31, 2017. Future minimum payments due under the noncancelable operating lease are as follows (in thousands):

Year ended:	
December 31, 2016	\$225
December 31, 2017	<u>54</u>
Total future payments due under building lease	<u>\$279</u>

Rent expense totaled \$0.2 million for both years ended December 31, 2014 and 2015.

11. Related Party Transactions

In June 2013, the Company and Bader Sultan & Bros. Co W.L.L., or Bader, a healthcare products distributor based in Sufat, Kuwait, entered into a distribution agreement, whereby the Company appointed Bader as an exclusive distributor of its products in the Middle East. Sales to Bader began in November 2013. The Company's agreement with Bader restricts Bader's ability to sell competing products and requires Bader to purchase a certain number of products from the Company monthly based on annual forecasts that the Company provides to Bader. If Bader does not resell the minimum purchase quantity specified in the contract by the applicable date, then the Company has the right, in its sole discretion, to sell to other distributors in the Middle East or terminate its agreement with Bader. The initial term of the agreement expires in December 2019, and will thereafter automatically renew for successive terms of 12 months, subject to certain exceptions. The agreement can be terminated by the Company immediately upon certain breaches by Bader, or by either Bader or the Company for uncured material breach of the agreement.

As part of the 2014 Series D convertible preferred stock financing, Bader purchased 2,540,122 shares of the Company's Series D convertible preferred stock. All terms of the purchase of preferred stock were the same for Bader as the other investors. Sales to Bader for the years ended December 31, 2014 and 2015 totaled \$1.9 million and \$3.8 million, respectively, which represent 52.4% and 94.7% of total revenue for the respective years. As of December 31, 2015, the Company had accounts receivable from Bader of \$0.6 million.

In December 2014, the Company and Bader amended the distribution agreement. In accordance with the amendment, Bader provided the Company with a deposit of \$1.3 million, and committed to minimum product purchases for calendar year 2015. Under the terms of the amendment, the Company reserved the right to keep the deposit as liquidated damages if Bader did not meet the minimum product purchases. The Company classified the deposit as a current liability at December 31, 2015 on the consolidated balance sheets as the minimum product purchase levels were met.

As discussed in note 12, in April 2016, the Company and Bader entered into a payment direction letter, resulting in the exchange of the distribution agreement deposit for Series E convertible preferred stock.

12. Subsequent Events

The Company has evaluated subsequent events through May 4, 2016, which is the date on which the financial statements were available to be issued.

OBALON THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

On April 29, 2016, the Company completed the initial closing of its Series E convertible preferred stock financing and issued 5,540,115 shares of Series E convertible preferred stock for total proceeds of \$15.8 million. Included in these proceeds was the exchange of Bader's \$1.3 million deposit for the preferred stock.

OBALON THERAPEUTICS, INC.
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except shares and par value data)

	December 31, 2015	June 30, 2016 (unaudited)	Pro Forma Stockholders' Equity June 30, 2016 (unaudited)
Assets			
Current assets:			
Cash and cash equivalents	\$ 3,356	\$ 4,329	
Short-term investments	9,175	13,953	
Accounts receivable, related party	636	585	
Inventory	363	477	
Other current assets	273	215	
Total current assets	13,803	19,559	
Property and equipment, net	418	512	
Total assets	<u>\$ 14,221</u>	<u>\$ 20,071</u>	
Liabilities, Convertible Preferred Stock and Stockholders' (Deficit) Equity			
Current liabilities:			
Accounts payable and accrued expenses	\$ 549	\$ 733	
Accrued compensation	1,250	236	
Accrued clinical expenses	913	612	
Other current liabilities	493	586	
Customer deposit from related party	1,283	—	
Current portion of long-term loan	747	3,255	
Warrant liability	332	213	
Total current liabilities	5,567	5,635	
Long-term loan, excluding current portion	9,094	6,628	
Total liabilities	14,661	12,263	
Commitments and contingencies (See Note 10)			
Convertible preferred stock			
Series A convertible preferred stock, \$0.001 par value; 2,333,332 shares authorized, 2,333,332 shares issued and outstanding at December 31, 2015 and June 30, 2016, respectively; liquidation preference of \$7,000 at December 31, 2015 and June 30, 2016, actual; no shares issued and outstanding at June 30, 2016, pro forma	6,773	6,773	—
Series B convertible preferred stock, \$0.001 par value; 4,333,332 shares authorized, 4,333,332 shares issued and outstanding at December 31, 2015 and June 30, 2016, respectively; liquidation preference of \$6,500 at December 31, 2015 and June 30, 2016, actual; no shares issued and outstanding at June 30, 2016, pro forma	6,454	6,454	—

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OBALON THERAPEUTICS, INC.

	December 31, 2015	June 30, 2016 (unaudited)	Pro Forma Stockholders' Equity June 30, 2016 (unaudited)
Series C convertible preferred stock, \$0.001 par value; 7,809,939 and 7,809,006 shares authorized at December 31, 2015 and June 30, 2016, respectively; 7,738,752 shares issued and outstanding at December 31, 2015 and June 30, 2016, respectively; liquidation preference of \$16,523 at December 31, 2015 and June 30, 2016, actual; no shares issued and outstanding at June 30, 2016, pro forma	16,393	16,393	—
Series C-1 convertible preferred stock, \$0.001 par value; 2,783,334 and 1,418,042 shares authorized at December 31, 2015 and June 30, 2016, respectively; 1,392,832 shares issued and outstanding at December 31, 2015 and June 30, 2016; liquidation preference of \$5,000 at December 31, 2015 and June 30, 2016, actual; no shares issued and outstanding at June 30, 2016, pro forma	4,984	4,984	—
Series D convertible preferred stock, \$0.001 par value; 11,546,013 and 8,076,436 shares authorized at December 31, 2015 and June 30, 2016, respectively; 7,924,414 shares issued and outstanding at December 31, 2015 and June 30, 2016; liquidation preference of \$41,180 and \$20,590 at December 31, 2015 and June 30, 2016, respectively, actual; no shares issued and outstanding at June 30, 2016, pro forma	20,095	20,095	—
Series E convertible preferred stock, \$0.001 par value; 0 and 10,490,611 shares authorized at December 31, 2015 and June 30, 2016, respectively; 0 and 5,557,649 shares issued and outstanding at December 31, 2015 and June 30, 2016, respectively; liquidation preference of \$0 and \$15,893 at December 31, 2015 and June 30, 2016, respectively, actual, no shares issued and outstanding at June 30, 2016, pro forma	—	15,799	—
	<u>54,699</u>	<u>70,498</u>	
Stockholders' (deficit) equity:			
Common stock, par value \$0.001; 35,000,000 and 45,000,000 shares authorized at December 31, 2015 and June 30, 2016, respectively; 1,667,899 and 1,684,465 shares issued and outstanding at December 31, 2015 and June 30, 2016, respectively; shares issued and outstanding at June 30, 2016, pro forma	2	2	
Additional paid-in capital	1,001	1,158	
Other comprehensive income	—	4	
Accumulated deficit	(56,142)	(63,854)	
Total stockholders' (deficit) equity	<u>(55,139)</u>	<u>(62,690)</u>	
Total liabilities and stockholders' (deficit) equity	<u>\$ 14,221</u>	<u>\$ 20,071</u>	<u>\$</u>

See accompanying notes to condensed consolidated financial statements.

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OBALON THERAPEUTICS, INC.

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

(in thousands, except shares and per share data)

	Six months ended June 30,	
	2015	2016
Revenue:		
Revenue	\$ 224	\$ —
Revenue, related party	1,739	1,848
Total revenue	1,963	1,848
Cost of revenue	1,205	1,294
Gross profit	758	554
Operating expenses:		
Research and development	5,968	5,098
Selling, general and administrative	1,679	2,975
Total operating expenses	7,647	8,073
Loss from operations	(6,889)	(7,519)
Interest expense, net	(263)	(290)
Gain from change in fair value of warrant liability	11	119
Other expense, net	(16)	(22)
Net loss	(7,157)	(7,712)
Other comprehensive income	10	4
Net loss and comprehensive loss	<u>\$ (7,147)</u>	<u>\$ (7,708)</u>
Net loss per share, basic and diluted	<u>\$ (4.31)</u>	<u>\$ (4.61)</u>
Weighted-average common shares outstanding, basic and diluted	<u>1,659,394</u>	<u>1,672,633</u>
Pro forma net loss per share, basic and diluted		<u>\$</u>
Pro forma weighted-average common shares outstanding, basic and diluted		<u></u>

See accompanying notes to condensed consolidated financial statements.

OBALON THERAPEUTICS, INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Six months ended June 30,	
	2015	2016
Operating activities:		
Net loss	\$ (7,157)	\$ (7,712)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	81	90
Stock-based compensation	100	145
Loss on disposal of fixed assets	2	13
Change in fair value of warrant liability	(11)	(119)
Amortization (accretion) of investment premium (discount), net	152	55
Amortization of debt discount	36	43
Change in operating assets and liabilities:		
Accounts receivable, net	96	—
Accounts receivable from related party	(619)	51
Inventory	168	(114)
Other current assets	54	46
Accounts payable and accrued expenses	97	60
Accrued compensation	53	(1,014)
Accrued clinical expenses	2,053	(301)
Other current liabilities	160	94
Customer deposit from related party	1,283	—
Net cash used in operating activities	(3,452)	(8,663)
Investing activities:		
Purchases of short-term investments	(10,691)	(14,979)
Maturities of short-term investments	4,200	10,150
Purchase of property and equipment	(58)	(63)
Net cash used in investing activities	(6,549)	(4,892)
Financing activities:		
Issuance of preferred stock for cash, net of offering costs	—	14,517
Proceeds from long-term loan, net of issuance costs	5,000	—
Sale of common stock	59	11
Net cash provided by financing activities	5,059	14,528
Net (decrease) increase in cash and cash equivalents	(4,942)	973
Cash and cash equivalents at beginning of period	6,902	3,356
Cash and cash equivalents at end of period	<u>\$ 1,960</u>	<u>\$ 4,329</u>
Supplemental cash flow information:		
Interest paid	<u>\$ 241</u>	<u>\$ 266</u>
Non-cash investing and financing activities:		
Conversion of customer deposit from related party to preferred stock	<u>\$ —</u>	<u>\$ 1,283</u>
Property and equipment in accounts payable	<u>\$ —</u>	<u>\$ 121</u>

See accompanying notes to condensed consolidated financial statements.

OBALON THERAPEUTICS, INC.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Basis of Presentation

Obalon Therapeutics, Inc., or the Company, was incorporated in the state of Delaware on January 2, 2008. The Company is a commercial-stage medical device company focused on developing and commercializing innovative medical devices to treat obese and overweight people by facilitating weight loss. Using its patented technology, the Company has developed the Obalon balloon system, the first swallowable, gas-filled intragastric balloon designed to provide progressive and sustained weight loss in obese and overweight patients.

The consolidated financial statements include the accounts of Obalon Therapeutics, Inc., and its wholly owned subsidiaries, Obalon Italy SRL and Obalon Therapeutics, LLC. Obalon Therapeutics, LLC is a shell Company, which owns 99% of Obalon Mexico DE RL CV. All intercompany balances and transactions have been eliminated in consolidation.

The Company's principal operations are located in Carlsbad, California and it operates in one business segment.

As of June 30, 2016, the Company has devoted a substantial portion of its efforts to product development, raising capital, and building infrastructure. The Company has incurred operating losses and has experienced negative cash flows from operations since its inception. In July 2012, the Company realized initial revenue from its planned principal operations. The Company recognized revenue, including revenue from related parties, of \$1.8 million for the six months ended June 30, 2016, respectively. Prior to 2014, the Company was considered to be in the development stage. However, the Company has not yet established an ongoing source of revenues sufficient to cover its operating costs and has funded its activities to date almost exclusively from debt and equity financings. As of June 30, 2016, the Company had not yet obtained FDA approval to sell its products in the United States. All sales are to customers outside of the United States, mainly in the Middle East.

As reflected in the accompanying condensed consolidated financial statements, the Company has a limited operating history and the sales and income potential of the Company's business are unproven. The Company has not been profitable since inception, and as of June 30, 2016, its accumulated deficit was \$63.9 million. Since inception, the Company has financed its operations primarily through private placements of preferred securities and, to a lesser extent, debt financing arrangements. The Company expects to continue to incur net losses for the foreseeable future as it builds its sales and marketing organization, seeks regulatory approval, prepares for and, if approved, proceeds to, commercialization of its product in the United States and continues research and development efforts. The Company will need additional funding to pay expenses relating to its operating activities, including selling, general and administrative expenses and research and development expenses. Adequate funding may not be available to the Company on acceptable terms, or at all. The failure to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on the Company's business, results of operations or financial condition.

2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of

OBALON THERAPEUTICS, INC.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)

assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant items subject to such estimates and assumptions include the warrant liability, stock-based compensation, and income tax uncertainties.

Reported amounts and note disclosures reflect the overall economic conditions that are most likely to occur and anticipated measures management intends to take. Actual results could differ materially from those estimates. All revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

Unaudited Interim Condensed Consolidated Financial Statements

The interim condensed consolidated financial statements as of June 30, 2016 and for the six months ended June 30, 2015 and 2016 are unaudited. The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and reflect, in the opinion of management, all adjustments of a normal and recurring nature that are necessary for the fair presentation of the Company's condensed consolidated financial position as of June 30, 2016 and its consolidated results of operations and cash flows for the six months ended June 30, 2015 and 2016. The financial data and other information disclosed in these notes to consolidated financial statements related to the six-month periods are also unaudited. The results of operations for the six months ended June 30, 2016 are not necessarily indicative of the results to be expected for the year ending December 31, 2016 or for any other future annual or interim period. The balance sheet as of December 31, 2015 included herein was derived from the audited financial statements as of that date. These financial statements should be read in conjunction with the Company's audited financial statements included elsewhere in this prospectus.

Unaudited Pro Forma Stockholders' Equity

The unaudited pro forma stockholders' equity as of June 30, 2016 assumes: (i) the automatic conversion of all outstanding shares of our convertible preferred stock as of June 30, 2016 into shares of common stock immediately prior to the closing of this offering; (ii) the automatic net exercise of certain outstanding warrants to purchase shares of preferred stock immediately prior to the closing of this offering, which will result in the issuance of _____ shares of common stock, based on an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and the related reclassification of the warrant liability to stockholders' equity; (iii) the automatic conversion of certain outstanding warrants to purchase shares of preferred stock into warrants to purchase shares of common stock upon the closing of this offering and the related reclassification of the warrant liability to additional paid-in capital. The pro forma balance sheet was prepared as though the completion of the IPO contemplated by this prospectus had occurred on June 30, 2016. Shares of common stock issued in the IPO and any related net proceeds are excluded from the pro forma information.

Short-Term Investments

The Company classifies its investments as available-for-sale and records such assets at estimated fair value in the balance sheet, with unrealized gains and losses, if any, reported as a component of other comprehensive loss within the consolidated statements of operations and comprehensive loss. All of the Company's short-term investments are U.S. Treasury notes with maturities of less than one year. For the

OBALON THERAPEUTICS, INC.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)

six months ended June 30, 2015 and 2016, unrealized losses were immaterial. Realized gains and losses would be calculated on the specific-identification method and recorded as interest income. There have been no material realized gains and losses for the six months ended June 30, 2015 or 2016. The Company periodically reviews available-for-sale securities for other-than-temporary declines in fair value below the cost basis whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable.

Fair Value Measurements

The carrying values of the Company's financial instruments, including cash and cash equivalents, accounts receivable, accounts receivable from related party, accounts payable, and accrued expenses approximate their fair values due to the short maturity of these instruments. The carrying value of the term loan approximates its fair value as the interest rate and other terms are that which are currently available to the Company.

The Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible. The Company determines fair value based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels in accordance with authoritative accounting guidance:

- Ø Level 1 inputs: Observable inputs such as unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date.
- Ø Level 2 inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Ø Level 3 inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

Deferred Initial Public Offering Costs

Deferred offering costs, which primarily consist of direct incremental legal and accounting fees relating to the IPO, are capitalized. The deferred offering costs will be offset against IPO proceeds upon the consummation of the offering. In the event the offering is terminated, deferred offering costs will be expensed. As of June 30, 2016, an immaterial amount of deferred offering costs have been incurred. No deferred offering costs were capitalized as of December 31, 2015.

Net Loss per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period without consideration for common stock equivalents. Diluted net loss per share is the same as basic net loss per common share, since the effects of potentially dilutive securities are anti-dilutive.

Dilutive common stock equivalents are comprised of convertible preferred stock, warrants and unexercised stock options outstanding under the Company's equity plan.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)***Unaudited Pro Forma Net Loss per Share***

Pro forma basic and diluted net loss per share has been computed to give effect to: (i) the assumed conversion of the shares of convertible preferred stock into common stock; (ii) the automatic net exercise of certain outstanding warrants to purchase shares of preferred stock; and (iii) the automatic conversion of certain outstanding warrants to purchase shares of preferred stock into warrants to purchase shares of common stock as if such conversions had occurred at the beginning of the period. The pro forma net loss does not include the shares expected to be sold and related proceeds to be received from an initial public offering, or IPO.

Recent Accounting Pronouncements

In May 2014, the FASB issued Accounting Standard Update, or ASU, 2014-09, *Revenue from Contracts with Customers*. ASU 2014-09 outlines a comprehensive revenue recognition model and supersedes most current revenue recognition guidance. ASU 2014-09 is effective for annual reporting periods, and interim periods within those periods, beginning after December 15, 2016. Entities are able to use one of three prescribed transition methods. In August 2015, the FASB issued ASU 2015-14 to defer the effective date of ASU 2014-09 by one year and allow early adoption for all entities but not before the original public entity effective date. The Company has not yet selected a transition method as the Company is currently evaluating the impact of the amended revenue recognition guidance on its consolidated financial statements.

In August 2014, the FASB issued ASU 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*. ASU 2014-15 requires management to evaluate relevant conditions, events and certain management plans that are known or reasonably knowable that when, considered in the aggregate, raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued, for both annual and interim periods. ASU 2014-15 also requires certain disclosures around management's plans and evaluation, as well as the plans, if any, that are intended to mitigate those conditions or events that will alleviate the substantial doubt. ASU 2014-15 is effective for fiscal years ending after December 15, 2016. The Company does not anticipate that the adoption of ASU 2014-15 will have a material impact on its consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases*. Under this new guidance, at the commencement date, lessees will be required to recognize (i) a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis and (ii) a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. This guidance is not applicable for leases with a term of 12 months or less. The new standard is effective for the Company on January 1, 2019, with early adoption permitted. The Company is currently evaluating the impact that this standard will have on its consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, *Improvements to Employee Share-Based Payment Accounting*, which involves several aspects of the accounting for stock-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This new guidance will require all income tax effects of awards to be recognized as income tax expense or benefit in the income statement when the awards vest

OBALON THERAPEUTICS, INC.
NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)

or are settled, as opposed to additional paid-in-capital where it is currently recorded. It also will allow an employer to repurchase more of an employee's shares than it can today for tax withholding purposes without triggering liability accounting. All tax-related cash flows resulting from stock-based payments are to be reported as operating activities on the statement of cash flows. The guidance also allows a Company to make a policy election to either estimate the number of awards that are expected to vest or account for forfeitures as they occur. This new standard is effective for the Company on January 1, 2017, with early adoption permitted. The Company is currently evaluating the impact that this standard will have on its consolidated financial statements.

3. Fair Value Measurements
Instruments Recorded at Fair Value on a Recurring Basis

The Company has segregated all financial assets and liabilities that are measured at fair value on a recurring basis (at least annually) into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date in the table below.

Assets and liabilities measured at fair value on a recurring basis as of December 31, 2015 and June 30, 2016 are as follows (in thousands):

	Balance as of December 31, 2015	Fair value measurements at reporting date using		
		Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets:				
Money market funds(1)	\$ 3,593	\$ 3,593	\$ —	\$ —
U.S. Treasury bonds(2)	9,175	9,175	—	—
Total assets	<u>\$ 12,768</u>	<u>\$ 12,768</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Warrant liability	\$ 332	\$ —	\$ —	\$ 332
Total liabilities	<u>\$ 332</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 332</u>

OBALON THERAPEUTICS, INC.
NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)

	Balance as of June 30, 2016	Fair value measurements at reporting date using		
		Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets:				
Cash and cash equivalents:				
Money market funds(1)	\$ 2,935	\$ 2,935	\$ —	\$ —
U.S. Treasury bonds(1)	1,500	1,500	—	—
Short-term investments:				
U.S. Treasury bonds(2)	13,953	13,953	—	—
Total assets	<u>\$ 18,388</u>	<u>\$ 18,388</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Warrant liability	\$ 213	\$ —	\$ —	\$ 213
Total liabilities	\$ 213	\$ —	\$ —	\$ 213

(1) Classified as cash and cash equivalents on the condensed consolidated balance sheets.

(2) Classified as cash and cash equivalents and short-term investments on the condensed consolidated balance sheets.

The Company's investments in Level 1 assets are valued based on publicly available quoted market prices for identical securities as of December 31, 2015 and June 30, 2016.

The warrant liability is recorded at fair value using the Black-Scholes option pricing model based on the following assumptions as of December 31, 2015 and June 30, 2016:

	December 31, 2015	June 30, 2016
Assumed risk-free interest rate	1.28% - 2.06%	0.97% - 1.72%
Assumed volatility	66.76% - 70.66%	55.53% - 63.22%
Expected life	3.15 - 8.75 yrs	2.65 - 8.25 yrs
Expected dividend yield	—%	—%
Preferred stock fair value:		
Series D	\$2.90	\$2.10
Series C-1	\$0.77	\$1.60
Series C	\$0.59	\$1.20

The assumptions were determined as follows:

Assumed risk-free interest rate — Based on the average yield of U.S. Treasury bills as of the valuation date for the expected term of the award.

Assumed volatility — Based on the historical volatility of a number of publicly traded companies comparable in size, business model, industry and business description.

Expected life — Based on the remaining contractual term of warrant as of the valuation date.

OBALON THERAPEUTICS, INC.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)

Expected dividend yield — Based upon the Company's historic dividends and dividend expectations for the foreseeable future.

Preferred stock fair value — Given the absence of a public trading market, the Company considered numerous objective and subjective factors to determine the fair value of preferred stock at each valuation date. These factors included, but were not limited to, (i) contemporaneous valuations of preferred stock performed by unrelated third-party specialists; (ii) the prices for preferred stock sold to outside investors; (iii) the rights, preferences and privileges of preferred stock relative to common stock; (iv) developments in the business; and (v) the likelihood of achieving a liquidity event, such as an initial public offering or a merger or acquisition of the Company, given prevailing market conditions.

As of December 31, 2015 and June 30, 2016, reasonable changes in the unobservable inputs would not be expected to have a significant impact on the consolidated financial statements. The Company's policy is to recognize transfers between levels of the fair value hierarchy on the date of the event or change in circumstances that caused the transfer. There were no significant transfers into or out of Level 1, 2, or 3 for the year ended December 31, 2015 and the six months ended June 30, 2016.

The following table provides reconciliation for all liabilities measured at fair value using significant unobservable inputs (Level 3) for the year ended December 31, 2015 and six months ended June 30, 2016 (in thousands):

	Fair value measurements at reporting date using significant unobservable inputs (Level 3)
Balance at December 31, 2014	\$ 56
Issuance of warrants for the purchase of convertible preferred stock	242
Change in fair value of warrant liability	34
Balance at December 31, 2015	332
Change in fair value of warrant liability	(119)
Balance at June 30, 2016	<u>\$ 213</u>

Instruments Not Recorded at Fair Value on a Recurring Basis

The estimated fair value of long-term debt is determined by Level 2 inputs and is based primarily on quoted market prices for the same or similar issues. The recorded value of long-term debt approximates the current fair value because of its relatively short maturity date.

OBALON THERAPEUTICS, INC.
NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)
4. Net Loss per Share and Pro Forma Net Loss per Share

The following table sets forth the computation of basic and diluted net loss per share of common stock (in thousands, except for shares and per share data):

	Six months ended June 30,	
	2015	2016
Net loss	\$ (7,157)	\$ (7,712)
Weighted-average shares used in computing net loss per share	1,659,394	1,672,633
Net loss per share, basic and diluted	\$ (4.31)	\$ (4.61)

The following table sets forth the outstanding potentially dilutive securities determined using the treasury stock and if-converted methods that have been excluded in the calculation of diluted net loss per share because to do so would be anti-dilutive (in common stock equivalent shares):

	Six months ended June 30,	
	2015	2016
Convertible preferred stock, on an if-converted basis	24,487,630	26,396,540
Stock options to purchase common stock	—	908,882
Total	24,487,630	27,305,422

The following table summarizes our pro forma net loss per share (in thousands, except shares and per share data):

	Six months ended June 30, 2016
Numerator:	
Net loss	\$
Change on fair value of convertible preferred stock warrants	
Pro forma net loss	\$
Denominator:	
Weighted-average shares used in computing net loss per share, basic and diluted	
Pro forma adjustments to reflect assumed conversion of convertible preferred stock	
Pro forma adjustments to reflect assumed conversion of convertible preferred stock warrants	
Weighted-average shares used in computing pro forma net loss per share, basic and diluted	
Pro forma net loss per share, basic and diluted	\$

OBALON THERAPEUTICS, INC.
NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)
5. Balance Sheet Details

Short-term investments consist of the following at December 31, 2015 and June 30, 2016 (in thousands):

	Maturity (in years)	Amortized cost	Gross unrealized gains	Gross unrealized losses	Estimated fair value
At December 31, 2015:					
U.S. Treasury	1 year or less	\$ 9,178	\$ —	\$ (3)	\$ 9,175
At June 30, 2016:					
U.S. Treasury	1 year or less	\$ 13,954	\$ —	\$ (1)	\$ 13,953

Inventory consist of the following (in thousands):

	December 31, 2015	June 30, 2016
Raw materials	\$ 235	\$ 407
Work in process	121	64
Finished goods	7	6
Total	<u>\$ 363</u>	<u>\$ 477</u>

Other current assets consist of the following (in thousands):

	December 31, 2015	June 30, 2016
Prepaid assets	\$ 234	\$ 181
Interest receivable	25	34
Other assets	14	—
Total	<u>\$ 273</u>	<u>\$ 215</u>

Property and equipment, net consist of the following (in thousands):

	December 31, 2015	June 30, 2016
Computer equipment	\$ 255	\$ 272
Leasehold improvements	181	181
Furniture and fixtures	82	82
Scientific equipment	770	827
Construction in progress, or CIP	24	134
	1,312	1,496
Less: accumulated depreciation and amortization	(894)	(984)
Total	<u>\$ 418</u>	<u>\$ 512</u>

OBALON THERAPEUTICS, INC.**NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)**

Depreciation and amortization expense was \$0.1 million for both the six months ended June 30, 2015 and 2016.

Other current liabilities consist of the following (in thousands):

	December 31, 2015	June 30, 2016
Accrued legal	\$ 162	\$ 248
Accrued professional fees	195	152
Accrued interest	44	44
Other accrued expenses	92	142
Total	<u>\$ 493</u>	<u>\$ 586</u>

6. Term Loan

In June 2013, the Company entered into a loan and security agreement, or 2013 Loan Agreement, with Square 1 Bank allowing for borrowings up to \$3.0 million. In addition to the interest payments, Square 1 Bank received warrants for the purchase of up to 25,210 shares of the Company's Series C-1 convertible preferred stock. In October 2014, the Company amended the 2013 Loan Agreement and executed a \$10.0 million credit facility with Square 1 Bank, or 2014 Loan Agreement. The 2014 Loan Agreement was separated into two tranches, Term Loan A and Term Loan B. Term Loan A was \$5.0 million, which included the existing \$3.0 million of outstanding debt and the additional \$2.0 million that was funded upon closing of the 2014 Loan Agreement. Term Loan B was \$5.0 million and was available upon receipt of at least \$20.0 million in proceeds from the issuance and sale of the Company's equity securities to investors. Term Loan B was funded after the close of the Company's Series D financing in January 2015. As part of the 2014 Loan Agreement, the Company issued Square 1 Bank additional warrants to purchase up to 80,822 shares of its Series D convertible preferred stock at \$2.5983 per share.

The present value of the future cash flows under the 2014 Loan Agreement terms described below did not exceed the present value of the future cash flows under the 2013 Loan Agreement terms by more than 10%. As such, the Company treated this amendment as a modification and recorded the associated immaterial facility fee and the associated immaterial fair value of the warrants as a discount to the 2014 Loan Agreement. This discount and the remaining balance of debt issuance costs and debt discount of the 2013 Loan Agreement are amortized to interest expense over the remaining term of the 2014 Loan Agreement using the effective-interest method.

The interest rate under the 2014 Loan Agreement is at a variable annual rate equal to the greater of the prime rate plus 1.75% or 5.0%, and there is an interest-only period until October 31, 2016, followed by a 24-month principal and interest period. Pursuant to the 2014 Loan Agreement, the Company provided a first priority security interest in all existing and after-acquired assets, excluding intellectual property owned by the Company. As of June 30, 2016, unpaid borrowings under the 2014 Loan Agreement totaled \$10.0 million. For the six months ended June 30, 2015 and 2016, the Company recorded immaterial amounts related to the amortization of debt discount.

The 2014 Loan Agreement includes restrictions on, among other things, the Company's ability to incur additional indebtedness, change the name or location of the Company's business, merge with or acquire

OBALON THERAPEUTICS, INC.**NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)**

other entities, pay dividends or make other distributions to holders of its capital stock, make certain investments, engage in transactions with its affiliates, create liens, sell assets, pay subordinated debt, and store certain inventory and equipment with third parties. The 2014 Loan Agreement also requires that, if the Company's total cash is less than \$5.0 million, the Company is required to maintain all its deposits, transaction accounts and primary investment accounts with Square 1 Bank, and if the Company's total cash is greater than \$5.0 million, it is required to maintain 50% of its deposits, transaction accounts and primary investment accounts with Square 1 Bank.

Total term loan and unamortized debt discount balances are as follows (in thousands):

	June 30, 2016
Face value	\$ 10,000
Less: debt issuance costs	(117)
Total	\$ 9,883
Less: current portion	(3,255)
Total	\$ 6,628

As of June 30, 2016, future principal payments due under the 2014 Loan agreement are as follows (in thousands):

Year ended:	
December 31, 2016	\$ 833
December 31, 2017	5,000
December 31, 2018	4,167
Total future principal payments due under the 2014 Loan Agreement	\$ 10,000

7. Stock-Based Compensation

The Company adopted an Equity Incentive Plan, or the Plan, in 2008, under which 8,667,434 shares of common stock are reserved for issuance to employees, nonemployee directors, and consultants of the Company. The Plan provides for the grant of incentive stock options, nonstatutory stock options, rights to purchase restricted stock, stock appreciation rights, dividend equivalents, stock payments, and restricted stock units to eligible recipients.

The fair value of stock options for employees was estimated using a Black-Scholes option pricing model with the following assumptions:

	Six months ended June 30,	
	2015	2016
Assumed risk-free interest rate	1.57%	1.49%
Assumed volatility	61.53%	53.49%
Expected option life	6.1 years	6.1 years
Expected dividend yield	— %	— %

OBALON THERAPEUTICS, INC.
NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)

The Company recognized stock-based compensation straight-line over the vesting term of the options. The Company recorded non-cash compensation, including non-cash compensation to employees and nonemployees in the consolidated statements of operations and comprehensive loss as follows (in thousands):

	Six months ended June 30,	
	2015	2016
Cost of revenue	\$ 15	\$ 15
Research and development	23	25
Selling, general and administrative	62	105
Total	<u>\$100</u>	<u>\$145</u>

Unrecognized compensation expense at June 30, 2016 was approximately \$0.6 million, which is expected to be recognized over a weighted-average term of 3.2 years.

Equity instruments issued to nonemployees are initially recorded at their grant-date fair value and are periodically revalued using the Black-Scholes Option Pricing model as the equity instruments vest and are recognized as expense over the related service period. Stock-based compensation expense to nonemployees was immaterial for the six months ended June 30, 2015 and 2016.

The following table summarizes stock option transactions for the Plan for the six months ended June 30, 2016 (in thousands, except shares and per share data):

	Number of shares	Weighted- average exercise price	Weighted- average remaining contractual life (in years)	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2015	3,766,846	\$ 0.50		
Options granted	1,482,662	0.49		
Options exercised	(16,566)	0.70		
Options canceled	(106,493)	0.80		
Outstanding at June 30, 2016	<u>5,126,449</u>	<u>\$ 0.48</u>	7.7	\$ 2,467
Vested and expected to vest at June 30, 2016	4,796,927	\$ 0.49	7.6	\$ 2,348
Vested and exercisable at June 30, 2016	2,698,867	\$ 0.54	6.2	\$ 1,142

All options outstanding at year-end are exercisable under the early exercise provisions of the Plan. Options granted under the Plan that are exercised prior to vesting are subject to repurchase by the Company at the original issue price and will vest according to the respective option agreement. For the six months ended June 30, 2016, no options were early exercised.

OBALON THERAPEUTICS, INC.
NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)
8. Convertible Preferred Stock and Stockholders' Deficit
Convertible Preferred Stock

Convertible preferred stock consisted of the following (in thousands, except for shares):

	As of June 30, 2016			
	Shares authorized	Shares issued and outstanding	Net carrying value	Aggregate liquidation preference
Series A	2,333,332	2,333,332	\$ 6,773	\$ 7,000
Series B	4,333,332	4,333,332	6,454	6,500
Series C	7,809,006	7,738,752	16,393	16,523
Series C-1	1,418,042	1,392,832	4,984	5,000
Series D	8,076,436	7,924,414	20,095	20,590
Series E	10,490,611	5,557,649	15,799	15,893
Total	34,460,759	29,280,311	\$ 70,498	\$ 71,506

Outstanding Warrants

The following warrants were outstanding as of June 30, 2016:

	Shares	Weighted-average exercise price	Issuance date	Expiration date
Series C	70,254	\$ 2.1351	Feb 24, 2012	Feb 24, 2019
Series C-1	25,210	3.5700	Jun 14, 2013	Jun 14, 2023
Series D	80,822	2.5983	Oct 01, 2014	Oct 01, 2024
Series D	23,092	2.5983	Mar 15, 2015	Mar 15, 2023
Series D	48,108	2.5983	Mar 16, 2015	Mar 16, 2023
Total	247,486	\$ 2.5666		

Series E Preferred Stock

On April 29, 2016, the Company completed its Series E financing. The Company sold 5,557,649 shares of Series E stock at \$2.8597 per share for cash proceeds of \$15.8 million, gross of \$0.1 million in issuance costs. The holders of Series E stock are entitled to receive dividends, if declared, at a rate of \$0.2288 per annum. In the event of liquidation, the holders of Series E shares are entitled to receive liquidation preferences at the rate of \$2.8597 per share. Each share of Series E stock is convertible to one share of common stock immediately upon (i) the Company's sale of its common stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, in which per share price is at least \$4.29 (as adjusted) or (ii) the affirmative vote of more than 67% of the holders of the then-outstanding preferred stock voting together as a single class.

The convertible preferred stock has been classified as temporary equity in the accompanying balance sheets as the shares include provisions allowing the holder to cause redemption of the shares upon certain changes in control events that are outside of the Company's control.

OBALON THERAPEUTICS, INC.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)***Amendments to Certificate of Incorporation***

On April 29, 2016, the Company amended its amended and restated certificate of incorporation to:

- Ø increase the total number of shares authorized from 63,805,954 to 79,460,759, of which 45,000,000 are designated as common stock and 34,460,759 are designated as preferred stock;
- Ø reduce the liquidation preference on Series D preferred stock from \$5.1966 per share to \$2.5983 per share;
- Ø create three classes of preferred stock- Series E, Series D and Junior preferred stock. Holders of Series E preferred stockholder receive payment of liquidation distributions and dividends prior and in preference to holders of Series D and Junior preferred stock. Holders of Series D preferred stock receive payment of liquidation distributions and dividends prior and in preference to holders of Junior preferred stock. Liquidation distributions to holders of Junior preferred stock are made pari passu and are made in preference to any payments to the holders of common stock;
- Ø modify the IPO price at which each share of preferred stock is automatically converted to common from \$3.8974 per share to \$4.29 per share (as adjusted for Recapitalizations); and
- Ø change the automatic conversion of the preferred stock to no longer require the affirmative vote of more than 67% of the Series D convertible preferred stock, but only requiring the affirmative vote of more than 67% of the holders of then outstanding preferred stock voting together as a single class.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consists of the following at June 30, 2016:

Conversion of preferred stock	30,045,279
Stock options issued and outstanding	5,126,449
Authorized for future option grants	3,063,416
Warrants outstanding	247,486
Total common stock	<u>38,482,630</u>

9. Income Taxes

For the six months ended June 30, 2015 and 2016, the Company did not record an income tax provision. The U.S. federal and California deferred tax assets generated from the Company's net operating losses have been fully reserved, as the Company believes it is not more likely than not the benefit will be realized.

10. Commitments and Contingencies

The Company leases facilities under a noncancelable operating lease that expires on March 31, 2017. Under the terms of the facilities lease, the Company is required to pay its proportionate share of property taxes, insurance and normal maintenance costs.

OBALON THERAPEUTICS, INC.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)

Future noncancelable minimum payment obligations under the operating lease were as follows as of June 30, 2016 (in thousands):

Year ended:	
December 31, 2016	\$142
December 31, 2017	<u>71</u>
Total future payments due under building lease	<u>\$213</u>

Rent expense was \$0.1 million for both six months ended June 30, 2015 and 2016, respectively.

11. Related Party Transactions

In June 2013, the Company and Bader Sultan & Bros. Co W.L.L., or Bader, a healthcare products distributor based in Sufat, Kuwait, entered into a distribution agreement, whereby the Company appointed Bader as a distributor of its products. Sales to Bader began in November 2013. The Company's agreement with Bader restricts Bader's ability to sell competing products and requires Bader to purchase a certain number of products from the Company monthly based on annual forecasts that the Company provides to Bader. If Bader does not resell the minimum purchase quantity specified in the contract by the applicable date, then the Company has the right, in its sole discretion, to sell to other distributors in the Middle East or terminate its agreement with Bader. The initial term of the agreement expires in December 2019, and will thereafter automatically renew for successive terms of 12 months, subject to certain exceptions. The agreement can be terminated by the Company immediately upon certain breaches by Bader, or by either Bader or the Company for uncured material breach of the agreement.

As part of the 2014 Series D convertible preferred stock financing, Bader purchased 2,540,122 shares of the Company's Series D convertible preferred stock. All terms of the purchase of preferred stock were the same for Bader as the other investors. Sales to Bader for the six months ended June 30, 2016 totaled \$1.8 million, which represent 100% of total revenue for the period. As of June 30, 2016, the Company had accounts receivable from Bader of \$0.6 million.

In January 2015, the Company and Bader amended the distribution agreement. In accordance with the amendment, Bader provided the Company with a deposit of \$1.3 million, and committed to minimum product purchases for calendar year 2015. Under the terms of the amendment, the Company reserved the right to keep the deposit as liquidated damages if Bader did not meet the minimum product purchases. The Company classified the deposit as a current liability at December 31, 2015 on the consolidated balance sheets as the minimum product purchase levels were met. In April 2016, the Company and Bader entered into a Payment Direction Letter, resulting in the exchange of the distribution agreement deposit for 448,298 shares Series E convertible preferred stock at a price of \$2.8597 per share.

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS —(Continued)**12. Subsequent Events*****Stock option exercises***

Subsequent to June 30, 2016, stock options for 2,297,696 shares of the Company's common stock were exercised for proceeds of \$1.0 million.

Second amendment to loan and security agreement

On September 7, 2016, the Company entered into a Second Amendment to Loan and Security Agreement, or the Amendment, with Pacific Western Bank (as successor in interest to Square 1 Bank), which amends the existing outstanding debt agreement described in Note 6. The Amendment allows for total borrowings up to \$15.0 million in two tranches as follows: a first tranche consisting of \$10.0 million funded on September 7, 2016, of which the full \$10.0 million must be used to repay the existing debt with Pacific Western Bank (pursuant to its original terms); and a second tranche consisting of an additional \$5.0 million which may be drawn at any time prior to March 7, 2017. We refer to the first tranche and the second tranche collectively as the "Term Loans." The Term Loans bear interest at the greater of prime rate plus 1.50% per annum, or 5.00%. The Term Loans mature on September 7, 2020 and have an interest-only period through March 2018 followed by 30 equal monthly installments of principal and interest. The Term Loans may be prepaid in full at any time with no additional cost.

Pursuant to the Amendment, the Company issued to Pacific Western Bank a warrant to purchase a number of the Company's Series E Preferred Stock, at a purchase price of \$2.8597 per share, equal to 3.0% of the total amount of up to \$5.0 million of debt drawn over \$10.0 million divided by the purchase price, which will only be exercisable in the event that the Company borrows all or part of the second tranche.

The Amendment also requires that, if the Company's total cash is less than \$15.0 million, the Company is required to maintain all its deposits, transaction accounts and primary investment accounts with Pacific Western Bank, and if the Company's total cash is greater than \$15.0 million, it is required to maintain 50% of its deposits, transaction accounts and primary investment accounts with Pacific Western Bank. In addition, should the Company draw on the second tranche and its cash balance fall below \$5.0 million, the Company is required to deliver a signed term sheet to Pacific Western Bank that is reasonably acceptable to the bank for the sale of the Company's equity securities.

FDA approval

On September 8, 2016, the Company received premarket approval from the FDA to market the Obalon balloon system for temporary use to facilitate weight loss in obese adults with a BMI of 30 to 40 who have failed to lose weight through diet and exercise. The Obalon balloon system is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed.



Through and including _____, 2016 (the 25th day after the date of this prospectus), all dealers that buy, sell or trade shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other expenses of issuance and distribution.

The following table sets forth all costs and expenses, other than underwriting discounts and commissions, paid or payable by the Registrant in connection with the sale of the common stock being registered. All amounts shown are estimates except for the Securities and Exchange Commission, or SEC, registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and The NASDAQ Global Market listing fee.

Item	Amount Paid or to be Paid
SEC registration fee	\$ 7,553
FINRA filing fee	11,750
NASDAQ Global Market listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous expenses	*
Total	\$ *

* To be provided by amendment.

Item 14. Indemnification of directors and officers.

Section 145 of the General Corporation Law of the State of Delaware authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the General Corporation Law of the State of Delaware are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the General Corporation Law of the State of Delaware, the Registrant's restated certificate of incorporation to be effective immediately prior to the closing of this offering contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

- Ø any breach of the director's duty of loyalty to the Registrant or its stockholders;
- Ø acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- Ø under Section 174 of the General Corporation Law of the State of Delaware (regarding unlawful dividends and stock purchases); or
- Ø any transaction from which the director derived an improper personal benefit.

As permitted by the General Corporation Law of the State of Delaware, the Registrant's restated bylaws to be effective immediately prior to the closing of this offering, provide that:

- Ø the Registrant is required to indemnify its directors and executive officers to the fullest extent permitted by the General Corporation Law of the State of Delaware, subject to very limited exceptions;

- Ø the Registrant may indemnify its other employees and agents as set forth in the General Corporation Law of the State of Delaware;
- Ø the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the General Corporation Law of the State of Delaware, subject to very limited exceptions; and
- Ø the rights conferred in the restated bylaws are not exclusive.

Prior to the closing of this offering, the Registrant intends to enter into indemnification agreements with each of its current directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. There is no pending litigation or proceeding involving a director or executive officer of the Registrant for which indemnification is sought. Reference is also made to the underwriting agreement to be filed as Exhibit 1.1 to this registration statement, which provides for the indemnification of executive officers, directors and controlling persons of the Registrant against specified liabilities, including liabilities under the Securities Act with respect to information provided by the underwriters specifically for inclusion in the registration statement. The indemnification provisions in the Registrant's restated certificate of incorporation, restated bylaws and the indemnification agreements to be entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant expects to obtain and maintain insurance policies under which its directors and executive officers are insured, within the limits and subject to the limitations of those policies, against certain expenses in connection with the defense of, and certain liabilities that might be imposed as a result of, actions, suits or proceedings to which they are parties by reason of being or having been directors or officers. The coverage provided by these policies may apply whether or not the Registrant would have the power to indemnify such person against such liability under the provisions of the General Corporation Law of the State of Delaware.

Item 15. Recent sales of unregistered securities.

From September 7, 2013 and through September 7, 2016, the Registrant has issued and sold the following securities:

1. Between September 7, 2013 and September 7, 2016, the Registrant granted options to purchase 4,069,776 shares of common stock under its 2008 Equity Incentive Plan to its directors, officers, employees, consultants and other service providers with per share exercise prices ranging from \$0.26 to \$0.97. In this same period, the Registrant issued and sold 939,649 shares of common stock upon exercise of stock options previously issued under the 2008 Equity Incentive Plan to its directors, officers, employees, consultants and other service providers for cash consideration at prices ranging from \$0.26 to \$0.90 for an aggregate purchase price of \$280,709. These transactions were exempt from the registration requirements of the Securities Act in reliance upon Rule 701 promulgated under the Securities Act.
2. From August 28, 2014 through December 31, 2014, the Registrant issued in three closings an aggregate of 7,924,414 shares of the Registrant's Series D convertible preferred stock at a purchase price of \$2.5983 per share for an aggregate purchase price of \$20.6 million to nine purchasers that represented to the Registrant that they were each an accredited investor. These

transactions were exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated under the Securities Act.

3. On October 1, 2014, the Registrant issued a warrant to purchase up to 80,822 shares of Series D convertible preferred stock with an exercise price of \$2.5983 per share to one purchaser that represented to the Registrant that it was an accredited investor. This transaction was exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated under the Securities Act.
4. On March 15, 2015 and March 16, 2015, the Registrant issued warrants to purchase up to an aggregate of 71,200 shares of Series D convertible preferred stock at an exercise price of \$2.5983 per share to two purchasers that represented to the Registrant that they were each an accredited investor. These transactions were exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated under the Securities Act.
5. On April 19, 2016 and May 4, 2016, the Registrant issued in two closings an aggregate of 5,557,649 shares of Series E convertible preferred stock at a purchase price of \$2.8597 per share for an aggregate purchase price of \$15.8 million to 12 purchasers that represented to the Registrant that they were each an accredited investor. These transactions were exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated under the Securities Act.
6. On September 7, 2016, the Registrant issued a warrant to purchase that number of shares of its Series E convertible preferred stock, at a purchase price of \$2.8597 per share, equal to 3.0% of the total additional amount of debt drawn under its loan and security agreement (up to \$5.0 million) divided by the purchase price, which will only be exercisable in the event the Registrant borrows such additional amount. Such warrant is exercisable for up to a maximum of 52,453 shares of Series E convertible preferred stock. The purchaser represented to the Registrant that it was an accredited investor. This transaction was exempt from the registration requirements of the Securities Act in reliance upon Section 4(2) of the Securities Act or Regulation D promulgated under the Securities Act.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions or any public offering, and the Registrant believes each transaction was exempt from the registration requirements of the Securities Act as stated above. All recipients of the foregoing transactions either received adequate information about the Registrant or had access, through their relationships with the Registrant, to such information. Furthermore, the Registrant affixed appropriate legends to the share certificates and instruments issued in each foregoing transaction setting forth that the securities had not been registered and the applicable restrictions on transfer.

Item 16. Exhibits and financial statement schedules.

(a) Exhibits.

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this registration statement on Form S-1, which Exhibit Index is incorporated herein by reference.

(b) Financial Statement Schedule.

No financial statement schedules are provided because the information called for is not required or is shown either in the consolidated financial statements or notes.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(a) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(b) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, or the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Carlsbad, State of California, on this 9th day of September, 2016.

OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal
Andrew Rasdal
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Andrew Rasdal and William Plovanic, and each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution and resubstitution and full power to act without the other, for him or her and in his or her name, place or stead, in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments), and to sign any registration statement for the same offering covered by this registration statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their, his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Andrew Rasdal</u> Andrew Rasdal	President and Chief Executive Officer and Director (Principal Executive Officer)	September 9, 2016
<u>/s/ William Plovanic</u> William Plovanic	Chief Financial Officer (Principal Financial Officer)	September 9, 2016
<u>/s/ Nooshin Hussainy</u> Nooshin Hussainy	Vice President of Finance (Principal Accounting Officer)	September 9, 2016
<u>/s/ Kim Kamdar</u> Kim Kamdar	Chairperson of the Board of Directors	September 9, 2016

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Signature	Title	Date
/s/ Ray Dittamore Ray Dittamore	Director	September 9, 2016
/s/ Douglas Fisher Douglas Fisher	Director	September 9, 2016
/s/ Les Howe Les Howe	Director	September 9, 2016
/s/ Sharon Stevenson Sharon Stevenson	Director	September 9, 2016

Exhibit index

Exhibit Number	Description of Document
1.1†	Form of Underwriting Agreement.
3.1	Seventh Amended and Restated Certificate of Incorporation, as currently in effect.
3.2†	Form of Restated Certificate of Incorporation to be effective immediately prior to the closing of this offering.
3.3	By-laws, as currently in effect.
3.4†	Form of Restated Bylaws to be effective immediately prior to the closing of this offering.
4.1	Form of Common Stock Certificate.
4.2	Fourth Amended and Restated Investors' Rights Agreement dated April 29, 2016 among the Registrant and certain of its stockholders.
4.3	Form of Warrant to Purchase Series C Preferred Stock.
4.4	Amended and Restated Warrant to Purchase Stock issued to Square 1 Bank to purchase shares of Series C-1 Preferred Stock, issued June 14, 2013, as amended October 1, 2014.
4.5	Second Warrant to Purchase Stock issued to Square 1 Bank to purchase shares of Series D Preferred Stock, dated October 1, 2014.
4.6	Third Warrant to Purchase Stock issued to Pacific Western Bank to purchase shares of Series E Preferred Stock, dated September 7, 2016.
5.1†	Opinion of Fenwick & West LLP.
10.1†	Form of Indemnity Agreement by and between the Registrant and its directors and officers.
10.2	2008 Stock Plan and form of Stock Option Agreement thereunder.
10.3†	2016 Equity Incentive Plan and form of award agreements thereunder.
10.4†	2016 Employee Stock Purchase Plan and form of offering document thereunder.
10.5†	Offer Letter dated June 9, 2008 between the Registrant and Andrew Rasdal.
10.6†	Offer Letter dated June 16, 2008 between the Registrant and Mark Brister.
10.7†	Offer Letter dated November 24, 2008 between the Registrant and Amy VandenBerg.
10.8	Leases dated October 3, 2011 and November 23, 2015 between the Registrant and Pleta & San Gal Trusts dba: Ocean Point Tech Centre, and related amendments.
10.9*	Distribution Agreement dated June 26, 2013 between the Registrant and Bader Sultan & Bros. Co. W.L.L., as amended.
10.10	Loan and Security Agreement dated June 14, 2013 between the Registrant and Pacific Western Bank (as successor in interest to Square 1 Bank), as amended.
16.1	Letter from Ernst & Young LLP.
21.1	List of Subsidiaries.
23.1	Consent of KPMG LLP, independent registered public accounting firm.

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Exhibit Number	Description of Document
23.2†	Consent of Fenwick & West LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included in signature page to Registration Statement).
†	To be filed by amendment.
*	Registrant has omitted and filed separately with the SEC portions of the exhibit pursuant to confidential treatment request under Rule 406 promulgated under the Securities Act.

**SEVENTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
OBALON THERAPEUTICS, INC.**

Obalon Therapeutics, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), certifies that:

A. The name of the Corporation is Obalon Therapeutics, Inc. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on January 2, 2008.

B. This Seventh Amended and Restated Certificate of Incorporation of the corporation attached hereto as Exhibit A, which is incorporated herein by this reference, and which restates, integrates and further amends the provisions of the Certificate of Incorporation of this corporation as previously amended or supplemented, has been duly adopted by the corporation’s Board of Directors and a majority of the stockholders in accordance with Sections 242 and 245 of the Delaware General Corporation Law, with the approval of the corporation’s stockholders having been given by written consent without a meeting in accordance with Section 228 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, Obalon Therapeutics, Inc. has caused this Seventh Amended and Restated Certificate of Incorporation to be signed by Andrew Rasdal, a duly authorized officer of the Corporation on April 29, 2016.

/s/ Andrew Rasdal

Andrew Rasdal
President

EXHIBIT A

ARTICLE I

The name of the corporation is Obalon Therapeutics, Inc.

ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE III

The address of the corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400 in the City of Wilmington, County of New Castle, Delaware 19808. The name of the corporation's registered agent for service of process at such address is Corporation Service Company.

ARTICLE IV

The total number of shares of stock that the corporation shall have authority to issue is 79,460,759, consisting of 45,000,000 shares of Common Stock, \$0.001 par value per share, and 34,460,759 shares of Preferred Stock, \$0.001 par value per share. The Preferred Stock shall consist of 2,333,332 shares of "Series A Preferred Stock," 4,333,332 shares of "Series B Preferred Stock," 7,809,006 shares of "Series C Preferred Stock," 1,418,042 shares of "Series C-1 Preferred Stock," 8,076,436 shares of "Series D Preferred Stock" and 10,490,611 shares of "Series E Preferred Stock."

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) "**Conversion Price**" shall mean \$2.2593 per share for the Series A Preferred Stock, \$1.50 per share for the Series B Preferred Stock, \$2.1351 per share for the Series C Preferred Stock, \$3.5898 per share for the Series C-1 Preferred Stock, \$2.5983 per share for the Series D Preferred Stock and \$2.8597 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(b) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(c) “**Corporation**” shall mean Obalon Therapeutics, Inc.

(d) “**Distribution**” shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases at cost of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, and (iii) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Common and Preferred Stock of the Corporation voting as separate classes.

(e) “**Dividend Rate**” shall mean an annual rate of \$0.24 per share for the Series A Preferred Stock, \$0.12 per share for the Series B Preferred Stock, \$0.15 per share for the Series C Preferred Stock, \$0.2871 per share for the Series C-1 Preferred Stock, \$0.2079 per share for the Series D Preferred Stock and \$0.228776 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(f) “**Junior Preferred Stock**” shall mean Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series C-1 Preferred Stock and any other series of preferred stock of the Company that may from time to time be authorized by an amendment of the Corporation’s Certificate of Incorporation following the date of filing of this Seventh Amended and Restated Certificate of Incorporation.

(g) “**Liquidation Preference**” shall mean \$3.00 per share for the Series A Preferred Stock, \$1.50 per share for the Series B Preferred Stock, \$2.1351 per share for the Series C Preferred Stock, \$3.5898 per share for the Series C-1 Preferred Stock, \$2.5983 per share for the Series D Preferred Stock and \$2.8597 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(h) “**Options**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(i) “**Original Issue Price**” shall mean \$3.00 per share for the Series A Preferred Stock, \$1.50 per share for the Series B Preferred Stock, \$2.1351 per share for the Series C Preferred Stock, \$3.5898 per share for the Series C-1 Preferred Stock, \$2.5983 per share for the Series D Preferred Stock and \$2.8597 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(j) “**Preferred Stock**” shall mean each series of Junior Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock.

(k) “**Recapitalization**” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event provided, however, that a Recapitalization shall not include the Reverse Split.

2. Dividends.

(a) Series E Preferred Stock. In any calendar year, the holders of outstanding shares of Series E Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for shares of Series E Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on the Series D Preferred Stock, Junior Preferred Stock or Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Series D Preferred Stock, Junior Preferred Stock or Common Stock unless dividends on the Series E Preferred Stock have been declared in accordance with the preference stated herein and all declared dividends on the Series E Preferred Stock have been paid or set aside for payment to the Series E Preferred Stock holders. The right to receive dividends on shares of Series E Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Series E Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any prior calendar year.

(b) Series D Preferred Stock. Subject to the prior payment or setting aside for payment to the holders of Series E Preferred Stock of their full amount pursuant to Section 2(a) above, in any calendar year, the holders of outstanding shares of Series D Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for shares of Series D Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Junior Preferred Stock or Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Junior Preferred Stock or Common Stock unless dividends on the Series D Preferred Stock have been declared in accordance with the preference stated herein and all declared dividends on the Series D Preferred Stock have been paid or set aside for payment to the Series D Preferred Stock holders. The right to receive dividends on shares of Series D Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Series D Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any prior calendar year.

(c) Junior Preferred Stock. Subject to the prior payment or setting aside for payment to the holders of Series E Preferred Stock and Series D Preferred Stock of their full amount pursuant to Sections 2(a) and (b) above, in any calendar year, the holders of outstanding shares of Junior Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Junior Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock unless dividends on the Junior Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Junior Preferred Stock have been paid or set aside for payment to the Junior Preferred Stock holders. Payments of any dividends to the holders of each such series of Junior Preferred Stock shall be paid pro rata, on an equal priority, *pari passu*

basis according to their respective dividend preferences as set forth herein. The right to receive dividends on shares of Junior Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any prior calendar year.

(d) Additional Dividends. The Corporation shall not declare, set aside or pay any dividends on any share of Common Stock (other than dividends on Common Stock payable solely in Common Stock) unless, in addition to the dividends payable pursuant to Sections 2(a), (b) and (c) above, a dividend is declared, set aside or paid with respect to all outstanding shares of Preferred Stock in an amount for each such share of Preferred Stock at least equal to the aggregate amount of the dividends for all shares of Common Stock into which such share of Preferred Stock could then be converted, calculated on the record date for determination of holders entitled to receive such dividend.

(e) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be determined in accordance with the procedures described in Section 3(f) hereof.

(f) Waiver of Dividends. Any dividend preference of the Preferred Stock may be waived, in whole or in part, by the consent or vote of the holders of at least sixty-seven percent (67%) of the outstanding shares of Preferred Stock.

3. Liquidation Rights.

(a) Series E Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series E Preferred Stock shall be entitled to receive, on a pro rata basis and prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series D Preferred Stock, Junior Preferred Stock or the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series E Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series E Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series E Preferred Stock, or such lesser amount as may be approved by the holders of at least sixty-seven percent (67%) of the outstanding shares of Series E Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series E Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed on a pro rata basis among the holders of the Series E Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Series D Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary and subject to the prior payment to the holders of Series E Preferred Stock of the full preferential amounts specified in Section 3(a) above, the holders of the Series D Preferred Stock shall be entitled to receive, on a pro rata basis and prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Junior Preferred Stock or the Common Stock by reason of

their ownership of such stock, an amount per share for each share of Series D Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series D Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series D Preferred Stock, or such lesser amount as may be approved by the holders of at least sixty-seven percent (67%) of the outstanding shares of Series D Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series D Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(b), then the entire assets of the Corporation legally available for distribution shall be distributed on a pro rata basis among the holders of the Series D Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(b).

(c) Junior Preferred Stock Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary and subject to the prior payment to the holders of Series E Preferred Stock and Series D Preferred Stock of the full preferential amounts specified in Sections 3(a) and (b) above, the holders of the Junior Preferred Stock shall be entitled to receive, on a pari passu basis and prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of each series of Junior Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of such series of Junior Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of such series of Junior Preferred Stock, or such lesser amount as may be approved by the holders of at least sixty-seven percent (67%) of the outstanding shares of Junior Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Junior Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(c), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of each series of the Junior Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(c).

(d) Distribution of Remaining Assets Solely to Common Stock. Subject to the prior payment to the holders of Preferred Stock of the full preferential amounts specified in Sections 3(a), (b) and (c) above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed on a pro rata basis solely among the holders of the Common Stock in proportion to the number of shares of Common Stock held by them.

(e) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Notwithstanding paragraphs (a), (b) and (c) above, solely for purposes of determining the amount that each holder of shares of Preferred Stock is entitled to receive with respect to a liquidation, dissolution or winding up of the Corporation, each such holder shall be treated as if such holder had converted such holder's shares of Preferred Stock into shares of Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation if as a result of an actual conversion of any series of Preferred Stock, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder had not converted such Preferred Stock into shares of Common Stock.

If, with respect to a specific series of Preferred Stock, the holder is treated as if such holder had converted shares of such series of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution on such series of Preferred Stock pursuant to Section 3(a), (b) or (c) that would otherwise be made to holders of such series of Preferred Stock.

(f) Reorganization. For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Corporation held by such holders prior to such transaction, at least a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease, exclusive license or other disposition or conveyance of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole by means of any transaction or series of related transactions, except where such sale, lease, exclusive license or other disposition or conveyance is to a wholly-owned subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a liquidation, dissolution or winding up pursuant to clause (i) or (ii) of the preceding sentence may be waived by the consent or vote of at least sixty- seven percent (67%) of the outstanding Preferred Stock.

(g) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, except that any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(g), “**trading day**” shall mean any day which the exchange or system on which the securities to be distributed are traded is open and “**closing prices**” or “**closing bid prices**” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of each series of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the “**Conversion Rate**” for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion.

(i) Upon IPO. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “**Securities Act**”), covering the offer and sale of the Corporation’s Common Stock, provided that the offering price per share is not less than \$4.29 (as adjusted for Recapitalizations) and provided further than the aggregate gross proceeds to the Company in such offering (before taking into account underwriter discounts or commissions) are at least Thirty Million Dollars (\$30,000,000).

(ii) Upon Election of Preferred Stock. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share upon the receipt by the Corporation of a written request for such conversion from the holders of at least sixty-seven percent (67%) of the Preferred Stock then outstanding, voting together as a single class on an as-converted basis, or, if later, the effective date for conversion specified in such request.

Each of the events referred to in Sections 4(b)(i) and (ii) are referred to herein as an “**Automatic Conversion Event**”).

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of any shares of any series of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, the holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that the holder elects to convert the same; provided, however, that on the date of an Automatic Conversion Event, the applicable outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of the applicable series of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the

Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this paragraph 4(d), “**Additional Shares of Common**” shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Seventh Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of:

(1) shares of Common Stock and options, warrants or other rights to purchase Common Stock issued or issuable to employees, officers or directors of, or consultant or advisors to the Corporation or any subsidiary pursuant to stock grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar arrangements, in each case only if and to the extent such grants are approved by the Board of Directors, including the Preferred Directors;

(2) shares of Common Stock issued or issuable as a dividend or distribution on, or upon conversion of, any series of Preferred Stock or pursuant to any event for which adjustment is made pursuant to Sections 4(e), 4(f) or 4(g) hereof;

(3) shares of Common Stock issued or issuable for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination, provided that such issuance has been approved by the holders of at least sixty-seven percent (67%) of the then outstanding Preferred Stock;

(4) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors, including the Preferred Directors;

(5) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreement or strategic partnership approved by the Board of Directors, including the Preferred Directors; and

(6) shares of Common Stock issuable upon conversion of shares of Preferred Stock that are issued upon exercise of any warrants that are outstanding as of the filing of this Seventh Amended and Restated Certificate of Incorporation.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of any series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to Section 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price of such series of Preferred Stock and also the Conversion Price of the Series C Preferred Stock in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the date of the filing of this Seventh Amended and Restated Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f) and 4(g) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such

Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event that, at any time after the issuance by this Corporation of the first share of Series E Preferred Stock, this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Conversion Price of the Series E Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of any series of Preferred Stock with a Conversion Price above the consideration per share of the Additional Shares shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, such Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of this Section 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding. No adjustment in a Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(d)(iii)) if the Corporation receives written notice waiving such adjustment from the holders of at least sixty-seven percent (67%) of the outstanding Preferred Stock; provided, however, no adjustment to the Conversion Price of the Series C Preferred Stock shall be waived unless the Corporation receives written notice waiving

such adjustment from the holders of at a majority of the outstanding shares of Series C Preferred Stock, no adjustment to the Conversion Price of the Series D Preferred Stock shall be waived unless the Corporation receives written notice waiving such adjustment from the holders of at least sixty-seven percent (67%) of the outstanding shares of Series D Preferred Stock and no adjustment to the Conversion Price of the Series E Preferred Stock shall be waived unless the Corporation receives written notice waiving such adjustment from the holders of at least sixty-seven percent (67%) of the outstanding shares of Series E Preferred Stock.

(v) Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in accordance with the procedures described in Section 3(g) hereof; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 4(d)(iii) shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of Shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment

of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above, if the Common Stock issuable upon conversion of any series of Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders of such series would otherwise have been entitled to receive, each holder of such series of Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) No Impairment. The Corporation will not through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of all series of Preferred Stock against impairment.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Prices pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of any series of

Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (1) such adjustments and readjustments, (2) the Conversion Price therefor at the time in effect and (3) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such series of Preferred Stock.

(j) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the corporation pursuant to Section 3(f);

then, in connection with each such event, this Corporation shall send to the holders of each series of the Preferred Stock prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed. Such written notice shall be given at least fifteen (15) days prior (A) the record date for determination of the stockholders entitled to receive a Distribution pursuant to Section 4(j)(i), or (B) the effective date for any transaction described in Section 4(j)(ii) or Section 4(j)(iii).

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of at least sixty-seven percent (67%) of the Preferred Stock, voting as a single class on an as-converted basis.

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of each series of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of each series of Preferred Stock and the holders of Common Stock shall vote together as a single class and not as separate classes.

(b) No Series Voting. Other than as provided herein or required by law, there shall be no series voting.

(c) Preferred Stock. Each holder of each series of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of such series of Preferred Stock held by such holder could be converted as of the record date. Fractional votes shall not be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be disregarded. Except as otherwise expressly provided herein or as required by law, the holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation.

(d) Election of Directors. The Board of Directors shall consist of seven (7) members. The holders of Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) members of the Corporation's Board of Directors (the "**Preferred Directors**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "**Common Director**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. Any additional members of the Corporation's Board of Directors shall be elected by the holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis (each an "**Additional Director**").

(e) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of all outstanding shares of Common Stock and Preferred Stock of the Corporation, voting together as a single class on an as-converted basis.

(f) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

6. Preferred Stock Protective Provisions. The Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of not less than sixty-seven percent (67%) of the outstanding shares of the Preferred Stock, voting together as a single class on an as-converted basis, take any action which:

(a) alters or changes the rights, preferences or privileges of the Preferred Stock or any series thereof (whether by merger, reclassification, amendment of this Certificate of Incorporation or otherwise);

(b) amends, alters, waives or repeals any provision of the Certificate of Incorporation or bylaws of the Corporation (including pursuant to a merger, reclassification or otherwise);

(c) increases or decreases (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of any class or series of stock;

(d) authorizes or creates (by reclassification, merger or otherwise) any new class or series of stock;

(e) authorizes a merger, acquisition or sale of substantially all of the assets of the Corporation or any of its subsidiaries (other than a merger exclusively to effect a change of domicile of the Corporation), or any other transaction resulting in a deemed liquidation, dissolution or winding up of the Corporation pursuant to Section 3(g) hereof;

(f) redeems, retires, purchases or otherwise acquires (or pays into or sets aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock at no greater than cost from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which this Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment;

(g) results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock or any series thereof;

(h) increases the number of shares reserved in any of the Corporation's equity incentive plans;

(i) increases or decreases the authorized number of directors which constitute the Board of Directors of the Corporation;

(j) results in the taxation of the holders of Preferred Stock under Section 305 of the Internal Revenue Code or any successor thereto; or

(k) amends this Section 6.

7. Series E Preferred Stock Protective Provision. The Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of not less than sixty-seven percent (67%) of the outstanding shares of the Series E Preferred Stock, voting together as a single class, take any action which (whether by merger, reclassification, amendment of the Certificate of Incorporation, or otherwise):

(a) adversely alters or changes the express rights or obligations of the Series E Preferred Stock set forth in (i) Section 2(a) ("Dividends – Series E Preferred Stock"); (ii) Section 3(a) ("Liquidation Rights – Series E Liquidation Preference"); or (iii) any other provision of this Certificate of Incorporation that expressly and exclusively references the Series E Preferred Stock;

(b) alters or changes the powers preferences, or special rights of the Series E Preferred Stock so as to affect the Series E Preferred Stock adversely, but does not so affect the entire class of the Preferred Stock;

(c) increases the authorized number of shares of Series E Preferred Stock set forth in Article IV; or

(d) amends this Section 7.

8. Series D Preferred Stock Protective Provision. The Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of not less than sixty-seven percent (67%) of the outstanding shares of the Series D Preferred Stock, voting together as a single class, take any action which (whether by merger, reclassification, amendment of the Certificate of Incorporation, or otherwise):

(a) adversely alters or changes the express rights or obligations of the Series D Preferred Stock set forth in (i) Section 2(b) (“Dividends – Series D Preferred Stock”); (ii) Section 3(b) (“Liquidation Rights – Series D Liquidation Preference”); or (iii) any other provision of this Certificate of Incorporation that expressly and exclusively references the Series D Preferred Stock;

(b) alters or changes the powers preferences, or special rights of the Series D Preferred Stock so as to affect the Series D Preferred Stock adversely, but does not so affect the entire class of the Preferred Stock;

(c) increases the authorized number of shares of Series D Preferred Stock set forth in Article IV; or

(d) amends this Section 8.

9. Reissuance of Preferred Stock. In the event that any shares of any series of Preferred Stock shall be converted pursuant to Section 4 or otherwise repurchased by the Corporation, the shares so converted or repurchased shall be cancelled and shall not be issuable by this Corporation.

10. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder’s address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated by the Board of Directors of the Corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

3. Neither any amendment nor repeal of this ARTICLE X, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE XII

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series C Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

OBALON THERAPEUTICS, INC.

BY-LAWS

ARTICLE I – STOCKHOLDERS

Section 1: Annual Meeting

An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date, and at such time as the Board of Directors shall each year fix, which date shall be within thirteen (13) months of the last annual meeting of stockholders or, if no such meeting has been held, the date of incorporation.

Section 2: Special Meetings

Special meetings of the stockholders, for any purpose or purposes prescribed in the notice of the meeting, may be called by the Board of Directors or the chief executive officer and shall be held at such place, on such date, and at such time as they or he or she shall fix.

Section 3: Notice of Meetings

Notice of the place, if any, date, and time of all meetings of the stockholders and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation).

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote

communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 4: Quorum

At any meeting of the stockholders, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law. Where a separate vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, may adjourn the meeting to another place, if any, date, or time.

Section 5: Organization

Such person as the Board of Directors may have designated or, in the absence of such a person, the President of the Corporation or, in 'his or her absence, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the

absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

Section 6: Conduct of Business

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

Section 7: Proxies and Voting

At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

The Corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict

impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by an inspector or inspectors appointed by the chairman of the meeting.

All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

Section 8: Stock List

A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law.

The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

Section 9: Consent of Stockholders in Lieu of Meeting

Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery

made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in the first paragraph of this Section. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section to the extent permitted by law. Any such consent shall be delivered in accordance with Section 228(d)(1) of the Delaware General Corporation Law.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

ARTICLE II - BOARD OF DIRECTORS

Section 1: Number and Term of Office

The authorized number of directors shall be not less than three (3) nor more than five (5), with the exact number of directors to be fixed, within the limits heretofore specified, by the Board of Directors from time to time. Each director shall be elected for a term of one year and until his or her successor is elected and qualified, except as otherwise provided herein or required by law.

Whenever the authorized number of directors is increased between annual meetings of

the stockholders, a majority of the directors then in office shall have the power to elect such new directors for the balance of a term and until their successors are elected and qualified. Any decrease in the authorized number of directors shall not become effective until the expiration of the term of the directors then in office unless, at the time of such decrease, there shall be vacancies on the board which are being eliminated by the decrease.

Section 2: Vacancies

If the office of any director becomes vacant by reason of death, resignation, disqualification, removal or other cause, a majority of the directors remaining in office, although less than a quorum, may elect a successor for the unexpired term and until his or her successor is elected and qualified.

Section 3: Regular Meetings

Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 4: Special Meetings

Special meetings of the Board of Directors may be called by one-third (1/3) of the directors then in office (rounded up to the nearest whole number) or by the President and shall be held at such place, on such date, and at such time as they or he or she shall fix. Notice of the place, date, and time of each such special meeting shall be given to each director by whom it is not waived by mailing written notice not less than five (5) days before the meeting or by telegraphing or telexing or by facsimile or electronic transmission of the same not less than twenty-four (24) hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 5: Quorum

At any meeting of the Board of Directors, a majority of the total number of the whole Board of Directors shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

Section 6: Participation in Meetings By Conference Telephone

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 7: Conduct of Business

At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided herein or required by law. Action may be taken by the Board of Directors without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 8: Compensation of Directors

Directors, as such, may receive, pursuant to resolution of the Board of Directors, fixed fees and other compensation for their services as directors, including, without limitation, their services as members of committees of the Board of Directors.

ARTICLE III – COMMITTEES

Section 1: Committees of the Board of Directors

The Board of Directors may from time to time designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 2: Conduct of Business

Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; one-third (1/3) of the members shall constitute a quorum unless the committee shall consist of one (1) or two (2) members, in which event one (1) member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV – OFFICERS

Section 1: Generally

The officers of the Corporation shall consist of a Chief Executive Officer, a Secretary, a Chief Financial Officer and such other officers as may from time to time be appointed by the Board of Directors. Officers shall be elected by the Board of Directors, which shall consider that subject at its first meeting after every annual meeting of stockholders. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person.

Section 2: Chief Executive Officer

The Chief Executive Officer shall be the chief executive officer of the Corporation. Subject to the provisions of these By-laws and to the direction of the Board of Directors, he or she shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief executive or which are delegated to him or her by the Board of Directors. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation.

Section 3: Chief Financial Officer

The Chief Financial Officer shall have the responsibility for maintaining the financial records of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. The Chief Financial Officer shall also perform such other duties as the Board of Directors may from time to time prescribe.

Section 4: Secretary

The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board of Directors. He or she shall have charge of the

corporate books and shall perform such other duties as the Board of Directors may from time to time prescribe.

Section 5: Delegation of Authority

The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 6: Removal

Any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors.

Section 7: Action with Respect to Securities of Other Corporations

Unless otherwise directed by the Board of Directors, the Chief Executive Officer or any officer of the Corporation authorized by the Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V – STOCK

Section 1: Certificates of Stock

Each stockholder shall be entitled to a certificate signed by, or in the name of the Corporation by, the Chief Executive Officer or the President or a Vice President, and by the Secretary or an Assistant Secretary, or the Chief Financial Officer or an Assistant Chief Financial Officer, certifying the number of shares owned by him or her. Any or all of the signatures on the certificate may be by facsimile.

Section 2: Transfers of Stock

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 4 of Article V of these By-laws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

Section 3: Record Date

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of

Directors may fix a new record date for the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to consent to corporate action without a meeting, (including by telegram, cablegram or other electronic transmission as permitted by law), the Board of Directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall be not more than ten (10) days after the date upon which the resolution fixing the record date is adopted. If no record date has been fixed by the Board of Directors and no prior action by the Board of Directors is required by the Delaware General Corporation Law, the record date shall be the first date on which a consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner prescribed by Article I, Section 9 hereof. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by the Delaware General Corporation Law with respect to the proposed action by consent of the stockholders without a meeting, the record date for determining stockholders entitled to consent to corporate action without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 4: Lost, Stolen or Destroyed Certificates

In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 5: Regulations

The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE VI – NOTICES

Section 1: Notices

If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

Section 2: Waivers

A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver.

ARTICLE VII – MISCELLANEOUS

Section 1: Facsimile Signatures

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these By-laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2: Corporate Seal

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 3: Reliance upon Books, Reports and Records

Each director, each member of any committee designated by the Board of Directors, and

each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4: Fiscal Year

The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 5: Time Periods

In applying any provision of these By-laws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE VIII - INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1: Right to Indemnification

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee, or in any other capacity while serving as a director, officer or trustee,

shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this ARTICLE VIII with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2: Right to Advancement of Expenses

In addition to the right to indemnification conferred in Section 1 of this ARTICLE VIII, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

Section 3: Right of Indemnitee to Bring Suit

If a claim under Section 1 or 2 of this ARTICLE VIII is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim.

If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought

by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this ARTICLE VIII or otherwise shall be on the Corporation.

Section 4: Non-Exclusivity of Rights

The rights to indemnification and to the advancement of expenses conferred in this ARTICLE VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, By-laws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5: Insurance

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6: Indemnification of Employees and Agents of the Corporation

The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7: Nature of Rights

The rights conferred upon indemnitees in this ARTICLE VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee

and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this ARTICLE VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

ARTICLE IX – AMENDMENTS

These By-laws may be amended or repealed by the Board of Directors at any meeting or by the stockholders at any meeting.

THIS IS TO CERTIFY:

That I am the duly elected, qualified and acting Secretary of Obalon Therapeutics, Inc., a Delaware corporation, and that the foregoing By-Laws were adopted as the By-Laws of said Corporation on the 2nd day of January, 2008, by the Board of Directors of said Corporation.

/s/ Kim Puloma Kamdar
Kim Puloma Kamdar

			
NUMBER OT		SHARES	
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE		CUSIP 67424L 10 0 SEE REVERSE FOR CERTAIN DEFINITIONS	
This certifies that is the record holder of			
FULLY PAID AND NONASSESSABLE SHARES OF COMMON STOCK \$0.001 PAR VALUE PER SHARE, OF OBALON THERAPEUTICS, INC. transferable on the books of the corporation in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar. WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers. Dated:			
President and Chief Executive Officer		Secretary	
		COUNTERSIGNED AND REGISTERED AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC (BROOKLYN, NY) TRANSFER AGENT AND REGISTRAR AUTHORIZED SIGNATURE	
			

The Corporation shall furnish without charge to each stockholder who so requests a statement of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock of the Corporation or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Such requests shall be made to the Corporation's Secretary at the principal office of the Corporation.

KEEP THIS CERTIFICATE IN A SAFE PLACE. IF IT IS LOST, STOLEN,OR DESTROYED THE CORPORATION WILL REQUIRE A BOND INDEMNITY AS A CONDITION TO THE ISSUANCE OF A REPLACEMENT CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	– as tenants in common	UNIF GIFT MIN ACT	– _____ Custodian _____
TEN ENT	– as tenants by the entireties		(Cust) (Minor)
JT TEN	– as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act _____
COM PROP	– as community property		(State)
		UNIF TRF MIN ACT	– _____ Custodian (until age _____)
			(Cust) _____
			under Uniform Transfers to Minors Act _____
			(Minor) _____
			(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, _____ hereby sell(s), assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____ shares
of the capital stock represented by within Certificate, and do hereby irrevocably constitute and appoint

_____ attorney-in-fact
to transfer the said stock on the books of the within named Corporation with full power of the substitution in the premises.

Dated _____

X _____

X _____

Signature(s) Guaranteed: NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

By _____
THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION, (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15. GUARANTEES BY A NOTARY PUBLIC ARE NOT ACCEPTABLE. SIGNATURE GUARANTEES MUST NOT BE DATED.

FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (the "Agreement") is entered into as of April 29, 2016 by Obalon Therapeutics, Inc., a Delaware corporation (the "Company"), the persons and entities listed on Exhibit A attached hereto (the "Investors") and the persons and entities listed on Exhibit B attached hereto (the "Stockholders").

RECITALS

WHEREAS, certain of the Investors (the "Prior Investors") are holders of outstanding shares of the Company's Series A Preferred Stock (the "Series A Stock") and/or Series B Preferred Stock (the "Series B Stock") and/or Series C Preferred Stock (the "Series C Stock") and/or Series C-1 Preferred Stock (the "Series C-1 Stock") and/or Series D Preferred Stock (the "Series D Stock") and possess registration rights, information rights, rights of first offer and other rights pursuant to a Third Amended and Restated Investors' Rights Agreement dated as of August 28, 2014 by and among the Company and such Prior Investors, as amended from time to time thereafter (the "Prior Rights Agreement").

WHEREAS, certain Investors (the "Series E Investors") have agreed to purchase shares of the Company's Series E Preferred Stock (the "Series E Stock") pursuant to a certain Series E Preferred Stock Purchase Agreement by and among the Company and such Series E Investors dated of even date herewith, as amended from time to time (the "Purchase Agreement"). The Purchase Agreement provides that, as a condition to the Series E Investors' purchase of Series E Stock thereunder, the Company will enter into this Agreement and the Series E Investors will be granted the rights set forth herein.

WHEREAS, the Company and the Prior Investors desire to enter into this Agreement in order to amend, restate and replace their rights and obligations under the Prior Rights Agreement with the rights and obligations set forth in this Agreement. Section 4.7 of the Prior Rights Agreement provides that the Prior Rights Agreement may be amended by the written consent of the holders of 67% of the "Registrable Securities" (as defined in Section 1.1 of the Prior Rights Agreement) and the undersigned parties to this Agreement hold at least 67% of the Registrable Securities.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

SECTION 1

REGISTRATION RIGHTS; RESTRICTIONS ON TRANSFERABILITY

1.1 Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“Affiliate” shall mean with respect to any Person, any Person which directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person.

“Commission” shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

“Conversion Shares” shall mean the Common Stock issued or issuable upon conversion of the Shares.

“Convertible Securities” shall mean any evidence of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

“Holder” shall mean any Investor owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.14 hereof; provided, however, that with respect to Section 1.6 hereof and other provisions of this Agreement applicable to a registration pursuant to such section, “Holder” shall also mean the Stockholders or any assignee thereof.

“Initial Public Offering” means the first sale to the public of shares of Common Stock of the Company pursuant to an effective registration statement filed under the Securities Act.

“Initiating Holders” shall mean Investors or transferees of the Investors under Section 1.14 hereof who in the aggregate are Holders of not less than thirty-five percent (35%) of the outstanding Registrable Securities.

“Major Holder” shall mean an Investor or transferees of such Investor who in the aggregate are Holders of not less than five percent (5%) of the fully-diluted shares of the outstanding Registrable Securities on an as-converted to Common Stock basis. In addition to the foregoing definition, “Major Holder” shall also mean (i) Phagia Technology, Inc. (“Phagia”) or its transferees for so long as Phagia or such transferees hold in the aggregate not less than five percent (5%) of the fully-diluted shares of the outstanding Registrable Securities on an as-converted to Common Stock basis; (ii) Okapi Ventures, L.P. (“Okapi”) or its transferees for so long as Okapi and its affiliates or such transferees hold in the aggregate not less than 1,666,667 shares of Preferred Stock (as adjusted for stock splits, stock dividends, reclassification and the like); and (iii) Striker Asia Opportunities Fund Corporation (“Striker”) for so long as Striker and its affiliates hold in the aggregate not less than 760,000 shares of Preferred Stock (as adjusted for stock splits, stock dividends, reclassification and the like).

“Options” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

“Person” shall mean an individual, a corporation, a partnership, a trust or unincorporated organization or any other entity or organization.

“Preferred Stock” shall mean the Series A Stock, Series B Stock, Series C Stock, Series C-1 Stock, Series D Stock and Series E Stock of the Company.

The terms “register,” “registered” and “registration” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“Registrable Securities” means (a) the Conversion Shares, (b) all shares of Common Stock owned by the Investors, (c) shares of Common Stock issuable upon conversion of shares of Series C-1 Preferred Stock of the Company issuable upon exercise of that certain Amended and Restated Warrant to Purchase Stock, dated October 1, 2014, issued by the Company to Square 1 Bank, (d) shares of Common Stock issuable upon conversion of shares of Series D Preferred Stock of the Company issuable upon exercise of that certain Second Warrant to Purchase Stock, dated October 1, 2014, issued by the Company to Square 1 Bank, (e) shares of Common Stock issuable upon conversion of shares of Series D Preferred Stock of the Company issuable upon exercise of that certain Warrant to Purchase Series D Preferred Stock, dated March 15, 2015, issued by the Company to AENTIB Group Inc., (f) shares of Common Stock issuable upon conversion of shares of Series D Preferred Stock of the Company issuable upon exercise of that certain Warrant to Purchase Series D Preferred Stock, dated March 16, 2015, issued by the Company to Beech Hill Securities, Inc. and (g) any Common Stock issued (or issuable upon the conversion or exercise of any warrant, right or other security that is issued) as a dividend or other distribution with respect to, or in exchange for, or in replacement of, the Common Stock described in clauses (a) or (b) hereof; provided, however, that with respect to Section 1.6 hereof and other provisions of this Agreement applicable to a registration pursuant to such section, in addition to the foregoing definition, “Registrable Securities” shall also mean all shares of Common Stock owned by Phagia or its transferees.

“Registration Expenses” shall mean all reasonable expenses incurred by the Company in complying with Sections 1.5, 1.6 and 1.7 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company) and all reasonable fees and disbursements of one special counsel for all of the Holders who elect to include their Registrable Securities in any such registration.

“Restricted Securities” shall mean the securities of the Company required to bear the legend set forth in Section 1.3 hereof.

“Securities Act” shall mean the Securities Act of 1933, as amended, or any similar or successor federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

“Selling Expenses” shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders.

“Shares” shall mean shares of Series A Stock, Series B Stock, Series C Stock, Series C-1 Stock, Series D Stock and/or Series E Stock of the Company, as applicable.

1.2 Restrictions. The Registrable Securities shall not be sold, assigned, transferred or pledged except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. The Holder will cause any proposed purchaser, assignee, transferee or pledgee of the Registrable Securities to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

1.3 Restrictive Legend. Each certificate representing (a) the Shares, (b) the Registrable Securities, and (c) any other securities issued in respect of the securities referenced in clauses (a) and (b) upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of Section 1.4 below) be stamped or otherwise imprinted with certain legends, including a legend in substantially the following form (in addition to any legend required under applicable state securities laws):

“THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THE SHARES MAY NOT BE SOLD, TRANSFERRED OR PLEDGED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED OR UNLESS SOLD PURSUANT TO RULE 144 OF SUCH ACT.”

“THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AGREEMENTS BETWEEN THE COMPANY AND THE ORIGINAL STOCKHOLDER, COPIES OF WHICH ARE ON FILE WITH THE SECRETARY OF THE COMPANY.”

Each Holder consents to the Company making a notation on its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer established in this Section 1.

1.4 Notice of Proposed Transfers. The holder of each certificate representing Restricted Securities, by acceptance thereof, agrees to comply in all respects with the provisions of this Section 1. Prior to any proposed sale, assignment, transfer or pledge of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transfer, the holder thereof shall give written notice to the Company of such holder's intention to effect such transfer, sale, assignment or pledge. Each such notice shall describe the manner and circumstances of the proposed transfer, sale, assignment or pledge in sufficient detail, and shall be accompanied at such holder's expense by either (a) an unqualified written opinion of legal counsel who shall, and whose legal opinion shall be, reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transfer of the Restricted Securities may be effected without registration under the Securities Act, or (b) a “no action” letter from the Commission to the effect that the transfer of such securities without

registration will not result in a recommendation by the staff of the Commission that action be taken with respect thereto, or (c) any other evidence reasonably satisfactory to counsel to the Company, whereupon the holder of such Restricted Securities shall be entitled to transfer such Restricted Securities in accordance with the terms of the notice delivered by the holder to the Company. The Company will not require such a legal opinion or “no action” letter (i) in any transaction in which an Investor which is a corporation distributes Restricted Securities solely to its majority owned subsidiaries or affiliates for no consideration, or (ii) in any transaction in which an Investor which is a partnership distributes Restricted Securities solely to its partners, limited partners, retired partners, members or retired members for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Section 1. Each certificate evidencing the Restricted Securities transferred as above provided shall bear, except if such transfer is made pursuant to Rule 144, the appropriate restrictive legends set forth in this Section 1, except that such certificate shall not bear such restrictive legend if, in the opinion of counsel for such holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act or this Agreement.

1.5 Requested Registration.

(a) In case the Company shall receive from Initiating Holders a written request that the Company effect any registration, qualification or compliance with respect to the Registrable Securities, the Company will:

(i) promptly give written notice of the proposed registration, qualification or compliance to all other Holders; and

(ii) as soon as practicable and in any event within ninety (90) days after receipt of such written request, use all reasonable efforts to effect such registration, qualification or compliance (including, without limitation, the execution of an undertaking to file post-effective amendments, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act and any other governmental requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after receipt of the written notice from the Company; provided, however, that the Company shall not be obligated to take any action to effect any such registration, qualification or compliance pursuant to this Section 1.5:

(A) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(B) Prior to six (6) months after the effective date of the Company’s Initial Public Offering;

(C) After the Company has effected two (2) such registrations pursuant to this subparagraph 1.5(a), such registration has been declared or ordered effective and the securities offered pursuant to each such registration have been sold; provided that a majority of Registrable Securities requested for inclusion were in fact included in such registration;

(D) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a registration initiated by the Company; provided that the Company is actively employed in good faith in all reasonable efforts to cause such registration statement to become effective and provided further that the Initiating Holders shall be entitled to include Registrable Securities on such registration pursuant to Section 1.6 hereof; or

(E) If such registration, qualification or compliance involves securities with an aggregate value less than Ten Million Dollars (\$10,000,000).

Subject to the foregoing clauses (A) through (E), the Company shall file a registration statement covering the Registrable Securities so requested to be registered as soon as practicable after receipt of the request or requests of the Initiating Holders; provided, however, that if (i) in the good faith judgment of the board of directors of the Company (the "Board"), such, registration would be detrimental to the Company and the Board concludes, as a result, that it is essential to defer the filing of such registration statement at such time, and (ii) the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board, it would be detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, essential to defer the filing of such registration statement, then the Company shall have the right to defer such filing for up to ninety (90) days after receipt of the request of the Initiating Holders, and provided further, that the Company shall not defer its obligation in this manner more than once in any twelve (12) month period.

(b) Underwriting. In the event that a registration pursuant to Section 1.5 is for a registered public offering involving an underwriting, the Company shall so advise the Holders as part of the notice given pursuant to Section 1.5(a)(i). The right of any Holder to registration pursuant to Section 1.5 shall be conditioned upon such Holder's participation in the underwriting arrangements required by this Section 1.5 and the inclusion of such Holder's Registrable Securities in the underwriting, to the extent requested and provided herein.

The Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by a majority in interest of the Initiating Holders (which managing underwriter shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 1.5, if the managing underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Company shall so advise all Holders of Registrable Securities and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated among all Holders thereof in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders at the time of filing the

registration statement. No Registrable Securities excluded from the underwriting by reason of the underwriter's marketing limitation shall be included in such registration. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

If any Holder of Registrable Securities disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders. The Registrable Securities or other securities so withdrawn shall also be withdrawn from registration, and such Registrable Securities shall not be transferred in a public distribution prior to ninety (90) days (one hundred eighty (180) days in the case of the Company's Initial Public Offering) after the date of the final prospectus used in such public offering.

1.6 Company Registration.

(a) Notice of Registration. If at any time or from time to time, the Company shall determine to register any of its securities, either for its own account or the account of a security holder or holders exercising their respective demand registration rights other than (i) a registration relating solely to employee benefit plans, or (ii) a registration relating solely to a merger, acquisition or exchange, or (iii) a registration relating to convertible debt transaction, the Company will:

(i) promptly give to each Holder written notice thereof; and

(ii) include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request or requests made within twenty (20) days after receipt of such written notice from the Company by any Holder.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 1.6(a)(i). In such event, the right of any Holder to registration pursuant to Section 1.6 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and the other Holders distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by the Company (or if applicable by the Holders who have initiated such registration,). Notwithstanding any other provision of this Section 1.6, if the managing underwriter determines in its sole discretion that marketing factors require a limitation of the number of shares to be underwritten, the managing underwriter may limit the number of Registrable Securities to be included in the registration and underwriting, on a pro rata basis based on the total number of Registrable Securities held by each participating Holder; but in no event shall the amount of securities of the participating Investors included in the offering be reduced to less than thirty percent (30%) of the total amount of securities included in such registration and offering, unless such offering is the Initial Public Offering of the Company, in which case the participating Holders may be entirely excluded if the managing

underwriter makes the determination described above and no other stockholder's securities are included. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder or other holder to the nearest one hundred (100) shares. If any Holder or other holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration, and shall not be transferred in a public distribution prior to ninety (90) days (one hundred eighty (180) days in the case of the Company's Initial Public Offering) after the date of the final prospectus included in the registration statement relating thereto.

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.6 prior to the effectiveness of such registration, whether or not any Holder has elected to include securities in such registration.

1.7 Registration on Form S-3.

(a) If any Holder or Holders of at least twenty percent (20%) of the then outstanding Registrable Securities requests that the Company file a registration statement on Form S-3 (or any successor form to Form S-3) for a public offering of shares of Registrable Securities, with a reasonably anticipated aggregate price to the public of at least One Million Dollars (\$1,000,000), and the Company is a registrant entitled to use Form S-3 to register the Registrable Securities for such an offering, the Company shall use all commercially reasonable efforts to cause such Registrable Securities to be registered for the offering on such form. The Company will (i) promptly give written notice of the proposed registration to all other Holders, and (ii) as soon as practicable, but in no event later than sixty (60) days following the request, use all reasonable efforts to effect such registration (including, without limitation, the execution of an undertaking to file post-effective amendments, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act and any other governmental requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after such Holder's receipt of written notice from the Company. The substantive provisions of Section 1.5(b) shall be applicable to each registration initiated under this Section 1.7.

(b) Notwithstanding the foregoing, the Company shall not be obligated to take any action pursuant to this Section 1.7: (i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act; (ii) in a given twelve month period, after the Company has effected two (2) such registrations pursuant to subparagraph 1.7(a); or (iii) if the Company shall furnish to such Holders a certificate signed by the President of the Company stating that, in the good faith judgment of the Board, it would be detrimental to the Company or its stockholders for registration statements to be filed in the near future, then the

Company's obligation to use all commercially reasonable efforts to file a registration statement shall be deferred for up to ninety (90) days provided that the Company shall not defer its obligation in this manner more than once in any twelve-month period.

1.8 Corporate Transaction. In the event of a Corporate Transaction, the Company shall use reasonable efforts to cause the registration rights described under this Section 1 to be assumed or equivalent registration rights to be substituted by a successor corporation or a parent or subsidiary of such successor corporation in writing. "Corporate Transaction" means a sale of all or substantially all of the Company's assets or a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, entity or person or a sale of capital stock such that the stockholders immediately prior to such sale possess less than fifty percent (50%) of the voting power immediately after such sale; provided however, that (a) the provisions of this Section 1.8 may be waived by the holders of at least sixty-seven percent (67%) of the then outstanding Registrable Securities and (b) the provisions of this Section 1.8 shall not apply in the event of any Corporate Transaction if all Holders are entitled to receive in exchange for their Registrable Securities consideration consisting solely of (i) cash or (ii) securities of the acquiring corporation which may be immediately sold to the public without registration under the Securities Act.

1.9 Expenses of Registration. All Registration Expenses, including the reasonable fees and expenses of not more than one special counsel to the Holders, incurred in connection with registrations pursuant to Sections 1.5, 1.6 and 1.7 shall be borne by the Company. Unless otherwise stated, all Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the Holders of the registered securities included in such registration pro rata on the basis of the number of shares so registered.

1.10 Registration Procedures. In the case of each registration, qualification or compliance effected by the Company pursuant to this Section 1, the Company will keep each Holder advised in writing as to the initiation of each registration, qualification and compliance and as to the completion thereof. The Company will, at its expense:

(a) Prepare and file with the Commission a registration statement with respect to the Registrable Securities and use all commercially reasonable efforts to cause such registration statement to become and remain effective for at least one hundred twenty (120) days or until the distribution described in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period that the Holder refrains from selling any securities included in such registration at the request of the Company or an underwriter of the Common Stock (or any other securities) of the Company and (ii) in the case of any registration on Form S-3 which is intended to be offered on a continuous or delayed basis, such one hundred twenty (120) day period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Securities are sold, provided that Rule 415, or any successor rule under the Securities Act, permits an offering on a continuous or delayed basis, and provided further that applicable rules under the Securities Act governing the obligation to file post-effective amendments permit, in lieu of filing a post-effective amendment which includes (A) any prospectus required by Section 10(a)(3) of the Securities Act or (B) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the incorporation

by reference into the registration statement of information required to be included in (A) and (B) above to be contained in periodic reports filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”);

(b) Furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement and amendments and supplements thereto, preliminary prospectus, final prospectus and such other documents as such underwriters may reasonably request in order to facilitate the public offering of such securities;

(c) Cause all such Registrable Securities registered hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed;

(d) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(e) As soon as practicable, prepare and file amendments of or supplements to the registration statement or prospectus necessary to comply with the Securities Act with respect to disposition of the Registrable Securities covered by such registration statement and furnish copies of amendments or supplements to all participating Holders;

(f) Provide transfer agent and registrar for all Registrable Securities registered pursuant to such registration statement and a CUSIP number for all such Registrable Securities, in each case not later than effective date of such registration;

(g) Use all reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions unless the Company is already qualified to do business or subject to service of process in that jurisdiction;

(h) Use all reasonable efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 1.10, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 1.10, if such securities are being sold through underwriters, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(i) Register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdiction as shall be reasonably requested by the Holders; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(j) Make generally available to its security holders, and to deliver to each Holder participating in the registration statement, an earnings statement of the Company that will satisfy the provisions of Section 11(a) of the Securities Act covering a period of 12 months beginning after the effective date of such registration statement as soon as reasonably practicable after the termination of such 12-month period; and

(k) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder and other security holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

1.11 Indemnification.

(a) The Company will indemnify each Holder, each of its officers and directors, partners and stockholders and agents of the foregoing, and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification or compliance has been effected pursuant to this Section 1, and each underwriter, if any, and each person who controls any underwriter within the meaning of Section 15 of the Securities Act, against all reasonable expenses, claims, losses, damages or liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act") or any state securities laws applicable to the Company in connection with any such registration, qualification or compliance, and the Company will reimburse each such Holder, each of its officers, directors and agents, and each person controlling such Holder, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred, provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on 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 an instrument duly executed by such Holder, controlling person or underwriter and stated to be specifically for use therein.

(b) Each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify the Company, each of its directors and officers, each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, and each other such Holder, each of its officers and directors and each person controlling such Holder • within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse the Company, such Holders, such directors, officers, persons, underwriters or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such Holder and stated to be specifically for use therein; provided however that in no event shall any indemnity under this Section 1.11(b) exceed the net proceeds from the offering received by such Holder.

(c) If the indemnification provided for in this Section 1.11 is held by a court of competent jurisdiction to be unavailable to a party entitled to indemnification under this Section 1.11 (the "Indemnified Party") with respect to any loss, liability, claim, damage or expense referred to herein, then the party required to provide indemnification (the "Indemnifying Party"), in lieu of indemnifying such Indemnified Party hereunder, instead shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(d) Each Indemnified Party shall give notice to the Indemnifying Party promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party's expense; provided, however, that an Indemnified Party (together with all other Indemnified Parties which may be represented without conflict by one counsel) shall have the right to retain its own separate counsel with the reasonable fees and expenses to be

paid by the Indemnifying Party if the Indemnified Party reasonably determines that representation of such Indemnified Party would be appropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding. The failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 1 unless the failure to give such notice is materially prejudicial to an Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such claim or litigation.

1.12 Information by Holder. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders, the Registrable Securities held by them and the distribution proposed by such Holder or Holders as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Section 1.

1.13 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission which may at any time permit the sale of the Restricted Securities to the public without registration, after such time as a public market exists for the Common Stock of the Company, the Company agrees to use all reasonable efforts to:

(a) Make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times after the effective date that the Company becomes subject to the reporting requirements of the Exchange Act;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements); and

(c) So long as an Investor or Stockholder owns any Restricted Securities, to furnish to such Investor or Stockholder forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company for an offering of its securities to the general public) and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company and other information in the possession of or reasonably obtainable by the Company as an Investor or Stockholder may reasonably request in availing itself of any rule or regulation of the Commission allowing an Investor or Stockholder to sell any such securities without registration.

1.14 Transfer of Registration Rights. The rights to cause the Company to register securities granted Investors and Stockholders under Sections 1.5, 1.6 and 1.7, as applicable, may only be assigned to (i) a transferee or assignee who acquires at least thirty percent (30%) of an original Holder's Registrable Securities as of the date hereof or (ii) a spouse, sibling, lineal

descendant or ancestor, subsidiary, parent, general partner, limited partner, retired partner, member, retired member, stockholder or Affiliate of a Holder (without restriction as to number of Shares transferred); provided in each case that prompt written notice of such assignment is given to the Company and such assignee agrees to be bound by the provisions of this Agreement by executing a Joinder Agreement in the form attached hereto as Exhibit C.

1.15 Market Stand-off Agreement. Each Holder agrees in connection with the Initial Public Offering of the Company (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan) that, upon request of the underwriters managing any underwritten offering of the Company's securities, not to sell, make any short sale of, loan, grant any option for the purchase of, pledge, hypothecate or otherwise directly or indirectly dispose of any Registrable Securities (other than those included in the registration) or other capital stock of the Company or securities exchangeable or convertible into capital stock of the Company without the prior written consent of such underwriters for such period of time (not to exceed one hundred eighty (180) days from the date of the final prospectus used in such registration) as may be requested by such managing underwriters, and to enter into a lock-up agreement in customary form with such underwriters consistent with the foregoing, provided that all officers and directors of the Company and holders of at least one percent (1%) of the Company's capital stock are bound by and have entered into similar agreements. The certificates for the (a) Shares, (b) Registrable Securities and (c) any other securities issued in respect of the securities referenced in clauses (a) and upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event shall contain, for so long as such market stand-off provision remains in place, certain legends, including a legend in substantially the following form:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER INCLUDING A MARKET STAND-OFF AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL STOCKHOLDER THAT PROHIBITS SALE OR TRANSFER OF SUCH SHARES FOR A PERIOD OF UP TO 180 DAYS FOLLOWING THE DATE OF THE FINAL PROSPECTUS FOR THE INITIAL PUBLIC OFFERING OF THE ISSUER'S COMMON STOCK. THIS AGREEMENT IS BINDING UPON TRANSFEREES. A COPY OF THE AGREEMENT IS ON FILE WITH THE SECRETARY OF THE ISSUER.”

1.16 Termination of Rights. The rights of any particular Holder or permitted transferee thereof to cause the Company to register securities under Sections 1.5, 1.6 and 1.7 shall terminate with respect to such Holder on the date when such Holder can sell all of its Registrable Securities in a single transaction pursuant to Rule 144 of the Securities Act.

SECTION 2

RIGHT OF FIRST OFFER

2.1 Right of First Offer. Subject to the terms and conditions contained in this Section 2, the Company hereby grants to each Investor the right of first offer (the “Right of First”

Offer") to purchase up to its Pro Rata Portion (as defined below) of any New Securities (as defined in Section 2.2) which the Company may, from time to time, propose to sell and issue. An Investor's "Pro Rata Portion" for purposes of this Section 2 shall be equal to (x) the sum of the number of shares of the Company's Common Stock then held by such Investor after giving effect to the conversion of all shares of Preferred Stock then held by such Investor, divided by (y) the sum of the total number of shares of the Company's Common Stock then outstanding after giving effect to the conversion of all outstanding shares of Preferred Stock held by all Investors.

2.2 Definition of New Securities. Except as set forth below, "New Securities" shall mean any shares of capital stock of the Company, including Common Stock and Preferred Stock, whether authorized or not, and rights, options or warrants to purchase said shares of Common Stock or Preferred Stock, and securities of any type whatsoever that are, or may become, convertible into said shares of Common Stock or Preferred Stock. Notwithstanding the foregoing, "New Securities" does not include:

(a) shares of Common Stock and options, warrants or other rights to purchase Common Stock issued or issuable to employees, officers or directors of, or consultant or advisors to the Company or any subsidiary pursuant to stock grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar arrangements, in each case only if and to the extent such grants are approved by the Board of Directors, including the Preferred Directors (as such term is defined in the Company's Seventh Amended and Restated Certificate of Incorporation, as may be amended from time to time);

(b) shares of Common Stock issued or issuable upon stock splits, or as a dividend or distribution on, or upon conversion of, the Preferred Stock;

(c) shares of Common Stock issued or issuable for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination, provided that such issuance has been approved by the holders of at least sixty-seven percent (67%) of the then outstanding Preferred Stock;

(d) shares of Common Stock or Preferred Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors, including the Preferred Directors;

(e) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreement or strategic partnership approved by the Board of Directors, including the Preferred Directors; and

(f) shares of Series C Stock, Series C-1 Stock and/or Series D Stock (and shares of Common Stock issuable upon conversion of such Series C Stock, Series C-1 Stock and/or Series D Stock) issued upon exercise of any warrants that are outstanding prior to the Initial Closing (as defined in the Purchase Agreement).

2.3 Notice of Right. In the event the Company proposes to undertake an issuance of New Securities, it shall give each Investor written notice of its intention, describing the type of

New Securities and the price and terms upon which the Company proposes to issue the same. The Investors shall have twenty (20) days from the date of receipt of any such notice to agree to purchase shares of such New Securities (up to the Pro Rata Portion computed pursuant to Section 2.1), for the price and upon the terms specified in the notice, by giving written notice to the Company and stating therein the quantity of New Securities to be purchased. If any Investor does not indicate an interest in purchasing any such Investor's full Pro Rata Portion of such New Securities by the end of the 20-day period, the Company shall give notice of any remaining available New Securities (the "Overallotment Notice") to each of the other Investors who has elected to purchase its full Pro Rata Portion (the "Electing Holders"). Such Overallotment Notice may be made by telephone if confirmed in writing within two (2) days. The Electing Holders shall then have ten (10) days from the date such Overallotment Notice was given to provide the Company with written notice of their election to purchase some or all of the New Securities subject to the Overallotment Notice. In the event that the number of additional New Securities the Electing Holders elect to purchase (the "Oversubscribing Holders") exceeds the number of available New Securities, the number of additional New Securities shall be apportioned ratably amongst the Oversubscribing Holders based on the number of shares of Preferred Stock and Common Stock (on an as-converted to Common Stock basis) then held by each such Oversubscribing Holder.

2.4 Exercise of Right. If any Investor exercises its Right of First Offer hereunder, the closing of the purchase of the New Securities with respect to which such right has been exercised shall take place as soon as practicable after the Investor gives notice of such interest.

2.5 Lapse and Reinstatement of Right. In the event an Investor fails to exercise the Right of First Offer provided in this Section 2 in the manner provided above, the Company shall have ninety (90) days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within sixty (60) days from the date of said agreement) to sell the New Securities not elected to be purchased by such Investor at the price and upon the terms no more favorable to the purchasers of such securities than specified in the Company's notice. In the event the Company has not sold the New Securities or entered into an agreement to sell the New Securities within said ninety (90) day period (or sold and issued New Securities in accordance with the foregoing within sixty (60) days from the date of said agreement), the Company shall not thereafter issue or sell any New Securities without first offering such securities to the Investor in the manner provided above.

2.6 Transfer of Right of First Offer. The Right of First Offer granted under Section 2 of this Agreement may be assigned to a transferee or assignee reasonably acceptable to the Company in connection with any transfer of shares of the Company's capital stock held by an Investor; provided that (a) such transfer may otherwise be effected in accordance with applicable securities laws; (b) written notice of such assignment is given to the Company; and (c) the transferee executes a written agreement to be bound by the terms of this Agreement. Notwithstanding the above, an Investor that is a venture capital fund may assign or transfer such rights to an affiliated venture capital fund so long as the transferee agrees to be bound by the terms of this Agreement by executing a Joinder Agreement in the form attached hereto as Exhibit C.

2.7 Termination of Right of First Offer. The Right of First Offer granted under this Section 2 of this Agreement shall not apply to, and shall terminate and be of no further force or effect upon the effective date of, the Company's Initial Public Offering.

SECTION 3

AFFIRMATIVE COVENANTS OF THE COMPANY

The Company hereby covenants and agrees as follows:

3.1 Financial Information. The Company will furnish to each Major Holder or transferee thereof under Section 1.14 the following reports:

(a) As soon as practicable after the end of each fiscal year, and in any event within one hundred twenty (120) days thereafter, consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of such fiscal year, and consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such year, prepared in accordance with generally accepted accounting principles applied on a consistent basis and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and audited by independent public accountants of national standing selected by the Company and approved by the Board;

(b) As soon as practicable after the end of each quarter, and in any event within forty-five (45) days thereafter (other than the last calendar month of each fiscal year), unaudited consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of the quarter, and unaudited consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such quarter, prepared in accordance with generally accepted accounting principles applied on a consistent basis and setting forth in each case in comparative form the figures for the same quarter one year earlier; provided that footnotes and schedule disclosure appearing in audited financial statements shall not be required, all in reasonable detail and signed by the principal financial or accounting officer of the Company;

(c) As soon as practicable after the end of each month, and in any event within thirty (30) days thereafter (other than the last calendar month of each fiscal year), unaudited consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of the month, and unaudited consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such month, prepared in accordance with generally accepted accounting principles applied on a consistent basis and setting forth in each case in comparative form the figures for the same month one year earlier; provided that footnotes and schedule disclosure appearing in audited financial statements shall not be required, all in reasonable detail and signed by the principal financial or accounting officer of the Company;

(d) As soon as practicable, but in any event at least thirty (30) days prior to the beginning of each fiscal year, a budget for the next fiscal year, prepared on a monthly basis, and, as soon as prepared, any other updated or revised budgets for such fiscal year prepared by the Company and approved by the Board.

3.2 Inspection. The Company shall permit each Major Holder, at such Major Holder's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers during normal business hours and upon three (3) business days' prior written notice from such Major Holder.

3.3 Confidentiality. Each Major Holder agrees and will cause any representative of such Major Holder to hold in confidence and trust and not use or disclose any information provided to or learned by it in connection with its rights under this Section 3 that is identified in writing as confidential (the "Confidential Information"), except that such Major Holder may disclose such information to any partner, member, stockholder, subsidiary or parent or professional advisor of such Major Holder for the purpose of evaluating its investment in the Company as long as (x) (a) such partner, member, stockholder, subsidiary or parent or professional advisor is advised of the confidentiality provisions of this Section 3.3 and (b) such Major Holder uses commercially reasonable efforts to ensure that such partner, member, stockholder, subsidiary or parent or professional advisor holds such information in confidence and trust and will not use or disclose any information provided to or learned by it except as required by law. Notwithstanding the above, this Section 3.3 shall not apply to any information which any such Major Holder can prove:

(a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of such Major Holder;

(b) was known to such Major Holder, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

(c) is disclosed with the prior written approval of the Company;

(d) was independently developed by such Major Holder without any use of the Confidential Information and by employees of such Major Holder who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development;

(e) becomes known to such Major Holder, without restriction, from a source other than the Company without breach of this Section 3.3 by such Major Holder and otherwise not in violation of the Company's rights;

(f) is disclosed generally to third parties by the Company without restrictions similar to those contained in this Section 3.3; or

(g) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that such Major Holder shall provide prompt notice of such court order or requirement to the Company to enable the Company to seek a protective order or otherwise prevent or restrict such disclosure.

3.4 Nondisclosure and Intellectual Property Assignment Agreements. The Company agrees to require each employee of the Company to execute a Nondisclosure and Intellectual Property Assignment Agreement and each consultant and advisor of the Company to execute an

agreement that provides for confidential treatment of the Company's proprietary information and assignment of intellectual property rights, in a form approved by the Board, as a condition of employment or continued employment or engagement, as the case maybe, unless otherwise approved by the Board, including approval by the Preferred Directors.

3.5 Stock and Option Vesting. Unless otherwise approved by the Board, including approval by the Preferred Directors, the Company agrees that all Common Stock issued to employees, consultants, advisors, directors and officers in the future shall be subject to a repurchase option which provides that upon termination of the employment of such individual, with or without cause, the Company shall have the option to repurchase at cost any unvested shares held by the individual, which repurchase option shall lapse twenty-five percent (25%) at the first anniversary date of the issuance of such shares and the remainder on an equal monthly basis over the following three (3) year period following such first anniversary. In addition, unless otherwise approved by the Board, the Company agrees that each option to purchase Common Stock issued to employees, consultants, advisors, directors and officers in the future shall vest in accordance with the following schedule: twenty-five percent (25%) of the total number of shares subject to such option shall vest at the first anniversary date of the grant thereof and the remainder on an equal monthly basis over the following three (3) year period following such first anniversary.

3.6 Qualified Small Business. The Company covenants that so long as any of the shares of Preferred Stock, or the Common Stock into which such shares are converted, are held by a Holder in whose hands such shares of Common Stock are eligible to qualify as "qualified small business stock" as defined in Section 1202(c) of the Internal Revenue Code of 1986, as amended (the "Code") as of the date hereof ("Qualified Small Business Stock"), the Company will (i) comply with any applicable filing or reporting requirements imposed by the Code on issuers of Qualified Small Business Stock, (ii) execute and deliver to the Holders, from time to time, such forms, documents, schedules and other instruments as may be reasonably requested thereby to cause the Preferred Stock or the Common Stock into which such shares are converted, to qualify as Qualified Small Business Stock and (iii) otherwise not take any action which would cause such shares to cease to be Qualified Small Business Stock.

3.7 Insurance. The Company has obtained and shall maintain from financially sound and reputable insurers directors' and officers' liability insurance in an amount approved by the Board, including the Preferred Directors.

3.8 Annual Budget. The Company shall (a) provide to the Board a copy of the proposed Annual Budget for review at least sixty (60) days prior to the beginning of each fiscal year, and (b) the Company shall obtain the approval of the Board, including approval of the Preferred Directors, of the Annual Budget at least thirty (30) days prior to the commencement of such fiscal year.

3.9 Board Matters. The Company shall reimburse the customary expenses incurred by all non-employee directors in attending Board meetings. All non-employee directors will be compensated, if at all, uniformly for service on the Board.

3.10 Termination of Covenants. The covenants set forth in this Section 3 shall terminate on, and be of no further force or effect at such time as the Company consummates the Initial Public Offering of the Company.

SECTION 4

MISCELLANEOUS

4.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors, assigns, heirs, executors and administrators and permitted transferees of the parties hereto.

4.2 Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto, and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

4.3 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements entered into and performed in the State of California solely by residents thereof without reference to principles of conflicts of laws or choice of laws.

4.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.5 Notices. All notices, demands or other communications hereunder shall be in writing and shall be deemed given when delivered personally, received by certified mail, return receipt requested, received by overnight courier service, or otherwise actually delivered to the parties at the addresses provided to the Company (which the Company agrees to disclose to the other parties upon request) or such other address as a party may request by notifying the other in writing.

4.6 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, portions of such provisions, or such provisions in their entirety, to the extent necessary, shall be severed from this Agreement, and the balance of this Agreement shall be enforceable in accordance with its terms.

4.7 Amendment and Waiver. Any provision of this Agreement may be amended or waived (either generally or in a particular instance and either retroactively or prospectively) with the written consent of the Company and the Holders of at least sixty-seven percent (67%) of the Registrable Securities; provided, however, that any amendment to the rights of the Stockholders set forth in this Agreement shall also require the written consent of the holders of at least a majority of the Common Stock held by all Stockholders. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each Investor, Stockholder and the Company but in no event shall any amendment or waiver adversely change the obligations or rights of any party in a manner different than the other parties, except upon the written consent of

such adversely affected party. In addition, the Company may waive performance of any obligation owing to it, as to some or all of the Investors or Stockholders, or agree to accept alternatives to such performance, without obtaining the consent of any Investors or Stockholders so long as such waiver or acceptance of alternative performance affects all Investors and Stockholders equally.

4.8 Rights of Holders. Each Investor and Stockholder shall have the right to exercise or refrain from exercising any right or rights that such party may have by reason of this Agreement, including, without limitation, the right to consent to the waiver or modification of any obligation under this Agreement, and such party shall not incur any liability to any other holder of any securities of the Company as a result of exercising or refraining from exercising any such right or rights.

4.9 Waiver of Right of First Refusal. Pursuant to Section 4.7 of this Agreement, the undersigned hereby waive on behalf of all Investors the rights contained in Section 2 of this Agreement with respect to the issuance of the Series E Stock pursuant to and in accordance with the Purchase Agreement, including any notice requirements provided therein, as well as the shares of Common Stock issuable upon conversion of such Series E Stock.

4.10 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party to this Agreement, upon any breach or default of the other party, shall impair any such right, power or remedy of such non-breaching party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be made in writing and shall be effective only to the extent specifically set forth in such writing.

4.11 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

4.12 Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits and schedules attached hereto, all of which are incorporated herein by this reference.

4.13 Entire Agreement. This Agreement amends and restates the Prior Rights Agreement in its entirety and constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations among the parties with respect to the subject matter hereof.

4.14 Further Assurances. From and after the date of this Agreement, upon the request of a party, the other parties shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

4.15 Aggregation of Stock. All shares of the Preferred Stock or Common Stock held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

COMPANY:

OBALON THERAPEUTICS, INC.

ADDRESS:

5421 Avenida Encinas, Suite F
San Diego, CA 92008

By: /s/ Andy Rasdal

Andrew Rasdal,
President

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTOR:

LUCAS VENTURE GROUP V, LP

BY: LVG GP IV, LLC,
Its Managing Member

By: /s/ Donald Lucas
Name: Donald Lucas
Title: Managing Member

LUCAS VENTURE GROUP XVI, LLC

BY: LVG GP IV, LLC,
Its Managing Member

By: /s/ Donald Lucas
Name: Donald Lucas
Title: Managing Member

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

BADER SULTAN BROS. CO W.L.L.

By: /s/ Anwar Sultan Al Essa
Print Name: ANWAR SULTAN AL ESSA
Title: MANAGING DIRECTOR

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTOR:

AXON VENTURES VIII, LLC

By: Axon Managers, LLC, Its Manager

By: /s/ Afif Khoury

Name: Afif Khoury

Title: Managing Member

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

DOMAIN PARTNERS VII, L.P.

By: One Palmer Square Associates VII, L.L.C.
Its: General Partner

By: /s/ Lisa A. Kraeutler
Lisa A. Kraeutler
Attorney-in-Fact

DP VII ASSOCIATES, L.P.

By: One Palmer Square Associates VII, L.L.C.
Its: General Partner

By: /s/ Lisa A. Kraeutler
Lisa A. Kraeutler
Attorney-in-Fact

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTORS:

INTERWEST PARTNERS X, L.P.

By: InterWest Management Partners, X, LLC

Its: General Partner

By: /s/ Arnold Oronsky

Name: Arnold Oronsky,

Managing Director

**[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTOR:

OKAPI VENTURES, L.P.

By: Okapi Venture Partners, LLC
Its: General Partner

By: /s/ Sharon Stevenson
Sharon Stevenson,
Managing Director

OKAPI VENTURES II, LP

By: Okapi Venture Partners II, LLC
Its: General Partner

By: /s/ Sharon Stevenson
Sharon Stevenson,
Managing Director

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTOR:

THE ANDREA TRUST

By: /s/ Lauren M. Lee
Print Name: Lauren M. Lee
Title: Trustee

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors’ Rights Agreement as of the date first above written.

INVESTOR:

THE FERAYORNI FAMILY TRUST

By:	<u>/s/ Justin Ferayorni</u>
Print Name:	<u>Justin Ferayorni</u>
Title:	<u>Trustee</u>

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors’ Rights Agreement as of the date first above written.

INVESTOR:

MEHTA VON MEHTA LIVING TRUST

By: /s/ Anup Mehta
Print Name: ANUP MEHTA
Title: TRUSTEE

IN WITNESS WHEREOF, the parties have executed this Fourth Amended and Restated Investors' Rights Agreement as of the date first above written.

INVESTOR:

BLACK DIAMOND VENTURES 51, LLC

By: /s/ Christopher B. Lucas
Print Name: Christopher B. Lucas
Title: Director

[SIGNATURE PAGE TO OBALON THERAPEUTICS, INC.
FOURTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

EXHIBIT A

Lucas Venture Group V, LP
Lucas Venture Group XVI, LLC
InterWest Partners X, L.P.
Domain Partners VII, L.P.
DP VII Associates, L.P.
Okapi Ventures, L.P.
Okapi Ventures II, L.P.
Amore Pacific Group
Square 1 Bank
Bader Sultan & Bros. Co. W.L.L.
Striker Asia Opportunities Fund Corporation
KOF-C-NeoPlux R&D-Biz Creation 2013-1 Venture Capital Fund
KOF-C-MiraeAsset Pioneer Champ 2011-3 Venture Capital Fund
The Andrea Trust
Axon Ventures VIII-2, LLC
The Ferayorni Family Trust
Mehta Von Mehta Living Trust
Black Diamond Ventures 51, LLC

EXHIBIT B

STOCKHOLDERS

Phagia Technology, Inc.

EXHIBIT C

JOINDER AGREEMENT TO
OBALON THERAPEUTICS FOURTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT

The undersigned hereby agrees, effective as of the date hereof, to become a party to that certain Fourth Amended and Restated Investors' Rights Agreement (the "Agreement") dated as of April 29, 2016, as may be amended from time to time, by and among Obalon Therapeutics, Inc. (the "Company") and the other parties from time to time named therein, and for all purposes of the Agreement, the undersigned shall be included within the term Stockholder, as defined in the Agreement. The address to which notices shall be sent to the undersigned are as follows:

Address: _____

Print Name: _____
Date: _____

Acknowledged and Accepted:

OBALON THERAPEUTICS, INC.

By: _____
Name: _____
Title: _____

THIS WARRANT AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS. THIS WARRANT AND SUCH UNDERLYING SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR THE AVAILABILITY OF AN EXEMPTION FROM THE REGISTRATION PROVISIONS OF THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS.

OBALON THERAPEUTICS, INC.

PREFERRED STOCK PURCHASE WARRANT

This Preferred Stock Purchase Warrant (the “**Warrant**”) is issued as of February 24, 2012, by Obalon Therapeutics, Inc., a Delaware corporation (the “**Company**”), to [], or its assigns (the “**Holder**”). This Warrant is one of a series of Warrants containing substantially identical terms and conditions issued by the Company pursuant to the Note and Warrant Purchase Agreement dated as of February 24, 2012 by and among the Company and the purchasers described therein (the “**Purchase Agreement**”) with an aggregate principal amount of \$1,500,000.00 (the “**Notes**”). Capitalized terms used but not defined herein shall have the meaning therefor set forth in the Purchase Agreement or the Notes, as applicable. This Warrant is subject to the following terms and conditions.

1. Issuance of Warrant; Number of Shares; Term; Price

1.1. **Issuance.** The Company, for value received, hereby certifies that the Holder is entitled, subject to the terms set forth below, to purchase from the Company, after the first to occur of the events specified in Section 1.1 (a) or (b) below but on or before the Expiration Date (as defined in Section 1.2 below) the following number of Shares of the Company at the following exercise price:

(a) If the Notes automatically convert into shares of the securities sold in a Next Equity Financing as provided under the Notes, then, concurrently therewith, this Warrant shall be and shall be deemed to be exercisable (i) for a number of shares of the securities sold in the Next Equity Financing equal to 10% of the original principal amount of the Holder’s Note divided by the price at which such securities are sold in the Next Equity Financing, and (ii) at an exercise price equal to the price at which such securities are sold in the Next Equity Financing.

(b) In the event that (i) a Next Equity Financing does not occur prior to the earlier of (A) the first closing of a transaction that results in a Change of Control or (B) the Maturity Date, then this Warrant shall be and shall be deemed to be exercisable (Y) for a number of shares of the Series B Preferred Stock equal to 10% of the original principal amount of the Holder’s Note divided by the conversion price for the Series B Preferred Stock as in effect as of the date immediately preceding the date of the first closing of such Change of Control

transaction, the Maturity Date, or the date upon which the Notes are converted into Series B Preferred Stock, as applicable, and (Z) at an exercise price equal to such conversion price for the Series 8 Preferred Stock.

1.2. **Definitions.** For purposes of this Warrant, the following terms shall have the following meanings:

(a) “**Shares**” shall mean the shares of Warrant Stock issuable upon exercise of this Warrant.

(b) “**Warrant Stock**” shall mean the securities for which this Warrant may be exercisable from time to time.

1.3. **Term.** This Warrant shall be exercisable upon the terms herein set forth until the date that is seven (7) years from the issue date of this Warrant referenced above (the “**Expiration Date**”).

1.4. **Notice.** In case (a) the Company shall take a record of the holders of its Common Stock or Series B Preferred Stock (or other stock or securities at the time deliverable upon the exercise of this Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, or (b) of any capital reorganization of the Company, any reclassification of the capital stock of the Company, any consolidation or merger of the Company, any consolidation or merger of the Company with or into another corporation (other than a consolidation or merger in which the Company is the surviving entity), or any transfer of all or substantially all of the assets of the Company, including without limitation, any Change of Control, or (c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company, then, and in each such case, the Company will mail or cause to be mailed to the Holder a notice specifying, as the case may be, (i) the date on which a record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, Change of Control transaction, dissolution, liquidation, winding-up, redemption or conversion is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock or Series 8 Preferred Stock (or such other stock or securities at the time deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion) are to be determined. Such notice shall be mailed to the Holder at least ten (10) days prior to the record date or effective date for the event specified in such notice.

1.5. **Exercise Price.** Subject to adjustment as hereinafter provided, the price per share for which all or any of the Shares may be purchased pursuant to the terms of this Warrant shall be equal to the exercise price determined in accordance with Section 1.1(a) or 1.1(b), as applicable (the “**Exercise Price**”).

2. **No Fractional Shares.** No fractional shares of Warrant Stock will be issued in connection with any subscription hereunder. In lieu of any fractional shares that would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Warrant Stock on the date of exercise, as determined in good faith by the Company's Board of Directors.

3. **No Shareholder Rights.** This Warrant as such shall not entitle its holder to any of the rights of a stockholder of the Company until the holder has exercised this Warrant in accordance with Section 4 or Section 5 hereof.

4. **Exercise of Warrant.** This Warrant may be exercised by the Holder by the surrender of this Warrant at the principal office of the Company, accompanied by payment in full of the purchase price of the shares purchased thereby, as described above. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its surrender for exercise as provided above, and the person or entity entitled to receive the shares or other securities issuable upon such exercise shall be treated for all purposes as the holder of such shares of record as of the close of business on such date. As promptly as practicable, the Company shall issue and deliver to the person or entity entitled to receive the same a certificate or certificates for the number of full shares of Warrant Stock issuable upon such exercise, together with cash in lieu of any fraction of a share as provided above. The shares of Warrant Stock issuable upon exercise hereof shall, upon their issuance, be fully paid and nonassessable. If this Warrant shall be exercised in part only, the Company shall, at the time of delivery of the certificate representing the Shares or other securities in respect of which this Warrant has been exercised, deliver to the Holder a new Warrant evidencing the right to purchase the remaining Shares or other securities purchasable under this Warrant, which new warrant shall, in all other respects, be identical to this Warrant.

5. **Net Issue Election.**

5.1. **Right to Convert.** In addition to and without limiting the rights of the Holder under the terms of this Warrant, the Holder shall have the right to convert this Warrant or any portion hereof (the "**Conversion Right**") into shares of Warrant Stock as provided in this Section 5. Upon exercise of the Conversion Right with respect to a particular number of shares subject to this Warrant (the "**Converted Warrant Shares**"), the Company shall deliver to the Holder (without payment by the Holder of any cash or other consideration) that number of shares of Warrant Stock equal to the quotient obtained by dividing (x) the value of this Warrant (or the specified portion hereof) on the Conversion Date (as defined in subsection 5.2 hereof), which value shall be determined by subtracting (A) the aggregate Exercise Price of the Converted Warrant Shares immediately prior to the exercise of the Conversion Right from (B) the aggregate fair market value of the Converted Warrant Shares issuable upon exercise of this Warrant (or the specified portion hereof) on the Conversion Date (as herein defined) by (y) the fair market value of one share of Warrant Stock on the Conversion Date (as herein defined). No fractional shares shall be issuable upon exercise of the Conversion Right, and if the number of shares to be issued determined in accordance with the foregoing formula is other than a whole number, the Company shall pay to the Holder an amount in cash equal to the fair market value of the resulting fractional share on the Conversion Date.

5.2. **Method of Exercise.** The Conversion Right may be exercised by the Holder by the surrender of this Warrant at the principal office of the Company together with a written statement specifying that the Holder thereby intends to exercise the Conversion Right and indicating the number of shares subject to this Warrant that are being surrendered (referred to in subsection 5.1 hereof as the Converted Warrant Shares) in exercise of the Conversion Right. Such conversion shall be effective upon such surrender of this Warrant (the “**Conversion Date**”). Certificates for the shares of Warrant Stock issuable upon exercise of the Conversion Right shall be issued as of the Conversion Date and shall be delivered to the Holder immediately following the Conversion Date, or, if requested at the time of surrender of this Warrant, held for pick-up by the Holder at the Company’s principal office.

5.3. **Determination of Fair Market Value.** For purposes of this Section 5, fair market value (the “**Market Price**”) of a share of Warrant Stock as of a particular date (the “**Determination Date**”) shall mean, where such security is listed on a security exchange at the time of exercise, the average of the closing prices of such security’s sales on the principal securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the last sale prices quoted in the Nasdaq System, or if on any day such security is not quoted in the Nasdaq System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of five (5) days consisting of the day prior to the day as of which “Market Price” is being determined and the five (5) consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the Nasdaq System or the over-the-counter market, the “Market Price” shall be the fair value thereof as determined in good faith by the Company’s Board of Directors.

6. **Adjustment of Exercise Price and Number of Shares.** The number of and kind of Shares purchasable upon exercise of this Warrant and the applicable Exercise Price shall be subject to adjustment from time to time following determination thereof as follows:

6.1. **Subdivisions, Combinations and Other Issuances.** If the Company shall at any time prior to the expiration of this Warrant subdivide the Warrant Stock, by split-up or otherwise, or combine the Warrant Stock, or issue additional shares of the Warrant Stock as a dividend, the number of Warrant Stock issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the purchase price payable per share, but the aggregate purchase price payable for the total number of shares of Warrant Stock purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 6.1 shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

6.2. **Reclassification, Reorganization and Consolidation.** In case of any reclassification, capital reorganization, or change in the capital stock of the Company (other than as a result of a subdivision, combination, or stock dividend provided for in Section 6.1 above),

then the Company shall make appropriate provision so that the Holder shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and other securities and property receivable in connection with such reclassification, reorganization, or change by a holder of the same number of Shares as were purchasable by the Holder immediately prior to such reclassification, reorganization, or change. In any such case appropriate provisions shall be made with respect to the rights and interest of the Holder so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon exercise hereof, and appropriate adjustments shall be made to the purchase price per share payable hereunder, provided the aggregate purchase price shall remain the same.

6.3. **Notice of Adjustment.** When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price therefor, the Company shall promptly notify the Holder of such event and of the number of Shares or other securities or property thereafter purchasable upon exercise of this Warrant.

7. **Notice of Proposed Transfers.** This Warrant is transferable by the Holder hereof subject to compliance with this Section 7. Prior to any proposed transfer of this Warrant or the Shares (the “***Securities*”**), unless there is in effect a registration statement under the Securities Act of 1933, as amended (the “***Securities Act*”**), covering the proposed transfer, the Holder thereof shall give written notice to the Company of such Holder’s intention to effect such transfer. Each such notice shall describe the manner and circumstances of the proposed transfer in sufficient detail, and shall, if the Company so requests, be accompanied (except in transactions in compliance with Rule 144) by a written opinion of legal counsel, who shall be reasonably satisfactory to the Company, addressed to the Company and to the effect that the proposed transfer of the Securities may be effected without registration under the Securities Act and any applicable state securities laws, whereupon the Holder of the Securities shall be titled to transfer the Securities in accordance with the terms of the notice delivered by the Holder to the Company; provided, however, no such registration statement or opinion of counsel shall be necessary for a transfer by a Holder to any affiliate of such Holder, or a transfer by a Holder which is a partnership to a partner of such partnership or a retired partner, of such partnership who retires after the date hereof, or to the estate of any such partner or retired partner or the transfer by gift, will or intestate succession of any partner to his spouse or lineal descendants or ancestors, if the transferee agrees in writing to be subject to the terms hereof to the same extent as if such transferee were the original Holder hereunder. Each certificate evidencing the Securities transferred as above provided shall bear the appropriate restrictive legend set forth above, except that such certificate shall not bear such restrictive legend if in the opinion of counsel for the Company such legend is not required in order to establish compliance with any provisions of the Securities Act.

8. **Replacement of Warrants.** Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of the Warrant, and in the case of any such loss, theft or destruction of the Warrant, on delivery of an indemnity agreement or security reasonably satisfactory in form and amount to the Company, and reimbursement to the Company of all reasonable expenses incidental thereto, and upon surrender and cancellation of the Warrant if mutilated, the Company will execute and deliver, in lieu thereof, a new Warrant of like tenor.

9. **Miscellaneous.** This Warrant shall be governed by the internal laws of the State of California, without regard to the conflict of laws provisions thereof. The headings in this Warrant are for purposes of convenience of reference only, and shall not be deemed to constitute a part hereof. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provisions. All notices and other communications from the Company to the holder of this Warrant shall be given in writing and shall be deemed effectively given as provided in the Purchase Agreement.

10. **Taxes.** The Company shall pay all issue taxes and other governmental charges (but not including any income taxes of a Holder) that may be imposed in respect of the issuance or delivery of the Shares or any portion thereof.

11. **Amendment.** Any term of this Warrant may be amended or modified only in the manner provided in the Purchase Agreement. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon the Company, each Holder and each transferee of any Note.

12. **Remedies.** In the event of any default or threatened default by the Company in the performance of or observance with any of the terms of this Warrant, it is agreed that remedies at law are not and will not be adequate for the Holder and that such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the undersigned officer of the Company has set his hand as of the date first above written.

OBALON THERAPEUTICS, INC.

By: _____

Andrew Rasdal,
President and Chief Executive Officer

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

**AMENDED AND RESTATED
WARRANT TO PURCHASE STOCK**

Corporation:	OBALON THERAPEUTICS, Inc., a Delaware corporation
Number of Shares:	25,210
Class of Stock:	Series C-1 Preferred
Issue Date:	June 14, 2013
Initial Exercise Price:	\$ 3.57 per share
Amendment Date:	October 1, 2014
Expiration Date:	June 14, 2023

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, the receipt of which is hereby acknowledged, **SQUARE 1 BANK** or its assignee (“**Holder**”) is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the “**Shares**”) of OBALON THERAPEUTICS, INC., (the “**Company**”) at the initial exercise price per Share (the “**Warrant Price**”) all as set forth above and as adjusted pursuant to Article 2 of this warrant, subject to the provisions and upon the terms and conditions set forth in this warrant. This Amended and Restated Warrant to Purchase Stock (this “**Amended and Restated Warrant**”) amends and restates the warrant issued on June 14, 2013 (the “**Prior Warrant**”). The Prior Warrant is superseded and replaced by this Amended and Restated Warrant in all respects.

ARTICLE 1

EXERCISE

1.1. Method of Exercise. Holder may exercise this warrant by delivering this warrant and a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check for the aggregate Warrant Price for the Shares being purchased.

1.2. Conversion Right. In lieu of exercising this warrant as specified in Section 1.1, Holder may from time to time convert this warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Section 1.4.

1.3. Intentionally Omitted.

1.4. Fair Market Value. If the Shares are traded regularly in a public market, the fair market value of the Shares shall be the closing price of the Shares (or the closing price of the Company's stock into which the Shares are convertible) reported for the business day immediately before Holder delivers its Notice of Exercise to the Company. If the Shares are not regularly traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.5. Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this warrant, the Company shall deliver to Holder certificates for the Shares acquired and, if this warrant has not been fully exercised or converted and has not expired, a new warrant representing the Shares not so acquired.

1.6. Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this warrant, the Company at its expense shall execute and deliver, in lieu of this warrant, a new warrant of like tenor.

1.7. Repurchase on Sale, Merger, or Consolidation of the Company.

1.7.1 "Acquisition." For the purpose of this warrant, "Acquisition" means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, (b) any sale or disposition of all or substantially all of the capital stock of the Company, or (c) any reorganization, consolidation, merger or sale of the voting securities of the Company or any other transaction where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.7.2 Assumption of Warrant. If upon the closing of any Acquisition the successor entity assumes the obligations of this warrant, then this warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly. The Company shall use reasonable efforts to cause the surviving corporation to assume the obligations of this warrant.

1.7.3 Nonassumption. If upon the closing of any Acquisition the successor entity does not assume the obligations of this warrant and Holder has not otherwise exercised this warrant in full, then Holder shall deem this warrant to have been automatically converted pursuant to Section 1.2 and thereafter Holder shall participate in the Acquisition on the same terms as other holders of the same class of securities of the Company.

1.8. Number of Shares. The Number of Shares for which this warrant shall be exercisable shall be an amount equal to three percent (3.00%) of the principal amount of the Term Loans made by Square 1 Bank to the Company pursuant to that certain Loan and Security Agreement by and between the Square 1 Bank and the Company dated as of June 14, 2013 (as may be amended from time to time the "Loan Agreement") divided by the Initial Exercise Price. All terms used in this Section 1.8 but not defined herein shall have the meanings assigned in the Loan Agreement.

ARTICLE 2

ADJUSTMENTS TO THE SHARES

2.1. Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, or subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this warrant, for each Share acquired, Holder shall receive upon conversion thereof, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

2.2. Reclassification, Exchange or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this warrant, Holder shall be entitled to receive, upon exercise or conversion of this warrant, the number and kind of securities and property that Holder would have received for the Shares if this warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation upon the closing of a registered public offering of the Company's common stock. The Company or its successor shall promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3. Adjustments for Combinations, Etc. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a greater number of shares, the Warrant Price shall be proportionately decreased.

2.4. Adjustments for Diluting Issuances. In the event of the issuance (a "Diluting Issuance") by the Company after the Issue Date of securities at a price per share less than the Warrant Price, then the number of shares of common stock issuable upon conversion of the Shares shall be adjusted in accordance with those provisions of the Company's Certificate of Incorporation that apply to Diluting issuances.

2.5. Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

2.6. Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the warrant and the Number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

ARTICLE 3

REPRESENTATIONS AND COVENANTS OF THE COMPANY

3.1. Representations and Warranties. The Company hereby represents and warrants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this warrant is the per share price paid in Company's most recent equity financing.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached to this warrant is true and complete as of the Issue Date.

3.2. Notice of Certain Events. The Company shall provide Holder with not less than 10 days prior written notice, including a description of the material facts surrounding, any of the following events: (a) declaration of any dividend or distribution upon its common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) offering for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) effecting any reclassification or recapitalization of common stock; or (d) the merger or consolidation with or into any other corporation, or sale, lease, license, or conveyance of all or substantially all of its assets, or liquidation, dissolution or winding up.

3.3. Information Rights. So long as the Holder holds this warrant and for so long as that certain Second Amended and Restated Investors' Rights Agreement by and between the Company and other persons dated as of May 4, 2012, as amended (the "**Rights Agreement**"), is in force and effect, the Company shall deliver to the Holder (a) within one hundred eighty (180) days after the end of each fiscal year of the Company, the annual audited (or at other such level as is required by Company's Board of Directors) financial statements of the Company certified by independent public accountants of recognized standing and (b) within forty-five (45) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements.

3.4. Registration under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall be “Registrable Securities”, and Holder shall be a “Holder” under and subject to the terms and conditions of the Rights Agreement.

ARTICLE 4

MISCELLANEOUS

4.1. Term: Exercise upon Expiration. This warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above; provided, however, that if the Company completes its initial public offering within the three-year period immediately prior to the Expiration Date, the Expiration Date shall automatically be extended until the third anniversary of the effective date of the Company’s initial public offering. If this warrant has not been exercised prior to the Expiration Date, this warrant shall be deemed to have been automatically exercised on the Expiration Date by “cashless” conversion pursuant to Section 1.2.

4.2. Legends. This warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form as well as any additional legends that the Company and Holder mutually agree upon with respect to such Shares:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

4.3. Compliance with Securities Laws on Transfer. This warrant and the Shares issuable upon exercise of this warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder or if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder’s notice of proposed sale.

4.4. Transfer Procedure. Subject to the provisions of Section 4.3, Holder may transfer all or part of this warrant or the Shares issuable upon exercise of this warrant (or the securities issuable, directly or indirectly, upon conversion of the Shares, if any) by giving the Company notice of the portion of the warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this warrant to the Company for reissuance to the transferee(s) (and Holder, if applicable). No surrender or reissuance shall be required if the transfer is to an affiliate of Holder.

4.5. Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. All notices to the Holder shall be addressed as follows:

Square 1 Bank
Attn: Warrant Administrator
406 Blackwell Street, Suite 240
Crowe Building
Durham, NC 27701

4.6. Amendments. This warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

4.7. Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

4.8. Governing Law. This warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

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OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal

Name: Andrew Rasdal

Title: Chief Executive Officer

[Signature Page to Amended and Restated Warrant to Purchase Stock]

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned hereby elects to purchase _____ shares of the _____ stock of OBALON THERAPEUTICS, INC. pursuant to the terms of the attached warrant, and tenders herewith payment of the purchase price of such shares in full.

1. The undersigned hereby elects to convert the attached warrant into shares in the manner specified in the Warrant. This conversion is exercised with respect to _____ of the shares covered by the warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:

Square 1 Bank
Attn: Warrant Administrator
406 Blackwell Street, Suite 240
Crowe Building
Durham, NC 27701

3. The undersigned represents it is acquiring the shares solely for its own account and not as a nominee for any other party and not with a view toward the resale or distribution thereof except in compliance with applicable securities laws.

SQUARE 1 BANK or Registered Assignee

(Signature)

(Date)

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

SECOND WARRANT TO PURCHASE STOCK

Corporation:	OBALON THERAPEUTICS, Inc., a Delaware corporation
Number of Shares:	See Section 1.8
Class of Stock:	Series D Preferred
Initial Exercise Price:	\$ 2.5983 per share
Amendment Date:	October 1, 2014
Expiration Date:	October 1, 2014

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, the receipt of which is hereby acknowledged, **SQUARE 1 BANK** or its assignee ("**Holder**") is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the "**Shares**") of OBALON THERAPEUTICS, INC., (the "**Company**") at the initial exercise price per Share (the "**Warrant Price**") all as set forth above and as adjusted pursuant to Article 2 of this warrant, subject to the provisions and upon the terms and conditions set forth in this warrant.

ARTICLE 1

EXERCISE

1.1. Method of Exercise. Holder may exercise this warrant by delivering this warrant and a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check for the aggregate Warrant Price for the Shares being purchased.

1.2. Conversion Right. In lieu of exercising this warrant as specified in Section 1.1, Holder may from time to time convert this warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Section 1.4.

1.3. Intentionally Omitted.

1.4. Fair Market Value. If the Shares are traded regularly in a public market, the fair market value of the Shares shall be the closing price of the Shares (or the closing price of the Company's stock into which the Shares are convertible) reported for the business day immediately before Holder delivers its Notice of Exercise to the Company. If the Shares are not regularly traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.5. Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this warrant, the Company shall deliver to Holder certificates for the Shares acquired and, if this warrant has not been fully exercised or converted and has not expired, a new warrant representing the Shares not so acquired.

1.6. Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this warrant, the Company at its expense shall execute and deliver, in lieu of this warrant, a new warrant of like tenor.

1.7. Repurchase on Sale, Merger, or Consolidation of the Company.

1.7.1 "Acquisition." For the purpose of this warrant, "Acquisition" means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, (b) any sale or disposition of all or substantially all of the capital stock of the Company, or (c) any reorganization, consolidation, merger or sale of the voting securities of the Company or any other transaction where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.7.2 Assumption of Warrant. If upon the closing of any Acquisition the successor entity assumes the obligations of this warrant, then this warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly. The Company shall use reasonable efforts to cause the surviving corporation to assume the obligations of this warrant.

1.7.3 Nonassumption. If upon the closing of any Acquisition the successor entity does not assume the obligations of this warrant and Holder has not otherwise exercised this warrant in full, then Holder shall deem this warrant to have been automatically converted pursuant to Section 1.2 and thereafter Holder shall participate in the Acquisition on the same terms as other holders of the same class of securities of the Company.

1.8. Number of Shares. The Number of Shares for which this warrant shall be exercisable shall be an amount equal to three percent (3.00%) of the principal amount of the Term Loans made by Square 1 Bank to the Company in excess of Three Million Dollars

(\$3,000,000), pursuant to that certain Loan and Security Agreement by and between the Square 1 Bank and the Company dated as of June 14, 2013 (as may be amended from time to time the "Loan Agreement") divided by the Initial Exercise Price. All terms used in this Section 1.8 but not defined herein shall have the meanings assigned in the Loan Agreement.

ARTICLE 2

ADJUSTMENTS TO THE SHARES

2.1. Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, or subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this warrant, for each Share acquired, Holder shall receive upon conversion thereof, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

2.2. Reclassification, Exchange or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this warrant, Holder shall be entitled to receive, upon exercise or conversion of this warrant, the number and kind of securities and property that Holder would have received for the Shares if this warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation upon the closing of a registered public offering of the Company's common stock. The Company or its successor shall promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3. Adjustments for Combinations, Etc. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a greater number of shares, the Warrant Price shall be proportionately decreased.

2.4. Adjustments for Diluting Issuances. In the event of the issuance (a "Diluting Issuance") by the Company after the Issue Date of securities at a price per share less than the Warrant Price, then the number of shares of common stock issuable upon conversion of the Shares shall be adjusted in accordance with those provisions of the Company's Certificate of Incorporation that apply to Diluting issuances.

2.5. Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a

certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

2.6. Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the warrant and the Number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

ARTICLE 3

REPRESENTATIONS AND COVENANTS OF THE COMPANY

3.1. Representations and Warranties. The Company hereby represents and warrants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this warrant is the per share price paid in Company's most recent equity financing.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached to this warrant is true and complete as of the Issue Date.

3.2. Notice of Certain Events. The Company shall provide Holder with not less than 10 days prior written notice, including a description of the material facts surrounding, any of the following events: (a) declaration of any dividend or distribution upon its common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) offering for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) effecting any reclassification or recapitalization of common stock; or (d) the merger or consolidation with or into any other corporation, or sale, lease, license, or conveyance of all or substantially all of its assets, or liquidation, dissolution or winding up.

3.3. Information Rights. So long as the Holder holds this warrant and for so long as that certain Second Amended and Restated Investors' Rights Agreement by and between the Company and other persons dated as of May 4, 2012, as amended (the "*Rights Agreement*"), is in force and effect, the Company shall deliver to the Holder (a) within one hundred eighty (180) days after the end of each fiscal year of the Company, the annual audited (or at other such level as is required by Company's Board of Directors) financial statements of the Company certified by independent public accountants of recognized standing and (b) within forty-five (45) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements.

3.4. Registration under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall be “Registrable Securities”, and Holder shall be a “Holder” under and subject to the terms and conditions of the Rights Agreement.

ARTICLE 4

MISCELLANEOUS

4.1. Term: Exercise upon Expiration. This warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above; provided, however, that if the Company completes its initial public offering within the three-year period immediately prior to the Expiration Date, the Expiration Date shall automatically be extended until the third anniversary of the effective date of the Company’s initial public offering. If this warrant has not been exercised prior to the Expiration Date, this warrant shall be deemed to have been automatically exercised on the Expiration Date by “cashless” conversion pursuant to Section 1.2.

4.2. Legends. This warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form as well as any additional legends that the Company and Holder mutually agree upon with respect to such Shares:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

4.3. Compliance with Securities Laws on Transfer. This warrant and the Shares issuable upon exercise of this warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder or if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder’s notice of proposed sale.

4.4. Transfer Procedure. Subject to the provisions of Section 4.3, Holder may transfer all or part of this warrant or the Shares issuable upon exercise of this warrant (or the securities issuable, directly or indirectly, upon conversion of the Shares, if any) by giving the Company notice of the portion of the warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this warrant to the Company for reissuance to the transferee(s) (and Holder, if applicable). No surrender or reissuance shall be required if the transfer is to an affiliate of Holder.

4.5. Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. All notices to the Holder shall be addressed as follows:

Square 1 Bank
Attn: Warrant Administrator
406 Blackwell Street, Suite 240
Crowe Building
Durham, NC 27701

4.6. Amendments. This warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

4.7. Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

4.8. Governing Law. This warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

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OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal

Name: Andrew Rasdal

Title: Chief Executive Officer

[Signature Page to Second Warrant to Purchase Stock]

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

THIRD WARRANT TO PURCHASE STOCK

Corporation:	OBALON THERAPEUTICS, INC., a Delaware corporation
Number of Shares:	See Section 1.8
Class of Stock:	Series E Preferred
Initial Exercise Price:	\$2.8597 per share
Issue Date:	September 7, 2016
Expiration Date:	September 7, 2026

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, the receipt of which is hereby acknowledged, **PACIFIC WESTERN BANK** or its assignee (“**Holder**”) is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the “**Shares**”) of OBALON THERAPEUTICS, INC. (the “**Company**”) at the initial exercise price per Share (the “**Warrant Price**”) all as set forth above and as adjusted pursuant to Article 2 of this warrant, subject to the provisions and upon the terms and conditions set forth in this warrant.

ARTICLE 1

EXERCISE

1.1 Method of Exercise. Holder may exercise this warrant by delivering this warrant and a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this warrant as specified in Section 1.1, Holder may from time to time convert this warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Section 1.4.

1.3 Intentionally Omitted.

1.4 Fair Market Value. If the Shares are traded regularly in a public market, the fair market value of the Shares shall be the closing price of the Shares (or the closing price of the Company’s stock into which the Shares are convertible) reported for the business day immediately before Holder delivers its Notice of Exercise to the Company. If the Shares are not regularly traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.5 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this warrant, the Company shall deliver to Holder certificates for the Shares acquired and, if this warrant has not been fully exercised or converted and has not expired, a new warrant representing the Shares not so acquired.

1.6 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this warrant, the Company at its expense shall execute and deliver, in lieu of this warrant, a new warrant of like tenor.

1.7 Repurchase on Sale, Merger, or Consolidation of the Company.

1.7.1 **“Acquisition.”** For the purpose of this warrant, “Acquisition” means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, (b) any sale or disposition of all or substantially all of the capital stock of the Company, or (c) any reorganization, consolidation, merger or sale of the voting securities of the Company or any other transaction where the holders of the Company’s securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.7.2 **Assumption of Warrant.** If upon the closing of any Acquisition the successor entity assumes the obligations of this warrant, then this warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly. The Company shall use reasonable efforts to cause the surviving corporation to assume the obligations of this warrant.

1.7.3 **Nonassumption.** If upon the closing of any Acquisition the successor entity does not assume the obligations of this warrant and Holder has not otherwise exercised this warrant in full, then Holder shall deem this warrant to have been automatically converted pursuant to Section 1.2 and thereafter Holder shall participate in the Acquisition on the same terms as other holders of the same class of securities of the Company.

1.8 Number of Shares. The Number of Shares for which this warrant shall be exercisable shall be an amount equal to three percent (3.00%) of the principal amount of the Term Loans made by Pacific Western Bank to the Company in excess of Ten Million Dollars (\$10,000,000), pursuant to that certain Loan and Security Agreement by and between the Pacific Western Bank and the Company dated as of June 14, 2013 (as may be amended from time to time, the “Loan Agreement”) divided by the Initial Exercise Price. All terms used in this Section 1.8 but not defined herein shall have the meanings assigned in the Loan Agreement.

ARTICLE 2

ADJUSTMENTS TO THE SHARES

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, or subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this warrant, for each Share acquired, Holder shall receive upon conversion thereof, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

2.2 Reclassification, Exchange or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this warrant, Holder shall be entitled to receive, upon exercise or conversion of this warrant, the number and kind of securities and property that Holder would have received for the Shares if this warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation upon the closing of a registered public offering of the Company's common stock. The Company or its successor shall promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Combinations, Etc. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a greater number of shares, the Warrant Price shall be proportionately decreased.

2.4 Adjustments for Diluting Issuances. In the event of the issuance (a "Diluting Issuance") by the Company after the Issue Date of securities at a price per share less than the Warrant Price, then the number of shares of common stock issuable upon conversion of the Shares shall be adjusted in accordance with those provisions of the Company's Certificate of Incorporation that apply to Diluting Issuances.

2.5 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

2.6 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the warrant and the Number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

ARTICLE 3

REPRESENTATIONS AND COVENANTS OF THE COMPANY

3.1 Representations and Warranties. The Company hereby represents and warrants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this warrant is the per share price paid in Company's most recent equity financing.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached to this warrant is true and complete as of the Issue Date

3.2 Notice of Certain Events. The Company shall provide Holder with not less than 10 days prior written notice, including a description of the material facts surrounding, any of the following events: (a) declaration of any dividend or distribution upon its common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) offering for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) effecting any reclassification or recapitalization of common stock; or (d) the merger or consolidation with or into any other corporation, or sale, lease, license, or conveyance of all or substantially all of its assets, or liquidation, dissolution or winding up.

3.3 Information Rights. So long as the Holder holds this warrant and for so long as that certain Fourth Amended and Restated Investors' Rights Agreement by and between the Company and other persons dated as of April 29, 2016 (as amended, the "Rights Agreement"), is in force and effect, the Company shall deliver to the Holder (a) within one hundred eighty (180) days after the end of each fiscal year of the Company, the annual audited (or at other such level as is required by Company's Board of Directors) financial statements of the Company certified by independent public accountants of recognized standing and (b) within forty-five (45) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements.

3.4 Registration Under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall be “Registrable Securities”, and Holder shall be a “Holder” under and subject to the terms and conditions of the Rights Agreement.

ARTICLE 4

MISCELLANEOUS

4.1 Term: Exercise Upon Expiration. This warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above; provided, however, that if the Company completes its initial public offering within the three-year period immediately prior to the Expiration Date, the Expiration Date shall automatically be extended until the third anniversary of the effective date of the Company’s initial public offering. If this warrant has not been exercised prior to the Expiration Date, this warrant shall be deemed to have been automatically exercised on the Expiration Date by “cashless” conversion pursuant to Section 1.2. Furthermore, if on the Availability End Date (as defined in the Loan Agreement), the amount of Term Loans made by Pacific Western Bank to the Company Ten Million Dollars (\$10,000,000) or less, such that no Shares have become issuable upon exercise of this warrant, then this warrant will, notwithstanding the Expiration Date, expire and terminate upon the day after the Availability End Date.

4.2 Legends. This warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form as well as any additional legends that the Company and Holder mutually agree upon with respect to such Shares:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

4.3 Compliance with Securities Laws on Transfer. This warrant and the Shares issuable upon exercise of this warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder or if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144 (d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder’s notice of proposed sale.

4.4 Transfer Procedure. Subject to the provisions of Section 4.3, Holder may transfer all or part of this warrant or the Shares issuable upon exercise of this warrant (or the securities issuable, directly or indirectly, upon conversion of the Shares, if any) by giving the Company notice of the portion of the warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this warrant to the

Company for reissuance to the transferee(s) (and Holder, if applicable). No surrender or reissuance shall be required if the transfer is to an affiliate of Holder.

4.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. All notices to the Holder shall be addressed as follows:

Pacific Western Bank
Attn: Warrant Administrator
406 Blackwell Street, Suite 240
Durham, NC 27701

4.6 Amendments. This warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

4.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

4.8 Governing Law. This warrant shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to its principles regarding conflicts of law.

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OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal

Name: Andrew Rasdal

Title: Chief Executive Officer

[Signature Page to Third Warrant to Purchase Stock]

OBALON THERAPEUTICS, INC.

2008 STOCK PLAN

1. Purposes of the Plan. The purposes of this Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan in accordance with Section 4 hereof.

(b) "Applicable Laws" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Change in Control" means the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or

(iii) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(e) "Code" means the Internal Revenue Code of 1986, as amended.

(f) "Committee" means a committee of Directors or of other individuals satisfying Applicable Laws appointed by the Board in accordance with Section 4 hereof.

(g) “Common Stock” means the Common Stock of the Company.

(h) “Company” means Obalon Therapeutics, Inc., a Delaware corporation.

(i) “Consultant” means any person who is engaged by the Company or any Parent or Subsidiary to render consulting or advisory services to such entity.

(j) “Director” means a member of the Board.

(k) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code.

(l) “Employee” means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company shall be sufficient to constitute “employment” by the Company.

(m) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(n) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

(o) “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(p) “Nonstatutory Stock Option” means an Option not intended to qualify as an Incentive Stock Option.

(q) “Option” means a stock option granted pursuant to the Plan.

(r) “Option Agreement” means a written or electronic agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(s) “Optioned Stock” means the Common Stock subject to an Option or a Stock Purchase Right.

(t) “Optionee” means the holder of an outstanding Option or Stock Purchase Right granted under the Plan.

(u) “Parent” means a “parent corporation,” whether now or hereafter existing, as defined in Section 424(e) of the Code.

(v) “Plan” means this 2008 Stock Plan.

(w) “Restricted Stock” means Shares issued pursuant to a Stock Purchase Right or Shares of restricted stock issued pursuant to an Option.

(x) “Restricted Stock Purchase Agreement” means a written agreement between the Company and the Optionee evidencing the terms and restrictions applying to Shares purchased under a Stock Purchase Right. The Restricted Stock Purchase Agreement is subject to the terms and conditions of the Plan and the notice of grant.

(y) “Securities Act” means the Securities Act of 1933, as amended.

(z) “Service Provider” means an Employee, Director, Consultant or other permitted recipient under Rule 701 under the Securities Act.

(aa) “Share” means a share of the Common Stock, as adjusted in accordance with Section 13 below.

(bb) “Stock Purchase Right” means a right to purchase Common Stock pursuant to Section 11 below.

(cc) “Subsidiary” means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares that may be subject to option and sold under the Plan is Four Million Nine Hundred Two Thousand Two Hundred Fifteen (4,902,215) Shares. The Shares may be authorized but unissued, or reacquired Common Stock.

If an Option or Stock Purchase Right expires or becomes unexercisable without having been exercised in full, the unpurchased Shares that were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). However, Shares that have actually been issued under the Plan, upon exercise of either an Option or Stock Purchase Right, shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if unvested Shares of Restricted Stock are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan.

4. Administration of the Plan.

(a) Administrator. The Plan shall be administered by the Board or a Committee appointed by the Board, which Committee shall be constituted to comply with Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan and, in the case of a Committee, the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its sole discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options and Stock Purchase Rights may from time to time be granted hereunder;

(iii) to determine the number of Shares to be covered by each such award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions of any Option or Stock Purchase Right granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options or Stock Purchase Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Stock Purchase Right or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws;

(vii) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option or Stock Purchase Right that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Optionees to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable; and

(viii) to construe and interpret the terms of the Plan and Options granted pursuant to the Plan.

(c) Effect of Administrator's Decision. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Optionees.

5. Eligibility. Nonstatutory Stock Options and Stock Purchase Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Limitations.

(a) Incentive Stock Option Limit. Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a): (x) Incentive Stock Options shall be taken into account in the order in which they were granted and (y) the Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) At-Will Employment. Neither the Plan nor any Option or Stock Purchase Right shall confer upon any Optionee any right with respect to continuing the Optionee's relationship as a Service Provider with the Company, nor shall it interfere in any way with his or her right or the Company's right to terminate such relationship at any time, with or without cause, and with or without notice.

7. Term of Plan. Subject to stockholder approval in accordance with Section 19, the Plan shall become effective upon its adoption by the Board. Unless sooner terminated under Section 15, it shall continue in effect for a term of ten (10) years from the later of (i) the effective date of the Plan, or (ii) the earlier of the Board approval or stockholder approval of the most recent amendment to Plan involving an increase in the number of Shares reserved for issuance under the Plan.

8. Term of Option. The term of each Option shall be stated in the Option Agreement; provided, however, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to an Optionee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant.

(B) granted to any other Employee, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction, or as otherwise determined by the Board.

(b) Forms of Consideration. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of, without limitation, (1) cash, (2) check, (3) promissory note, (4) other Shares, provided Shares acquired directly from the Company (x) have been owned by the Optionee for more than six (6) months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (5) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan, or (6) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company, and what form of consideration is permitted by law.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder shall be exercisable according to the terms hereof at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 13 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Relationship as a Service Provider. If an Optionee ceases to be a Service Provider, such Optionee may exercise his or her Option within thirty (30) days of termination, or such longer period of time as specified in the Option Agreement, to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement, and in the case of an Incentive Stock Option, in no event later than the earlier of three (3) months after the date of termination and the expiration of the term of the Option as set forth in the Option Agreement). If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within six (6) months of termination, or such longer period of time as specified in the Option Agreement, to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement, and in the case of an Incentive Stock Option, in no event later than the earlier of one (1) year after the date of Termination and the expiration of the term of the Option as set forth in the Option Agreement). If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. If an Optionee dies while a Service Provider, the Option may be exercised within six (6) months following Optionee's death, or such longer period of time as specified in the Option Agreement, to the extent that the Option is vested on the date of death (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement) by the Optionee's designated beneficiary, provided such beneficiary has been designated prior to Optionee's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Optionee, then such Option may be exercised by the personal representative of the Optionee's estate or by the person(s) to whom the Option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution. If, at the time of death, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Leaves of Absence.

(i) Unless the Administrator provides otherwise, vesting of Options granted hereunder to employees, officers and Directors shall be suspended during any unpaid leave of absence.

(ii) A Service Provider who is an Employee shall not cease to be an Employee in the case of (A) any leave of absence approved by the Company or (B) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor.

(iii) For purposes of Incentive Stock Options, no such leave may exceed ninety (90) days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then following the 91st day of such leave, any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

11. Stock Purchase Rights.

(a) Rights to Purchase. Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing or electronically of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. The terms of the offer shall comply in all respects with Section 260.140.42 of Title 10 of the California Code of Regulations. The offer shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) Repurchase Option. Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable within ninety (90) days of the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine.

(c) Other Provisions. The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Stockholder. Once the Stock Purchase Right is exercised, the purchaser shall have rights equivalent to those of a stockholder and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 13 of the Plan.

12. Limited Transferability of Options and Stock Purchase Rights. Unless determined otherwise by the Administrator, Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner, and may be exercised only by the Optionee during the lifetime of the Optionee. If the Administrator, in its

sole discretion, makes an Incentive Stock Option transferable, such Incentive Stock Option may only be transferred (i) by will, (ii) by the laws of descent and distribution, or (iii) to a revocable trust. If the Administrator, in its sole discretion, makes a Nonstatutory Stock Option or Stock Purchase Right transferable, such Nonstatutory Stock Option may only be transferred (i) by will, or (ii) by the laws of descent and distribution, (iii) to a revocable trust, or (iv) to Family Members of the Optionee. For purposes of this Section 12, "Family Member" shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, registered domestic partner, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the employee's household (other than a tenant or employee), a trust in which these persons have more than fifty percent of the beneficial interest, a foundation in which these persons (or the employee) control the management of assets, and any other entity in which these persons (or the employee) own more than fifty percent of the voting interests

13. Adjustments; Dissolution or Liquidation; Merger or Change in Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, may (in its sole discretion) adjust the number and class of Shares that may be delivered under the Plan and/or the number, class, and price of Shares covered by each outstanding Option or Stock Purchase Right; provided, however, that the Administrator shall make such adjustments to the extent required by Section 25102(o) of the California Corporations Code.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Option or Stock Purchase Right will terminate immediately prior to the consummation of such proposed action.

(c) Merger or Change in Control. In the event of a merger of the Company with or into another corporation, or a Change in Control, each outstanding Option and Stock Purchase Right shall be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation in a merger or Change in Control refuses to assume or substitute for the Option or Stock Purchase Right, then the Optionee shall fully vest in and have the right to exercise the Option or Stock Purchase Right as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option or Stock Purchase Right becomes fully vested and exercisable in lieu of assumption or substitution in the event of a merger or Change in Control, the Administrator shall notify the Optionee in writing or electronically that this Option or Stock Purchase Right shall be fully exercisable for a period of fifteen (15) days from the date of such notice, and the Option or Stock Purchase Right shall terminate upon expiration of such period. For the purposes of this paragraph, the Option or Stock Purchase

Right shall be considered assumed if, following the merger or Change in Control, the option or right confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option or Stock Purchase Right immediately prior to the merger or Change in Control, the consideration (whether stock, cash, or other securities or property) received in the merger or Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option or Stock Purchase Right, for each Share of Optioned Stock subject to the Option or Stock Purchase Right, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of common stock in the merger or Change in Control.

14. Time of Granting Options and Stock Purchase Rights. The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such later date as is determined by the Administrator. Notice of the determination shall be given to each Service Provider to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

15. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Board shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options granted under the Plan prior to the date of such termination.

16. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Administrator may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without

any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

17. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

18. Reservation of Shares. The Company, during the term of this Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

19. Stockholder Approval. The Plan shall be subject to approval by the stockholders of the Company prior to the later of (i) twelve (12) months after the date the Plan is adopted or (ii) the date of first grant of an Option or Stock Purchase Right to a Service Provider in California if such grant is to be exempt from qualification under Section 25102(o) of the California Corporations Code. Each Option or Stock Purchase Right intended to be exempt from qualification under Section 25102(o) of the California Corporations Code shall be canceled, and any issuance of Shares pursuant to such Option or Stock Purchase Right shall be rescinded, if the Plan is not approved by the Company's stockholders (excluding the votes of Shares issued under the Plan) within twelve (12) months before or after the date the Plan is adopted by the Board. Such stockholder approval shall be obtained in the degree and manner required under Applicable Laws.

OBALON THERAPEUTICS, INC.

2008 STOCK PLAN

STOCK OPTION AGREEMENT

Unless otherwise defined herein, the terms defined in the 2008 Stock Plan shall have the same defined meanings in this Stock Option Agreement.

I. NOTICE OF STOCK OPTION GRANT:

Name: _____

Address: _____

The undersigned Optionee has been granted an Option to purchase Common Stock of the Company, subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Date of Grant _____

Vesting Commencement Date _____

Exercise Price per Share _____

Total Number of Shares Granted _____

Total Exercise Price _____

Type of Option: _____ Incentive Stock Option

_____ Nonstatutory Stock Option

Term/Expiration Date: _____ years after Date of Grant _____

Vesting Schedule:

This Option shall be exercisable, in whole or in part, according to the following vesting schedule:

1. 25% of the shares subject to this Option shall vest upon the first anniversary of the Vesting Commencement Date, contingent on continued status as a Service Provider as of such date.

2. Thereafter, 1/36 of the remainder of the shares subject to this Option shall vest at the end of each month, contingent on continued status as a Service Provider.

Termination Period:

This Option shall be exercisable for ninety (90) days after Optionee ceases to be a Service Provider. Upon Optionee's death or Disability, this Option may be exercised for one (1) year after Optionee ceases to be a Service Provider. Any exercise made more than three (3) months after the date Optionee ceases to be an Employee for any reason other than the

Optionee's "permanent and total disability" (as defined in Section 22(e)(3) of the Code), is deemed to be exercise of a Nonstatutory Stock Option. In no event may Optionee exercise this Option after the Term/Expiration Date as provided above.

II. AGREEMENT

1. Grant of Option. The Plan Administrator of the Company hereby grants to the Optionee named in the Notice of Grant (the "Optionee"), an option (the "Option") to purchase the number of Shares set forth in the Notice of Grant, at the exercise price per Share set forth in the Notice of Grant (the "Exercise Price"), and subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 15(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and this Option Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Notice of Grant as an Incentive Stock Option ("ISO"), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. Nevertheless, to the extent that it exceeds the \$100,000 rule of Code Section 422(d), this Option shall be treated as a Nonstatutory Stock Option ("NSO").

2. Exercise of Option.

(a) Right to Exercise. This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Grant and with the applicable provisions of the Plan and this Option Agreement.

(b) Method of Exercise. This Option shall be exercisable by delivery of an exercise notice in the form attached as Exhibit A (the "Exercise Notice") which shall state the election to exercise the Option, the number of Shares with respect to which the Option is being exercised, and such other representations and agreements as may be required by the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price.

No Shares shall be issued pursuant to the exercise of an Option unless such issuance and such exercise complies with Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares. Shares issued pursuant to this Option are subject to the right of first refusal set forth in the Exercise Notice.

3. Optionee's Representations. In the event the Shares have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), at the time this Option is exercised, the Optionee shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, deliver to the Company his or her Investment Representation Statement in the form attached hereto as Exhibit B.

4. Lock-Up Period. Optionee hereby agrees that Optionee shall not 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, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Stock (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Company held by Optionee (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company (not to exceed one hundred eighty (180) days plus up to an additional thirty-four (34) days if

requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto) following the effective date of any registration statement of the Company filed under the Securities Act.

Optionee agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, Optionee shall provide, within ten (10) days of such request, such information as maybe required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said period. Optionee agrees that any transferee of the Option or shares acquired pursuant to the Option shall be bound by this Section.

5. Method of Payment. Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee:

(a) cash or check; or

(b) consideration received by the Company under any formal cashless exercise program adopted by the Company in connection with the Plan.

6. Restrictions on Exercise. This Option may not be exercised until such time as the Plan has been approved by the shareholders of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any Applicable Law.

7. Non-Transferability of Option. This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by Optionee. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

8. Term of Option. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option.

9. Tax Obligations.

(a) Withholding Taxes. Optionee agrees to make appropriate arrangements with the Company (or the Parent or Subsidiary employing or retaining Optionee) for the satisfaction of all Federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. Optionee acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver Shares if such withholding amounts are not delivered at the time of exercise.

(i) Notice of Disqualifying Disposition of ISO Shares. If the Option granted to Optionee herein is an ISO, and if Optionee sells or otherwise disposes of any of the

Shares acquired pursuant to the ISO on or before the later of (1) the date two years after the Date of Grant, or (2) the date one year after the date of exercise, the Optionee shall immediately notify the Company in writing of such disposition. Optionee agrees that Optionee may be subject to income tax withholding by the Company on the compensation income recognized by the Optionee.

10. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee’s interest except by means of a writing signed by the Company and Optionee. This agreement is governed by the internal substantive laws but not the choice of law rules of the state of California.

Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Option. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

OPTIONEE

OBALON THERAPEUTICS, INC.

Signature

By:

Print Name

Title:

Residence Address

EXHIBIT A
2008 STOCK PLAN
EXERCISE NOTICE

Obalon Therapeutics, Inc.

Address: _____

Attention: Secretary

1. Exercise of Option. Effective as of today, _____, _____, the undersigned ("Optionee") hereby elects to exercise Optionee's option to purchase _____ shares of the Common Stock (the "Shares") of Obalon Therapeutics, Inc. (the "Company") under and pursuant to the 2008 Stock Plan (the "Plan") and the Stock Option Agreement dated _____, 20__ (the "Option Agreement").

2. Delivery of Payment. Purchaser herewith delivers to the Company the full purchase price of the Shares, as set forth in the Option Agreement, and any and all withholding taxes due in connection with the exercise of the Option.

3. Representations of Optionee. Optionee acknowledges that Optionee has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Shareholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Shares shall be issued to the Optionee as soon as practicable after the Option is exercised in accordance with the Option Agreement. No adjustment shall be made for a dividend or other right for which the record date is prior to the date of issuance except as provided in Section 13 of the Plan.

5. Company's Right of First Refusal. Before any Shares held by Optionee or any transferee (either being sometimes referred to herein as the "Holder") may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section (the "Right of First Refusal").

(a) Notice of Proposed Transfer. The Holder of the Shares shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the bona fide cash price or other consideration for which the Holder proposes to transfer the Shares (the "Offered Price"), and the Holder shall offer the Shares at the Offered Price to the Company or its assignee(s).

(b) Exercise of Right of First Refusal. At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (c) below.

(c) Purchase Price. The purchase price ("Purchase Price") for the Shares purchased by the Company or its assignee(s) under this Section shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board of Directors of the Company in good faith.

(d) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within thirty (30) days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(e) Holder's Right to Transfer. If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within one hundred twenty (120) days after the date of the Notice, that any such sale or other transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee agrees in writing that the provisions of this Section shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(f) Exception for Certain Family Transfers. Anything to the contrary contained in this Section notwithstanding, the transfer of any or all of the Shares during the Optionee's lifetime or on the Optionee's death by will or intestacy to the Optionee's Immediate Family or a trust for the exclusive benefit of the Optionee and/or the Optionee's Immediate Family shall be exempt from the provisions of this Section. "Immediate Family" as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions of this Section, and there shall be no further transfer of such Shares except in accordance with the terms of this Section.

(g) Termination of Right of First Refusal. The Right of First Refusal shall terminate as to any Shares upon the earlier of (i) the first sale of Common Stock of the Company to the general public, or (ii) a Change in Control in which the successor corporation has equity securities that are publicly traded.

6. Tax Consultation. Optionee understands that Optionee may suffer adverse tax consequences as a result of Optionee's purchase or disposition of the Shares. Optionee represents that Optionee has consulted with any tax consultants Optionee deems advisable in connection with the purchase or disposition of the Shares and that Optionee is not relying on the Company for any tax advice.

7. Restrictive Legends and Stop-Transfer Orders.

(a) Legends. Optionee understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by the Company or by state or federal securities laws:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND

MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COMPANY COUNSEL SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE THEREWITH.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND A RIGHT OF FIRST REFUSAL HELD BY THE ISSUER OR ITS ASSIGNEE(S) AS SET FORTH IN THE EXERCISE NOTICE BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH TRANSFER RESTRICTIONS AND RIGHT OF FIRST REFUSAL ARE BINDING ON TRANSFEREES OF THESE SHARES.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR A PERIOD NOT TO EXCEED 180 DAYS FOLLOWING THE EFFECTIVE DATE OF THE UNDERWRITTEN PUBLIC OFFERING OF THE COMPANY'S SECURITIES AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF BY THE HOLDER WITHOUT THE CONSENT OF THE COMPANY OR THE MANAGING UNDERWRITER.

(b) Stop-Transfer Notices. Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Exercise Notice or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

8. Lock-Up Period. Optionee hereby agrees that Optionee shall not 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, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Stock (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Company held by Optionee (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company (not to exceed one hundred eighty (180) days plus up to an additional thirty-four (34) days if requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto) following the effective date of any registration statement of the Company filed under the Securities Act.

Optionee agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company,

Optionee shall provide, within ten (10) days of such request, such information as maybe required by the Company or such representative in connection with the completion of any public offering of the Company’s securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said period. Optionee agrees that any transferee of the Option or shares acquired pursuant to the Option shall be bound by this Section.

9. Successors and Assigns. The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this Exercise Notice shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon Optionee and his or her heirs, executors, administrators, successors and assigns.

10. Interpretation. Any dispute regarding the interpretation of this Exercise Notice shall be submitted by Optionee or by the Company forthwith to the Administrator which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all parties.

11. Governing Law; Severability. This Exercise Notice is governed by the internal substantive laws but not the choice of law rules, of the state of California. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Option Agreement will continue in full force and effect.

12. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Exercise Notice, the Plan, the Option Agreement and the Investment Representation Statement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee’s interest except by means of a writing signed by the Company and Optionee.

Submitted by:

Accepted by:

OPTIONEE

OBALON THERAPEUTICS, INC.

Signature
Print Name
Address:

By: _____
Title:
Address:

EXHIBIT B

INVESTMENT REPRESENTATION STATEMENT

OPTIONEE:

COMPANY: OBALON THERAPEUTICS, INC.

SECURITY: COMMON STOCK

AMOUNT:

DATE:

In connection with the purchase of the above-listed Securities, the undersigned Optionee represents to the Company the following:

(a) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Optionee is acquiring these Securities for investment for Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

(b) Optionee acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Optionee's investment intent as expressed herein. In this connection, Optionee understands that, in the view of the Securities and Exchange Commission, the statutory basis for such exemption may be unavailable if Optionee's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one year or any other fixed period in the future. Optionee further understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the Securities. Optionee understands that the certificate evidencing the Securities will be imprinted with any legend required under applicable state securities laws.

(c) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to the Optionee, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter (or such longer period as any market stand-off agreement may require) the Securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (1) the resale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, (3) the amount of Securities being

sold during any three month period not exceeding the limitations specified in Rule 144(e), and (4) the timely filing of a Form 144, if applicable.

In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than six months after the later of the date the Securities were sold by the Company or the date the Securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the Securities by an affiliate, or by a non-affiliate who subsequently holds the Securities less than one year, the satisfaction of the conditions set forth in sections (1), (2), (3) and (4) of the paragraph immediately above.

(d) Optionee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Optionee understands that no assurances can be given that any such other registration exemption will be available in such event.

Signature of Optionee:

Date: _____, _____



**AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL
MULTI-TENANT LEASE – GROSS**

1. Basic Provisions (“Basic Provisions”).

1.1 **Parties:** This Lease (“Lease”), dated for reference purposes only October 3, 2011, is made by and between Pleta & Sal Gal Trusts dba: Ocean Point Tech Centre (“Lessor”) and Obalon Therapeutics Inc., a Delaware Corporation (“Lessee”), (collectively the “Parties”, or individually a “Party”).

1.2 (a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 5421 Avenida Encinas, Suite A through G, located in the City of Carlsbad, County of San Diego, State of California, with zip code 92008, as outlined on Exhibit 56 attached hereto (“Premises”) and generally described as (describe briefly the nature of the Premises): Approximately 13,650 rentable square feet of office and warehouse space.

In addition to Lessee’s rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises (“Building”) and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the “Project.” (See also Paragraph 2)

1.2 (b) **Parking:** Fifty (50) unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** Two (2) years and zero (0) months 16 days (“Original Term”) commencing November 15, 2011 (“Commencement Date”) and ending November 30, 2013 (“Expiration Date”). (See also Paragraph 3)

1.4 **Early Possession:** N/A (“Early Possession Date”). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$ 12,968.00 per month (“Base Rent”), payable on the 1st day of each month commencing November 15, 2011. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 **Lessee’s Share of Common Area Operating Expenses:** Sixteen & 45/100 percent (16.45%) (“Lessee’s Share”). Lessee’s share has been calculated by dividing the approximate square footage of the Premises by the approximate square footage of the Project. In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee’s Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$12,968.00 for the period 11/15/11 thru 12/14/11.

(b) **Common Area Operating Expenses:** \$1,092.00 for the period 11/15/11 thru 12/14/11.

(c) **Security Deposit:** \$8,900.00 (“Security Deposit”). This amount shall transfer from the lease between the Parties dated August 7, 2008 for the premises located at 5421 Avenida Encinas, Suite F, upon that lease’s termination. (See also Paragraph 5 and 50G)

(d) **Other:** \$0.00 for N/A.

(e) **Total Due Upon Execution of this Lease:** \$14,060.00.

1.8 **Agreed Use:** GENERAL OFFICE AND WAREHOUSE FOR RESEARCH AND DEVELOPMENT, MEDICAL DEVICE USE, COMPUTER LABS, CLEAN ROOM, AND ANY AND ALL USES UNDER THE PROJECT ZONING. (See also paragraph 5)

1.9 **Insuring Party.** Lessor is the “Insuring Party”. (See also Paragraph 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

/s/ AR
INITIALS

/s/ GH
INITIALS

(a) **Representation:** The following real estate brokers (the “**Brokers**”) and brokerage relationships exist in this transaction (check applicable boxes):

x Lessor represents itself represents Lessor exclusively (“**Lessor’s Broker**”);

x Lessee represents itself represents Lessee exclusively (“**Lessee’s Broker**”); or

“ _____ represents both Lessor and Lessee (“**Dual Agency**”).

(b) ~~**Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____% of the total Base Rent) for the brokerage services rendered by the Brokers.~~

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by NONE (“**Guarantor**”). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

~~an Addendum~~ Addenda consisting of Paragraphs 50 through 55; *in the event that any provision of this Lease is in conflict with any provision of the Lease Addenda, the conflicting provision of the Lease Addenda shall take precedence and govern.*

x a site plan depicting the Premises (*Exhibit 56*);

x a site plan depicting the Project (*Exhibit 56*);

x a current set of the Rules and Regulations for the Project (*Exhibit 53*);

“ a current set of the Rules and Regulations adopted by the owners’ association;

“ a Work Letter;

“ other (specify): _____

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building (“**Unit**”) to **Lessee** broom clean and free of debris on the Commencement Date *per Compliance provision* (Addendum Paragraph 50) ~~or the Early Possession Date~~, whichever first occurs (“**Start Date**”), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (“**HVAC**”), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor’s sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor’s sole expense *without possibility of reimbursement as a Common Area Operating Expense or otherwise*. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems ~~and other elements of the Unit~~. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee’s sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 **Compliance.** Lessor warrants that ~~to the best of its knowledge~~ the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the State Date (“**Applicable Requirements**”). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee’s use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee’s intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor’s sole expense *without possibility of reimbursement as a Common Area*

/s/ AR
INITIALS

/s/ GH
INITIALS

~~Operating Expense or otherwise. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.~~ If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligations to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d); provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days' prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days' written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures, *except Code and Compliance issues per Addendum Paragraph 50*, are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and regarding their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to *its intended use* ~~such matters~~ and assumes all responsibility therefor as the same relate to *its intended use occupancy* of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 ~~Lessee as Prior Owner/Occupant.~~ ~~The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.~~

2.6 Vehicle Parking. Lessee shall be entitled to use, *free of charge*, the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles**." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas – Definition. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

/s/ AR
INITIALS

/s/ GH
INITIALS

2.8 Common Areas – Lessee’s Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor’s designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas – Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations (“**Rules and Regulations**”) for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas – Changes. Lessor shall have the right, in Lessor’s sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways, with no increase in costs;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available with no disruption to Lessee’s business or Lessee’s access or parking;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate. The costs of such changes shall be at Lessor’s sole expense without possibility of reimbursement as a Common Area Operating Expense or otherwise.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. ~~If Lessee totally or partially occupies~~ Immediately after full execution of the Lease, Lessee may occupy the Premises for the purpose of installing its Tenant Improvements prior to the Commencement Date. ~~the~~ The obligation to pay Base Rent and Common Area Operating Expenses shall be abated for the period of such early possession. All other terms of this Lease ~~(including but not limited to the obligations to pay Lessee’s Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises)~~ shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee ~~by the Commencement Date~~ upon mutual execution of the Lease. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within ~~10~~ 5 days after the end of such ~~60~~ 15 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee’s right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor’s election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

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4. Rent.

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share ~~(as specified in Paragraph 1.6)~~ of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs *(exclusive of costs due to code compliance work)* incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) ~~Exterior signs and any tenant directories.~~

(cc) Any fire sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) Trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs that are reasonable and related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any Capital Expenditure to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such Capital Expenditure over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month.

(x) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. ~~Within 60 days after written request (but not more than once each year)~~ From time to time, Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

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(e) Except as provided in paragraph 4.2(a)(viii), Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. ~~If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent.~~ Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. ~~If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition.~~ Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. *If property is sold, deposit shall transfer.*

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon

receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was *negligently* caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, ~~or any third party~~ (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which *Lessee* suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's ~~use~~ *negligent actions* (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, *with rent being appropriately abated*, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

(h) Notwithstanding anything in this Lease to the contrary, Lessee shall not be liable or responsible (legally, financially or otherwise) with respect to Hazardous Substances other than Hazardous Substances that (1) Lessee brought onto or permitted to enter the Premises or (2) if Lessee did not bring them onto the Premises or permit them to enter the Premises, to the extent Lessee negligently handled such Hazardous Substances. Hazardous Substances that Lessee neither (A) brought onto or permitted to enter the Premises nor (B) negligently handled if they are not described in (A), are collectively referred to in this Lease as “**Lessor Hazardous Substances**.” Lessor shall indemnify, defend and hold Lessee harmless against all damages suffered by Lessee as the result of the presence of Lessor Hazardous Substances.

6.3 Lessee’s Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee’s sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor’s engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor’s written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee’s compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any

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documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. *Notwithstanding anything in this Lease to the contrary, Lessee shall not be liable or responsible (legally, financially or otherwise) with respect to any violations of or non-compliances with Applicable Requirements if such violations or non-compliances with (X) exist when Lessee takes possession of the Premises or (Y) is not caused by Lessee's act or failure to act.*

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. ~~Lessee's obligations shall include restorations; replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.~~

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, (iii) clarifiers, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time. *If any HVAC units are in need of replacement, Lessor shall comply and replace.*

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a ~~Common Area Operating Expense pursuant to Paragraph 4.2~~. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease. *Lessor, at its sole cost and expense and without possibility of reimbursement as a Common Area Operating Expense or otherwise shall maintain, restore, replace and repair all structural elements, e.g., foundation, roof, walls.*

7.3 Utility Installations; Trade Fixtures; Alterations. *Lessee can remove its items per Addendum.*

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

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(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) ~~acquiring all applicable governmental permits,~~ (ii) ~~furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and~~ (iii) ~~compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner.~~ Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor. *Lessor shall approve or disapprove of any Alteration requests submitted in writing by Lessee within 5 business days or approval is deemed.*

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent. *Lessee shall not be required to remove or pay for the removal of the initial tenant improvements. Removal items should only be noted at time of approval of Alterations.*

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) As used herein, the term “**Insurance Cost Increase**” is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b) (“**Required Insurance**”), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the parties insert a dollar amount in Paragraph 1.9, such amount shall be considered the “**Base Premium**.” The Base Premium shall be the annual premium applicable to the 12 month period

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immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance – Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value insurance**"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

~~(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.~~

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

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8.5 Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's ~~gross~~ negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in ~~3~~ 5 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **“Premises Total Destruction”** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in ~~3~~ 5 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month’s Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **“Insured Loss”** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **“Replacement Cost”** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

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(e) **“Hazardous Substance Condition”** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

9.2 Partial Damage – Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor’s expense, repair such damage (but not Lessee’s Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; ~~provided, however, that Lessee shall, at Lessor’s election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose.~~ Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage – Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee’s expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor’s expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee’s commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate ~~60~~ 30 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor’s damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month’s Base Rent, whether or not an Insured Loss, ~~Lessor~~ either party may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee’s receipt of Lessor’s written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor’s commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee’s option shall be extinguished.

9.6 Abatement of Rent; Lessee’s Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee’s use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

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9.8 **Waive Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

10.1 Definitions.

(a) **“Real Property Taxes.”** As used herein, the term **“Real Property Taxes”** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor’s right to other income therefrom, and/or Lessor’s business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term **“Real Property Taxes”** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **“Base Real Property Taxes.”** As used herein, the term **“Base Real Property Taxes”** shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2. *Common Area Operating Expenses are fixed at \$1,092.00 with CAM charges and shall not increase.*

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor’s records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee’s request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor’s work sheets or such other information as may be reasonably available. Lessor’s reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee’s said property shall be assessed with Lessor’s real property, Lessee shall pay Lessor the taxes attributable to Lessee’s property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee’s property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor’s sole reasonable judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee’s Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor’s reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor’s Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, “**assign or assignment**”) or sublet all or any part of Lessee’s interest in this Lease or in the Premises without Lessor’s prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

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(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a *de minimis* portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36). *Lessor shall have no recapture right for transfers less than 60%, nor shall have a recapture right for Affiliates.*

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor

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stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary. *Lessor shall approve or disapprove of any requested transfer in 5 business days, if not, approval is deemed.*

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

~~(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee. Notwithstanding anything to the contrary contained in this Lease, Lessor's consent is not required regarding an assignment or sublet to an "Affiliate" of Lessee. "Affiliate" means any corporation or other entity controlling, controlled by, or under common control with Lessee including as the result of an acquisition of Lessee.~~

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism *except if marketing the Premises for sublease.*

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 ~~business~~ days following written notice to Lessee.

(c) The commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 ~~business~~ days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, ~~(vi) evidence concerning any guaranty and/or Guarantor,~~ (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

~~(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.~~

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13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concession are hereinafter referred to as **"Inducement Provisions"**, shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to ~~10%~~ 5% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest (“**Interest**”) charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor’s obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

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(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

~~15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.~~

~~15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

~~(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.~~

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17. Definition of Lessor. The term “**Lessor**” as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee’s interest in the prior lease. In the event of a transfer of Lessor’s title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word “**days**” as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor’s partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys’ fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to and amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker’s liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party’s signature on this Lease shall be that Party’s address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee’s taking possession of the Premises, the Premises shall constitute Lessee’s address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor’s consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor’s consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) *Lessor’s Agent.* A Lessor’s agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor’s agent or subagent has the following affirmative obligations: *To the Lessor:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. *To the Lessee and the Lessor:* a. Diligent exercise of reasonable skills and care in performance of the agent’s duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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(ii) **Lessor's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to ~~150%~~ 125% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

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/s/ GH
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30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and *during the last 6 months of the term* at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "**For Sale**" signs at any time and ordinary "**For Lease**" signs during the last 6 months of the term hereof. Except for ordinary "**For Sublease**" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor:

- 37.1 ~~Execution.~~ The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.
- 37.2 ~~Default.~~ It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

/s/ AR
INITIALS

/s/ GH
INITIALS

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. Reservations. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

/s/ AR
INITIALS

/s/ GH
INITIALS

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee’s obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Mediation and Arbitration of Disputes. An Addendum requiring the Mediation and/or Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease “ is x is not attached to this Lease.

49. Americans with Disabilities Act. ~~Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee’s specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee’s use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance Lessee agrees to make any such necessary modifications and/or modifications or additions at Lessee’s expense.~~ All ADA work inside the Premises and outside the Premises is Lessor’s responsibility at Lessor’s sole cost and expenses without possibility of reimbursement as a Common Area Operating Expense or otherwise.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

- 1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**
- 2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE’S INTENDED USE.**

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____
On: 10/19/11

Executed: 5421 AVENIDA ENCINAS STE F, CARLSBAD, CA
On: 10/14/144

By LESSOR:
PLETA & SAN GAL TRUST
dba: OCEAN POINT TECH CENTRE

By LESSEE:
OBALON THERAPEUTICS, INC.,
A DELAWARE CORPORATION

By: /s/ GREGG HAGGART
Name Printed: GREGG HAGGART
Title: SPECIAL TRUSTEE

By: /s/ Andy Rasdal
Name Printed: ANDY RASDAL
Title: CEO

By: _____
Name Printed: SANDY WATSON
Title: PROPERTY MANAGER

Address: 5431 AVENIDA ENCINAS SUITE E
CARLSBAD, CA 92008

Telephone: ()
Facsimile: (760) 438-5964
Federal ID No. _____

/s/ AR
INITIALS

By: _____
Name Printed: _____
Title: _____

Address: 5421 AVENIDA ENCINAS STE. F
CARLSBAD, CA 92008

Telephone: _____
Facsimile: _____
Federal ID No. _____

/s/ GH
INITIALS

BROKER:
LESSOR REPRESENTS ITSELF

Att: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Federal ID No. _____

BROKER:
LESSEE REPRESENTS ITSELF

Att: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Federal ID No. _____

These forms are often modified to meet changing requirements of law and needs of the Industry. Always write or call to make sure you are utilizing the most current form: AIR COMMERCIAL REAL ESTATE ASSOCIATION, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

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/s/ AR
INITIALS

/s/ GH
INITIALS

Addendum

RENTAL SCHEDULE

This **RENTAL SCHEDULE** is attached to and made part of that certain real estate Lease (the "Lease") **DATED OCTOBER 3, 2011**, between **PLETA & SAN GAL TRUST DBA: OCEAN POINT TECH CENTRE** as Lessor and **OBALON THERAPEUTICS INC., A DELAWARE CORPORATION** as Lessee, covering the Premises commonly known as **5421 AVENIDA ENCINAS, SUITES A, B, C, D, E, F & G, CARLSBAD, CALIFORNIA 92008**. The terms use in this document shall have the same definitions as those set forth in the Lease.

- 50A. RENTAL SCHEDULE:** For the Term of the Lease, the following schedule for Base Rent and Common Area Operating Expenses (also referred to within the Lease as "CRM" or "CAM Charges") shall be in effect.

<u>Date</u>	<u>Monthly Base Rent</u>	<u>Monthly CAM</u>		<u>Monthly Total Rent</u>
11/15/11-12/14/11	\$ 0.00	\$ 1,092.00	=	\$ 1,092.00
12/15/11-12/31/11	\$ 6,484.00	\$ 546.00	=	\$ 7,030.00
01/01/12-11/30/12	\$ 12,968.00	\$ 1,092.00	=	\$ 14,060.00
12/01/12-12/30/12	0	\$ 1,092.00	=	\$ 1,092.00
01/01/13-11/30/13	\$ 13,377.00	\$ 1,092.00	=	\$ 14,469.00

- 50B. CAM CHARGES:** CAM CHARGES (ALSO KNOWN WITHIN THE LEASE AS COMMON AREA OPERATING EXPENSES) SHALL BE FIXED DURING THE ORIGINAL TERM OF THE LEASE.

- 50C. TAXES & INSURANCE:** DURING THE ORIGINAL TERM OF THE LEASE, LESSEES SHARE OF INCREASES IN TAXES AND INSURANCE ABOVE AND BEYOND THE BASE YEAR OF 07/01/11 THROUGH 06/30/12 ARE **INCLUDED** IN THE FIXED CAM CHARGE.

- 50D. FIRST RIGHT OF REFUSAL:** LESSEE WILL BE PROVIDED A ONE TIME "FIRST RIGHT OF REFUSAL" ON ANY SPACE THAT COMES AVAILABLE IN THE PARK. ANY EXPANSION SPACE LEASED BY LESSEE DURING THE TERM SHALL BE AT THE THEN PREVAILING FAIR MARKET RATE. UPON LESSEE'S RECEIPT OF A COPY OF AN EXECUTED LETTER OF INTENT BY A THIRD PARTY CONTAINING TERMS ON WHICH LESSOR IS WILLING TO LEASE THE EXPANSION SPACE, LESSEE SHALL HAVE FIVE (5) BUSINESS DAYS TO ACCEPT OR REJECT THOSE TERMS BY WRITTEN NOTICE DELIVERED TO LESSOR.

- 50E. OPTION TO EXTEND:** LESSEE SHALL BE GRANTED ONE (1) ADDITIONAL ONE (1) YEAR TERM ("OPTION TERM") AT THEN MARKET RATE. LESSEE MUST NOTIFY LESSOR IN WRITING OF LESSEE'S INTENT TO RENEW AT LEAST ONE HUNDRED & TWENTY (120) DAYS PRIOR TO THE EXPIRATION OF THE ORIGINAL LEASE TERM.

- 50F. COMPLIANCE:**

THE COMMON AREAS (OUTSIDE THE BUILDING) AND THE PREMISES UNDER THE LEASE SHALL BE IN COMPLIANCE WITH ALL LAWS AND REGULATIONS, INCLUDING THE ADA, AT LESSOR'S SOLE COST AND EXPENSE & EXCLUSIVE OF OPERATING EXPENSES. NOTWITHSTANDING, SHOULD ANY CODE VIOLATIONS NOT BE ENFORCED BY A GOVERNMENTAL AGENCY, THE LESSOR SHALL NOT HAVE THE OBLIGATION TO FIX SUCH NON-COMPLIANT ITEMS, UNLESS THEY INTERFERE WITH LESSEE'S USE OF THE PREMISES TO CONDUCT ITS NORMAL BUSINESS. ANY REPAIR OR REPLACEMENT EXPENSES RELATED TO THE ROOF, NOT CAUSED BY LESSEE, (INCLUDING SKYLIGHTS) SHALL BE AT LESSOR'S SOLE COST AND EXPENSE & EXCLUSIVE OF THE OPERATING EXPENSES.

/s/ AR
INITIALS

/s/ GH
INITIALS

EXISTING HVAC UNITS THAT ARE IN NEED OF REPLACEMENT OR REPAIR DURING THE LEASE TERM, AND NOT DUE TO LESSEE NEGLIGENCE, SHALL BE AT LESSOR'S SOLE COST & EXPENSE & NOT PART OF THE OPERATING EXPENSES. LESSOR SHALL PLACE ALL BUILDING SYSTEMS IN GOOD WORKING ORDER AND REPAIR PRIOR TO LEASE COMMENCEMENT.

AT LESSOR'S SOLE COST AND EXPENSE AND EXCLUSIVE OF OPERATING EXPENSES, LESSOR SHALL REPAIR/REPLACE ANY BROKEN/NON WORKING LIGHTS OR LIGHT FIXTURES, REPLACE ANY STAINED/DAMAGED CEILING TILES.

AT LESSOR'S SOLE COST & EXPENSE, LESSOR WILL REPAIR ALL HVAC UNITS ON THE PREMISES AND MAINTAIN SUCH UNITS IN GOOD WORKING ORDER FOR THE TERM OF THE LEASE AND ANY RENEWALS THEREOF.

50G. **TERMINATION OF PREVIOUS LEASE:** CONTINGENT UPON MUTUAL EXECUTION OF THIS LEASE AND UPON COMMENCEMENT OF THIS LEASE, THE LEASE BETWEEN THE PARTIES DATED AUGUST 27, 2008 FOR THE PREMISES LOCATED AT 5421 AVENIDA ENCINAS, SUITE F, CARLSBAD, CALIFORNIA ("PREVIOUS LEASE") SHALL BE TERMINATED.

ACCEPTED:

LESSOR:

PLETA & SAN GAL TRUST
DBA: OCEAN POINT TECH CENTRE

By: /s/ Gregg Haggart
Gregg Haggart, Special Trustee
To Pleta & San Gal Trust

By LESSEE:

OBALON THERAPEUTICS INC.,
A DELAWARE CORPORATION

By: /s/ ANDREW RASDAL
Name Printed: ANDREW RASDAL
Title: CEO

OCEAN POINT TECH CENTRE
SIGN CRITERIA

This criteria establishes the policy governing all Tenant sign identification within Ocean Point Tech Centre. The purpose is to maintain the high quality of the Tech Centre. Conformance will be strictly enforced and any sign that does not conform shall be brought into conformity at the expense of the Tenant.

GENERAL REQUIREMENTS

1. Landlord shall approve all copy and/or logo design prior to the installation of the sign.
2. Landlord shall approve the placement and method of all signs prior to installation.
3. Any and all permit approvals are the sole responsibility and expense of the tenant.

GENERAL SPECIFICATIONS

1. Sign Type G: Front Door Suite Identification for Building 5421, 5431, 5441, 5451 shall be white vinyl letters applied to glass side panels. Suite designation has been provided and company name shall be "3" caps and lower case as shown on attached drawing. The letters are provided and installed by Signs On Time (760) 431-1050 at the expense of the Tenant.
2. Sign Type H: Major Tenant Building Identification.
The size shall be limited to an area not more than 2' high X 10' long and shall be placed on the concrete beam in front of Tenant's space. In the event there is no beam in front, the sign may be placed on the third concrete panel from the ground adjacent to tenant's door. These signs shall be non-lit cut out letters. The materials used should be durable, weather and fade resistant. Suggested materials are acrylic, high density urethane foam etc. The landlord accepts colors of Blue or White. Signs On Time (760-431-1050) is the sign contractor for Ocean Point Tech Centre.
4. Upon removal of any sign, any damages or disfigurement of the building will be repaired at Tenant's expense. It is the Tenant's responsibility to maintain their sign in a new condition at all times.

No other signs, placards, banners, pennants, insignias, trademarks, security stickers or other descriptive materials shall be placed or affixed or maintained upon any glass parts, wall surface, landscaped areas, streets or parking areas.

/s/ AR
INITIALS

/s/ GH
INITIALS

Addendum

Paragraph 52

**OUTSIDE STORAGE,
REPAIRS/REPLACEMENT
AND GLASS**

This Outside Storage, Repairs/Replacement and Glass Addendum is attached to and made part of that certain real estate Lease (the "Lease") dated **OCTOBER 3, 2011** between **PLETA & SAN GAL TRUST DBA: OCEAN POINT TECH CENTRE** as Lessor, and **OBALON THERAPEUTICS INC., A DELAWARE CORPORATION** as Lessee, covering the Premises commonly known as **5421 AVENIDA ENCINAS, SUITES A, B, C, D, E, F & G, CARLSBAD, CALIFORNIA 92008**. The terms used in this document shall have the same definitions as those set forth in the Lease.

OUTSIDE STORAGE

Lessee hereby grants permission to Lessor to tow away and store, at Lessee's expense, all automobiles or motor vehicles belonging to Lessee or its employees or customers, which remain in the common parking area for more than 48 consecutive hours. No automobiles or motor vehicles shall be parked or left unattended in any part of the common area or services yard not striped or designated for common area. Any materials, supplies, equipment or machinery outside the Premises, whether in the open or in tanks, bins or other container devices, shall not obstruct parking or common areas.

REPAIRS AND/OR REPLACEMENT

Lessee shall, at its sole cost, keep and maintain the leased Premises and appurtenances and every part thereof (excepting exterior walls and roofs which Lessor agrees to repair unless damage is caused by Lessee or Lessee's agents or invitees), including, but not limited to, windows, skylights, doors and store front, floors, carpeting, ceilings, interior walls of the leased Premises, heating, ventilation, air conditioning, plumbing, electrical in good and sanitary order, condition and repair and shall repair or replace any asphalt paving damaged by Lessee or Lessee's agents or invitees.

GLASS

Lessor shall replace, at the expense of the Lessee any and all plate and other glass damaged or broken from any cause whatsoever in d about the leased Premises, or Lessee may, at its option, replace such glass at its expense provided Lessee receives approval from Lessor to perform this repair.

ACCEPTED:

LESSOR:

**PLETA & SAN GAL TRUST
DBA: OCEAN POINT TECH CENTRE**

LESSEE:

**OBALON THERAPEUTICS INC.,
A DELAWARE CORPORATION**

BY: /s/ Gregg Haggart
Gregg Haggart, Special Trustee
To Pleta & San Gal Trust

BY: /s/ ANDREW RASDAL
Name Printed: ANDREW RASDAL
Title: CEO

Paragraph 53

RULES AND REGULATIONS

1. No sign, placard, pictures, advertisement, name or notices shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building without the written consent of Lessor and Lessor shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of the Lessee.

All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Lessee by a person approved of by Lessor. Lessee shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises as determined by Lessor: provided, however, Lessor may require a Building Standard window covering at all exterior windows. Lessee shall not, without prior written consent of Lessor, sunscreen any window.
2. The sidewalks, exits, entrances, shall not be obstructed by any of the Lessees, or used by them for any purpose other than for ingress and egress from their respective Premises.
3. Lessee shall not alter any new or additional locks or any bolts on any doors or windows of the Premises.
4. The toilet rooms, urinal, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Lessee whom or whose employees or invitees shall have caused it.
5. Lessee shall not in any way deface the Premises or the Project or any part thereof.
6. Lessee shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Lessor or other occupants of the Building by reason of noise, odors, and/or vibrations or interfere in any way with other Lessees or those having business therein nor shall any animals of any kind be brought in or kept in or about the Premises or Building.
7. Lessee shall not use or keep in the Premises or the Building any kerosene gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Lessor.
8. Lessor reserves the right to exclude or expel from the Project any person who, in the judgement of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any these Rules and Regulations.
9. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.
10. Lessor shall have the right, exercisable without liability to Lessor, to change the name and street address of the Building of which the Premises are a part provided they notify lessee a minimum of six months in advance of any such change, or within 3 business days of receiving notification of impending change from a city or governing body.
11. Lessee shall not disturb, solicit, canvas any occupant of the Building and shall cooperate to prevent same.

/s/ AR
INITIALS

/s/ GH
INITIALS

Addendum

Paragraph 52
(continued)

RULES AND REGULATIONS

(continued)

12. Without the written consent of Lessor, Lessee shall not use the name of the Building in connection with or in promoting or advertising the business of Lessee except as Lessee's address.
13. All garbage and refuse shall be placed by Lessees in containers.
14. No aerial or antenna shall be erected on roof or exterior walls of the leased Premises, or on the grounds without, in each instance, the written consent of Lessor first being obtained. Any aerial or antenna so installed without such written consent shall be subject to removal by Lessor at any time without notice.
15. No loud speakers, television, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the leased Premises.
16. The outside areas immediately adjoining the leased Premises shall be kept clean and free and clear of dirt and rubbish by Lessee, to the satisfaction of the Lessor, and Lessee shall not place or permit any obstruction or materials in such areas. No exterior storage shall be allowed including, without limitation, the storage of motor vehicles, trucks, boats, trailers, pallets, drums, or equipment of any kind or nature, without the permission in writing from Lessor.
17. Lessee shall use at Lessee's cost such pest extermination contractor at such intervals as Lessor may require or Lessee desires.
18. Lessee shall not burn any trash or garbage of any kind in or about the leased Premises or the Project.
19. No residential use, including residing, sleeping or cooking is permitted on the Premises or anywhere on the Project.
20. No animals of any type, including, without limiting the generality of the foregoing, pets, guard dogs, exotic animals, reptiles or birds, are permitted on the Premises or anywhere on the Project.
21. Lessor reserves the right, by written notice to Lessee, to rescind, alter or waive any rule or regulation at any time prescribed for the Building when, in Lessor's judgement, it is necessary, desirable or proper for the best interest of the Building and its Lessees.
22. The trash dumpsters in the common area are designed for office and light waste only. If a Lessee is a heavier generator of trash, it is the responsibility of the Lessee to contract directly with a trash disposal company for a dumpster and trash pickup. Under no circumstances are contractors allowed to place construction debris in any dumpster in the park.
23. No penetrations to the roof or exterior walls without prior approval of the Lessor, and all modifications must be performed by a Lessor approved contractor and must be returned to the original state at the discretion of the Lessor.
24. Lessees that have fencing are responsible for the maintenance and repair of the fencing at Lessee's sole cost.

/s/ AR
INITIALS

/s/ GH
INITIALS

Addendum

Paragraph 54

LESSEE IMPROVEMENTS

Project: OCEAN POINT TECH CENTRE

DATE: 10/03/11

Lessee: OBALON THERAPEUTICS INC.

Unit Address: 5421 AVENIDA ENCINAS, SUITES # A, B, C, D, E, F & G, CARLSBAD, CALIFORNIA 92008

**QUALITY AND/OR SIZE
HEIGHT, LENGTH, ETC.**

ITEM:

Except as otherwise provided in this Lease, Lessee has agreed to accept possession of the Premises on an "AS IS" basis. Any/all additional improvements shall be completed by Lessee, at Lessee's sole cost and expense in accordance with Paragraphs 7.3 and 7.4 of the Lease.

UNLESS OTHERWISE STATED, THE IMPROVEMENTS LISTED ABOVE WILL BE FINAL. ANY ADDITIONS WILL BE PAID FOR BY THE LESSEE.

/s/ AR
INITIALS

/s/ GH
INITIALS

Addendum

Paragraph 55

**OCEAN POINT TECH CENTRE
LOCATED AT 5411 AVENIDA ENCINAS,
CARLSBAD, CALIFORNIA**

Welcome to **Ocean Point Tech Centre!** To insure that your move goes smoothly, we have collected a list of services you may find useful. Please contact your insurance agent and give him/her a copy of your Lease. **You must have public liability insurance, per your Lease. Please have your Insurance Agent forward a copy of your insurance to the property management office at 5431 Avenida Encinas, Suite E, Carlsbad, California 92008.**

At your earliest convenience please contact **SDG&E to place Electrical Service in your Company's name.**

Leasing Office:

Ocean Point Tech Centre
Sandy Watson, Property Manager
(760) 438-9200
(760) 438-5964 (fax)

Make Rent Checks Payable To:

OCEAN POINT TECH CENTRE

Send Rent checks To:

Gildred Development Company

Electricity:

SDG&E

Telephone:

Pacific Bell

Police/Fire:

911

Business License:

1200 Elm Ave.,
Carlsbad, CA
(760) 434-2882

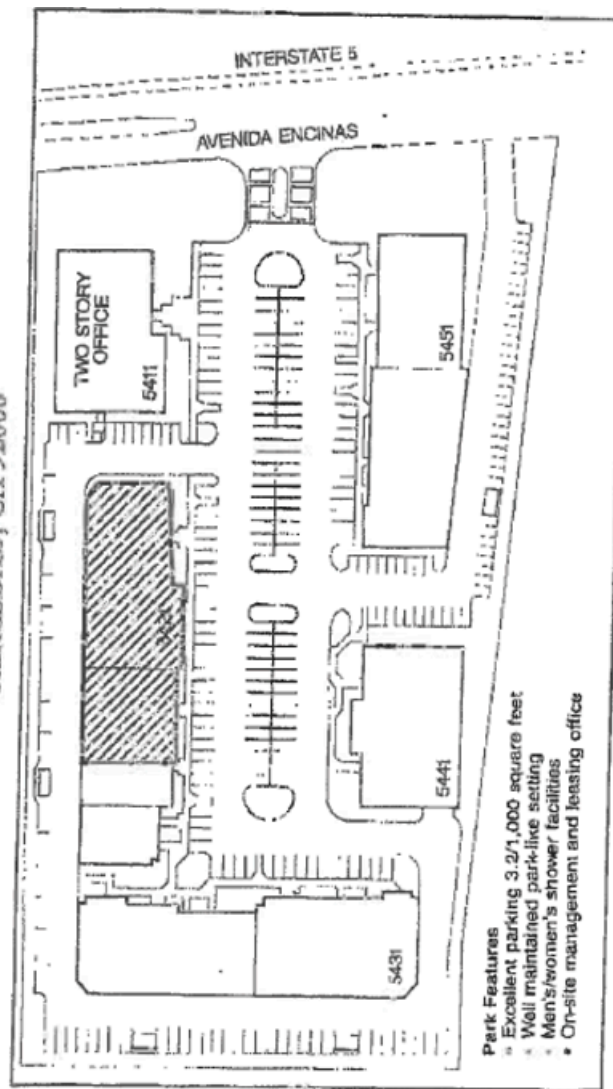
Post Office:

2772 Roosevelt Street
Carlsbad, CA

/s/ AR
INITIALS

/s/ GH
INITIALS

OCEAN POINT TECH CENTRE
 5411 - 5451 AVENIDA ENCINAS
 CARLSBAD, CA 92008



/s/ GH
 INITIALS

/s/ AR
 INITIALS

FIRST AMENDMENT TO LEASE DATED AUGUST 5, 2013 BY AND BETWEEN PLETA & SAN GAL TRUSTS, DBA: OCEAN POINT TECH CENTRE, HEREINAFTER REFERRED TO AS “LESSOR”, AND OBALON THERAPEUTICS INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS “LESSEE.

The undersigned parties do hereby amend, affirm and ratify that certain Lease between the undersigned originally dated on or about October 3, 2011 regarding the lease of 5421 Avenida Encinas, Suites A through G, Carlsbad, California 92008 and generally described as the “Premises”. The terms used in this First Amendment shall have the same definitions as those set forth in the Lease. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that, subject to the full execution and delivery of this First Amendment, the parties’ respective rights and obligations under the Lease are hereby modified and amended as follows:

1.

TERM (Paragraph 1.3): The Expiration Date shall hereby be changed to November 30, 2014.
2.

RENTAL SCHEDULE (Paragraph 504): For this extended Term of the Lease, the following schedule for Base Rent and Common Area Operating Expenses (also referred to within the Lease as “CAM” or “CAM Charges”) shall be in effect.
TERM		MONTHLY BASE RENT		MONTHLY FIXED CAM		MONTHLY RENT
12/01/13 through 11/30/14	+	\$13,650.00	+	\$ 1,365.00	+	\$ 15,015.00
3.

CAM CHARGES (Paragraph 50B) and TAXES AND INSURANCE (Paragraph 50C). During this extended Term of the Lease, and the Option Term (See Paragraph 5 of this First Amendment), if exercised, CAM charges (also known within the Lease as Common Area Operating Expenses) shall be FIXED at \$1,365.00 per month and shall continue to include Lessee’s pro-rata share of Insurance Cost increase above the Base Premium and increase in Base Real Property Taxes.
4.

FIRST RIGHT OF REFUSAL (Paragraph 50D): Shall be deleted in its entirety and replaced with the following: Lessee shall be provided a one time “First Right of Refusal” on any space that comes available in the Park. Upon Lessee’s receipt of a copy of an executed letter of intent by a third party containing terms on which Lessor is willing to lease space, Lessee shall have three (3) business days to accept or reject the submitted terms by written notice delivered to Lessor.
5.

OPTION TO EXTEND (Paragraph 50E): The Option to Extend per Paragraph 50E was not exercised, however, Lessor and Lessee have agreed to the terms contained in this First Amendment for extension of the Lease Term. Subject to Paragraph 39 of the Lease (excepting Paragraph 39.3), Lessee shall be granted one (1) additional one (1) Year Option to Extend the Term of the Lease (“Option Term”). The monthly Base Rent for the Option Term shall be \$14,060. Lessee must notify Lessor in writing of its intent to renew at least 120 days prior to the Expiration Date of the Term (see Paragraph 1 of this First Amendment).
6.

GENERAL PROVISIONS

A.

Lessee further covenants and agrees that: (i) Lessor has fully performed or satisfied all obligations of Lessor under or in connection with, and Lessor is not in breach of any term or condition of the Lease; (ii) any and all required work or contributions of Lessor to or on account of any tenant improvements respecting the Premises have been fully satisfied or received; and (iii) there are no defenses, offsets, counterclaims, or deductions against rents or other sums due to Lessor respecting the Premises, or which Lessee has against Lessor’s enforcement of the Lease.

/s/ AR
INITIALS

/s/ GH
INITIALS

FIRST AMENDMENT TO LEASE DATED AUGUST 5, 2013 BY AND BETWEEN PLETA & SAN GAL TRUSTS, DBA: OCEAN POINT TECH CENTRE, HEREINAFTER REFERRED TO AS “LESSOR”, AND OBALON THERAPEUTICS INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS “LESSEE.

- B. Except as otherwise provided herein, the provisions of this First Amendment shall be deemed to obligate, extend to, and inure to the benefit of the successors, assigns, agents, principals, transferees, grantees, trustors, representatives, beneficiaries, insurers and indemnitees of each of the parties.
- C. In the event that any provision of this First Amendment is in conflict with any provision of the Lease, the conflicting provision of this First Amendment shall take precedence and govern.
- D. Each of the parties represents, acknowledges and agrees that it has been represented by such independent counsel as it has voluntarily chosen throughout all negotiations which preceded the execution of this First Amendment, and that this First Amendment has been executed on the advice of such independent counsel. The Parties further agree that each has cooperated and participated in the drafting of this First Amendment and, therefore, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this First Amendment. Except as otherwise specified herein, the Lease remains in full force and effect.

LESSOR:
PLETA & SAN GAL TRUSTS
DBA: OCEAN POINT TECH CENTRE

LESSEE
OBALON THERAPEUTICS, INC.,
A DELAWARE CORPORATION

By: /s/ Greg Haggart
Gregg Haggart, Special Trustee

By: /s/ Andrew Rasdal

Date: 9/11/13

Name Printed: Andrew Rasdal

Title: CEO

Date: 8/15/13

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/s/ GH
INITIALS

/s/ AR
INITIALS

SECOND AMENDMENT TO LEASE DATED NOVEMBER 20, 2015 BY AND BETWEEN PLETA & SAN GAL TRUSTS, DBA: OCEAN POINT TECH CENTRE, HEREINAFTER REFERRED TO AS “LESSOR” AND OBALON THERAPEUTICS INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS “LESSEE”.

The undersigned parties do hereby for the second time amend, affirm and ratify that certain Lease between the undersigned originally dated on or about October 3, 2011, as amended by the Amendment Renewal dated August 5, 2013 (collectively the “Lease”) regarding the lease of 5421 Avenida Encinas, Suites A through G, Carlsbad, California 92008 and generally described as the “Premises”. The terms used in this Second Amendment shall have the same definitions as those set forth in the Lease.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that, subject to the full execution and delivery of this Second Amendment, the parties’ respective rights and obligations under the Lease are hereby modified and amended as follows:

50. **TERM (Paragraph 1.3):** The Expiration Date shall hereby be changed to March, 2017.
51. **RENTAL SCHEDULE (Paragraph 50):** For this extended Term of the Lease, the following schedule for Base Rent and Common Area Operating Expenses (also referred to within the Lease as “CAM” or “CAM Charges”) shall be in effect:

TERM	MONTHLY BASE RENT		MONTHLY ESTIMATED CAM		MONTHLY RENT
12/01/15 through 03/31/17	\$16,380.00	+	\$ 1,502.00	=	\$17,882.00

52. **CAM CHARGES:** CAM Charges shall continue to be estimated for this extended Term of the Lease. CAM Charges as of the date of this Amendment are estimated to be \$1,502.00 per month and shall be reconciled quarterly.
53. **REPRESENTATION:** Sandra Watson of Gildred Development Company represents Lessor exclusively and Lessee represents itself in this transaction (please see Exhibit A to this Amendment, attached hereto and incorporated by this reference). Lessee and Lessor each represent and warrant to the other that no person, firm, broker or finder is entitled to any commission or finder’s fee in connection herewith. Each of the Parties represents, acknowledges and agrees that it has been represented by such independent counsel and/or brokers, and has consulted with such consultants and other professionals, as each such Party has deemed necessary or appropriate and as it has voluntarily chosen throughout all negotiations which preceded the execution of this Amendment; and that this Amendment has been executed on the advice of such independent counsel, broker(s), consultant(s) and other professional(s). The Parties further agree that each has cooperated and participated in the drafting of this Amendment and, therefore, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Amendment.
54. **CONFIDENTIALITY:** Lessee agrees that the terms of this Lease will be kept strictly confidential and not disclosed to any other person without written consent from Lessor. Disclosure to persons or tenants other than the Lessee will constitute a material uncurable Breach of this Lease.
55. **GENERAL PROVISIONS.**
- 55.1 Lessee further covenants and agrees that: (i) Lessor has fully performed or satisfied all obligations of Lessor under or in connection with, and Lessor is not in breach of any term or condition of the Lease; (ii) any and all required work or contributions of Lessor to or on

/s/ AR
INITIALS

/s/ GH
INITIALS

/s/ AR
INITIALS



**EXHIBIT A
DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP
(As required by the Civil Code)**

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT ("Buyer" Includes both a purchaser and a lessee).

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties,

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative Duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

/s/ GH
INITIALS

/s/ AR
INITIALS

SECOND AMENDMENT TO LEASE DATED NOVEMBER 20, 2015 BY AND BETWEEN PLETA & SAN GAL TRUSTS, DBA: OCEAN POINT TECH CENTRE, HEREINAFTER REFERRED TO AS "LESSOR" AND OBALON THERAPEUTICS INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE".

LESSEE REPRESENTS ITSELF - ACKNOWLEDGED BY LESSEE:

By: /s/ Andrew Rasdal
Andrew Rasdal, C.E.O.
Obalon Therapeutics, Inc.

Date: 12-11-15

SANDRA WATSON OF GILDRED DEVELOPMENT REPRESENTS LESSOR EXCLUSIVELY:

ACKNOWLEDGED BY LESSOR:

By: /s/ Gregg Haggart
Gregg Haggart, Special Trustee

Date: 12/14/15

Agent: Gildred Development Company/Gregg Haggart
Real Estate Broker (Firm)

BRE Lic. # _____

By: Sandra Watson
(Salesperson or Broker-Associate)

BRE Lic. # _____ Date: 04/03/19

THIS FORM HAS BEEN PREPARED BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobile homes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent.

/s/ GH
INITIALS

/s/ AR
INITIALS

(i) “Offering price” is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) “Offer to purchase” means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) “Real property” means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year’s duration, and mobile homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) “Real property transaction” means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) “Sell,” “sale,” or “sold” refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a lease hold exceeding one year’s duration. (n) “Seller” means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. “Seller” includes both a vendor and a lessor. (o) “Selling agent” means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) “Subagent” means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, “subagent” does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer’s offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer’s agent, exclusively as the seller’s agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller’s agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

<u>(DO NOT COMPLETE, SAMPLE ONLY)</u>	is the agent of (check one)	☐ the seller exclusively, or	☐ both the buyer and seller
(Name of Listing Agent)			
<u>(DO NOT COMPLETE, SAMPLE ONLY)</u>	is the agent of (check one)	☐ the buyer exclusively, or	☐ the seller exclusively, or
(Name of Selling Agent if not the same as the Listing Agent)		☐ both the buyer and seller	

(d) The disclosure and confirmation required by this section shall be in addition to the disclosure required by Section 207.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

SECOND AMENDMENT TO LEASE DATED NOVEMBER 20, 2015 BY AND BETWEEN PLETA & SAN GAL TRUSTS, DBA: OCEAN POINT TECH CENTRE, HEREINAFTER REFERRED TO AS “LESSOR” AND OBALON THERAPEUTICS INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS “LESSEE”.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent’s employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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 /s/ GH
INITIALS

 /s/ AR
INITIALS



**AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL
MULTI-TENANT LEASE – GROSS**

1. Basic Provisions (“Basic Provisions”).

1.1 Parties: This Lease (“Lease”), dated for reference purposes only November 23, 2015, is made by and between Pleta & Sal Gal Trusts DBA: Ocean Point Tech Centre (“Lessor”) and Obalon Therapeutics Inc., a Delaware Corporation (“Lessee”), (collectively the “Parties”, or individually a “Party”).

1.2 (a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 5421 Avenida Encinas Suite J, located in the City of Carlsbad, County of San Diego, State of California, with zip code 92008, as outlined on Exhibit A attached hereto (“Premises”) and generally described as (describe briefly the nature of the Premises): Approximately 3,850 rentable square feet of office and warehouse space.

In addition to Lessee’s rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises (“**Building**”) and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the “**Project**.” (See also Paragraph 2)

1.2 (b) Parking: Ten (10) unreserved vehicle parking spaces . (See also Paragraph 2.6)

1.3 Term: One (1) years and Zero (0) months (“Original Term”) commencing April 1, 2016 (“Commencement Date”) and ending March 31, 2017 (“Expiration Date”). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing upon completion of Lessor’s unit prep and upon Lessee providing appropriate evidence of insurance per Paragraph 8 of the Lease (“Early Possession Date”). (See also Paragraphs 3.2 and 3.3 and 3.4)

1.5 Base Rent: \$5,390.00 for the period 04-1-2016 through 04-30-2016, month (“Base Rent”), payable on the first day of each month commencing April 1, 2016. (See also Paragraph 4)

“ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50A and 50B.

1.6 Lessee’s Share of Common Area Operating Expenses: Four and 70/100ths percent (4.7%) (“Lessee’s Share”).

In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee’s Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) **Base Rent:** \$5,390.00 for the period 04-1-2016 through 04-30-2016.
- (b) **Common Area Operating Expenses:** \$424.00 for the period 04-1-2016 through 04-30-2016.
- (c) **Security Deposit:** \$5,814.00 (“**Security Deposit**”). (See also Paragraph 5)
- (d) **Other:** \$0.00 for N/a.
- (e) Total Due Upon Execution of this Lease: \$11,628.00.

1.8 **Agreed Use:** Office/warehouse for research and development, medical device use, computer labs and clean room.

1.9 Insuring Party. Lessor is the “Insuring Party”. (See also Paragraph 8)

1.10 Real Estate Brokers: (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the “**Brokers**”) and brokerage relationships exist in this transaction (check applicable boxes):

- x Gildred Development Company (see also SOE and Exhibit B) represents Lessor exclusively (“**Lessor’s Broker**”);
- x Hughes Marino (see also 50F and Exhibit B) represents Lessee exclusively (“**Lessee’s Broker**”); or
- .. _____ represents both Lessor and Lessee (“**Dual Agency**”).

/s/ GH
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/s/ AR
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(b) **Payment to Brokers:** There is no commission payable by Lessor in connection with this lease. ~~Upon delivery to Lessee of possession of the Premises and execution and delivery of this Lease by both Parties, Lessor shall pay to the Lessor's Brokers the brokerage fee agreed to in a separate written agreement. Additionally, upon delivery to Lessee of possession of the Premises and execution and delivery of this Lease by both Parties, Lessor shall pay to Lessee's Broker a brokerage fee equal to three percent (3%) of the Base Rent applicable to the Original Term of the Lease. (or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.~~

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by NONE ("Guarantor"). (See also Paragraph 37)

1.12 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

- x ~~an Addendum~~ Addenda consisting of Paragraphs 50 through 54;
- x a site plan depicting the Premises (Exhibit A);
- x a site plan depicting the Project (Exhibit A);
- x a current set of the Rules and Regulations for the Project (Paragraph 53);
- ~~~~~ a current set of the Rules and Regulations adopted by the owners' association;
- ~~~~~ a Work Letter;
- x other (specify): Exhibit B - Disclosure Regarding Real Estate Agency Relationship.

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.

2.2 Condition. *Except as otherwise provided in this Lease*, Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 Compliance. *Except as otherwise provided in this Lease*, Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to *any use or occupancy of the Premises, modifications to the Premises or Common Areas which may be required by the Americans with Disabilities Act or any similar federal, state or local laws, regulations or restrictions the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use* (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

/s/ GH
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(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/1 44th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises *and the Common Areas* (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking, *at no cost to Lessee*. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

/s/ GH
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/s/ AR
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2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

/s/ GH
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/s/ AR
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4.2 Common Area Operating Expenses". Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) The following costs relating to the ownership and operation of the Project are defined as "Common Area Operating Expenses":

(i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs ~~and any tenant directories~~.

(cc) Any fire sprinkler systems

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. ~~Within 60 days after written request (but not more than once each year)~~ From time to time, Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

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(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

/s/ GH
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/s/ AR
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(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, *including without limitation the Americans with Disabilities Act and any similar federal, state or local laws, regulations or restrictions applying to Lessee's use or occupancy of the Premises or to any related use of the Common Areas*, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 Inspection; Compliance. Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after

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reasonable notice for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. *Except as otherwise provided in this Lease and subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.*

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the

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consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor ~~not earlier than 90 and not later than 30 days prior to the end of the term of this Lease~~, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. *Notice of Lessors requirement of Lessee to remove added alterations upon vacating premises will be given by the Lessor in conjunction with any approval to Lessee requested alterations.* Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) As used herein, the term "**Insurance Cost Increase**" is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "**Base Premium**" shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not

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less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an **"insured contract"** for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value insurance**"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

~~(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.~~

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

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8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, or material breach of express warranties set forth herein, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy by Lessee of the Premises and/or the Common Areas during the term of this Lease, including without limitation any claims or liabilities under or in connection with the Americans with Disabilities Act and/or any similar federal, state or local laws, regulations or restrictions by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 day from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the

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repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 Definitions.

(a) **“Real Property Taxes.”** As used herein, the term **“Real Property Taxes”** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term **“Real Property Taxes”** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

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(b) **“Base Real Property Taxes.”** As used herein, the term **“Base Real Property Taxes”** shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 Payment of Taxes. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor’s records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee’s request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor’s work sheets or such other information as may be reasonably available. Lessor’s reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee’s said property shall be assessed with Lessor’s real property, Lessee shall pay Lessor the taxes attributable to Lessee’s property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee’s property.

11. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor’s sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee’s Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor’s reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor’s Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **“assign or assignment”**) or sublet all or any part of Lessee’s interest in this Lease or in the Premises without Lessor’s prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee’s assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **“Net Worth of Lessee”** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor’s option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee’s remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

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(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) ~~Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.~~ Notwithstanding anything to the contrary contained in this Lease, Lessor's consent is not required regarding an assignment or sublet to an "affiliate" of Lessee. "Affiliate" means any corporation or other entity controlling, controlled by, or under common control with Lessee including as the result of an acquisition of Lessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

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(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 ~~business~~ days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 ~~business~~ days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In

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such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

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15. Brokerage Fees.

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option; (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project; (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one ~~other than said named Brokers~~ is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

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22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other

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duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement. *Any fees required by Lender associated with obtaining said Non-Disturbance Agreement shall be payable by Lessee.*

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

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31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute ~~a guaranty in the form most recently published by the AIA Commercial Real Estate Association.~~

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

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39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. Reservations. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions. Any conflict between the Lease and the attached Addenda and Exhibits shall be controlled by the attached Addenda and Exhibits.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease " is x is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) *To the best of Lessor's knowledge, the Premises* ~~The Premises:~~ x have not undergone an inspection by a Certified Access Specialist (CASp). " have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. " have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act *and similar federal, state and local laws, regulations and restrictions* (ADA) is or may be dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to

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whether or not the Premises *and/or the Common Areas* comply with ADA or any similar legislation. In the event that ~~Lessee's~~ any use of the Premises *during Lessee's tenancy (and specifically not limited to Lessee's particular use)* requires modifications or additions to the Premises *or the Common Areas* in order to be in ADA compliance, Lessee agrees to make, *cause and pay for* any such necessary modifications and/or additions at Lessee's sole expense, *subject to Lessor's prior written consent, as otherwise provided herein.*

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____
On: 3/22/16

By LESSOR:
Pleta & San Gal Trusts
DBA: Ocean Point Tech Centre

By: /s/ Gregg Haggart
Name Printed: Gregg Haggart

Title: Special Trustee

~~By:~~
Name Printed: Sandra Watson

Title: Director, Property Management

Address: 5431 Avenida Encinas Suite E
Carlsbad, CA 92008

Telephone: _____
Facsimile: (760) 438-5964

/s/ GH
INITIALS

Executed at: _____
On: _____

By LESSEE:
Obalon Therapeutics Inc.,
A Delaware Corporation

By: /s/ Andrew Rasdal
Name Printed: Andrew Rasdal

Title: ~~Chief Financial Officer~~ CEO

~~By:~~
~~Name Printed:~~ _____

~~Title:~~ _____

Address: 5421 Avenida Encinas Suites A-G
Carlsbad, CA 92008

Telephone: _____
Facsimile: (760) 603-9053

/s/ AR
INITIALS

Email: _____
Email: _____
Federal ID No. _____

BROKER:

Gildred Development Company

Att: Sandra Watson / Gregg Haggart
Title: Property Management / CEO
Address: 550 West C Street Suite 1820

San Diego, CA 92101

Telephone: ()
Facsimile: (619) 696-0991
Email: _____
Federal ID No. _____

Broker/Agent #: _____

Email: _____
Email: _____
Federal ID No. _____

BROKER:

Lessee Represents Itself

(see also 1.10, 50E and Exhibit B)

Att: _____
Title: _____
Address: _____

Telephone: ()
Facsimile: ()
Email: _____
Federal ID No. _____

Broker/Agent BRE License #: _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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/s/ GH
INITIALS

/s/ AR
INITIALS

Addendum Paragraph 50

This Addendum Paragraph 50 is attached to and made part of that certain real estate Lease dated December 2, 2015, between PLETA & SAN GAL TRUST DBA: OCEAN POINT TECH CENTRE, as Lessor and OBALON THERAPEUTICS INC., A DELAWARE CORPORATION as Lessee, covering the Premises commonly known as 5421 Avenida Encinas, Suite J, Carlsbad, CA 92008 (the "Lease"). The terms used in this document shall have the same definitions as those set forth in the Lease.

- 50A. **RENTAL SCHEDULE**: The following schedule for Base Rent and Common Area Operating Expenses (also referred to within the Lease as "CAM" or "CAM Charges") shall be in effect for the Original Term of the Lease:

<u>TERM</u>	<u>MONTHLY BASE RENT</u>		<u>MONTHLY ESTIMATED CAM</u>	<u>MONTHLY RENT</u>
04/01/2015 through 03/31/2017	\$ 5,390	+	\$ 424	\$ 5,814

- 50B. **CAM CHARGES**: As of the date of this Lease, CAM Charges are estimated to be \$424 per month and shall be reconciled quarterly.
- 50C. **LESSEE IMPROVEMENTS**: Except as otherwise provided in this Lease, Lessee has agreed to accept possession of the Premises on an "AS IS" basis. Any/all additional improvements shall be completed by Lessee, at Lessee's sole cost and expense in accordance with Paragraphs 7.3 and 7.4 of this Lease. Lessee shall use a licensed contractor who is insured and has workmen's compensation insurance.
- 50D. **CONFIDENTIALITY**: Lessee agrees that the terms of this Lease will be kept strictly confidential and not disclosed to any other person without written consent from Lessor. Disclosure to persons or tenants other than the Lessee will constitute a material incurable Breach of this Lease.
- 50E. **REPRESENTATION**: Sandra Watson of Gildred Development Company represents Lessor exclusively and Lessee represents itself in this transaction (please also see Exhibit C to this lease). Lessee and Lessor each represent and warrant to the other that no person, firm, broker or finder is entitled to any commission or finder's fee in connection herewith. Each of the Parties represents, acknowledges and agrees that it has been represented by such independent counsel and/or brokers, and has consulted with such consultants and other professionals, as each such Party has deemed necessary or appropriate and as it has voluntarily chosen throughout all negotiations which preceded the execution of this Lease; and that this Lease has been executed on the advice of such independent counsel, broker(s) and other professional(s). The Parties further agree that each has cooperated and participated in the drafting of this Lease and, therefore, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Lease.

ACCEPTED:

LESSOR:
PLETA & SAN GAL TRUST
DBA: OCEAN POINT TECH CENTRE

By: /s/ Greg Haggart
Gregg Haggart, Chief Executive Officer

Date: 3/22/16

LESSEE:
OBALON THERAPEUTICS INC.,
A DELAWARE CORPORATION

By: /s/ Andrew Rasdal
Andrew Rasdal, Chief Financial Officer CEO

Date: 12/31/15

Addendum Paragraph 51

**OCEAN POINT TECH CENTRE
SIGN CRITERIA**

This Addendum Paragraph 51 Sign Criteria is attached to and made part of that certain real estate Lease dated November 17, 2015 between PLETA & SAN GAL TRUSTS DBA: OCEAN POINT TECH CENTRE as Lessor and OBALON THERAPEUTICS INC., A DELAWARE CORPORATION as Lessee, covering the Premises commonly known as 5421 Avenida Encinas, Suite J, Carlsbad, CA 92008 (the "Lease"). The terms used in this document shall have the same definitions as those set forth in the Lease.

This criteria establishes the policy governing all tenant sign identification within Ocean Point Tech Centre. The purpose is to maintain the high quality of the Tech Centre. Conformance will be strictly enforced and any sign that does not conform shall be brought into conformity at the expense of the tenant.

GENERAL REQUIREMENTS

1. Lessor shall approve all copy and/or logo design prior to the installation of the sign.
2. Lessor shall approve the placement and method of all signs prior to installation.
3. Any and all permit approvals are the sole responsibility and expense of the tenant.

GENERAL SPECIFICATIONS

1. Sign Type G: Front Door Suite Identification for Buildings 5421, 5431, 5441, 5451 shall be white vinyl letters applied to glass side panels. Suite designation has been provided and company name shall be "3" caps and lower case as shown on attached drawing. These letters are provided and installed by Signs On Time (760) 431-1050 at the expense of the tenant.
2. Sign Type 11: Major Tenant Building Identification -The size shall be limited to an area not more than 2' high X 10' long and shall be placed on the concrete beam in front of tenant 's space. In the event there is no beam in front, the sign may be placed on the third concrete panel from the ground adjacent to tenant's door. These signs shall be non-lit cut out letters. The material used should be durable, weather and fade resistant. Suggested materials are acrylic, high density urethane foam etc. The Lessor accepts colors of blue or white. Signs On Time (760) 431-1050 is the sign contractor for Ocean Point Tech Centre.
3. Upon removal of any sign, any damage or disfiguration of the building will be repaired at tenant's expense. It is the tenant's responsibility to maintain their sign in a new condition at all times.

No other signs, placards, banners, pennants, insignias, trademarks, security stickers or other descriptive materials shall be placed or affixed or maintained upon any glass parts, wall surfaces, landscaped areas, streets or parking areas.

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/s/ GH
INITIALS

/s/ AR
INITIALS

Addendum Paragraph 52

**OUTSIDE STORAGE
REPAIRS / REPLACEMENT
AND GLASS**

This Outside Storage, Repairs/Replacement and Glass Addendum is attached to and made part of that certain real estate Lease dated November 17, 2015 between PLETA & SAN GAL TRUSTS OBA: OCEAN POINT TECH CENTRE as Lessor and OBALON THERAPEUTICS INC., A DELAWARE CORPORATION as Lessee, covering the Premises commonly known as 5421 Avenida Encinas, Suite J, Carlsbad, CA 92008 (the "Lease"). The terms used in this document shall have the same definitions as those set forth in the Lease.

OUTSIDE STORAGE

Lessee hereby grants permission to Lessor to tow away and store, at Lessee's expense, all automobiles or motor vehicles belonging to Lessee or its employees or customers, which remain in the common parking area for more than 48 consecutive hours. No automobiles or motor vehicles shall be parked or left unattended in any part of the common area or services yard not striped or designated for common area. Any materials, supplies, equipment or machinery outside the Premises, whether in the open or in tanks, bins or other container devices, shall not obstruct parking or common areas.

REPAIRS AND/OR REPLACEMENT

Lessee shall, at its sole cost, keep and maintain the leased Premises and appurtenances and every part thereof (excepting exterior walls and roofs which Lessor agrees to repair unless damage is caused by Lessee or Lessee's agents or invitees), including but not limited to windows, skylights, doors and store front, floors, carpeting, ceilings, interior walls of the leased Premises, heating, ventilation, air conditioning, plumbing, electrical in good and sanitary order, condition and repair and shall repair or replace any asphalt paving damaged by Lessee or Lessee's agents or invitees.

GLASS

Lessor shall replace, at the expense of the Lessee any and all plate and other glass damaged or broken from any cause whatsoever in and about the leased Premises, or Lessee may, at its option, replace such glass at its expense provided Lessee receives approval from Lessor to perform this repair.

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/s/ GH
INITIALS

/s/ AR
INITIALS

Addendum Paragraph 53

RULES AND REGULATIONS

1. No sign, placard, pictures, advertisement, name or notices shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building or Project without the written consent of Lessor and Lessor shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of the Lessee.

All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Lessee by a person approved of by Lessor. Lessee shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises as determined by Lessor: provided, however, Lessor may require a Building Standard window covering at all exterior windows. Lessee shall not, without prior written consent of Lessor, sunscreen any window.
2. The sidewalks, exits, entrances, shall not be obstructed by any of the Lessees, or used by them for any purpose other than for ingress and egress from their respective Premises.
3. Lessee shall not alter any Lock or install any new or additional locks or any bolts on any doors or windows of the Premises.
4. The toilet rooms, urinal, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Lessee whom or whose employees or invitees shall have caused it.
5. Lessee shall not in any way deface the Premises or the Project or any part thereof.
6. Lessee shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Lessor or other occupants of the Project by reason of noise, odors, and/or vibrations or interfere in any way with other Lessees or those having business therein nor shall any animals of any kind be brought in or kept in or about the Premises or Project.
7. Lessee shall not use or keep in the Premises or the Project any kerosene gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Lessor.
8. Lessor reserves the right to exclude or expel from the Project any person who, in the judgment of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any these Rules and Regulations.
9. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.
10. Lessor shall have the right, exercisable without notice and without liability to Lessor, to change the name and street address of the Building or the Project of which the Premises are a part.
11. Lessee shall not disturb, solicit, canvas any occupant of the Project and shall cooperate to prevent same.

/s/ GH
INITIALS

/s/ AR
INITIALS

RULES AND REGULATIONS

12. Without the written consent of Lessor, Lessee shall not use the name or image of the Building in connection with or in promoting or advertising the business of Lessee except as Lessee's address.
13. All garbage and refuse shall be placed by Lessees in containers .
14. No aerial or antenna shall be erected on roof or exterior walls of the leased Premises, or on the grounds without, in each instance, the written consent of Lessor first being obtained. Any aerial or antenna so installed without such written consent shall be subject to removal by Lessor at any time without notice.
15. No loud speakers, television , phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the leased Premises.
16. The outside areas immediately adjoining the leased Premises shall be kept clean and free and clear of dirt and rubbish by Lessee, to the satisfaction of the Lessor, and Lessee shall not place or permit any obstruction or materials in such areas. No exterior storage shall be allowed including, without limitation, the storage of motor vehicles, trucks, boats, trailers, pallets, drums, or equipment of any kind or nature, without the permission in writing from Lessor.
17. Lessee shall use at Lessee's cost such pest extermination contractor as Lessor may direct and at such intervals as Lessor may require.
18. Lessee shall not bum any trash or garbage of any kind in or about the leased Premises or the Project.
19. No residential use, including residing, sleeping or cooking is permitted on the Premises or anywhere on the Project.
20. Excepting "seeing-eye" dogs or other animals under the control of and specifically assisting any disabled person, no animals of any type, including, without limiting the generality of the foregoing, pets, guard dogs, exotic animals, reptiles or birds, are permitted on the Premises or anywhere on the Project.
21. Lessor reserves the right, by written notice to Lessee, to rescind , alter or waive any rule or regulation at any time prescribed for the Project when, in Lessor's judgment , it is necessary, desirable or proper for the best interest of the Project and its Lessees.
22. The trash dumpsters in the common area are designed for office and light waste only. If a Lessee is a heavier generator of trash, it is the responsibility of the Lessee to contract directly with a trash disposal company for a dumpster and trash pickup. Under no circumstances are contractors allowed to place construction debris in any dumpster in the Project.
23. Under no circumstances are penetrations to the exterior walls or roof allowed for any reason.
24. Notwithstanding any provision in this Lease to the contrary, Lessees that have fencing are responsible for the maintenance and repair of the fencing at Lessee's sole cost and expense.

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/s/ GH
INITIALS

/s/ AR
INITIALS

RULES AND REGULATIONS

PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles".
2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee and Lessee's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded or parked in areas other than those designated by Lessor for such activities.
3. Users of parking areas will obey all posted signs and park only in the areas designated for vehicle parking.
4. Unless otherwise instructed, every person using the parking areas is required to park and lock his/her own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which are risks assumed by the party using the parking area.
5. The maintenance, washing, waxing or cleaning of vehicles in the parking areas or Common Areas is prohibited .
6. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.
7. Lessor reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking areas.
8. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.
9. The use of parking areas for the storage of vehicles and/or extended overnight parking is prohibited . Those in violation of this regulation will be towed from the Project at the violator's expense.

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/s/ GH
INITIALS

Page 3 of 3

/s/ AR
INITIALS

Addendum Paragraph 54

**OCEAN POINT TECH CENTRE
LOCATED AT 5411 AVENIDA ENCINAS
CARLSBAD, CALIFORNIA**

Welcome to **Ocean Point Tech Centre!** To insure that your move goes smoothly, we have collected a list of services you may find useful. Please contact your insurance agent and give him/her a copy of your Lease. **You must have public liability insurance, per your Lease (See Paragraph 8). Please have your Insurance Agent forward a copy of your insurance to the property management office located at 5431 Avenida Encinas, Suite E, Carlsbad, CA 92008**

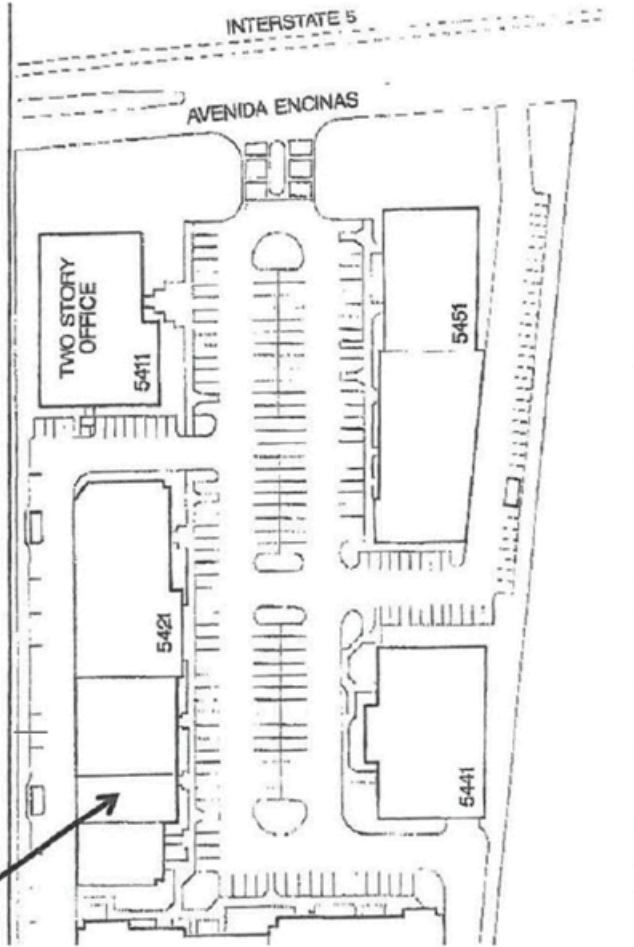
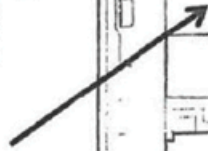
At your earliest convenience please contact **SDG&E to place Electrical Service in your Company's name**.

Leasing Office:	Ocean Point Tech Centre Sandy Watson, Property Manager (760) 438-9200 (760) 438-5964 (fax)
Make Rent Checks Payable To:	OCEAN POINT TECH CENTRE
Send Rent checks To:	Gildred Development Company 550 West "C" St., Suite 1820 San Diego, CA 92101-3509
Electricity:	SDG&E
Telephone:	Pacific Bell
Police/Fire:	911
Business License	1200 Elm Ave., Carlsbad, CA (760) 434-2882
Post Office	2772 Roosevelt Street: Carlsbad, CA

/s/ GH
INITIALS

/s/ AR
INITIALS

OCEAN POINT TECH CENTRE
5411 - 5451 AVENIDA ENCINAS
CARLSBAD, CA 92008



/s/ GH
INITIALS

/s/ AR
INITIALS

EXHIBIT B

**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP**

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT ("Buyer" includes both a purchaser and a lessee).

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative Duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

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/s/ GH
INITIALS

/s/ AR
INITIALS

LESSEE REPRESENTS ITSELF – ACKNOWLEDGED BY LESSEE

By: /s/ Andrew Rasdal
Andrew Rasdal, Chief Financial Officer CEO

Date: 12/31/15

LESSOR IS REPRESENTED BY GILDRED DEVELOPMENT COMPANY – ACKNOWLEDGED BY LESSOR

By: /s/ Greg Haggart
Gregg Haggart, Special Trustee

Date: 3/22/16

Broker: Gildred Development Company/Gregg Haggart
Real Estate Broker (Firm)

BRE Lic.#: _____

By: Sandra Watson
(Salesperson or Broker-Associate)

BRE Lic.#: _____

Date: 12/2/2015

THIS FORM HAS BEEN PREPARED BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) “Agent” means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) “Associate licensee” means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker’s agent in connection with acts requiring a real estate license and to function under the broker’s supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) “Buyer” means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. “Buyer” includes vendee or lessee. (d) “Commercial real property” means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobile homes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) “Dual agent” means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) “Listing agreement” means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) “Listing agent” means a person who has obtained a listing of real property to act as an agent for compensation. (h) “Listing price” is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) “Offering price” is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) “Offer to purchase” means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) “Real property” means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year’s duration, and mobile homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) “Real property transaction” means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) “Sell,” “sale,” or “sold” refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a lease hold exceeding one year’s duration. (n) “Seller” means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. “Seller” includes both a vendor and a lessor. (o) “Selling agent” means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) “Subagent” means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, “subagent” does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

/s/ GH
INITIALS

/s/ AR
INITIALS

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15. as follows: **(a)** The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). **(c)** Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address. in which case no signed acknowledgement of receipt is required. **(d)** The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent. or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

<u>(DO NOT COMPLETE, SAMPLE ONLY)</u> (Name of Listing Agent)	is the agent of (check one) ☐ the seller exclusively, or	☐ both the buyer and seller
<u>(DO NOT COMPLETE, SAMPLE ONLY)</u> (Name of Selling Agent if not the same as the Listing Agent)	is the agent of (check one) ☐ the buyer exclusively, or	☐ the seller exclusively,
	☐ both the buyer and seller	or

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price. without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form:
AIR Commercial Real Estate Association, 500 N Brand Blvd,
Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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/s/ GH
INITIALS

/s/ AR
INITIALS

[*] Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (this “Agreement”) dated as of June 26, 2013 (the “Effective Date”), is entered into between OBALON THERAPEUTICS, INC., a Delaware corporation, with offices at 55421 Avenida Encinas, Suite F, Carlsbad, CA, 92008 (“Obalon”), and BADER SULTAN & BROS CO W.L.L., with an address at PO Box 867, 13009 Kuwait (“Distributor”). The parties hereby agree as follows:

1. APPOINTMENT AND SCOPE.

1.1. Appointment. Subject to the terms and conditions of this Agreement, Obalon hereby appoints Distributor, for the term of this Agreement, as the exclusive distributor of the products described in Exhibit A (the “Products”) to customers described in Exhibit A (the “Customers”) in the territory described in Exhibit A (the “Territory”). Distributor hereby accepts such appointment.

1.2. Distributorship Restrictions.

(a) Distributor shall resell the Products solely to Customers in the Territory.

(b) Distributor shall not, directly or indirectly (i) make any sales of the Products outside of the Territory, (ii) seek customers for, establish any branch for, or maintain any distribution depot or network for the sale of the Products outside of the Territory, or (iii) make any sales of the Products to any third party other than to the Customers in the Territory; provided, however, that if a Customer from a country in the European Union that is outside of the Territory requests to purchase Products from Distributor, and if Distributor has otherwise complied with its obligation not to distribute the Products outside of the Territory and did not contact the applicable Customer prior to the Customer making contact with Distributor, then Distributor may sell the Products to such Customer if applicable law mandates that it is unlawful for Obalon to prevent sales by Distributor to such Customer.

(c) Distributor shall resell the Products solely for use by Customers in weight loss treatment (the “Field”). Distributor shall legally obligate each Customer purchasing the Products from Distributor, as a condition of such purchase, to use the Products solely for the Field and for no other purpose.

(d) Distributor shall not have the right to appoint sub-distributors unless Distributor first notifies Obalon of the prospective sub-distributor and obtains Obalon’s prior express written consent (not to be unreasonably withheld). Distributor shall remain liable for any actions or inactions of a sub-distributor that would be a breach of this Agreement if such action or inaction were committed by Distributor.

1.3. Exclusivity. For the purposes of Section 1.1 above, the term “exclusive” means that, subject to the terms and conditions of this Agreement (including, without limitation, Section 2.1) and for as long as Distributor is in full compliance with its obligations hereunder, Obalon shall not appoint any other agents, representatives or distributors in the Territory to promote, market or sell the Products to the Customers in the Territory, but Obalon shall retain the right to promote and market the Product to Customers in the Territory.

1.4. Noncompetition. Unless specifically authorized in writing by Obalon, Distributor shall not directly or indirectly promote, market, sell, offer for sale, or act as sales agent for the solicitation of orders in the Territory for any products intended to occupy space in the stomach for weight loss.

1.5. Product Offerings by Obalon. Obalon shall be under no obligation to Distributor to continue its business or to continue, discontinue, change, retain, manufacture, sell or supply any model or type of any of its products. Obalon may, in its sole discretion, discontinue the supply of any or all Products or make whatever changes to those Products it deems necessary, desirable or appropriate. Obalon may, in its sole discretion, add products to or delete products from the list of Products set forth in Exhibit A upon thirty (30) days written notice to Distributor.

1.6. Disposables. Distributor acknowledges that the Products identified on Exhibit A as “disposable” (the “Disposables”) are perishable. Distributor shall manage its inventory such that the Disposables are shipped throughout the Territory, to the extent reasonably practicable, on a first expires-first-out basis. Distributor shall be responsible for and shall bear the full risk with respect to any unsold quantities of the Disposables remaining in Distributor’s inventory beyond the stated shelf-life thereof. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary herein, the Disposables that remain unsold in Distributor’s inventory beyond the stated shelf-life thereof shall not be subject to any credits, refunds or exchanges.

1.7. Independent Purchaser Status. Distributor is an independent purchaser and seller of the Products. Distributor shall not act as an agent or legal representative of Obalon. Distributor shall be responsible for all of its own expenses and employees. Distributor shall incur no expense chargeable to Obalon, except, as may be specifically authorized in advance in writing in each case by Obalon, nor shall Distributor have any right or power to act for or bind Obalon in any respect or to pledge its credit. Distributor shall be free to resell the Products in the Territory to the Customers on such terms as it may, in its sole discretion, determine, including, without limitation, price, returns, credits and discounts. The detailed operations of Distributor under this Agreement are subject to the sole control and management of Distributor.

2. COVENANTS AND WARRANTIES OF DISTRIBUTOR

2.1. Minimum Quantity. Distributor shall purchase from Obalon during each Calendar Quarter and Contract Year (as each is defined on Exhibit A) the applicable minimum quantity set forth on Exhibit A, and shall use commercially reasonable efforts to resell, not less

than the minimum purchase quantity of the Products as set forth in Exhibit A (the “Minimum Quantity”). If Distributor fails to purchase from Obalon and to resell to Customers the Minimum Quantity for any twelve (12) month period, Obalon shall have the right, at Obalon’s sole option and discretion upon thirty (30) days written notice to Distributor (a) to convert the distributorship grant under Section 1.1 to non-exclusive, or (b) to terminate this Agreement.

2.2. Sales Promotion. Distributor shall use its best efforts to promote, market and sell the Products to the Customers in the Territory, to meet the market demand for the Products for use in the Territory. Distributor shall refrain from misrepresenting the origin of the Products in such a way that would cause one to believe that the Products are manufactured or developed by anyone other than Obalon. Distributor shall distribute the Products in the Territory so as to include all warnings and instructions necessary for the proper use of the Products and shall not make any warranty, express or implied, relating to the Products other than the warranty set forth in Section 5.1. Distributor shall only promote and market the Products for the approved indications as stated in the Product labeling.

2.3. Promotional Materials. Distributor shall ensure that all advertising, promotional literature and packaging for the Products comply with all applicable laws and regulations. Distributor shall not use any advertising or promotional materials to promote the Products or any packaging that have not been approved in writing by Obalon in advance.

2.4. Registrations.

(a) Obalon has obtained the European Union CE Mark approval for the Products. Distributor will notify Obalon promptly upon becoming aware of any additional governmental approval requirements with respect to the Products in the Territory. If additional governmental registrations, licenses, permits or approvals (collectively, “Registrations”) are required in the Territory, then Distributor shall, at its own expense, obtain the Registration that are necessary to permit the purchase, distribution and resale by Distributor of the Products in each country in the Territory. Obalon shall reasonably cooperate with the Distributor in connection with obtaining the Registrations.

(b) All Registrations shall be owned by and made in the name of Obalon. Distributor shall provide Obalon with all tangible documents, records, and other property relating to the Registrations. Distributor shall have the right to maintain copies of all Registrations, as necessary for Distributor’s activities authorized hereunder. Distributor shall, at no cost to Obalon, execute such documents and instruments and take such further actions as necessary or appropriate to evidence Obalon’s ownership of the Registrations.

2.5. Conduct of Business. Distributor shall conduct its business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of Obalon. Without limiting the generality of the foregoing, Distributor shall (a) avoid deception, misleading or unethical practices that are or might be detrimental to Obalon or the public, including but not limited to disparagement of Obalon or the Products; (b) not publish or employ, or cooperate in the publication or employment of any misleading or deceptive advertising material; (c) make no representations, warranties or guarantees to third parties with respect to the specifications, features or capabilities of the Products that are inconsistent with any

representations, warranties or guaranties regarding the Products that are expressly authorized by Obalon; (d) use marketing and advertising efforts of high quality and good taste, and preserve the professional image and reputation of Obalon and the Products; and (e) use professional and properly trained, as per Obalon's requirements, sales force to promote, market and sell the Products.

2.6. Compliance with Laws. Distributor shall comply with all governmental laws, regulations, and orders that may be applicable to Distributor by reason of its execution of this Agreement, including, without limitation, any requirement to be registered as Obalon's independent distributor with any governmental authority, and including any and all laws, regulations, or orders that govern or affect the ordering, export, shipment, import, sale (including government procurement), delivery, or redelivery of the Products in the Territory. Distributor shall not engage in any course of conduct that, in Obalon's reasonable belief, would cause Obalon to be in violation of the laws of any jurisdiction.

2.7. U.S. Foreign Corrupt Practices Act. Distributor warrants that in the performance of its obligations under this Agreement, Distributor shall not act in any fashion or take any action which will render Obalon liable for a violation of the U.S. Foreign Corrupt Practices Act ("FCPA"), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist Distributor or Obalon in obtaining or retaining business. Obalon shall have the right to terminate this Agreement immediately if Distributor takes any action in violation of the U.S. FCPA. Distributor shall indemnify and hold Obalon harmless from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) relating to Distributor's breach of this Section 2.7.

2.8. Customer Support. Distributor shall be solely responsible for providing, and shall provide the Customers in the Territory with all training and maintenance with respect to the Products that is necessary to support the normal use of the Products by Customers, including, without limitation, warranty repair service for the Products during the applicable warranty period therefor. Distributor shall, at its cost, cause all of its sales force personnel to become fully knowledgeable and achieve a high degree of competency with respect to the Products, sufficient to meet Distributor's customer support obligations under this Section 2.8. Obalon will provide required training on Product at Obalon's expense, although Distributor is responsible for travel and lodging and other expenses related to attending such required training.

2.9. Inventory Management. Distributor shall use commercially reasonable efforts to maintain its inventory of Products at a level sufficient to meet the demand for Products by Customers in the Territory. Without limiting the generality of the foregoing, at all times during the term of this Agreement, Distributor shall maintain inventory levels of the Products as set forth on Exhibit B.

2.10. Records and Reports. Distributor shall (a) maintain complete and accurate books and records regarding this Agreement and the Products (including, but not limited to, records containing the information supplied in the reports provided by Distributor to Obalon as required below), (b) provide Obalon within thirty (30) days after the end of each quarter with a report specifying in relation to such quarter the sales results in the Territory, progress and development

of the market for the Products in the Territory and all regulations affecting their distribution, sale and use, (c) provide Obalon within thirty (30) days after the end of each quarter a written report detailing the number and nature of requests for support received during the prior quarter, and such other information concerning Distributor's support obligations under Section 2.8 as Obalon may reasonably request, (d) provide Obalon, at Obalon's request, such other reports as are customarily provided by Distributor to suppliers similarly situated with Obalon, and (e) permit an independent chartered accountant appointed by Obalon to examine at all reasonable times, and at the expense of Obalon, the accounts and records of the Distributor so far as may be necessary to confirm Distributor's compliance with this Agreement, provided that such accountant shall be required to execute Distributor's reasonable confidentiality agreement.

2.11. Product Traceability and Record Keeping. Distributor shall establish and maintain procedures to provide lot traceability to end users and shall retain those records for at least four years.

2.12. Complaint Handling. Distributor shall establish and maintain a system for handling complaints related to the Product including receipt and review. All complaints shall be reported to Obalon and any complaints involving patient injury or serious product malfunction shall be reported to Obalon within three (3) calendar days. Distributor shall pursue products related to complaints and return to Obalon for management of detailed evaluation. All complaint records shall be retained for at least four (4) years.

2.13. Product Recalls. Distributor shall promptly implement any Product recall issued by Obalon, at Obalon's expense. Distributor shall maintain an accurate and up-to-date Product and Customer database which shall be sufficient to enable Distributor, if Obalon so instructs, promptly to recall all units of any specific lot number of any Product.

2.14. Product Storage. Distributor shall store Product in facilities and environmental conditions appropriate for medical devices and which meet the requirements specified on the product labeling.

2.15. Quality Audits. Obalon shall have the right to conduct quality system audits of the Distributor's facilities and operations.

3. TERMS AND CONDITIONS OF SALE.

3.1. Rolling Forecasts. Not less than thirty (30) days prior to each quarter during the term of this Agreement, Distributor shall prepare and provide Obalon with a twelve (12) month rolling forecast of its estimated purchase requirements for each of the Products (the "Rolling Forecast"). [*] of the Products specified in a Rolling Forecast for the first (1st) quarter reflected therein shall be a binding purchase obligation of Distributor. [*] of the quantity of the Products specified in a Rolling Forecast for the second (2nd) quarter reflected therein shall be a binding purchase obligation of Distributor. [*] of the quantity of the Products specified in a Rolling Forecast for the third (3rd) quarter reflected therein shall be a binding purchase obligation of Distributor. [*] of the quantity of the Products specified in a Rolling Forecast for the fourth (4th) quarter reflected therein shall be a binding purchase obligation of Distributor. The initial Rolling Forecast (together with a purchase order for the quantity of the Products for the first quarter of such Rolling Forecast) is attached hereto as Exhibit C.

3.2. Purchase Orders. Distributor shall make all purchases of Products hereunder by submitting firm purchase orders to Obalon. Except for the initial purchase order (as described in Section 3.1), purchase orders shall be placed solely by completing and submitting an Internet purchase order form located at an Obalon web site that will be provided to Distributor by Obalon. No purchase order shall be binding upon Obalon unless and until a written acknowledgement thereof is dispatched by Obalon to Distributor.

3.3. Shipping. Unless Obalon otherwise expressly agrees in writing, the lead time for shipping shall be not less than sixty (60) days after acknowledgement of Distributor's purchase order by Obalon. Obalon may defer shipment of the Products if and while Distributor is in default of any of its obligations owing to Obalon under this Agreement, including Distributor's obligations to pay any amounts when due. The Products shall be delivered EXW Obalon facility in Carlsbad, California USA (Incoterms 2010). Risk of loss and title shall pass to Distributor upon delivery by Obalon to Distributor's designated carrier. Distributor shall be responsible to pay all carrier costs, shipping and handling charges, insurance charges, and all customs duties, taxes and any other charges levied by any governmental body in connection with shipping of the Products to Distributor.

3.4. Products Returns. If a Product fails to conform to the specifications established by Obalon therefor, Distributor may return such nonconforming Product to Obalon, at Obalon's expense, within (a) thirty (30) calendar days after delivery to Distributor for any non-conformities that can be discovered by a reasonable inspection, and (b) thirty (30) calendar days after discovery of any hidden or latent non-conformities that could not have been discovered by a reasonable inspection but in no event later than the expiration date for the applicable Product; provided, however that Distributor shall first give prompt written notice to Obalon of any Products defects (no later than within ten (10) business days after delivery of the Product to Distributor or discovery of the hidden or latent non-conformity), at which time Obalon shall issue a Return Material Authorization ("RMA") number for the defective Product. If Distributor fails timely to give such notice and to receive the RMA number, Distributor shall be deemed to have accepted the Product. Products returned without a valid RMA number displayed on the outside of the shipping container shall be returned to Distributor at Distributor's expense. If Distributor returns a Product in compliance with the foregoing requirements, Obalon shall replace the returned Product as soon as reasonably practicable. Such replacement Product shall be at no additional cost to Distributor if Distributor had previously paid Obalon for the returned Product. Notwithstanding the foregoing, Obalon shall not be responsible for any Products that fails to pass Distributor's quality control as a result of improper storage and handling during or after shipment to Distributor. Distributor may not reject a Product unless the Product was damaged at the time of shipment. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE REPLACEMENT OF THE NONCONFORMING PRODUCTS BY OBALON AS PROVIDED UNDER THIS SECTION 3.4 SHALL BE DISTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY FOR OBALON'S DELIVERY OF NONCONFORMING PRODUCTS.

4. PRICE AND PAYMENT.

4.1. Price. Prices payable by Distributor for the Products shall be the transfer prices set forth in Exhibit A.

4.2. Payment Terms. At the time of shipping the Products to Distributor, Obalon shall invoice Distributor for the Products included in such shipment. Distributor shall pay each such invoice within thirty (30) days after the date thereof. Distributor shall make all payments in United States dollars, in immediately available funds, by wire transfer to such account as Obalon designates for such purpose. Any late payment by Distributor shall be a material breach of this Agreement. Any late payments by Distributor shall bear interest, at twelve percent (12%) per annum, or the maximum allowable by law if less.

4.3. Taxes. Distributor shall pay all sales, use and transfer taxes and other charges arising out of the purchase and sale of the Products, including any VAT and personal property taxes and all inspection fees and duties, applicable to the sale and transport of the Products by Distributor in the Territory which are applicable thereto. Obalon shall not be responsible for any business, occupation, withholding or similar tax, or any taxes of any kind, relating to the purchase and sale of the Products.

5. WARRANTIES AND DISCLAIMERS.

5.1. Warranty. Obalon warrants, solely to the Customers purchasing the Products from Distributor, that during the applicable warranty period specified below, the Products shall be of good quality and free from defects, whether patent or latent, in design, materials or workmanship. The warranty term for Products other than the Disposables shall be one (1) year from the date of purchase by the Customer. The warranty term for the Disposables shall be the period expiring on the expiration date stated on the packaging of the Disposable. The foregoing warranty shall not apply if the Products has been subjected to physical abuse, misuse, abnormal use, use not consistent with Obalon's published directions, fraud, tampering, unusual physical stress, negligence or accidents.

5.2. WARRANTY DISCLAIMERS.

(a) OTHER THAN AS WARRANTED UNDER SECTION 5.1, THE PRODUCTS ARE PROVIDED "AS IS." OBALON DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO THE PRODUCTS ARISING FROM ANY USE OF THE PRODUCTS THAT IS NOT CONSISTENT WITH OBALON'S PUBLISHED DIRECTIONS.

(b) OBALON PROVIDES NO WARRANTY OF ANY KIND TO DISTRIBUTOR. WITH THE EXCEPTION OF THE LIMITED WARRANTY THAT OBALON PROVIDES SOLELY TO CUSTOMERS, AS SET FORTH IN SECTION 5.1, OBALON MAKES NO OTHER WARRANTIES RELATING TO THE PRODUCTS, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. DISTRIBUTOR SHALL DISTRIBUTE THE PRODUCTS IN THE TERRITORY SO AS TO INCLUDE ALL WARNINGS AND INSTRUCTIONS NECESSARY FOR THE PROPER USE

OF THE PRODUCTS. WITHOUT LIMITING DISTRIBUTOR'S OBLIGATIONS UNDER SECTION 1.2(c), DISTRIBUTOR SHALL INCLUDE WITH EACH PRODUCT SOLD ALL APPLICABLE DISCLAIMERS SET FORTH IN THIS AGREEMENT, AND SHALL NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, RELATING TO THE PRODUCTS OTHER THAN THE WARRANTY SET FORTH IN SECTION 5.1.

5.3. LIMITATION OF LIABILITY. IN NO EVENT SHALL OBALON BE LIABLE TO DISTRIBUTOR OR ANY OTHER THIRD PARTY IN ANY MANNER FOR ANY SPECIAL, NON-COMPENSATORY, CONSEQUENTIAL, INDIRECT, INCIDENTAL, STATUTORY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, FOR LOST PROFITS, LOST SALES, LOST REVENUE OR LOSS OF USE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF OBALON HAS BEEN INFORMED OF OR IS AWARE OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE. OBALON'S TOTAL AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS SHALL BE LIMITED TO THE SUM OF THE AMOUNTS PAID BY DISTRIBUTOR TO OBALON DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO A CLAIM AGAINST OBALON. DISTRIBUTOR HAS ACCEPTED, AND SHALL CAUSE EACH CUSTOMER TO ACCEPT THIS LIMITATION OF LIABILITY AS PART OF A BARGAIN WITH RESPECT TO THE PRICING OF THE PRODUCTS WITH THE UNDERSTANDING THAT THE PRICING WOULD BE HIGHER IF OBALON WERE REQUIRED TO BEAR LIABILITY IN EXCESS OF THAT STATED HEREIN. NOTWITHSTANDING THE FOREGOING, OBALON'S LIABILITY (A) FOR DEATH OR PERSONAL INJURY CAUSED BY OBALON'S NEGLIGENCE OR CAUSED BY THE NEGLIGENCE OF OBALON'S EMPLOYEES OR AGENTS; AND (B) FOR ANY FRAUDULENT MISREPRESENTATION BY OBALON IS NOT EXCLUDED OR LIMITED BY THIS AGREEMENT, EVEN IF ANY OTHER TERM OF THIS AGREEMENT WOULD PROVIDE OR SUGGEST OTHERWISE.

6. CONFIDENTIALITY

6.1. Confidentiality Obligations. During the term of this Agreement, and for a period of five (5) years following the expiration or earlier termination hereof, Distributor shall maintain in confidence all information relating to the Products or otherwise relating to Obalon's business, and received directly or indirectly from Obalon (collectively, the "Confidential Information"), and shall not use, disclose or grant the use of the Confidential Information except on a need-to-know basis to those of its directors, officers and employees to the extent such disclosure is reasonably necessary in connection with Distributor's activities as expressly authorized by this Agreement. To the extent that disclosure is authorized by this Agreement, prior to disclosure, Distributor shall obtain agreement of any such person or entity to hold in confidence and not make use of the Confidential Information for any purpose other than those permitted by this Agreement. Distributor shall notify Obalon promptly upon discovery of any unauthorized use or disclosure of the Confidential Information.

6.2. Confidentiality Exceptions. The obligations of Distributor under Section 6.1 shall not apply to any information with respect to which Distributor is able demonstrate by written evidence that such information (a) was publicly known prior to the disclosure of such information to Distributor; (b) became publicly known, without fault on the part of Distributor, subsequent to disclosure by Obalon of such information to Distributor; (c) was otherwise known by Distributor prior to communication by Obalon to Distributor of such information; or (d) was received by Distributor at any time from a source other than Obalon lawfully having the right to disclose such information.

6.3. Permitted Disclosures. The confidentiality obligations contained in Section 6.1 above shall not apply to the extent that Distributor is required to disclose information by law, regulation or order of a governmental agency or a court of competent jurisdiction, provided that Distributor shall provide written notice thereof to Obalon and sufficient opportunity to object to any such disclosure or to request confidential treatment thereof.

7. INDEMNIFICATION AND INSURANCE.

7.1. Indemnity. Each party (the “Indemnitor”) shall defend, indemnify and hold the other party (the “Indemnatee”) harmless from all losses, liabilities, damages and expenses (including reasonable attorneys’ fees and costs) resulting from any claims, demands, actions and other proceedings by any third party to the extent resulting from (a) any breach of this Agreement by the Indemnitor, (b) any recklessness or intentional act or omission by or on behalf of the Indemnitor in the performance of its activities contemplated by this Agreement, (c) any misrepresentations by the Indemnitor, or (d) any violation by the Indemnitor (or any of its employees or agents) of, or failure to adhere to, any applicable law, regulation or order in any country, in each case other than those certain losses, liabilities, damages and expenses arising out of the gross negligence or willful misconduct of the Indemnatee. The obligations of the parties under this Section 7.1 shall survive expiration or termination of this Agreement.

7.2. Indemnity Procedure. In the event the Indemnatee seeks indemnification hereunder, it shall inform the Indemnitor of a claim as soon as reasonably practicable after it receives notice of the claim, shall permit the Indemnitor to assume direction and control of the defense of the claim (including the right to settle the claim solely for monetary consideration) and shall cooperate as requested (at the expense of the Indemnitor) in the defense of the claim. The indemnity obligations under this Section 7 shall not apply to amounts paid in settlement of any claim, demand, action or other proceeding if such settlement is effected without the prior express written consent of the Indemnitor, which consent shall not be unreasonably withheld or delayed.

7.3. Insurance. Each party shall maintain commercial general liability insurance, including contractual liability insurance and products liability insurance against claims regarding its activities contemplated by this Agreement, in such amounts as it customarily maintains for similar products and activities. Each party shall maintain such insurance during the term of this Agreement and thereafter for so long as it maintains insurance for itself covering such activities.

8. TRADEMARK MATTERS.

8.1. Trademarks and Trade Names. Distributor shall not use any of Obalon's trademarks, or any mark or name confusingly similar thereto, as part of its corporate or business name or in any other manner, except that:

(a) Distributor may identify itself as an authorized Distributor of Obalon; and

(b) Distributor may use any of Obalon's trademarks set out in Exhibit D (the "Trademarks") for display purpose in connection with the solicitation of orders for the Products. Use of the Trademarks shall be subject to written prior approval from Obalon, such approval not to be unreasonably withheld. Distributor agrees that Obalon's approval shall not be considered to be unreasonably withheld if Distributor's use (or intended use) of such Trademarks in Obalon's opinion misrepresents (or would misrepresent) the Products or could confuse as to the ownership of trademarks or of origin or quality of the Products or violate any regulatory statute.

(c) Distributor shall not register any trade mark or trade name (including any company name) which is identical to or confusingly similar to or incorporates any trade mark or trade name which Obalon or any associated company owns or claims rights in, including but not limited to the Trademarks.

8.2. Goodwill. Any goodwill associated with any trade marks affixed or applied or used in relation to the Products shall accrue to the sole benefit of Obalon or such associated company of Obalon as owns such trademarks.

8.3. Products Markings. Distributor shall not alter, remove or modify any Obalon trademarks, labels or markings, nor affix any other trademarks, labels, instructions, warnings or markings to or on the Products or the packages or boxes used for the Products without Obalon's written consent; provided that Distributor may affix labels or other indices on the Products it distributes to identify Distributor as the distributor of the Products so long as such labels do not cover and are not inconsistent with Obalon's trademarks, labels or markings. No other Distributor labels, package inserts or other material shall accompany the Products without the approval of Obalon. Nothing in this Agreement shall create an obligation on Obalon to register or otherwise maintain in force any trademarks.

8.4. Intellectual Property Infringement. Distributor shall inform Obalon immediately upon becoming aware of: (a) any infringements or risk of infringements by a third party of Obalon's intellectual property (including but not limited to brands, trademarks, copyrights, and patents), (b) any infringements or risk of infringements by Obalon's products of a third party's intellectual property or claims of such by a third party. In the event of any such infringement, Obalon shall have the sole right to conduct (at Obalon's sole expense) the defense or settlement of any claim of intellectual property right infringement by or against a third party in relation to any of Obalon's intellectual property. At Obalon's expense (as to reasonable out-of-pocket expenses only), Distributor cooperate with Obalon in connection with any such infringement defense or prosecution.

9. TERM AND TERMINATION.

9.1. Term. Unless terminated as provided in Section 9.2 below or by mutual written consent, this Agreement shall continue in full force and effect for an initial term expiring five (5) years after the Effective Date (the “Initial Term”). Thereafter, this Agreement shall automatically renew for additional terms of twelve (12) months (each a “Renewal Term” and collectively with the Initial Term, the “Term”) unless (a) one party gives to the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term, or (b) the parties are unable to agree in writing on a Minimum Quantity for any Contract Year beyond Contract Year Five at least ninety (90) days prior to the commencement thereof.

9.2. Termination. This Agreement may be terminated as follows:

(a) By either party, if the other party commits a material breach of this Agreement and fails to cure such material breach within thirty (30) calendar days after receiving written notice thereof; and

(b) By Obalon, immediately upon written notice to Distributor if Distributor breaches any provision of Sections 2.5, 2.6, 2.7, 6 or 8; and

(c) By Obalon upon written notice following the occurrence of (i) a transaction pursuant to which a third party or third parties that were not shareholders of Obalon prior to the applicable transaction acquire (whether by merger, consolidation or transfer or issuance of capital stock or otherwise) the voting power to elect a majority of the board of directors or other governing body of Obalon, or (ii) a transaction pursuant to which a third party acquires assets constituting all or substantially all of the assets of Obalon related to this Agreement (each a “Change of Control”).

9.3. Rights of Parties on Expiration or Termination. The following provisions shall apply on the expiration or termination of this Agreement.

(a) In the event of expiration (but not termination) of this Agreement or termination by Distributor under Section 9.2(a) or termination for a Change of Control under Section 9.2(c), Distributor shall have the non-exclusive right, for ninety (90) days after the expiration or termination (the “Sell-Off Period”), to sell the Products in Distributor’s inventory in accordance with the terms and conditions set forth in this Agreement. Distributor shall deliver to Obalon, at the end of the Sell-Off Period, a list of Products in Distributor’s inventory, and Obalon shall have the right (but not the obligation) to buy any or all of the Products in Distributor’s inventory at the then-current transfer price, as determined in accordance with Section 4.1. Any Products remaining in Distributor’s inventory at the conclusion of the Sell Off Period which Obalon elects not to purchase pursuant to the foregoing terms, shall be, at Obalon’s discretion, either destroyed by Distributor or donated, at Distributor’s expense, to a charitable organization selected by Obalon. In the event that this Agreement is terminated by Obalon under Sections 9.2(a) or 9.2(b), Distributor may not sell or distribute the Products after the effective date of termination (and Distributor shall destroy its inventory of Products) unless (i) Obalon, in writing and in its sole discretion, permits Distributor to sell or distribute Distributor’s inventory of Products or (ii) Obalon instructs Distributor to donate, at Distributor’s expense, Distributor’s inventory of Products to a charitable organization selected by Obalon.

(b) At the time Distributor may no longer distribute or sell the Products in accordance with Section 9.3(a), Distributor promptly shall:

(i) remove from its property and immediately discontinue all use, directly or indirectly, of trademarks, designs, and markings owned or licensed exclusively by Obalon, or any word, title, expression, trademark, design, or marking that is confusingly similar thereto;

(ii) promptly deliver to Obalon all records, files, data and information whatsoever relating in any way to the sale, distribution, marketing or promotion of the Products in the Territory, including, without limitation, all Product and Customer information maintained by Distributor under Section 2.13 to enable Obalon to implement Product recalls; and

(iii) provide to Obalon a final report containing all information required under Section 2.10 and which has not been previously provided to Obalon.

(c) If Obalon terminates this Agreement pursuant to Section 9.2(c) after a Change of Control, then as Distributor's sole and exclusive remedy for such termination, within ninety (90) days after termination Obalon shall pay to Distributor an amount equal to Distributor's Gross Margin Profit for the twelve (12) months immediately prior to the date of termination calculated as follows: Gross Margin Profit = number of Product sold during twelve (12) month period (multiplied by) the actual net amount received by Distributor from Customers for such Product (minus) the transfer price paid to Obalon for such Product. Promptly following the termination Distributor shall provide to Obalon a true and correct accounting of the sales for the prior twelve (12) month periods to allow Obalon to calculate the Gross Margin Profit.

(d) The following Sections shall survive any termination or expiration of this Agreement: 2.4(b), 5.2, 5.3, 6, 7.1, 7.2, 8, 9.3 and 10.

10. GENERAL PROVISIONS.

10.1. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, U.S.A., without regard to the conflicts of law principles thereof, and shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. The parties hereby submit to the jurisdiction of, and venue in, the state and federal courts located in San Diego County, California, U.S.A.

10.2. Language. The English language version of this Agreement shall govern and control any translations of this Agreement into any other language.

10.3. Notices. All consents, notices or reports required or permitted to be given or made by one party to the other under this Agreement shall be in writing and addressed to the other party at its address indicated above, or to such other address as the addressee shall have last furnished in writing to the addressor, and shall be effective upon receipt by the addressee.

10.4. Assignment. Distributor may not assign this Agreement or any of its rights, duties and obligations hereunder without the prior written consent of Obalon. Any purported assignment in violation of the foregoing shall be void. Any permitted assignee shall assume all obligations of Distributor under this Agreement. Obalon may assign this Agreement, in full or in part, without Distributor's consent.

10.5. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. All express or implied representations, agreements and understandings with respect to the subject matter hereof, either oral or written, heretofore made are expressly superseded by this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by both parties.

10.6. Headings. The captions to the several Sections hereof are not a part of this Agreement, but are merely guides or labels to assist in locating and reading the several Sections hereof.

10.7. Independent Contractors. Each party hereby acknowledges that the parties shall be independent contractors and that the relationship between the parties shall not constitute a partnership, joint venture or agency. Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, that shall be binding on the other party, without the prior consent of the other party to do so.

10.8. Waiver. The failure of Obalon at any time to require performance by Distributor of any of the provisions herein shall not operate as a waiver of the right of Obalon to request strict performance of the same or like provisions or any other provisions hereof, at a later time.

10.9. Force Majeure. Obalon shall use its reasonable efforts to fill orders, but Obalon shall not be liable for nonperformance or delays caused by a shortage of raw materials, labor problems, acts of regulatory agencies, acts of God or other causes beyond its reasonable control.

10.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.11. Severability. In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby and the parties agree to replace such invalid, illegal or unenforceable term or provision with an enforceable and valid arrangement that, in its economic effect, shall be as close as possible to the invalid, illegal or unenforceable term or provision.

IN WITNESS WHEREOF, Obalon and Distributor have caused this Agreement to be executed by their duly authorized representatives, as of the Effective Date.

OBALON THERAPEUTICS, INC.

BADER SULTAN & BROS CO W.L.L.

By: /s/ ANDREW RASDAL

By: /s/ Emad Al Zaben

Name: ANDREW RASDAL

Name: Emad Al Zaben

Title: CEO

Title: General Manager

EXHIBIT A

CUSTOMERS

“Customers” shall mean any customers located in the Territory.

TERRITORY

“Territory” shall mean the following countries: Saudia Arabia, Kuwait, United Arab Emirates, Qatar, Oman, Bahrain, Iraq and Lebanon.

MINIMUM QUANTITY

A “Calendar Quarter” is defined as the three month period commencing on January 1, April 1, July 1 and October 1 for each year. A “Contract Year” is the one year period commencing on the earlier of (a) the date of receipt of marketing approval from the applicable regulatory authority in the first country within the Territory or (b) September 1, 2013 (the “Contract Year Commencement Date”), and each one year period commencing on the anniversary of the Contract Year Commencement Date. The first Calendar Quarter for the first Contract Year is the Calendar Quarter in which the Contract Year Commencement Date falls.

<u>Contract Year</u>	<u>Calendar Quarter</u>	<u>Minimum Quantity</u>
One	First	[*] Balloons
One	Second	[*] Balloons
One	Third	[*] Balloons
One	Fourth	[*] Balloons
	<u>Yearly Total:</u>	[*] Balloons
Two	First	[*] Balloons
Two	Second	[*] Balloons
Two	Third	[*] Balloons
Two	Fourth	[*] Balloons
	<u>Yearly Total:</u>	[*] Balloons
Three	First	[*] Balloons
Three	Second	[*] Balloons
Three	Third	[*] Balloons
Three	Fourth	[*] Balloons
	<u>Yearly Total:</u>	[*] Balloons
Four	First	[*] Balloons
Four	Second	[*] Balloons
Four	Third	[*] Balloons
Four	Fourth	[*] Balloons
	<u>Yearly Total:</u>	[*] Balloons

***Confidential Treatment Requested.**

Contract Year	Calendar Quarter	Minimum Quantity
Five	First	[*] Balloons
Five	Second	[*] Balloons
Five	Third	[*] Balloons
Five	Fourth	[*] Balloons
	Yearly Total:	[*] Balloons

The Minimum Quantity for a Contract Year beyond Contract Year Five shall be negotiated prior to expiration of the Initial Term.

PRODUCTS AND PRICE

Product Code	Description	Price
OGB-02-005	Five (5) Pack Obalon Balloon Systems (Each Individually Packed System Contains One Balloon, One Balloon Kit (PN-7000) and One Balloon Accessory Kit (PN-6000)	\$ [*] USD
EZD-02-001	One (1) Obalon EZ Fill Dispenser	\$ [*] USD
EZC-02-010	Ten (10) Obalon EZ Fill Canisters	\$ [*] USD
PBO-02-50	Fifty (50) Placebo Capsules	\$ [*] USD

EXHIBIT B

MINIMUM INVENTORY QUANTITIES

Not including the initial stocking month for the Company products, Distributor agrees to order and have on hand a minimum of stock equal to [*] the number of individual units shipped to customers during the previous month.

These levels will be monitored and verified on a quarterly or as needed basis.

***Confidential Treatment Requested.**

EXHIBIT C

INITIAL ROLLING FORECAST AND PURCHASE ORDER

[None.]

EXHIBIT D

LIST OF TRADEMARKS

Obalon®

Additional trademarks and copyright materials may be added by the company to this Exhibit at any time, with notice to Distributor, carrying similar agreements and protections defined within this contract.

AMENDMENT NO. 1

TO DISTRIBUTION AGREEMENT

This Amendment No. 1 to the Distribution Agreement (this "Amendment") effective as of December 19, 2014 (the "Amendment Date"), is entered into between OBALON THERAPEUTICS, INC. ("Obalon"), and BADER SULTAN & BROS CO W.L.L. ("Distributor").

WHEREAS, the parties previously entered into that certain Distribution Agreement dated as of June 26, 2013 (the "Agreement");

WHEREAS, the parties wish to amend the Agreement in certain respects on the terms and conditions set forth herein.

NOW THEREFORE, capitalized terms not defined in this Amendment shall have the meaning ascribed in the Agreement, and the parties hereby agree as follows:

1. Amendment. Section 3 of the Agreement is hereby amended by adding the following new Section 3.5 immediately following the end of Section 3.4:

3.5 2015 Forecast and Ordering. Notwithstanding the terms of Sections 3.1 and 3.2 above, for calendar year 2015, the following terms shall apply with respect to the forecasting and ordering of Product. Attached to Amendment No. 1 to this Agreement as Appendix 1 is the forecast for Distributor's Product purchase requirements for calendar year 2015, broken down by calendar month (the "2015 Forecast"). Each calendar month during 2015, Distributor shall order the applicable quantity of Product for such calendar month as set forth on the 2015 Forecast. Distributor shall not have the right to change the 2015 Forecast, and shall not withhold or delay placing any purchase order for a calendar month in accordance with the 2015 Forecast, in each case without Obalon's prior written consent. Within five (5) days following the date of Amendment No. 1 to this Agreement, Distributor shall pay to Obalon a deposit fee of one million two hundred eighty-two thousand five hundred U.S. Dollars (USD \$1,282,500) (the "Deposit"). If Distributor places in full the monthly orders in accordance with the 2015 Forecast, then Obalon shall apply the Deposit against Distributor's final orders for Product in 2015. If Distributor does not place in full the monthly orders in accordance with the 2015 Forecast then Obalon shall have the right to keep the Deposit as liquidated damages for such failure. If at the end of 2015 Obalon was unable to manufacture the quantity of Product ordered by Distributor in accordance with

the 2015 Forecast, then Obalon shall refund the Deposit to Distributor (subject to Obalon's right to deduct from the Deposit any then-outstanding amounts owed by Distributor to Obalon).

2. Miscellaneous. This Amendment shall be effective for all purposes as of the Amendment Date. Except as expressly modified herein, the Agreement shall continue to remain in full force and effect in accordance with its terms. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and together shall be deemed to be one and the same document.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized representatives effective as of the Amendment Date.

OBALON THERAPEUTICS, INC.

By: /s/ ANDY RASDAL

Name: ANDY RASDAL

Title: CEO

BADER SULTAN & BROS CO W.L.L.

By: /s/ EMAD AL ZABEN

Name: EMAD AL ZABEN

Title: GENERAL MANAGER

2015 Forecast[illegible]

***Confidential Treatment Requested.**

Item	Item Number	Quantity	Unit Cost USD	Total Price USD	Deliver Date
[*]	[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]	[*]
2				*Confidential Treatment Requested.	

AMENDMENT NO. 2

TO DISTRIBUTION AGREEMENT

This Amendment No. 2 to the Distribution Agreement (this "Amendment") effective as of January 1, 2015 (the "Amendment Date"), is entered into between OBALON THERAPEUTICS, INC. ("Obalon"), and BADER SULTAN & BROS CO W.L.L. ("Distributor").

WHEREAS, the parties previously entered into that certain Distribution Agreement dated as of June 26, 2013 (as amended, the "Agreement");

WHEREAS, the parties wish to amend the Agreement in certain respects on the terms and conditions set forth herein.

NOW THEREFORE, capitalized terms not defined in this Amendment shall have the meaning ascribed in the Agreement, and the parties hereby agree as follows:

1. Amendments.

- (a) The first sentence of Section 9.1 of the Agreement is hereby amended and restated in its entirety as follows:

"Unless terminated as provided in Section 9.2 below or by mutual written consent, this Agreement shall continue in full force and effect for an initial term expiring December 31, 2019 (the "Initial Term")."

- (b) The definition of "Territory" on Exhibit A is hereby amended and replaced as follows:

"Territory" shall mean the following countries: Saudi Arabia, Kuwait, United Arab Emirates, Qatar, Oman, Bahrain, Iraq, Lebanon, Morocco, Algeria, Libya, Tunisia, Sudan, South Sudan, Egypt, Iran, Turkey, Jordan, Palestine, Syria, Muratenia, Djibouti and Yemen.

- (c) The "Products and Price" portion of Exhibit A is hereby amended and replaced with the Products and Price attached as Appendix 1 to this Amendment.

2. Miscellaneous. This Amendment shall be effective for all purposes as of the Amendment Date. Except as expressly modified herein, the Agreement shall continue to remain in full force and effect in accordance with its terms. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and together shall be deemed to be one and the same document.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized representatives effective as of the Amendment Date.

OBALON THERAPEUTICS, INC.

By: /s/ ANDY RASDAL
Name: ANDY RASDAL
Title: CEO

BADER SULTAN & BROS CO W.L.L.

By: /s/ EMAD AL ZABEN
Name: EMAD AL ZABEN
Title: GENERAL MANAGER

Appendix 1

Products and Price

Product code	Description	Price		
OGB-03-005	Five (5) Pack Obalon Balloon Systems (Each Individually Packed System Contains One Balloon, One Balloon Kit (PN-7000) and One Balloon Accessory Kit (PN-6000)	\$	[*]	USD
EZD-02-001	One (1) Obalon EZ Fill Dispenser	\$	[*]	USD
EZC-02-010	Ten (10) Obalon EZ Fill Canisters	\$	[*]	USD
PBO-01-050	Fifty (50) Placebo Capsules	\$	[*]	USD

***Confidential Treatment Requested.**

AMENDMENT NO. 3

TO DISTRIBUTION AGREEMENT

This Amendment No. 3 to the Distribution Agreement (this "Amendment") effective as of August 1, 2015 (the "Amendment Date"), is entered into between OBALON THERAPEUTICS, INC. ("Obalon"), and BADER SULTAN & BROS CO W.L.L. ("Distributor").

WHEREAS, the parties previously entered into that certain Distribution Agreement dated as of June 26, 2013 (as amended, the "Agreement");

WHEREAS, the parties wish to amend the Agreement in certain respects on the terms and conditions set forth herein.

NOW THEREFORE, capitalized terms not defined in this Amendment shall have the meaning ascribed in the Agreement, and the parties hereby agree as follows:

1. Amendment. Section 3.5 of the Agreement is hereby amended and restated in its entirety as follows:

3.5 2015/2016 Forecast and Ordering. Notwithstanding the terms of Sections 3.1 and 3.2 above, for calendar year 2015 and 2016, the following terms shall apply with respect to the forecasting and ordering of Product. Attached to Amendment No. 3 to this Agreement as Appendix 1 is the forecast for Distributor's Product purchase requirements for the remaining months of calendar year 2015 and calendar year 2016, broken down by calendar month (the "2015/2016 Forecast"). Each calendar month during the 2015/2016 Forecast, Distributor shall order the applicable quantity of Product for such calendar month as set forth on the 2015/2016 Forecast. Distributor shall not have the right to change the 2015/2016 Forecast, and shall not withhold or delay placing any purchase order for a calendar month in accordance with the 2015/2016 Forecast, in each case without Obalon's prior written consent. The parties acknowledge that pursuant to Amendment No. 1 to this Agreement Distributor paid to Obalon a deposit fee of one million two hundred eighty-two thousand five hundred U.S. Dollars (USD \$1, 282,500) (the "Deposit"). If Distributor places in full the monthly orders in accordance with the 2015/2016 Forecast, then Obalon shall apply the Deposit against Distributor's orders for Product in the remaining calendar months of 2015 and the calendar months of 2016 until the Deposit has been fully credited. If Distributor does not place in full the monthly orders in accordance with the 2015/2016 Forecast then Obalon shall have the right to keep the Deposit as liquidated damages for such failure.

2. Miscellaneous. This Amendment shall be effective for all purposes as of the Amendment Date. Except as expressly modified herein, the Agreement shall continue to remain in full force and effect in accordance with its terms. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and together shall be deemed to be one and the same document.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized representatives effective as of the Amendment Date.

OBALON THERAPEUTICS, INC.

By: /s/ ANDY RASDAL

Name: ANDY RASDAL

Title: CEO

BADER SULTAN & BROS CO W.L.L.

By: /s/ EMAD AL ZABEN

Name: EMAD AL ZABEN

Title: GENERAL MANAGER

Appendix 1

2015/2016 Forecast

2015

August
September
October
November
December

Balloon Units

[*]
[*]
[*]
[*]
[*]

2016

January
February
March
April
May
June
July
August
September
October
November
December

Balloon Units

[*]
[*]
[*]
[*]
[*]
[*]
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[*]
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[*]
[*]

***Confidential Treatment Requested.**

AMENDMENT NO. 4

TO DISTRIBUTION AGREEMENT

This Amendment No. 4 to the Distribution Agreement (this "Amendment") effective as of July 26, 2016 (the "Amendment Date"), is entered into between OBALON THERAPEUTICS, INC. ("Obalon"), and BADER SULTAN & BROS CO W.L.L. ("Distributor").

WHEREAS, the parties previously entered into that certain Distribution Agreement dated as of June 26, 2013 (as amended, the "Agreement");

WHEREAS, the parties wish to amend the Agreement in certain respects on the terms and conditions set forth herein.

NOW THEREFORE, capitalized terms not defined in this Amendment shall have the meaning ascribed in the Agreement, and the parties hereby agree as follows:

1. Amendment. Section 1.2(a) of the Agreement is hereby amended to add the following sentence immediately to the end of Section 1.2(a):

Distributor acknowledges that Iran, Sudan and Syria are not included within the Territory, and Distributor represents, warrants and covenants that since the Effective Date of this Agreement Distributor has not, and during the Term Distributor shall not, distribute or sell any Products into Iran, Sudan and Syria.

2. Miscellaneous. This Amendment shall be effective for all purposes as of the Amendment Date. Except as expressly modified herein, the Agreement shall continue to remain in full force and effect in accordance with its terms. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and together shall be deemed to be one and the same document.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized representatives effective as of the Amendment Date.

OBALON THERAPEUTICS, INC.

BADER SULTAN & BROS CO W.L.L.

By: /s/ Andrew Rasdal

By: /s/ EMAD AL ZABEN

Name: Andrew Rasdal

Name: EMAD AL ZABEN

Title: CEO

Title: GENERAL MANAGER

OBALON THERAPEUTICS, INC.

OBALON THERAPEUTICS, LLC

LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT (the “Agreement”) is entered into as of June 14, 2013, by and between Square 1 Bank (“Bank”) and Obalon Therapeutics, Inc. and Obalon Therapeutics, LLC (each a “Borrower” and collectively, “Borrowers”).

RECITALS

Borrowers wish to obtain credit from time to time from Bank, and Bank desires to extend credit to Borrowers. This Agreement sets forth the terms on which Bank will advance credit to Borrowers, and Borrowers will repay the amounts owing to Bank.

AGREEMENT

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, all capitalized terms shall have the definitions set forth on Exhibit A. Any term used in the Code and not defined herein shall have the meaning given to the term in the Code.

1.2 Accounting Terms. Any accounting term not specifically defined on Exhibit A shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP (except for noncompliance with FAS 123R in monthly reporting). The term “financial statements” shall include the accompanying notes and schedules.

2. LOAN AND TERMS OF PAYMENT.

2.1 Credit Extensions.

(a) Promise to Pay. Borrowers promise to pay to Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Bank to Borrowers, together with interest on the unpaid principal amount of such Credit Extensions at rates in accordance with the terms hereof.

(b) Term Loans.

(i) Subject to and upon the terms and conditions of this Agreement, Bank agrees to make one (1) or more term loans to Borrowers in an aggregate principal amount not to exceed \$3,000,000 (each a “Term Loan” and collectively the “Term Loans”). Parent may request Term Loans at any time from the date hereof through the Availability End Date. The proceeds of the Term Loans shall be used for general working capital purposes.

(ii) Interest shall accrue from the date of each Term Loan at the rate specified in Section 2.3(a), and prior to the Availability End Date shall be payable monthly beginning on the first day of the month next following such Term Loan, and continuing on the same day of each month thereafter. Any Term Loans that are outstanding on the Availability End Date shall be payable in 30 equal monthly installments of principal, plus all accrued interest,

beginning on July 14, 2014 and continuing on the same day of each month thereafter through the Term Loan Maturity Date, at which time all amounts due in connection with the Term Loans and any other amounts due under this Agreement shall be immediately due and payable. Term Loans, once repaid, may not be reborrowed. Borrowers may prepay any Term Loan without penalty or premium.

(iii) When a Borrower desires to obtain a Term Loan, Parent shall notify Bank (which notice shall be irrevocable) by facsimile transmission to be received no later than 3:30 p.m. Eastern time on the Business Day prior to the date on which the Term Loan is to be made. Such notice shall be substantially in the form of Exhibit C. The notice shall be signed by an Authorized Officer.

2.2 Intentionally Omitted.

2.3 Interest Rates, Payments, and Calculations.

(a) **Interest Rate for Term Loans.** Except as set forth in Section 2.3(b), the Term Loans shall bear interest, on the outstanding daily balance thereof, at a variable annual rate equal to the greater of (A) 1.75% above the Prime Rate then in effect, or (B) 5.00%.

(b) **Late Fee; Default Rate.** If any payment is not made within 15 days after the date such payment is due, Borrowers shall pay Bank a late fee equal to the lesser of (i) 5% of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law. All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to 5 percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

(c) **Payments.** Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of Borrowers' deposit accounts.

(d) **Computation.** In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a 360 day year for the actual number of days elapsed.

2.4 Crediting Payments. Prior to the occurrence of an Event of Default, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Parent specifies, except that to the extent a Borrower uses the Term Loans to purchase Collateral, Borrowers' repayment of the Term Loans shall apply on a "first-in-first-out" basis so that the portion of the Term Loans used to purchase a particular item of Collateral shall be paid in the chronological order the Borrowers purchased the Collateral. After the occurrence and during the continuance of an Event of Default, Bank shall have the right, in its sole discretion, to immediately apply any wire transfer of funds, check, or other item of payment Bank may receive to conditionally reduce Obligations, but such applications of funds shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment

received by Bank after 5:30 p.m. Eastern time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.5 Fees. Borrowers shall pay to Bank the following:

(a) **Facility Fee.** On or before the Closing Date, a fee equal to \$15,000, which shall be nonrefundable; and

(b) **Bank Expenses.** On the Closing Date, all Bank Expenses incurred through the Closing Date, and, after the Closing Date, all Bank Expenses, as and when they become due.

2.6 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for so long as any Obligations remain outstanding or Bank has any obligation to make Credit Extensions under this Agreement. Notwithstanding the foregoing, (i) Bank shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default and (ii) Borrower shall have the right to terminate this Agreement and Bank's obligation to lend upon written notice to Bank so long as (a) all Obligations have been paid in full, and (b) Bank has provided Borrower with written notice that all Obligations have been paid in full. Upon termination of this Agreement and written confirmation by Bank that all Obligations have been paid in full, all security interests granted pursuant to this Agreement shall terminate, and at such time Bank, at Borrower's sole expense, shall take such actions reasonably requested by Borrower to evidence the termination of such security interests.

3. CONDITIONS OF LOANS.

3.1 Conditions Precedent to Closing. The agreement of Bank to enter into this Agreement on the Closing Date is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, each of the following items and completed each of the following requirements:

(a) this Agreement;

(b) an officer's certificate of each Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;

(c) a financing statement (Form UCC-1);

(d) the certificate(s) for the Shares, together with Assignment(s) Separate from Certificate, duly executed by the pledgor in blank;

(e) payment of the fees and Bank Expenses then due specified in Section 2.5, which may be debited from any of Borrowers' accounts with Bank;

(f) current SOS Reports indicating that except for Permitted Liens, there are no other security interests or Liens of record in the Collateral;

(g) current financial statements, including audited statements (or such other level required by the Investment Agreement) for each Borrower's most recently ended fiscal year, together with an unqualified opinion (or an opinion qualified only for going concern so long as such Borrower's investors provide additional equity as needed), company prepared consolidated and consolidating balance sheets, income statements and statements of cash flows for the most recently ended month in accordance with Section 6.2, and such other updated financial information as Bank may reasonably request;

(h) current Compliance Certificate in accordance with Section 6.2;

(i) a Warrant in form and substance satisfactory to Bank;

(j) a control agreement in favor of Bank for Borrower's accounts held at State Street Bank;

(k) a Borrower Information Certificate for each Borrower;

(l) such other documents or certificates, and completion of such other matters, as Bank may reasonably request; and

(m) Borrowers shall have opened and funded not less than \$50,000 in deposit accounts held with Bank.

3.2 Conditions Precedent to all Credit Extensions. The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is contingent upon the Borrowers' compliance with Section 3.1 above, and is further subject to the following conditions:

(a) timely receipt by Bank of the Loan Advance/Paydown Request Form as provided in Section 2.1;

(b) each Borrower shall have transferred substantially all of its Cash assets into operating accounts held with Bank and otherwise be in compliance with Section 6.6 hereof; and

(c) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Loan Advance/Paydown Request Form and on the effective date of each Credit Extension as though made at and as of each such date, and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension (provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date). The making of each Credit Extension shall be deemed to be a representation and warranty by Borrowers on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2.

4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest. Each Borrower grants and pledges to Bank a continuing security interest in the Collateral to secure prompt repayment of any and all Obligations and to secure prompt performance by Borrowers of each of its covenants and duties under the Loan Documents. Except for Permitted Liens or as disclosed in the Schedule, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in later-acquired Collateral. Except for the granting of Permitted Liens and Permitted Transfers, Borrowers also hereby agree not to sell, transfer, assign, mortgage, pledge, lease, grant a security interest in, or encumber any of their Intellectual Property. Notwithstanding any termination of this Agreement or of any filings undertaken related to Bank's rights under the Code, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

4.2 Perfection of Security Interest. Each Borrower authorizes Bank to file at any time financing statements, continuation statements, and amendments thereto that (i) either specifically describe the Collateral or describe the Collateral as all assets of such Borrower of the kind pledged hereunder, and (ii) contain any other information required by the Code for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, including whether such Borrower is an organization, the type of organization and any organizational identification number issued to such Borrower, if applicable. Each Borrower shall have possession of the Collateral, except where expressly otherwise provided in this Agreement or where Bank chooses to perfect its security interest by possession in addition to the filing of a financing statement. Where Collateral is in possession of a third party bailee, each Borrower shall take such steps as Bank reasonably requests for Bank to (i) subject to Section 7.10 below, obtain an acknowledgment, in form and substance satisfactory to Bank, of the bailee that the bailee holds such Collateral for the benefit of Bank, and (ii) obtain "control" of any Collateral consisting of investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such items and the term "control" are defined in Revised Article 9 of the Code) by causing the securities intermediary or depository institution or issuing bank to execute a control agreement in form and substance satisfactory to Bank. No Borrower will create any chattel paper without placing a legend on the chattel paper acceptable to Bank indicating that Bank has a security interest in the chattel paper. Each Borrower from time to time may deposit with Bank specific cash collateral to secure specific Obligations; each Borrower authorizes Bank to hold such specific balances in pledge and to decline to honor any drafts thereon or any request by a Borrower or any other Person to pay or otherwise transfer any part of such balances for so long as the specific Obligations are outstanding. Each Borrower shall take such other actions as Bank requests to perfect its security interests granted under this Agreement.

4.3 Pledge of Collateral. Each Borrower hereby pledges, assigns and grants to Bank a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Closing Date, the certificate

or certificates for the Shares will be delivered to Bank, accompanied by an instrument of assignment duly governing the Shares, the relevant Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence of an Event of Default hereunder, Bank may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Bank and cause new certificates representing such securities to be issued in the name of Bank or its transferee. Unless an Event of Default shall have occurred and be continuing, each Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

5. REPRESENTATIONS AND WARRANTIES.

Each Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Each Borrower and each Subsidiary is an entity duly existing under the laws of the state in which it is organized and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within each Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in such Borrower's Certificate of Incorporation, Certificate of Formation, Bylaws or Operating Agreement, nor will they constitute an event of default under any material agreement by which such Borrower is bound. No Borrower is in default under any agreement by which it is bound, except to the extent such default would not reasonably be expected to cause a Material Adverse Effect.

5.3 Collateral. Each Borrower has rights in or the power to transfer the Collateral, and its title to the Collateral is free and clear of Liens, adverse claims, and restrictions on transfer or pledge except for Permitted Liens. Other than movable items of personal property such as laptop computers, all Collateral having an aggregate book value not in excess of \$100,000 is located solely in the Collateral States. All Inventory is in all material respects of good and merchantable quality, free from all material defects, except for Inventory for which adequate reserves have been made. Except as set forth in the Schedule, none of the Borrowers' Cash is maintained or invested with a Person other than Bank or Bank's affiliates.

5.4 Intellectual Property. Borrowers' Intellectual Property is set forth on Schedule 5.4 hereto. Each Borrower is the sole owner of the intellectual property created or purchased by such Borrower, except for licenses granted by such Borrower to its customers in the ordinary course of business. To the best of each Borrower's knowledge, each of the copyrights, trademarks and patents created or purchased by such Borrower is valid and

enforceable, and no part of the intellectual property created or purchased by such Borrower has been judged invalid or unenforceable, in whole or in part, and no claim has been made to such Borrower that any part of the intellectual property created or purchased by such Borrower violates the rights of any third party except to the extent such claim would not reasonably be expected to cause a Material Adverse Effect.

5.5 Name; Location of Chief Executive Office. Except as disclosed in the Schedule, no Borrower has done business under any name other than that specified on the signature page hereof, and its exact legal name is as set forth in the first paragraph of this Agreement. The chief executive offices of Borrowers are located at the addresses indicated in Section 10 hereof.

5.6 Litigation. Except as set forth in the Schedule, there are no actions or proceedings pending by or against any Borrower or any Subsidiary before any court or administrative agency in which a likely adverse decision would reasonably be expected to have a Material Adverse Effect.

5.7 No Material Adverse Change in Financial Statements. All consolidated and consolidating financial statements related to a Borrower and any Subsidiary that are delivered by such Borrower to Bank fairly present in all material respects such Borrower's consolidated and consolidating financial condition as of the date thereof and such Borrower's consolidated and consolidating results of operations for the period then ended. There has not been a material adverse change in the consolidated or in the consolidating financial condition of any Borrower since the date of the most recent of such financial statements submitted to Bank.

5.8 Solvency, Payment of Debts. Each Borrower is able to pay its debts (including trade debts) as they mature; the fair saleable value of each Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; and no Borrower is left with unreasonably small capital after the transactions contemplated by this Agreement.

5.9 Compliance with Laws and Regulations. Each Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from a Borrower's failure to comply with ERISA that is reasonably likely to result in such Borrower's incurring any liability that could have a Material Adverse Effect. No Borrower is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. No Borrower is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). No Borrower has violated any statutes, laws, ordinances or rules applicable to it, the violation of which would reasonably be expected to have a Material Adverse Effect. Each Borrower and each Subsidiary have filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein except those being contested in good faith with adequate reserves under GAAP or where the failure to file such returns or pay such taxes would not reasonably be expected to have a Material Adverse Effect.

5.10 Subsidiaries. Borrowers do not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

5.11 Government Consents. Each Borrower and each Subsidiary have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of such Borrower's business as currently conducted, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect.

5.12 Inbound Licenses. Except as disclosed on the Schedule, no Borrower is a party to, nor is bound by, any material license or other agreement important for the conduct of such Borrower's business that prohibits or otherwise restricts such Borrower from granting a security interest in such Borrower's interest in such license or agreement or any other property important for the conduct of such Borrower's business, other than this Agreement or the other Loan Documents.

5.13 Shares. Each Borrower has full power and authority to create a first lien on the Shares and no disability or contractual obligation exists that would prohibit such Borrower from pledging the Shares pursuant to this Agreement. To each Borrower's knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will remain duly authorized and validly issued, and are fully paid and non-assessable. To each Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and such Borrower knows of no reasonable grounds for the institution of any such proceedings.

5.14 Full Disclosure. No representation, warranty or other statement made by a Borrower in any certificate or written statement furnished to Bank taken together with all such certificates and written statements furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading in light of the circumstances in which they were made, it being recognized by Bank that the projections and forecasts provided by Borrowers in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

6. AFFIRMATIVE COVENANTS.

Each Borrower covenants that, until payment in full of all outstanding Obligations, and for so long as Bank may have any commitment to make a Credit Extension hereunder, such Borrower shall do all of the following:

6.1 Good Standing and Government Compliance. Each Borrower shall maintain its and each of its Subsidiaries' corporate existence and good standing in the respective states of formation, shall maintain qualification and good standing in each other jurisdiction in which the failure to so qualify would reasonably be expected to have a Material Adverse Effect, and shall furnish to Bank the organizational identification number issued to such Borrower by

the authorities of the state in which such Borrower is organized, if applicable. Each Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Each Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, and shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which or failure to comply with which would reasonably be expected to have a Material Adverse Effect.

6.2 Financial Statements, Reports, Certificates. Borrowers shall deliver to Bank: (i) as soon as available, but in any event within 30 days after the end of each calendar month, a company prepared consolidated and consolidating balance sheet, income statement and statement of cash flows covering Borrowers' operations during such period, in a form reasonably acceptable to Bank and certified by a Responsible Officer; (ii) as soon as available, but in any event within 180 days after the end of Borrowers' fiscal year, audited (or such other level as is required by the Investment Agreement) consolidated and consolidating financial statements of Borrowers prepared in accordance with GAAP, consistently applied, together with an opinion which is either unqualified, qualified only for going concern so long as Borrowers' investors provide additional equity as needed or otherwise consented to in writing by Bank on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank; (iii) company prepared annual budget as soon as available but not later than January 31 of each calendar year during the term hereof and the annual budget approved by Borrowers' Board of Directors, which shall not materially deviate from such company prepared annual budget, as soon as available but not later than February 28 of each calendar year during the term hereof; (iv) if applicable, copies of all statements, reports and notices sent or made available generally by a Borrower to its security holders or to any holders of Subordinated Debt and all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission; (v) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened against a Borrower or any Subsidiary that could reasonably be expected to result in damages or costs to a Borrower or any Subsidiary of \$250,000 or more; (vi) promptly upon receipt, each management letter prepared by a Borrower's independent certified public accounting firm regarding such Borrower's management control systems; and (vii) such budgets, sales projections, operating plans or other financial information generally prepared by a Borrower in the ordinary course of business as Bank may reasonably request from time to time.

(a) Within 30 days after the last day of each month, Parent shall deliver to Bank with the monthly financial statements a Compliance Certificate certified as of the last day of the applicable month and signed by a Responsible Officer in substantially the form of Exhibit D hereto.

(b) As soon as possible and in any event within 3 calendar days after becoming aware of the occurrence or existence of an Event of Default hereunder, a written statement of a Responsible Officer setting forth details of the Event of Default, and the action which Borrowers have taken or propose to take with respect thereto.

(c) Bank (through any of its officers, employees or agents) shall have the right, upon reasonable prior notice, from time to time during each Borrower's usual business

hours but no more than twice a year (unless an Event of Default has occurred and is continuing), to inspect each Borrower's Books and to make copies thereof and to check, test, inspect, audit and appraise the Collateral at Borrowers' expense in order to verify such Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral.

Parent may deliver to Bank on an electronic basis any certificates, reports or information required pursuant to this Section 6.2, and Bank shall be entitled to rely on the intimation contained in the electronic files, provided that Bank in good faith believes that the files were delivered by a Responsible Officer. Parent shall include a submission date on any certificates and reports to be delivered electronically.

6.3 Inventory and Equipment; Returns. Borrowers shall keep all Inventory and Equipment in good and merchantable condition, free from all material defects except for Inventory and Equipment (i) sold in the ordinary course of business, and (ii) for which adequate reserves have been made, in all cases in the United States and such other locations as to which Borrowers give prior written notice. Returns and allowances, if any, as between a Borrower and its account debtors shall be on the same basis and in accordance with the usual customary practices of such Borrower, as they exist on the Closing Date. Borrowers shall promptly notify Bank of all returns and recoveries and of all disputes and claims involving inventory having a book value of more than \$100,000.

6.4 Taxes. Each Borrower shall make, and cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, including, but not limited to, those laws concerning income taxes, F.I.C.A., F.U.T.A. and state disability, and will execute and deliver to Bank, on demand, proof satisfactory to Bank indicating that such Borrower or a Subsidiary has made such payments or deposits and any appropriate certificates attesting to the payment or deposit thereof; provided that such Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by such Borrower or such Subsidiary.

6.5 Insurance. Each Borrower, at its expense, shall (i) keep the Collateral insured against loss or damage, and (ii) maintain liability and other insurance, in each case in as ordinarily insured against by other owners in businesses similar to such Borrower's. All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Bank. All policies of property insurance shall contain a lender's loss payable endorsement, in a form satisfactory to Bank, showing Bank as an additional loss payee, and all liability insurance policies shall show Bank as an additional insured and specify that the insurer must give at least 20 days notice to Bank before canceling its policy for any reason. Within 30 days of the Closing Date, each Borrower shall cause to be furnished to Bank a copy of its policies or certificate of insurance including any endorsements covering Bank or showing Bank as an additional insured. Upon Bank's request, each Borrower shall deliver to Bank certified copies of the policies of insurance and evidence of all premium payments. Proceeds payable under any casualty policy will, at the relevant Borrower's option, be payable to such Borrower to replace the property subject to the claim, provided that any such replacement property shall be deemed Collateral in which Bank has been granted a first priority security interest, provided that if an Event of Default has occurred and is continuing, all proceeds payable under any such policy shall, at Bank's option, be payable to Bank to be applied on account of the Obligations.

6.6 Accounts. Borrower shall maintain 50% of its deposits, transaction accounts, and primary investment accounts with Square 1 Bank and its affiliates, should Borrower's total cash be greater than \$5,000,000. Borrower shall maintain 100% of its deposits, transaction accounts, and primary investment accounts with Square 1 Bank should Borrower's total cash be less than \$5,000,000.

6.7 Intentionally Omitted.

6.8 Intentionally Omitted.

6.9 Consent of Inbound Licensors. Prior to entering into or becoming bound by any material inbound license or agreement, each Borrower shall: (i) provide written notice to Bank of the material terms of such license or agreement with a description of its likely impact on such Borrower's business or financial condition; and (ii) upon Bank's request, in good faith use commercially reasonable efforts to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for such Borrower's interest in such licenses or contract rights to be deemed Collateral and for Bank to have a security interest in it that might otherwise be restricted by the terms of the applicable license or agreement, whether now existing or entered into in the future, provided, however, that the failure to obtain any such consent or waiver shall not constitute a default under this Agreement.

6.10 Further Assurances. At any time and from time to time each Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

7. NEGATIVE COVENANTS.

Each Borrower covenants and agrees that, so long as any credit hereunder shall be available and until the outstanding Obligations are paid in full or for so long as Bank may have any commitment to make any Credit Extensions, such Borrower will not do any of the following without Bank's prior written consent, which shall not be unreasonably withheld:

7.1 Dispositions. Convey, sell, lease, license, transfer or otherwise dispose of (collectively, to "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, or move cash balances on deposit with Bank to accounts opened at another financial institution, other than Permitted Transfers.

7.2 Change in Name, Location, Executive Office, or Executive Management; Change in Business; Change in Fiscal Year; Change in Control. Change its name or the state of such Borrower's formation or relocate its chief executive office without 30 days prior written notification to Bank; replace or suffer the departure of its chief executive officer without delivering written notification to Bank within 10 Business Days; fail to appoint an interim replacement or fill a vacancy in the position of chief executive officer for more than 30 consecutive days; suffer a change on its board of directors which results in the failure of at least one partner of Domain Associates or its Affiliates to serve as a voting member, or suffer the

resignation of one or more directors from its board of directors in anticipation of such Borrower's insolvency, in either case without the prior written consent of Bank which may be withheld in Bank's sole discretion; take action to liquidate, wind up, or otherwise cease to conduct business in the ordinary course; engage in any business, or permit any of its Subsidiaries to engage in any business, other than or reasonably related or incidental to the businesses currently engaged in by such Borrower; change its fiscal year end; have a Change in Control.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization (other than mergers or consolidations of a Subsidiary into another Subsidiary or into such Borrower), or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person except where (a) each of the following conditions is applicable: (i) the consideration paid in connection with such transactions (including assumption of liabilities) does not in the aggregate exceed \$500,000 during any fiscal year, (ii) no Event of Default has occurred, is continuing or would exist after giving effect to such transactions, (iii) such transactions do not result in a Change in Control, and (iv) such Borrower is the surviving entity; or (b) the Obligations are repaid in full concurrently with the closing of any merger or consolidation of such Borrower in which such Borrower is not the surviving entity; provided, however, that such Borrower shall not, without Bank's prior written consent, enter into any binding contractual arrangement with any Person to attempt to facilitate a merger or acquisition of such Borrower, unless (i) no Event of Default exists when such agreement is entered into by such Borrower, (ii) such agreement does not give such Person the right to claim any fee, payment or damages from any parties, other than from such Borrower or such Borrower's investors, in connection with a sale of such Borrower's stock or assets pursuant to or resulting from an assignment for the benefit of creditors, an asset turnover to such Borrower's creditors (including, without limitation, Bank), foreclosure, bankruptcy or similar liquidation, and (iii) such Borrower notifies Bank in advance of entering into such an agreement (provided, the failure to give such notification shall not be deemed a material breach of this Agreement).

7.4 Indebtedness. Create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness, or prepay any Indebtedness or take any actions which impose on any Borrower an obligation to prepay any Indebtedness, except (a) Indebtedness to Bank and (b) prepayments of Indebtedness described in clause (e) of the definition of Permitted Indebtedness made in the ordinary course of business, provided that no Event of Default exists hereunder or would exist after giving effect to any such prepayment.

7.5 Encumbrances. Create, incur, assume or allow any Lien with respect to its property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, except for Permitted Liens, or covenant to any other Person (other than (i) the licensors of in-licensed property with respect to such property or (ii) the lessors of specific equipment or lenders financing specific equipment with respect to such leased or financed equipment) that such Borrower in the future will refrain from creating, incurring, assuming or allowing any Lien with respect to any of such Borrower's property.

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, except that such Borrower may (i) repurchase the stock of former employees pursuant to stock repurchase agreements as long as an Event of Default does not exist prior to such repurchase or would not exist after giving effect to such repurchase, (ii) convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange therefor (provided, for the sake of clarity, that no Cash payments will be made by Borrower or on 'Borrower's behalf in connection therewith), and (iii) repurchase the stock of former employees pursuant to stock repurchase agreements by the cancellation of indebtedness owed by such former employees to such Borrower regardless of whether an Event of Default exists.

7.7 Investments. Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments, or maintain or invest any of its Investment Property with a Person other than Bank or Bank's Affiliates or permit any Subsidiary to do so unless such Person has entered into a control agreement with Bank, in form and substance satisfactory to Bank, or suffer or permit any Subsidiary to be a party to, or be bound by, an agreement that restricts such Subsidiary from paying dividends or otherwise distributing property to such Borrower.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of such Borrower except for transactions that are in the ordinary course of such Borrower's business, upon fair and reasonable terms that are no less favorable to such Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision affecting Bank's rights contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

7.10 Inventory and Equipment. Store the Inventory or the Equipment of a book value in excess of \$200,000 with a bailee, warehouseman, collocation facility or similar third party unless the third party has been notified of Bank's security interest and Bank (a) has received an acknowledgment from the third party that it is holding or will hold the Inventory or Equipment for Bank's benefit or (b) is in possession of the warehouse receipt, where negotiable, covering such Inventory or Equipment. Except for Inventory sold in the ordinary course of business and for movable items of personal property having an aggregate book value not in excess of \$200,000, and except for such other locations as Bank may approve in writing, each Borrower shall keep the Inventory and Equipment only at the locations set forth in Section 10 and such other locations of which such Borrower gives Bank prior written notice and as to which Bank is able to take such actions as may be necessary to perfect its security interest or to obtain a bailee's acknowledgment of Bank's rights in the Collateral,

7.11 No Investment Company; Margin Regulation. Become or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by Borrowers under this Agreement:

8.1 Payment Default. If a Borrower fails to pay any of the Obligations when due;

8.2 Covenant Default.

(a) If a Borrower fails to perform any obligation under Sections 6.2 (financial reporting), 6.4 (taxes), 6.5 (insurance), or 6.6 (primary accounts), or violates any of the covenants contained in Article 7 of this Agreement;

(b) If a Borrower fails or neglects to perform or observe any other material term, provision, condition, covenant contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between a Borrower and Bank and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within 10 days after a Borrower receives notice thereof or, any officer of a Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the 10 day period or cannot after diligent attempts by Borrowers be cured within such 10 day period, and such default is likely to be cured within a reasonable time, then Borrowers shall have an additional reasonable period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but no Credit Extensions will be made;

8.3 Material Adverse Change. If there occurs any circumstance or any circumstances which would reasonably be expected to have a Material Adverse Effect;

8.4 Attachment. If any material portion of a Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within 10 days, or if a Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of a Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any material portion of a Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any State, county, municipal, or governmental agency, and the same is not paid within ten days after such Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by such Borrower (provided that no Credit Extensions will be made during such cure period);

8.5 Insolvency. If a Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by a Borrower, or if an Insolvency Proceeding is commenced against a Borrower and is not dismissed or stayed within 30 days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding);

8.6 Other Agreements. If there is a default or other failure to perform in any agreement to which a Borrower is a party with a third party or parties (a) resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of \$250,000, (b) in connection with any lease of real property, or (c) that would reasonably be expected to have a Material Adverse Effect;

8.7 Judgments. If a final, uninsured judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least \$250,000 shall be rendered against a Borrower and shall remain unsatisfied and unstayed for a period of 10 days (provided that no Credit Extensions will be made prior to the satisfaction or stay of the judgment); or

8.8 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

9. BANK'S RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrowers:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5 (insolvency), all Obligations shall become immediately due and payable without any action by Bank);

(b) Demand that Borrowers (i) deposit cash with Bank in an amount equal to the amount of any Letters of Credit remaining undrawn, as collateral security for the repayment of any future drawings under such Letters of Credit, and (ii) pay in advance all Letter of Credit fees scheduled to be paid or payable over the remaining term of the Letters of Credit, and Borrowers shall promptly deposit and pay such amounts;

(c) Cease advancing money or extending credit to or for the benefit of Borrowers under this Agreement or under any other agreement between a Borrower and Bank;

(d) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(e) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrowers agree to assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. Borrowers authorize Bank to enter the premises where the Collateral is located, to take

and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of a Borrower's owned premises, such Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(f) Set off and apply to the Obligations any and all (i) balances and deposits of any Borrower held by Bank, and (ii) indebtedness at any time owing to or for the credit or the account of any Borrower held by Bank;

(g) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is hereby granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrowers' labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrowers' rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(h) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrowers' premises) as Bank determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate. Bank may sell the Collateral without giving any warranties as to the Collateral. Bank may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If Bank sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Bank, and applied to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Bank may resell the Collateral and Borrowers shall be credited with the proceeds of the sale;

(i) Bank may credit bid and purchase at any public sale;

(j) Apply for the appointment of a receiver, trustee, liquidator or conservator of the Collateral, without notice and without regard to the adequacy of the security for the Obligations and without regard to the solvency of any Borrower, any guarantor or any other Person liable for any of the Obligations; and

(k) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrowers.

Bank may, comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

9.2 Power of Attorney. Effective only upon the occurrence and during the continuance of an Event of Default, Borrowers hereby irrevocably appoint Bank (and any of Bank's designated officers, or employees) as each Borrower's true and lawful attorney to: (a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) endorse each Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (c) sign each Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) dispose of any Collateral; (e) make, settle, and adjust all claims under and decisions with respect to a Borrower's policies of insurance; (f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; and (g) file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral; provided Bank may exercise such power of attorney to sign the name of a Borrower on any of the documents described in clauses (g) above, regardless of whether an Event of Default has occurred. The appointment of Bank as each Borrower's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide advances hereunder is terminated.

9.3 Accounts Collection. At any time after the occurrence and during the continuation of an Event of Default, Bank may notify any Person owing funds to a Borrower of Bank's security interest in such funds and verify the amount of such Account. Borrowers shall collect all amounts owing to any Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses. If a Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following after reasonable notice to Borrowers: (a) make payment of the same or any part thereof; or (b) obtain and maintain insurance policies of the type discussed in Section 6.5 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

9.5 Bank's Liability for Collateral. Bank has no obligation to clean up or otherwise prepare the Collateral for sale. All risk of loss, damage or destruction of the Collateral shall be borne by Borrowers.

9.6 No Obligation to Pursue Others. Bank has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them and Bank may release, modify or waive any collateral provided by any other Person to secure any of the Obligations, all without affecting Bank's rights against Borrowers. Each Borrower waives any right it may have to require Bank to pursue any other Person for any of the Obligations.

9.7 Remedies Cumulative. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on a Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given. Each Borrower expressly agrees that this Section 9.7 may not be waived or modified by Bank by course of performance, conduct, estoppel or otherwise.

9.8 Demand; Protest. Except as otherwise provided in this Agreement, each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment and any other notices relating to the Obligations.

10. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by telefacsimile to Borrowers or to Bank, as the case may be, at its addresses set forth below:

If to Borrowers:	OBALON THERAPEUTICS, INC, on behalf of all Borrowers 5421 Avenida Encinas, Suite F Carlsbad, CA 92008 Attn: Nooshin Hussainy FAX: (760) 603-9053
If to Bank:	Square 1 Bank 406 Blackwell Street, Suite 240 Durham, North Carolina 27701 Attn: Loan Operations Manager FAX: (919) 314-3080
with a copy to:	Square 1 Bank 12481 High Bluff Drive, Suite 350 San Diego, CA 92130 Attn: Scott Foote FAX: (858) 436-3501

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Jurisdiction shall lie in the State of California. All disputes, controversies, claims, actions and similar proceedings arising with respect to Borrowers' accounts or any related agreement or transaction shall be brought in the Superior Court of San Mateo County, California or the United States District Court for the Northern District of California, except as provided below with respect to arbitration of such matters. BANK AND EACH BORROWER EACH ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THEM, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT, WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED INSTRUMENT OR LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY BANK OR ANY BORROWER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM. If the jury waiver set forth in this Section 11 is not enforceable, then any dispute, controversy, claim, action or similar proceeding arising out of or relating to this Agreement, the Loan Documents or any of the transactions contemplated therein shall be settled by final and binding arbitration held in San Mateo County, California in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association by one arbitrator appointed in accordance with those rules. The arbitrator shall apply California law to the resolution of any dispute, without reference to rules of conflicts of law or rules of statutory arbitration. Judgment upon any award resulting from arbitration may be entered into and enforced by any state or federal court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this Section. The costs and expenses of the arbitration, including without limitation, the arbitrator's fees and expert witness fees, and reasonable attorneys' fees, incurred by the parties to the arbitration may be awarded to the prevailing party, in the discretion of the arbitrator, or may be apportioned between the parties in any manner deemed appropriate by the arbitrator. Unless and until the arbitrator decides that one party is to pay for all (or a share) of such costs and expenses, both parties shall share equally in the payment of the arbitrator's fees as and when billed by the arbitrator.

12. GENERAL PROVISIONS.

12.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties and shall bind all persons who become bound as a debtor to this Agreement; provided, however, that neither this Agreement nor any rights hereunder may be assigned by any Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrowers to sell, assign, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder.

12.2 Indemnification. Each Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank, its officers, employees and agents as a result of or in any way arising out of, following, or consequential to transactions between Bank and a Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing, Integration. All amendments to or terminations of this Agreement or the other Loan Documents must be in writing. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the other Loan Documents, if any, are merged into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically in Portable Document Format ("PDF"), or any similar format, shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.

12.7 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Bank has any obligation to make any Credit Extension to a Borrower. The obligations of Borrowers to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

12.8 Confidentiality. In handling any confidential information, Bank and Borrowers and all employees and agents of each such party shall exercise the same degree of care that such party exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) in the case of Bank, to the subsidiaries or Affiliates of Bank or Borrower in connection with their present or prospective business relations with Borrowers, (ii) in the case of Bank, to prospective transferees or purchasers of any interest in the Credit Extensions, provided that they have entered into a comparable confidentiality agreement in favor of Borrowers and have delivered a copy to Borrowers, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar

order, (iv) in the case of Bank, as may be required in connection with the examination, audit or similar investigation of Bank and (v) as Bank may determine in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of the receiving party when disclosed to such party, or becomes part of the public domain after disclosure to such receiving party through no fault of such receiving party; or (b) is disclosed to the receiving party by a third party, provided such receiving party does not have actual knowledge that such third party is prohibited from disclosing such information.

13. CO-BORROWER PROVISIONS.

13.1 Primary Obligation. This Agreement is a primary and original obligation of each Borrower and shall remain in effect notwithstanding future changes in conditions, including any change of law or any invalidity or irregularity in the creation or acquisition of any Obligations or in the execution or delivery of any agreement between Bank and any Borrower. Each Borrower shall be liable for existing and future Obligations as fully as if all of all Credit Extensions were advanced to such Borrower. Bank may rely on any certificate or representation made by any Borrower as made on behalf of, and binding on, all Borrowers, including without limitation Disbursement Request Forms, Borrowing Base Certificates and Compliance Certificates.

13.2 Enforcement of Rights. Borrowers are jointly and severally liable for the Obligations and Bank may proceed against one or more of the Borrowers to enforce the Obligations without waiving its right to proceed against any of the other Borrowers.

13.3 Borrowers as Agents. Each Borrower appoints the other Borrower as its agent with all necessary power and authority to give and receive notices, certificates or demands for and on behalf of both Borrowers, to act as disbursing agent for receipt of any Credit Extensions on behalf of each Borrower and to apply to Bank on behalf of each Borrower for Credit Extensions, any waivers and any consents. This authorization cannot be revoked, and Bank need not inquire as to each Borrower's authority to act for or on behalf of another Borrower.

13.4 Subrogation and Similar Rights. Notwithstanding any other provision of this Agreement or any other Loan Document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating the Borrower to the rights of Bank under the Loan Documents) to seek contribution, indemnification, or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by the Borrower with respect to the Obligations in connection with the Loan Documents or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by the Borrower with respect to the Obligations in connection with the Loan Documents or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section 14.4 shall be null and void. If any payment is made to a Borrower in contravention of this Section 14.4, such Borrower shall hold such payment in trust for Bank and such payment shall be promptly delivered to Bank for application to the Obligations, whether matured or unmatured.

13.5 Waivers of Notice. Except as otherwise provided in this Agreement, each Borrower waives notice of acceptance hereof; notice of the existence, creation or acquisition of any of the Obligations; notice of an Event of Default; notice of the amount of the Obligations outstanding at any time; notice of intent to accelerate; notice of acceleration; notice of any adverse change in the financial condition of any other Borrower or of any other fact that might increase the Borrower's risk; presentment for payment; demand; protest and notice thereof as to any instrument; default; and all other notices and demands to which the Borrower would otherwise be entitled. Each Borrower waives any defense arising from any defense of any other Borrower, or by reason of the cessation from any cause whatsoever of the liability of any other Borrower. Bank's failure at any time to require strict performance by any Borrower of any provision of the Loan Documents shall not waive, alter or diminish any right of Bank thereafter to demand strict compliance and performance therewith. Nothing contained herein shall prevent Bank from foreclosing on the Lien of any deed of trust, mortgage or other security instrument, or exercising any rights available thereunder, and the exercise of any such rights shall not constitute a legal or equitable discharge of any Borrower. Each Borrower also waives any defense arising from any act or omission of Bank that changes the scope of the Borrower's risks hereunder.

13.6 Subrogation Defenses. Each Borrower hereby waives any defense based on impairment or destruction of its subrogation or other rights against any other Borrower and waives all benefits which might otherwise be available to it under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849, 2850, 2899, and 3433 and California Code of Civil Procedure Sections 580a, 580b; 580d and 726, as those statutory provisions are now in effect and hereafter amended, and under any other similar statutes now and hereafter in effect.

13.7 Right to Settle, Release.

(a) The liability of Borrowers hereunder shall not be diminished by (i) any agreement, understanding or representation that any of the Obligations is or was to be guaranteed by another Person or secured by other property, or (ii) any release or unenforceability, whether partial or total, of rights, if any, which Bank may now or hereafter have against any other Person, including another Borrower, or property with respect to any of the Obligations.

(b) Without affecting the liability of any Borrower hereunder, Bank may (i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Obligations with respect to a Borrower, (ii) grant other indulgences to a Borrower in respect of the Obligations, (iii) modify in any manner any documents relating to the Obligations with respect to a Borrower, (iv) release, surrender or exchange any deposits or other property securing the Obligations, whether pledged by a Borrower or any other Person, or (v) compromise, settle, renew, or extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any guarantor, endorser or other Person who is now or may hereafter be liable with respect to any of the Obligations.

13.8 Subordination. All indebtedness of a Borrower now or hereafter arising held by another Borrower is subordinated to the Obligations and the Borrower holding the indebtedness shall take all actions reasonably requested by Lender to effect, to enforce and to give notice of such subordination.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal
Title: CEO

OBALON THERAPEUTICS, LLC

By: /s/ Andrew Rasdal
Title: CEO

SQUARE 1 BANK

By: /s/ Michael Fulton
Title: Michael Fulton

[Signature Page to Loan and Security Agreement]

EXHIBIT A

DEFINITIONS

“Accounts” means all presently existing and hereafter arising accounts, contract rights, payment intangibles and all other forms of obligations owing to Borrowers arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrowers and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrowers and Borrowers’ Books relating to any of the foregoing.

“Affiliate” means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person’s senior executive officers, directors, and general partners.

“Authorized Officer” means someone designated as such in the corporate resolution provided by each Borrower to Bank in which this Agreement and the transactions contemplated hereunder are authorized by such Borrower’s board of directors. If a Borrower provides subsequent corporate resolutions to Bank after the Closing Date, the individual(s) designated as “Authorized Officer(s)” in the most-recently provided resolution shall be the only “Authorized Officers” for purposes of this Agreement.

“Availability End Date” means June 14, 2014.

“Bank Expenses” means all reasonable costs or expenses (including reasonable attorneys’ fees and expenses, whether generated in-house or by outside counsel) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable Collateral audit fees; and Bank’s reasonable attorneys’ fees and expenses (whether generated in-house or by outside counsel) incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

“Borrower’s Books” means all of a Borrower’s books and records including: ledgers; records concerning such Borrower’s assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks in the State of North Carolina are authorized or required to close.

“Cash” means unrestricted cash and cash equivalents.

“Change in Control” shall mean a transaction other than a bona fide equity financing or series of financings on terms and from investors reasonably acceptable to Bank in which any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the “beneficial owner” (as defined in Rule 13d3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then

outstanding of a Borrower ordinarily entitled to vote in the election of directors, empowering such “person” or “group” to elect a majority of the Board of Directors of a Borrower, who did not have such power before such transaction.

“Closing Date” means the date of this Agreement.

“Code” means the California Uniform Commercial Code as amended or supplemented from time to time.

“Collateral” means the property described on Exhibit B attached hereto and all Negotiable Collateral to the extent not described on Exhibit B, except to the extent any such property (i) is nonassignable by its terms without the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, §9406 and §9408 of the Code), (ii) the granting of a security interest therein is contrary to applicable law, provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral, (iii) constitutes the capital stock of a controlled foreign corporation (as defined in the IRC), in excess of 65% of the voting power of all classes of capital stock of such controlled foreign corporations entitled to vote, or (iv) property (including any attachments, accessions or replacements) that is subject to a Lien that is permitted pursuant to clause (c) of the definition of Permitted Liens, if the grant of a security interest with respect to such property pursuant to this Agreement would be prohibited by the agreement creating such Permitted Lien or would otherwise constitute a default thereunder, provided, that such property will be deemed “Collateral” hereunder upon the termination and release of such Permitted Lien.

“Collateral State” means the state where the Collateral is located, which is California.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“Copyrights” means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held.

“Credit Extension” means each Term Loan or any other extension of credit by Bank, to or for the benefit of a Borrower hereunder.

“Equipment” means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which a Borrower has any interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

“Event of Default” has the meaning assigned in Article 8.

“GAAP” means generally accepted accounting principles, consistently applied, as in effect from time to time in the United States.

“Indebtedness” means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, and (d) all Contingent Obligations, including but not limited to any sublimit contained herein.

“Insolvency Proceeding” means any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means all of a Borrower’s right, title, and interest in and to the following:

(a) Copyrights, Trademarks and Patents;

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to a Borrower now or hereafter existing, created, acquired or held;

(d) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(e) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(f) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(g) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

“Inventory” means all present and future inventory in which a Borrower has any interest.

“Investment” means any beneficial ownership of (including stock, partnership or limited liability company interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

“Investment Agreement” means, collectively, a Borrower’s stock purchase and other agreement(s) pursuant to which such Borrower most recently issued its preferred stock.

“IRC” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“Letter of Credit” means a commercial or standby letter of credit or similar undertaking issued by Bank at Parent’s request.

“Lien” means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

“Loan Documents” means, collectively, this Agreement, any note or notes executed by a Borrower, and any other document, instrument or agreement entered into in connection with this Agreement, all as amended or extended from time to time.

“Material Adverse Effect” means a material adverse effect on (i) the operations, business or financial condition of a Borrower and its Subsidiaries taken as a whole, (ii) the ability of a Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents, or (iii) a Borrower’s interest in, or the value, perfection or priority of Bank’s security interest in the Collateral.

“Negotiable Collateral” means all of a Borrower’s present and future letters of credit of which it is a beneficiary, drafts, instruments (including promissory notes), securities, documents of title, and chattel paper, and each Borrower’s Books relating to any of the foregoing.

“Obligations” means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrowers pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from a Borrower to others that Bank may have obtained by assignment or otherwise.

“Parent” means Obalon Therapeutics, Inc.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Periodic Payments” means all installments or similar recurring payments that a Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrowers and Bank.

“Permitted Indebtedness” means:

- (a) Indebtedness of Borrowers in favor of Bank arising under this Agreement or any other Loan Document;
- (b) Indebtedness existing on the Closing Date and disclosed in the Schedule;
- (c) Indebtedness not to exceed \$250,000 in the aggregate in any fiscal year of Borrowers secured by a lien described in clause (c) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed at the time it is incurred the lesser of the cost or fair market value of the property financed with such Indebtedness;
- (d) Subordinated Debt;
- (e) Indebtedness to trade creditors incurred in the ordinary course of business; and
- (f) Extensions, refinancings and renewals of any items of Permitted Indebtedness, provided that the principal amount is not increased or the terms modified to impose more burdensome terms upon a Borrower or its Subsidiary, as the case may be.

“Permitted Investment” means:

- (a) Investments existing on the Closing Date disclosed in the Schedule;
- (b) (i) Marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (iii) Bank’s certificates of deposit maturing no more than one year from the date of investment therein; (iv) Bank’s money market accounts, (v) Investments in regular deposit or checking accounts held with Bank or subject to a control agreement in favor of Bank, and (vi) Investments consistent with any investment policy adopted by a Borrower’s board of directors;
- (c) Repurchases of stock from former employees or directors of a Borrower under the terms of applicable repurchase agreements (i) in an aggregate amount not to exceed \$500,000 in any fiscal year, provided that no Event of Default has occurred, is continuing or would exist after giving effect to the repurchases, or (ii) in any amount where the consideration for the repurchase is the cancellation of indebtedness owed by such former employees to such Borrower regardless of whether an Event of Default exists;
- (d) Investments accepted in connection with Permitted Transfers;

-
- (e) Investments of Subsidiaries in or to other Subsidiaries or a Borrower and Investments by a Borrower in Subsidiaries not to exceed \$250,000 in the aggregate in any fiscal year;
- (f) Investments not to exceed \$250,000 outstanding in the aggregate at any time consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of a Borrower or its Subsidiaries pursuant to employee stock purchase plan agreements approved by a Borrower's Board of Directors;
- (g) Investments in unfinanced capital expenditures in any fiscal year, not to exceed \$250,000;
- (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of a Borrower's business;
- (i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, provided that this subparagraph (h) shall not apply to Investments of a Borrower in any Subsidiary;
- (j) Joint ventures or strategic alliances in the ordinary course of a Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash Investments by Borrowers do not exceed \$250,000 in the aggregate in any fiscal year; and
- (k) Investments permitted under Section 7.3.

"Permitted Liens" means the following:

- (a) Any Liens existing on the Closing Date and disclosed in the Schedule (excluding Liens to be satisfied with the proceeds of the Credit Extensions) or arising under this Agreement, the other Loan Documents, or any other agreement in favor of Bank;
- (b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and for which the relevant Borrower maintains adequate reserves;
- (c) Liens not to exceed \$250,000 in the aggregate in any fiscal year (i) upon or in any Equipment (other than Equipment financed by a Credit Extension) acquired or held by a Borrower or any of its Subsidiaries to secure the purchase price of such Equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such Equipment, or (ii) existing on such Equipment at the time of its acquisition, in each case provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such Equipment;
- (d) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (c) above, provided

that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase;

(e) Liens securing Subordinated Debt; and

(f) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Sections 8.4 (attachment) or 8.7 (judgments); and

(g) Liens in favor of other financial institutions arising in connection with a Borrower's deposit accounts held at such institutions to secure standard fees for deposit services charged by, but not financing made available by such institutions, provided that Bank has a perfected security interest in the amounts held in such deposit accounts.

"Permitted Transfer" means the conveyance, sale, lease, transfer or disposition by a Borrower or any Subsidiary of:

(a) Cash in the ordinary course of Borrower's business or that is otherwise permitted to be transferred pursuant to the terms of this Agreement;

(b) Inventory in the ordinary course of business;

(c) licenses and similar arrangements for the use of the property of a Borrower or its Subsidiaries in the ordinary course of business;

(d) worn-out, surplus or obsolete Equipment not financed with the proceeds of Credit Extensions;

(e) grants of security interests and other Liens that constitute Permitted Liens and

(f) other assets of Borrowers or their Subsidiaries that do not in the aggregate exceed \$250,000 during any fiscal year.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

"Prime Rate" means the variable rate of interest, per annum, most recently announced by Bank, as its "prime rate," whether or not such announced rate is the lowest rate available from Bank.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, Vice President of Finance and the Controller of a Borrower; as well as any other officer or employee identified as an Authorized Officer in the corporate resolution delivered by Borrower to Bank in connection with this Agreement.

"Schedule" means the schedule of exceptions attached hereto and approved by Bank, if any.

“Shares” means (i) sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by a Borrower in any Subsidiary of such Borrower which is not an entity organized under the laws of the United States or territory thereof, and (ii) one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by a Borrower in any Subsidiary of such Borrower which is an entity organized under the laws of the United States or any territory thereof.

“SOS Reports” means the official reports from the Secretaries of State of each Collateral State, each state where a Borrower’s chief executive office is located, each state of a Borrower’s formation and other applicable federal, state or local government offices identifying all current security interests filed in the Collateral and Liens of record as of the date of such report.

“Subordinated Debt” means any debt incurred by a Borrower that is subordinated in writing to the debt owing by such Borrower to Bank on terms reasonably acceptable to Bank (and identified as being such by the Borrower and Bank).

“Subsidiary” means any corporation, partnership or limited liability company or joint venture in which (i) any general partnership interest or (ii) more than 50% of the stock, limited liability company interest or joint venture of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by a Borrower, either directly or through an Affiliate.

“Term Loan” has the meaning assigned in Section 2.1(b).

“Term Loan Maturity Date” means December 14, 2016.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of a Borrower connected with and symbolized by such trademarks.

SECURED PARTY: **SQUARE 1 BANK**

COLLATERAL DESCRIPTION ATTACHMENT TO LOAN AND SECURITY AGREEMENT

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), financial assets, general intangibles (including patents, trademarks, copyrights, goodwill, payment intangibles, domain names and software), goods (including fixtures), instruments (including, promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

Notwithstanding the foregoing, the Collateral shall not include any of the Intellectual Property, in any medium, of any kind or nature whatsoever, now or hereafter owned or acquired or received by Borrower, or in which Borrower now holds or hereafter acquires or receives any right or interest; provided, however, that the Collateral shall include all accounts and general intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the foregoing (the "Rights to Payment").

Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of June 14, 2013, include the Intellectual Property to the extent and only to the extent necessary to permit perfection of Bank's security interest in the Rights to Payment, and further provided, however, that Bank's enforcement rights with respect to any security interest in the Intellectual Property shall be absolutely limited to the Rights to Payment only, and Bank shall have no recourse whatsoever with respect to the underlying Intellectual Property.

EXHIBIT C

LOAN ADVANCE/PAYDOWN REQUEST FORM

[Please refer to New Borrower Kit]

EXHIBIT D

COMPLIANCE CERTIFICATE

[Please refer to New Borrower Kit]

**FIRST AMENDMENT
TO
LOAN AND SECURITY AGREEMENT**

This First Amendment to Loan and Security Agreement (the “***Amendment***”), is made and entered into as of October 1, 2014, by and among SQUARE 1 BANK (“***Bank***”) and OBALON THERAPEUTICS, INC. and OBALON THERAPEUTICS, LLC (individually and collectively, “***Borrower***”).

RECITALS

Borrower and Bank are parties to that certain Loan and Security Agreement dated as of June 14, 2014 (as amended from time to time, with related documents, the “***Agreement***”). The parties desire to amend the Agreement in accordance with the terms of this Amendment.

NOW, THEREFORE, the parties agree as follows:

- 1) Section 2.1 (b) of the Agreement is hereby amended and restated, as follows:

(c) Term Loan A.

(i) Subject to and upon the terms and conditions of this Agreement, Bank agrees to make one (1) term loan to Borrower in a principal amount of Five Million Dollars (\$5,000,000) (the “Term Loan A”). The proceeds of the Term Loan A shall be used (A) first, to refinance all outstanding Term Loans (as defined immediately prior to the First Amendment Effective Date) as of the First Amendment Effective, and (B) second, for working capital purposes.

(ii) Interest shall accrue from the date of the Term Loan A at the rate specified in Section 2.3(a), and prior to the Availability End Date shall be payable monthly beginning on the first day of the month next following the Term Loan A, and continuing on the same day of each month thereafter. Any portion of the Term Loan A that is outstanding on the Availability End Date shall be payable in equal monthly installments of principal, plus all accrued interest, beginning on the date that is one month immediately following the Availability End Date, and continuing on the same day of each month thereafter through the Term Loan Maturity Date, at which time all amounts due in connection with the Term Loan A and any other amounts due under this Agreement shall be immediately due and payable. The Term Loan A, once repaid, may not be reborrowed. Borrower may prepay all or any portion of the Term Loan A without penalty or premium.

(iii) Borrower hereby requests that Bank make the Term Loan A on the First Amendment Effective Date or as soon as practicable thereafter. To document this request, Borrower shall notify Bank (which notice shall be irrevocable) by facsimile transmission to be received no later than 3:30 p.m. Eastern time on the day on which the Term Loan A is to be made. Such notice shall be substantially in the form of Exhibit C. The notice shall be signed by an Authorized Officer.

2) The following new Section 2.l(c) is hereby added to the Agreement, as follows:

(c) Term Loan B.

(i) Subject to and upon the terms and conditions of this Agreement, Bank agrees to make one (1) or more term loans to Borrower in an aggregate principal amount not to exceed Five Million Dollars (\$5,000,000) (each a "Term Loan B" and collectively the "Term Loans B", and together with the Term Loan A, the "Term Loans") at any time after Borrower's achievement of the Funding Milestone through the Availability End Date. The proceeds of the Term Loans B shall be used for general working capital purposes and for capital expenditures.

(ii) Interest shall accrue from the date of each Term Loan B at the rate specified in Section 2.3(a), and prior to the Availability End Date for the applicable Term Loan B shall be payable monthly beginning on the first day of the month next following such Term Loan B, and continuing on the same day of each month thereafter. Any Term Loans B that are outstanding on the Availability End Date shall be payable in equal monthly installments of principal, plus all accrued interest, beginning on the date that is one month immediately following the Availability End Date, and continuing on the same day of each month thereafter through the Term Loan Maturity Date, at which time all amounts due in connection with the Term Loans B and any other amounts due under this Agreement shall be immediately due and payable. Term Loans B, once repaid, may not be reborrowed. Borrower may prepay any Term Loan B without penalty or premium.

(iii) When Borrower desires to obtain a Term Loan B, Borrower shall notify Bank (which notice shall be irrevocable) by facsimile transmission to be received no later than 3:30 p.m. Eastern time on the day on which the Term Loan B is to be made. Such notice shall be substantially in the form of Exhibit C. The notice shall be signed by an Authorized Officer.

3) Section 6.2(a) of the Agreement is hereby amended and restated, as follows:

(a) Within 30 days after the last day of each month, Parent shall deliver to Bank with the monthly financial statements a Compliance Certificate certified as of the last day of the applicable month and signed by a Responsible Officer in substantially the form of Exhibit E hereto, together with a report with respect to clinical trial updates in form and substance satisfactory to Bank.

4) The following new Section 6.11 is hereby added to the Agreement, as follows:

6.11 Subsidiary Deposit Accounts. Notwithstanding anything to the contrary set forth in Section 6.6 above:

(a) Obalon Mexico, S. de R.L. de C.V. ("Obalon Mexico") shall be permitted to maintain one (1) account with ScotiaBank in an aggregate amount not to exceed \$250,000 at any time; and

(b) Obalon Italy, S.R.L. ("Obalon Italy") shall be permitted to maintain one (1) account with Intesa Sanpaolo in an aggregate amount not to exceed €25,000 at any time.

5) The following new Section 6.12 is hereby added to the Agreement, as follows:

6.12 Stock Pledges.

(a) Within 45 days following the First Amendment Effective Date (the "Pledge Date"), Borrower shall grant and pledge to Bank a perfected security interest in 65% of the stock, units or other evidence of equity ownership of Obalon Mexico, in form and substance factory to Bank. On or before the Pledge Date, the certificate or certificates for the Shares of Obalon Mexico will be delivered to Bank, accompanied by an instrument of assignment duly governing the Shares of Obalon Mexico. Borrower shall cause the books of Obalon Mexico and any transfer agent to reflect the pledge of the Shares of Obalon Mexico.

(b) On or before the Pledge Date, Borrower shall grant and pledge to Bank a perfected security interest in 65% of the stock, units or other evidence of equity ownership of Obalon Italy, in form and substance factory to Bank. On or before the Pledge Date, the certificate or certificates for the Shares of Obalon Italy will be delivered to Bank, accompanied by an instrument of assignment duly governing the Shares of Obalon Italy. Borrower shall cause the books of Obalon Italy and any transfer agent to reflect the pledge of the Shares of Obalon Italy.

6) The following defined terms are either added to, or are amended and restated in, Exhibit A to the Agreement, as follows:

"Availability End Date" means April 1, 2016; provided, however, if Borrower files a Premarket Approval application with the United States Food and Drug Administration, then the term "Availability End Date" shall mean October 1, 2016.

"Credit Extension" means the Term Loan A, each Term Loan B, or any other extension of credit by Bank, to or for the benefit of a Borrower hereunder.

"First Amendment Effective Date" means October 1, 2014.

"Funding Milestone" means Borrower's receipt of net Cash proceeds of at least \$20,000,000 (in addition to any amounts received by Borrower in connection with that certain First Amendment to Loan and Security Agreement by and among Borrower and Bank dated on the First Amendment Effective Date) from the issuance and sale of Borrower's equity securities to investors and on terms and conditions satisfactory to Bank.

"Term Loan Maturity Date" means October 1, 2018.

7) Unless otherwise defined, all initially capitalized terms in this Amendment shall be as defined in the Agreement. The Agreement, as amended hereby, shall be and remain in

full force and effect in accordance with its respective terms and hereby is ratified and confirmed in all respects. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Agreement, as in effect prior to the date hereof. Each Borrower ratifies and reaffirms the continuing effectiveness of all agreements entered into in connection with the Agreement.

- 8) Each Borrower represents and warrants that the representations and warranties contained in the Agreement are true and correct as of the date of this Amendment.
- 9) This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.
- 10) As a condition to the effectiveness of this Amendment, Bank shall have received, in form and substance satisfactory to Bank, the following:
 - (i) this Amendment, duly executed by each Borrower;
 - (j) an officer's certificate of each Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;
 - (k) a Loan Advance Request Form delivered pursuant to Section 2.1(b)(iii) of the Agreement;
 - (l) an Amended and Restated Warrant to Purchase Stock, duly executed by Borrower;
 - (m) a Second Warrant to Purchase Stock, duly executed by Borrower;
 - (n) payment of a \$35,000 facility fee, which may be debited from any of Borrower's accounts;
 - (o) payment of all Bank Expenses, including Bank's expenses for the documentation of this amendment and any related documents, and any UCC, good standing or intellectual property search or filing fees, which may be debited from any of Borrower's accounts; and
 - (p) such other documents and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal
Name: Andrew Rasdal
Title: Chief Executive Officer

OBALON THERAPEUTICS, LLC.

By: /s/ Andrew Rasdal
Name: Andrew Rasdal
Title: Chief Executive Officer

SQUARE 1 BANK

By: /s/ Evan Travis
Name: Evan Travis
Title: VP

[Signature Page to First Amendment to Loan and Security Agreement]

SECOND AMENDMENT TO LOAN AND SECURITY AGREEMENT

This Second Amendment to Loan and Security Agreement (this “Amendment”) is entered into as of September 7, 2016, by and between PACIFIC WESTERN BANK (“Bank”) and OBALON THERAPEUTICS, INC. and OBALON THERAPEUTICS, LLC (each a “Borrower” and collectively, “Borrowers”).

RECITALS

Borrowers and Bank (as successor in interest to Square 1 Bank) are parties to that certain Loan and Security Agreement dated as of June 14, 2013 (as amended from time to time including by that certain First Amendment to Loan and Security Agreement dated as of October 1, 2014, the “Agreement”). The parties desire to amend the Agreement in accordance with the terms of this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. The following defined terms in Exhibit A of the Agreement hereby are amended or restated as follows:

“Availability End Date” means March 7, 2017.

“Interest-Only End Date” means March 7, 2018.

“Second Amendment Effective Date” means September 7, 2016.

“Term Loan Maturity Date” means September 7, 2020.

“Term Loan B Milestone” means Borrowers’ receipt of FDA approval of Borrowers weight loss balloon, on or prior to the Availability End Date.

2. Section 2.1(b) of the Agreement hereby is amended and restated in its entirety to read as follows:

“(b) Term Loan A.

(i) Subject to and upon the terms and conditions of this Agreement, on the Second Amendment Effective Date, or as soon thereafter as all conditions precedent to the making thereof have been met, Bank agrees to make a term loan to Borrowers in a principal amount of \$10,000,000 (the “Term Loan A”). The proceeds of the Term Loan A shall be used to refinance all indebtedness owing from Borrower to Bank as of the Second Amendment Effective Date.

(ii) Interest shall accrue from the date of the Term Loan A at the rate specified in Section 2.3(a), and prior to the Interest-Only End Date shall be payable monthly beginning on the first day of the month next following the Term Loan A, and continuing on the same day of each month thereafter. Any portion of the Term Loan A that is outstanding on the Interest-Only End Date shall be payable in equal monthly installments of principal, plus all

accrued interest, beginning on April 7, 2018, and continuing on the same day of each month thereafter through the Term Loan Maturity Date, at which time all amounts due in connection with the Term Loan A and any other amounts due under this Agreement shall be immediately due and payable. The Term Loan A, once repaid, may not be reborrowed. Borrowers may prepay all or any portion of the Term Loan A without penalty or premium.

(iii) Borrowers hereby request that Bank make the Term Loan A on the Second Amendment Effective Date or as soon as practicable thereafter. To document this request, Borrowers shall notify Bank (which notice shall be irrevocable) by facsimile transmission to be received no later than 3:30 p.m. Eastern time on the day on which the Term Loan A is to be made. Such notice shall be substantially in the form of Exhibit C. The notice shall be signed by an Authorized Officer.”

3. Section 2.1(c) of the Agreement hereby is amended and restated in its entirety to read as follows:

“(c) Term Loans B.

(i) Subject to and upon the terms and conditions of this Agreement, Bank agrees to make one (1) or more term loans to Borrowers in an aggregate principal amount not to exceed \$5,000,000 (each a “Term Loan B” and collectively the “Term Loans B”, and together with the Term Loan A, the “Term Loans”) at any time after Borrowers’ achievement of the Term Loan B Milestone through the Availability End Date. The proceeds of the Term Loans B shall be used for general working capital purposes and for capital expenditures.

(ii) Interest shall accrue from the date of each Term Loan B at the rate specified in Section 2.3(a), and prior to the Interest-Only End Date shall be payable monthly beginning on the first day of the month next following such Term Loan B, and continuing on the same day of each month thereafter. Any Term Loans B that are outstanding on the Interest-Only End Date shall be payable in equal monthly installments of principal, plus all accrued interest, beginning on April 7, 2018, and continuing on the same day of each month thereafter through the Term Loan Maturity Date, at which time all amounts due in connection with the Term Loans B and any other amounts due under this Agreement shall be immediately due and payable. Term Loans B, once repaid, may not be reborrowed. Borrowers may prepay any Term Loan B without penalty or premium.

(iii) When Borrowers desire to obtain a Term Loan B, Borrowers shall notify Bank (which notice shall be irrevocable) by facsimile transmission to be received no later than 3:30 p.m. Eastern time on the day on which the Term Loan B is to be made. Such notice shall be substantially in the form of Exhibit C. The notice shall be signed by an Authorized Officer.”

4. Section 2.3(a) of the Agreement hereby is amended and restated in its entirety to read as follows:

“(a) Interest Rate for Term Loans. Except as set forth in Section 2.3(b), the Term Loans shall bear interest, on the outstanding daily balance thereof, at a variable annual rate equal to the greater of (A) 1.50% above the Prime Rate then in effect, or (B) 5.00%.”

5. Section 6.6 of the Agreement hereby is amended and restated in its entirety to read as follows:

“**6.6 Accounts.** Borrowers shall maintain 50% of their deposits, transaction accounts, and primary investment accounts with Bank and its affiliates, should Borrowers’ total cash be greater than \$15,000,000. Borrowers shall maintain 100% of their deposits, transaction accounts, and primary investment accounts with Bank should Borrowers’ total cash be less than \$15,000,000.”

6. Section 6.7 of the Agreement hereby is amended and restated in its entirety to read as follows:

“**6.7 Term Sheet Milestone.** If Bank has made the initial Term Loan B to Borrowers, on or prior to the date on which Borrowers’ total cash at Bank is less than \$5,000,000, Borrowers shall have delivered evidence, satisfactory to Bank in its sole but reasonable discretion, that Borrowers have received a signed and accepted term sheet on terms and from investors reasonably acceptable to Bank for the sale of Borrowers’ equity securities, with net cash proceeds in an amount reasonably acceptable to Bank (as determined by Bank in its sole discretion), to be funded no later than 30 days after Borrowers’ receipt of such signed and accepted term sheet.”

7. No course of dealing on the part of Bank or its officers, nor any failure or delay in the exercise of any right by Bank, shall operate as a waiver thereof, and any single or partial exercise of any such right shall not preclude any later exercise of any such right. Bank’s failure at any time to require strict performance by a Borrower of any provision shall not affect any right of Bank thereafter to demand strict compliance and performance. Any suspension or waiver of a right must be in writing signed by an officer of Bank.
8. Unless otherwise defined, all initially capitalized terms in this Amendment shall be as defined in the Agreement. The Agreement, as amended hereby, shall be and remain in full force and effect in accordance with its respective terms and hereby is ratified and confirmed in all respects. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Agreement, as in effect prior to the date hereof.
9. Each Borrower represents and warrants that the Representations and Warranties contained in the Agreement are true and correct in all material respects as of the date of this Amendment (other than Representations and Warranties which (i) are already qualified by materiality, in which case such Representations and Warranties shall be true and correct in all respects or (ii) refer to an specific date or time period, in which case such Representations and Warranties shall be true and correct as of such date or with respect to such time period), and that no Event of Default has occurred and is continuing.
10. As a condition to the effectiveness of this Amendment, Bank shall have received, in form and substance satisfactory to Bank, the following:
- (a) this Amendment, duly executed by each Borrower;

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- (b) a third warrant to purchase stock in form and substance satisfactory to Bank, which Bank and Borrowers acknowledge shall become excisable upon Bank making the initial Term B Loan to Borrowers;
 - (c) a Certificate of the Secretary of each Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Amendment;
 - (d) a facility fee in the amount of \$15,000, which may be debited from any of Borrowers' accounts;
 - (e) all reasonable Bank Expenses incurred through the date of this Amendment, which may be debited from any of Borrowers' accounts; and
 - (f) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.
11. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

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IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

OBALON THERAPEUTICS, INC.

By: /s/ Andrew Rasdal
Title: Chief Executive Officer

OBALON THERAPEUTICS, LLC

By: /s/ Andrew Rasdal
Title: Chief Executive Officer

BANK

By: /s/ Sean Noonan
Title: Vice President

[Signature Page to Second Amendment to Loan & Security Agreement]

August 4, 2016

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Ladies and Gentlemen:

We have read Obalon Therapeutics, Inc.'s statements included under the caption "Change in Accountants" in its Form S-1 filed on August 4, 2016, and are in agreement with the statements contained in the second paragraph and the first sentence of the fourth paragraph within this caption. We have no basis to agree or disagree with other statements of the registrant contained therein.

/s/ Ernst & Young LLP

List of Significant Subsidiaries of Obalon Therapeutics, Inc.

The Registrant does not have any “significant subsidiaries,” as defined under 1-02(w) of Regulation S-X.

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Obalon Therapeutics, Inc.:

We consent to the use of our report included herein and to the reference to our firm under the heading “Experts” in the prospectus.

/s/ KPMG LLP

San Diego, California
September 8, 2016