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

FORM 10-Q

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

For the Quarterly Period Ended June 30, 2012

Commission File Number: 001-35060

PACIRA PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

51-0619477
(I.R.S. Employer
Identification No.)

5 Sylvan Way, Suite 100
Parsippany, New Jersey 07054
(Address of Principal Executive Offices) (Zip Code)

(973) 254-3560
(Registrant's Telephone Number, Including Area Code)

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

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

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.

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

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

As of August 1, 2012, 32,419,407 shares of the registrant's common stock, \$0.001 par value per share, were outstanding.

**PACIRA PHARMACEUTICALS, INC.
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

**PACIRA PHARMACEUTICALS, INC.
CONSOLIDATED BALANCE SHEETS**

(Unaudited)

(In thousands, except share and per share amounts)

	<u>June 30, 2012</u>	<u>December 31, 2011</u> (Note 2)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 21,445	\$ 46,168
Restricted cash	1,847	1,299
Short-term investments	62,840	29,985
Accounts receivable, net of allowances	3,214	2,113
Inventories	9,299	1,245
Prepaid expenses and other current assets	1,431	1,839
Total current assets	<u>100,076</u>	<u>82,649</u>
Fixed assets, net	29,966	25,103
Goodwill	7,992	—
Intangibles, net	4,233	5,259
Other assets	586	479
Total assets	<u>\$ 142,853</u>	<u>\$ 113,490</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 440	\$ 3,440
Accrued expenses	9,279	7,159
Current portion of royalty interest obligation	1,164	1,219
Current portion of deferred revenue	4,353	13,054
Current portion of long-term debt	—	7,039
Total current liabilities	<u>15,236</u>	<u>31,911</u>
Long-term debt	24,670	18,537
Royalty interest obligation	1,270	1,537
Deferred revenue	4,634	8,416

Contingent purchase liability	—	2,042
Other liabilities	2,538	2,778
Total liabilities	48,348	65,221
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value \$0.001; 5,000,000 shares authorized, none issued and outstanding	—	—
Common stock, par value \$0.001 par value; 250,000,000 shares authorized, 32,420,472 shares issued and 32,419,407 shares outstanding at June 30, 2012; 25,340,103 shares issued and 25,339,038 shares outstanding at December 31, 2011	32	25
Additional paid-in capital	294,806	228,470
Accumulated deficit	(200,429)	(180,239)
Accumulated other comprehensive income	98	15
Treasury stock at cost, 1,065 shares	(2)	(2)
Total stockholders' equity	94,505	48,269
Total liabilities and stockholders' equity	\$ 142,853	\$ 113,490

See accompanying condensed notes to consolidated financial statements.

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PACIRA PHARMACEUTICALS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)
(In thousands, except share and per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
Revenues:				
Net product sales	\$ 4,981	\$ 1,469	\$ 5,427	\$ 3,185
Collaborative licensing and development revenue	6,600	1,283	13,090	2,493
Royalty revenue	763	884	1,631	1,822
Total revenues	12,344	3,636	20,148	7,500
Operating expenses:				
Cost of revenues	6,685	3,115	13,180	6,781
Research and development	1,872	4,586	3,166	8,382
Selling, general and administrative	10,413	4,466	21,565	7,988
Total operating expenses	18,970	12,167	37,911	23,151
Loss from operations	(6,626)	(8,531)	(17,763)	(15,651)
Other (expense) income:				
Interest income	68	37	131	65
Interest expense	(494)	(676)	(1,008)	(3,157)
Loss on early extinguishment of debt	(1,062)	—	(1,062)	—
Royalty interest obligation	(143)	429	(425)	118
Other, net	(39)	(22)	(63)	88
Total other expense, net	(1,670)	(232)	(2,427)	(2,886)
Net loss	\$ (8,296)	\$ (8,763)	\$ (20,190)	\$ (18,537)
Net loss per share:				
Basic and diluted net loss per common share	\$ (0.27)	\$ (0.51)	\$ (0.72)	\$ (1.36)
Weighted average common shares outstanding:				
Basic and diluted	30,953,635	17,233,146	28,160,471	13,623,668

See accompanying condensed notes to consolidated financial statements.

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CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

(Unaudited)
(In thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
Net loss	\$ (8,296)	\$ (8,763)	\$ (20,190)	\$ (18,537)
Other comprehensive income:				
Net unrealized gain on investments	81	—	83	—
Total other comprehensive income	81	—	83	—
Comprehensive loss	\$ (8,215)	\$ (8,763)	\$ (20,107)	\$ (18,537)

See accompanying condensed notes to consolidated financial statements.

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PACIRA PHARMACEUTICALS, INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
For the Six Months Ended June 30, 2012
(Unaudited)
(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Treasury Stock	Accumulated Other Comprehensive Income	Total
	Shares	Amount					
Balances at December 31, 2011	25,339	\$ 25	\$ 228,470	\$ (180,239)	\$ (2)	\$ 15	\$ 48,269
Exercise of stock options	180	—	383	—	—	—	383
Stock-based compensation	—	—	1,751	—	—	—	1,751
Unrealized gain on short-term investments	—	—	—	—	—	83	83
Follow-on offering, net of issuance costs	6,900	7	62,848	—	—	—	62,855
Debt discount on issuance of warrants	—	—	1,354	—	—	—	1,354
Net loss	—	—	—	(20,190)	—	—	(20,190)
Balances at June 30, 2012	32,419	\$ 32	\$ 294,806	\$ (200,429)	\$ (2)	\$ 98	\$ 94,505

See accompanying condensed notes to consolidated financial statements.

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PACIRA PHARMACEUTICALS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2012	2011
Operating activities:		
Net loss	\$ (20,190)	\$ (18,537)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,785	2,001
Amortization of unfavorable lease obligation and deferred financing costs	(116)	21
Amortization of end of term fee and warrants	310	1,291
Loss on extinguishment of debt	1,062	—
Stock-based compensation	1,751	1,523
Changes in operating assets and liabilities:		
Restricted cash	(548)	(755)

Accounts receivable, net of allowances	(1,101)	136
Inventories	(8,054)	(279)
Prepaid expenses and other assets	430	(659)
Accounts payable and accrued expenses	(1,256)	77
Royalty interest obligation	(322)	(892)
Other liabilities	(42)	696
Deferred revenue	(12,483)	467
Net cash used in operating activities	(37,774)	(14,910)
Investing activities:		
Purchase of fixed assets	(7,267)	(2,035)
Proceeds from sales of fixed assets	1	—
Net purchases of short-term investments	(32,772)	(19,755)
Payment of contingent consideration	(10,034)	—
Net cash used in investing activities	(50,072)	(21,790)
Financing activities:		
Proceeds from exercise of stock options	383	1
Proceeds from borrowings on long-term debt	27,500	—
Proceeds from offering, net	62,855	38,016
Repayment of debt	(26,250)	—
Payment of debt issuance and financing costs	(1,365)	—
Net cash provided by financing activities	63,123	38,017
Net (decrease) increase in cash and cash equivalents	(24,723)	1,317
Cash and cash equivalents, beginning of period	46,168	26,133
Cash and cash equivalents, end of period	\$ 21,445	\$ 27,450
Supplemental cash flow information		
Cash paid for interest, including royalty interest obligation	\$ 2,282	\$ 2,360
Initial public offering costs paid in 2010	—	907
Non cash investing and financing activities:		
Conversion of notes to common stock	—	51,222
Conversion of preferred stock to common stock	—	6
Value of warrants issued with debt	1,354	—

See accompanying condensed notes to consolidated financial statements.

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PACIRA PHARMACEUTICALS, INC.
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

Note 1—DESCRIPTION OF BUSINESS

Pacira Pharmaceuticals, Inc. and its subsidiaries (collectively, the “Company” or “Pacira”) is an emerging specialty pharmaceutical company focused on the development, commercialization and manufacture of proprietary pharmaceutical products, based on its proprietary DepoFoam extended release drug delivery technology, for use in hospitals and ambulatory surgery centers. The Company’s lead product EXPAREL[®], which consists of bupivacaine encapsulated in DepoFoam, was approved by the United States Food and Drug Administration, or FDA, on October 28, 2011. The Company commercially launched EXPAREL in April 2012. DepoFoam is also the basis for the Company’s other FDA-approved commercial product, DepoCyt(e), which the Company manufactures for its commercial partners.

Pacira Pharmaceuticals, Inc. is the holding company for the California operating subsidiary of the same name, also referred to as PPI-California, which was acquired from Skyepharma Holding, Inc., or Skyepharma, in March 2007, referred to herein as the Acquisition.

Note 2—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP, and in accordance with the rules and regulations of the U.S. Securities and Exchange Commission, or SEC, for interim reporting. Pursuant to these rules and regulations, certain information and footnote disclosures normally included in complete annual financial statements have been condensed or omitted. Therefore, these interim financial statements should be read in conjunction with the audited annual consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2011, filed with the SEC on March 27, 2012.

The consolidated financial statements at June 30, 2012 and for the three and six months ended June 30, 2012 and 2011 are unaudited, but include all

adjustments (consisting of only normal recurring adjustments) which, in the opinion of management, are necessary to present fairly the financial information set forth herein in accordance with GAAP. The balance sheet as of December 31, 2011 has been derived from the audited financial statements included in the Form 10-K for that year. Certain reclassifications were made to conform to the current presentation. Specifically, for the three and six months ended June 30, 2011, the Company reclassified \$0.2 million and \$0.5 million, respectively, of stock-based compensation expense from selling, general and administrative expense to research and development expense. This reclassification had no impact on net loss or stockholders' equity as previously reported. The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation.

The results of operations for the interim periods are not necessarily indicative of results that may be expected for any other interim period or for the full year. The Company has incurred losses and negative operating cash flow since inception and future losses are anticipated.

Liquidity

In April 2012, the Company sold 6,900,000 shares of common stock at a price of \$9.75 per share in a registered public offering, which includes the underwriter's exercise of the overallotment option. The Company raised approximately \$62.9 million in net proceeds after deducting underwriting discounts and offering expenses.

Management believes that the Company's existing cash and cash equivalents, short-term investments and revenue from product sales will be sufficient to enable the Company to meet its planned operating expenses, capital expenditure requirements and service its indebtedness through the next twelve months. However, changing circumstances may cause the Company to expend cash significantly faster than currently anticipated, and the Company may need to spend more cash than currently expected because of circumstances beyond its control. The Company expects to continue to incur substantial additional operating losses as it commercializes EXPAREL and develops and seeks regulatory approval for its product candidates.

Revenue Recognition

The Company sells EXPAREL mostly to wholesalers based on orders of the product from hospitals and other end user customers such as ambulatory surgery centers and doctors. The Company recognizes revenue when there is persuasive evidence that an arrangement exists, title has passed, collection is reasonably assured and the price is fixed or determinable. Sales to wholesalers provide for selling prices that are fixed on the date of sale. EXPAREL is delivered directly to the end user with the wholesaler never

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taking physical possession of the product. The Company records revenue at the time the product is delivered to the end-user.

At the time the Company recognizes revenue, it also records certain sales reserves and allowances as a reduction of revenue. These reserves and allowances include a prompt payment reserve, product return reserve, volume rebate discount, chargeback reserve and wholesaler service fee. Due to estimates and assumptions inherent in determining some of the sales reserves, the actual amount of volume rebates, chargebacks and returns may be different from estimates, at which time the Company would adjust reserves accordingly.

Prompt pay reserve

The prompt payment reserve is based upon discounts offered to wholesalers as an incentive to meet certain payment terms. The Company accounts for these discounts at the time the sale is made and reduces accounts receivable accordingly.

Returns reserve

The Company allows customers to return product that is damaged or received in error. In addition, the Company allows for product to be returned beginning six months prior to, and twelve months following product expiration. As EXPAREL is a new commercially available product, the Company is estimating its sales return reserve based on return history from other hospital-based products with similar distribution models, which management believes is the best estimate of the anticipated product to be returned. The returns reserve is recorded at the time of sale as a reduction to sales and an increase in returns liability.

Volume rebates and chargeback reserve

Volume rebates and chargeback reserve are based upon contracted discounts and promotional offers the Company provides to certain end users, including hospitals and ambulatory surgery centers, who are members of group purchasing organizations. The volume rebates and chargeback reserve are recorded as a reduction to sales and a customer payable and reduction to receivables, respectively.

Wholesaler fee payable

The Company's customers include major and regional wholesalers with whom the Company has contracted a fee for service based on a percentage of sales. This fee for service is recorded as a reduction to gross sales and a liability is established at the time the sale is recorded based on the contracted percentage.

Reserve for doubtful accounts

The Company evaluates accounts receivable to determine if a provision for an allowance for doubtful accounts is appropriate. The Company's sales to date are primarily to established customers. As of June 30, 2012, the accounts receivable was considered collectible and no allowance for doubtful accounts was recorded.

Concentration of Major Customers

The Company's customers are its commercial, distribution and licensing partners and major and regional wholesalers. The table below includes the percentage of revenue comprised by the three largest customers in each year presented.

	Three Months Ended		Six Months Ended	
	June 30, 2012	June 30, 2011	June 30, 2012	June 30, 2011
Largest customer	48%	45%	58%	43%
Second largest customer	17%	21%	13%	22%
Third largest customer	11%	19%	10%	19%
	<u>76%</u>	<u>85%</u>	<u>81%</u>	<u>84%</u>

No other individual customer accounted for more than 10% of the Company's revenues for these periods. The Company is dependent on its commercial partners to market and sell DepoCyt(e), from which a substantial portion of its revenues is derived.

On January 3, 2012, EKR Therapeutics, Inc., or EKR, delivered a notice to the Company to terminate the licensing, distribution and marketing agreement relating to DepoDur. Pursuant to the terms of the agreement, the termination of the agreement is effective 180 days from the date of the notice, or July 1, 2012. The associated supply agreement also terminates concurrently with the termination of the licensing, distribution and marketing agreement. Both parties agreed to terminate the agreements effective June 8, 2012. As a result of the termination, the Company recognized any unamortized deferred revenue relating to the agreement on a straight-line basis through the termination date in June 2012. During the three and six months ended June 30, 2012, the Company recognized \$5.8 million and \$11.6 million, respectively, of milestone revenue relating to these EKR agreements in collaborative licensing and development revenue on the consolidated statements of operations.

On June 29, 2012, the Company received a notice of termination from Novo Nordisk AS, or Novo, of the Development and License Agreement, dated January 14, 2011. Pursuant to the terms of the agreement, the termination of the agreement is effective 60 days from the date of the notice, or August 28, 2012. Under the agreement, the Company granted exclusive rights to Novo under

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certain of the Company's patents and know-how to develop, manufacture and commercialize formulations of a Novo proprietary drug using the Company's DepoFoam drug delivery technology. The agreement was terminated due to Novo's decision to discontinue development of the proprietary drug subject to the agreement. As a result of the termination, the Company is recognizing any unamortized deferred revenue relating to the agreement on a straight-line basis through the termination date in August 2012.

Note 3— FINANCIAL INSTRUMENTS

Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction. To increase consistency and comparability in fair value measurements, the Financial Accounting Standards Board, or FASB, established a three-level hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels are:

- Level 1—Values are unadjusted quoted prices for identical assets and liabilities in active markets.
- Level 2—Inputs include quoted prices for similar assets or liabilities in active markets, quoted prices from those willing to trade in markets that are not active, or other inputs that are observable or can be corroborated by market data for the term of the instrument.
- Level 3—Certain inputs are unobservable (supported by little or no market activity) and significant to the fair value measurement.

The carrying value of financial instruments including cash and cash equivalents, restricted cash, accounts receivable and accounts payable approximate their respective fair values due to the short-term maturities of these instruments and debts. The fair value of the Company's long-term debt is calculated using a discounted cash flow analysis factoring in current market borrowing rates for similar types of borrowing arrangements under a similar credit profile. The carrying amount and fair value of the Company's long-term debt is as follows (in thousands):

Financial Liabilities	Carrying Value	Fair Value Measurements Using		
		Level 1	Level 2	Level 3
June 30, 2012				
Long-term debt- current and long-term *	\$ 27,500	\$ —	\$ 27,500	\$ —

December 31, 2011

Long-term debt- current and long-term	\$	26,250	\$	—	\$	27,929	\$	—
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*The carrying value of the long-term debt at June 30, 2012 approximates its fair value since the interest rate approximates the current market rate for similar instruments.

Short-term investments consist of investment grade commercial paper, asset-backed securities collateralized by credit card receivables, and corporate bonds with initial maturities of greater than three months at the date of purchase but less than one year. The net unrealized gains (losses) from the Company's short-term investments are captured in other comprehensive gain (loss). All of the Company's short-term investments are classified as available for sale investments and determined to be Level 2 instruments. The fair value of the commercial paper is measured based on a standard industry model that uses the 3-month Treasury bill rate as an observable input. The fair value of the corporate bonds and asset-backed securities is principally measured or corroborated by trade data for identical issues or that of comparable securities in which related trading activity is not sufficiently frequent to be considered a Level 1 input. At June 30, 2012, the Company had \$62.8 million invested in short-term investments which were rated A or better by Standard & Poor's and had maturities ranging from 122 to 356 days from date of purchase.

The following summarizes the Company's short-term investments at June 30, 2012 and December 31, 2011 (in thousands):

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June 30, 2012	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value (Level 2)
Debt securities:				
Commercial Paper	\$ 35,040	\$ 93	\$ —	\$ 35,133
Corporate Bonds	21,529	4	(4)	21,529
Asset-backed Securities	6,173	5	—	6,178
Total	\$ 62,742	\$ 102	\$ (4)	\$ 62,840

December 31, 2011	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value (Level 2)
Debt securities:				
US Treasury Securities	\$ 1,000	\$ —	\$ —	\$ 1,000
Commercial Paper	11,476	23	—	11,499
Corporate Bonds	17,494	2	(10)	17,486
Total	\$ 29,970	\$ 25	\$ (10)	\$ 29,985

Credit Risk

Financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents, short-term investments and accounts receivable. The Company maintains its cash and cash equivalents with high-credit quality financial institutions. At times, such amounts may exceed Federal insured limits.

As of June 30, 2012, three customers accounted for 38%, 24% and 17% of the Company's accounts receivable. As of December 31, 2011, two customers accounted for 56% and 41% of the Company's accounts receivable. No other individual customer accounted for more than 10% of the Company's accounts receivable for these periods.

Note 4—INVENTORIES

The components of inventories were as follows (in thousands):

	June 30, 2012	December 31, 2011
Raw materials	\$ 3,339	\$ 862
Work-in-process	1,432	96
Finished goods	4,528	287
Total	\$ 9,299	\$ 1,245

Note 5—FIXED ASSETS

Fixed assets, summarized by major category, consist of the following (in thousands):

	June 30, 2012	December 31, 2011
Machinery and laboratory equipment	\$ 12,481	\$ 12,188

Computer equipment and software	1,405	1,133
Office furniture and equipment	430	352
Leasehold improvements	6,135	6,056
Construction in progress	19,656	13,656
Total	40,107	33,385
Less accumulated depreciation	(10,141)	(8,282)
Fixed assets, net	\$ 29,966	\$ 25,103

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Depreciation expense was \$0.9 million and \$0.4 million for the three months ended June 30, 2012 and 2011, respectively. Depreciation expense was \$1.8 million and \$0.9 million for the six months ended June 30, 2012 and 2011, respectively. For the three and six months ended June 30, 2012, the Company capitalized interest of \$0.5 million and \$0.9 million, respectively, on the construction of its manufacturing sites. Capitalized interest was \$0.3 million during each of the three and six months ended June 30, 2011.

Note 6—GOODWILL AND INTANGIBLE ASSETS

The Company applies Accounting Standards Codification (“ASC”) Topic 350, *Intangibles - Goodwill and Other Intangible Assets*, to record goodwill and intangible assets. In accordance with ASC 350, certain intangible assets are to be assessed periodically for impairment using fair value measurement techniques. Goodwill is tested for impairment on an annual basis as of the end of the Company’s fiscal year, or more frequently when impairment indicators arise. The Company evaluates the recoverability of intangible assets periodically and takes into account events and circumstances which indicate that impairment exists.

The Company’s goodwill as of June 30, 2012 and December 31, 2011 was \$8.0 million and \$0, respectively. Goodwill arose from the triggering in April 2012 of a contingent milestone payment to Skyepharma in connection with the Acquisition. The Acquisition was accounted for under Statement of Financial Accounting Standards 141, *Accounting for Business Combinations*, which was the effective GAAP at the Acquisition date. In connection with the Acquisition, the Company agreed to certain earn-out payments based on a percentage of net sales of EXPAREL collected and certain other yet-to-be-developed products, as well as milestone payments for EXPAREL as follows:

- (a) \$10.0 million upon first commercial sale in the United States;
- (b) \$4.0 million upon first commercial sale in a major EU country (United Kingdom, France, Germany, Italy and Spain);
- (c) \$8.0 million when annual net sales collected reach \$100.0 million;
- (d) \$8.0 million when annual net sales collected reach \$250.0 million; and
- (e) \$32.0 million when annual net sales collected reach \$500.0 million.

The first contingency was resolved in April 2012 resulting in a \$10.0 million payment to Skyepharma. The Company recorded this payment net of the \$2.0 million contingent consideration liability recognized at the time of the Acquisition resulting in \$8.0 million recorded as goodwill. Additionally, as of June 30, 2012, the Company also recorded less than \$0.1 million as goodwill for the percentage payments on net sales of EXPAREL collected. Any remaining earn-out payments will also be treated as additional cost of the Acquisition and, therefore, recorded as goodwill if and when each contingency is resolved.

Intangible assets are summarized as follows (in thousands):

	June 30, 2012	December 31, 2011	Estimated Useful Life
Core Technology			
Gross amount	\$ 2,900	\$ 2,900	9 years
Accumulated amortization	(1,691)	(1,530)	
Net	1,209	1,370	
Developed Technology			
Gross amount	11,700	11,700	7 years
Accumulated amortization	(8,775)	(7,939)	
Net	2,925	3,761	
Trademarks and trade names			
Gross amount	400	400	7 years
Accumulated amortization	(301)	(272)	
Net	99	128	
Intangible assets, net	\$ 4,233	\$ 5,259	

Amortization expense for intangibles was \$0.5 million and \$0.6 million for the three months ended June 30, 2012 and 2011, respectively. Amortization expense for intangibles was \$1.0 million and \$1.1 million for the six months ended June 30, 2012 and 2011, respectively.

The approximate amortization expense for intangibles, all of which are subject to amortization on a straight-line basis, is as

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follows (in thousands):

	Core Technology	Developed Technology	Trademarks and Tradenames	Total
2012 (remaining six months)	\$ 161	\$ 836	\$ 29	\$ 1,026
2013	322	1,671	57	2,050
2014	322	418	13	753
2015	322	—	—	322
2016	82	—	—	82
Total	\$ 1,209	\$ 2,925	\$ 99	\$ 4,233

Note 7—DEBT AND FINANCING OBLIGATIONS

The composition of the Company's debt and financing obligations is as follows (in thousands):

	June 30, 2012	December 31, 2011
Debt:		
Current portion of long-term debt	\$ —	\$ 7,039
Long-term debt	27,500	19,211
Discount on debt	(2,830)	(674)
Total debt, net of debt discount	24,670	25,576
Financing obligations:		
Current portion of royalty interest obligation	1,164	1,219
Long-term portion of royalty interest obligation	1,270	1,537
Total royalty interest obligation	2,434	2,756
Total debt and financing obligations	\$ 27,104	\$ 28,332

On May 2, 2012, the Company entered into a definitive loan and security agreement, or the Loan Agreement, with Oxford Finance LLC, or the Lender, and borrowed the principal amount of \$27.5 million, or the Loan Facility, at a fixed rate of 9.75%, with the first principal payment due December 1, 2013. Payments under the Loan Agreement are interest-only in arrears through November 30, 2013, followed by 30 equal monthly payments of principal and interest. In addition, a payment equal to 6% of the Loan Facility will be due on the final payment date, or such earlier date as specified in the Loan Agreement. This \$1.7 million end of term fee was recorded as a debt discount and is being amortized to interest expense over the term of the loan. The proceeds from the Loan Agreement were used by the Company to repay the entire \$24.2 million outstanding balance plus accrued interest, \$0.6 million end of term fee and \$0.3 million early prepayment penalty on its credit facility with Hercules Technology Growth Capital, Inc. and Hercules Technology II, L.P., as lenders, or Hercules Credit Facility. The Company recorded a loss on extinguishment of debt of \$1.1 million comprised of the remaining unamortized debt issuance costs, warrants and end of term fee, as well as the early prepayment penalty on the note issued under the Hercules Credit Facility.

The Company's obligations under the Loan Agreement are secured by a first priority security interest in substantially all of its assets, other than its intellectual property. The Company agreed not to pledge or otherwise encumber its intellectual property assets, except for permitted liens or to the extent the intellectual property constitutes royalty collateral, as such terms are defined in the Loan Agreement and except as otherwise provided in the Loan Agreement.

If the Company repays all or a portion of the Loan Facility prior to maturity, it will pay the Lender a prepayment fee based on a percentage of the then outstanding principal balance equal to: 3.00% if the prepayment occurs prior to or on the first anniversary of the funding date, 2.00% if the prepayment occurs after the first anniversary of the funding date but prior to or on the second anniversary of the funding date, or 1.00% if the prepayment occurs after the second anniversary of the funding date.

The Loan Agreement includes customary affirmative and restrictive covenants for transactions of this type and customary events of default, including the following events of default: payment defaults, breaches of covenants, judgment defaults, cross defaults to certain other contracts, the occurrence of certain events under the Company's royalty agreements, certain events with respect to

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governmental approvals if such events could cause a material adverse change, a material impairment in the perfection or priority of the Lender's security interest or in the value of the collateral, a material adverse change in the business, operations or condition of the Company or any of its subsidiaries and a material impairment of the prospect of repayment of the loans. Upon the occurrence of an event of default, a default increase in the interest rate of an additional 5.00% may be applied to the outstanding loan balance and the Lender may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Loan Agreement.

In connection with the Loan Agreement, the Company issued to the Lender warrants that are exercisable for an aggregate of 162,885 shares of its common stock at a per share exercise price of \$10.97. Each warrant may be exercised on a cashless basis in whole or in part. The warrants will terminate on the earlier of ten years from the issuance date or the closing of certain merger or consolidation transactions in which the consideration is cash or stock of a publicly traded acquirer, or a combination thereof. The value of the warrants was recorded as a debt discount and is being amortized over the term of the loan to interest expense. The fair value of the warrants was determined using Black-Scholes option model (using a discount rate of 1.96%, volatility of 69.69%, a dividend yield of 0%, and a contractual term of 10 years). The relative fair value of the warrants totaled \$1.4 million.

The Company's principal payments are due under the Loan Agreement as follows: \$0.8 million in 2013, \$10.3 million in 2014, \$11.3 million in 2015 and \$5.1 million in 2016.

Note 8—STOCKHOLDERS' EQUITY

Stock-Based Compensation

The Company recognized stock-based compensation expense in its consolidated statements of operations as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
Cost of revenues	\$ 111	\$ 31	\$ 199	\$ 114
Research and development	285	251	464	667
Selling, general and administrative	644	269	1,088	742
Total	\$ 1,040	\$ 551	\$ 1,751	\$ 1,523

Stock Incentive Plans

The Company's 2011 stock incentive plan, or 2011 Plan, previously contained an "evergreen" provision, which allowed for an increase in the number of shares authorized for issuance under the 2011 Plan on the first day of each calendar year from 2012 through 2015. On January 1, 2012, the evergreen provision increased the number of shares of common stock authorized for issuance under the 2011 Plan by 557,880 shares. On June 5, 2012, the 2011 Plan was amended, to, among other things: (i) increase the number of shares of common stock authorized for issuance under the 2011 Plan by 2,100,000, (ii) remove the evergreen provision and (iii) require stockholder approval prior to any repricing of awards granted under the 2011 Plan.

The following table contains information about the Company's plans at June 30, 2012:

Plan	Awards Reserved for Issuance	Awards Issued	Awards Available for Grant
2011 Plan	3,116,070	2,119,234	996,836
2007 Plan	2,088,467	2,088,467	—
	<u>5,204,537</u>	<u>4,207,701</u>	<u>996,836</u>

The following table summarizes the Company's stock option activity and related information for the period from December 31, 2011 to June 30, 2012:

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	Number of Shares	Weighted Average Exercise Price
Outstanding at December 31, 2011	2,337,017	\$ 3.92
Granted	1,762,500	10.75
Exercised	(180,369)	2.12
Forfeited	(68,406)	5.96
Outstanding at June 30, 2012	<u>3,850,742</u>	<u>7.09</u>

Note 9—LOSS PER SHARE

Basic net loss per share is computed by dividing net loss applicable to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted net loss per share is calculated by dividing net loss available to common stockholders by the weighted average number of common stock and dilutive common stock outstanding during the period. Potential common shares include the shares of common stock issuable upon the exercise of outstanding stock options and warrants (using the treasury stock method). Potential common shares in the diluted net loss per share computation are excluded to the extent that they would be anti-dilutive. No potentially dilutive securities are included in the computation of any diluted per share amounts as the Company reported a net loss for all periods presented.

The following table sets forth the computation of basic and diluted loss per share for the three and six months ended June 30, 2012 and 2011 (in thousands, except per share amounts):

	Three Months Ended		Six Months Ended	
	June 30, 2012	June 30, 2011	June 30, 2012	June 30, 2011
Numerator for basic and diluted loss per share				
Net loss	\$ (8,296)	\$ (8,763)	\$ (20,190)	\$ (18,537)
Denominator				
Weighted average shares of common stock outstanding	30,954	17,233	28,160	13,624
Effect of dilutive securities	—	—	—	—
Weighted average shares of common stock -diluted	30,954	17,233	28,160	13,624
Net loss per share				
Basic net loss per share of common stock	\$ (0.27)	\$ (0.51)	\$ (0.72)	\$ (1.36)
Diluted net loss per share of common stock	\$ (0.27)	\$ (0.51)	\$ (0.72)	\$ (1.36)

The stock options and warrants are excluded from the calculation of diluted loss per share because the net loss for the three and six months ended June 30, 2012 and 2011 causes such securities to be anti-dilutive. The potential dilutive effect of these securities is shown in the chart below (in thousands):

	Three Months Ended		Six Months Ended	
	June 30, 2012	June 30, 2011	June 30, 2012	June 30, 2011
Weighted average shares of common stock outstanding—basic	30,954	17,233	28,160	13,624
Stock options	1,203	1,209	1,183	1,247
Warrants	131	118	124	108
Weighted average shares of common stock -diluted	32,288	18,560	29,467	14,979

Note 10—RELATED PARTY TRANSACTIONS

In June 2011, the Company entered into an agreement with Gary Pace, a member of the Company's board of directors, to provide consulting services for manufacturing related activities. The fees payable under the agreement may not exceed \$60,000 per year. In connection with these services, Dr. Pace received an option to purchase 10,000 shares of common stock at an exercise price of \$11.02 per share. In April 2012, the Company entered into an amended and restated consulting agreement with Gary Pace, whereby Dr. Pace will provide consulting services at the rate of \$10,000 per month and received an option to purchase 20,000 shares of common stock at an exercise price of \$11.02 per share pursuant to the consulting arrangement. The amount of fees incurred for each

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of the three and six months ended June 30, 2012 was less than \$0.1 million. At June 30, 2012 and December 31, 2011, the amount payable to Dr. Pace was not material.

MPM Asset Management, or MPM, an investor in the Company, provides clinical management and subscription services to the Company. The Company incurred expenses of approximately \$0.1 million and \$0.2 million for the three and six months ended June 30, 2012 and 2011, respectively. Approximately \$0.1 million was payable to MPM at both June 30, 2012 and December 31, 2011.

The Company incurred expenses under the services agreement with Stack Pharmaceuticals, Inc., or SPI, an entity controlled by the Company's chief executive officer, of approximately \$0.1 million for the three and six months ended June 30, 2011. In November 2011, the Company terminated its services agreement with SPI. The Company had no outstanding amounts payable to SPI at June 30, 2012 and December 31, 2011.

Note 11—COMMITMENTS AND CONTINGENCIES

In July 2012, the Company received an inspection letter from the Medicines and Healthcare products Regulatory Agency, or MHRA, noting certain critical and major deficiencies in the DepoCyt(e) manufacturing line, which is located in a separate building from the EXPAREL manufacturing site. The Company recorded a charge of \$0.6 million during the three months ended June 30, 2012 relating to a remediation plan that the Company committed to the MHRA to complete by October 31, 2012. The Company believes this to be its best estimate of the remediation costs. However, the MHRA may require additional rectifications or take further action that could result in additional charges.

In May 2012, the Company entered into a construction management agreement with DPR Construction, a General Partnership, or DPR. Under the terms of the agreement, DPR is responsible for the management of the renovation of the Company's existing manufacturing facility in San Diego, California. The manufacturing facility is being renovated to allow the Company to expand the current manufacturing capacity and meet anticipated future market demand for EXPAREL. Pursuant to the agreement, the contract sum (the cost of the work plus the contractor fee) will not exceed approximately \$7.7 million, provided that such amount is subject to change based on agreed-upon changes to the scope of work.

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Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to risks, uncertainties and assumptions that are difficult to predict. All statements in this Quarterly Report on Form 10-Q, other than statements of historical fact, are forward-looking statements. These forward-looking statements are made pursuant to safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements include statements, among other things, regarding our plans to develop, manufacture and commercialize EXPAREL; our plans to continue to manufacture and provide support services for our commercial partners who have licensed DepoCyt(e); the success of our commercialization of EXPAREL; the rate and degree of market acceptance of EXPAREL; the size and growth of the potential markets for EXPAREL and our ability to serve those markets; our plans to expand the indications of EXPAREL to include nerve block; our manufacturing, commercialization and marketing capabilities, regulatory developments in the United States and foreign countries; our ability to obtain and maintain intellectual property protection; the accuracy of our estimates regarding expenses and capital requirements; and the loss or hiring of key scientific or management personnel. In some cases, you can identify these statements by forward-looking words, such as "estimate," "expect," "anticipate," "project," "plan," "intend," "believe," "forecast," "foresee," "likely," "may," "should," "goal," "target," "might," "could," "predict," and "continue," the negative or plural of these words and other comparable terminology. Forward-looking statements are only predictions based on our current expectations and our projections about future events. All forward-looking statements included in this Quarterly Report on Form 10-Q are based upon information available to us as of the filing date of this Quarterly Report on Form 10-Q. You should not place undue reliance on these forward-looking statements. We undertake no obligation to update any of these forward-looking statements for any reason. You should, therefore, not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this Quarterly Report on Form 10-Q.

These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance, or achievements to differ materially from those expressed or implied by these statements. These factors include the matters discussed and referenced in Part II-Item 1A. Risk Factors.

Unless the context requires otherwise, references to "Pacira," "we," the "company," "us" and "our" in this Quarterly Report on Form 10-Q refers to Pacira Pharmaceuticals, Inc. and its subsidiaries. In addition, references in this Quarterly Report on Form 10-Q to DepoCyt(e) mean DepoCyt when discussed in the context of the United States and Canada and DepoCyte when discussed in the context of Europe.

Overview

We are an emerging specialty pharmaceutical company focused on the development, commercialization and manufacture of proprietary pharmaceutical products, based on our proprietary DepoFoam drug delivery technology, for use in hospitals and ambulatory surgery centers.

On October 28, 2011, the United States Food and Drug Administration, or FDA, approved our New Drug Application, or NDA, for our lead product candidate, EXPAREL, a liposome injection of bupivacaine, an amide-type local anesthetic, indicated for administration into the surgical site to produce postsurgical analgesia. We have developed a sales force entirely dedicated to commercializing EXPAREL comprised of approximately 60 hospital specialists, seven regional directors and a national sales director. We have developed this sales force pursuant to a contract with Quintiles Commercial US, Inc., a division of Quintiles, Inc., or Quintiles, and under the terms of this contract we have the flexibility to hire all or a portion of the sales force dedicated to commercializing EXPAREL as full-time employees of Pacira, upon 60 days' notice to Quintiles. We commercially launched EXPAREL in April 2012. As a result of our first commercial sale of EXPAREL, we triggered a \$10.0 million payment obligation to Skyepharma Holding, Inc., or Skyepharma, in connection with the acquisition of our California operating subsidiary, which we refer to as the Acquisition.

We have two other approved products, DepoCyt(e) and DepoDur. DepoCyt(e) is a sustained release liposomal formulation of the chemotherapeutic agent cytarabine and is indicated for the intrathecal treatment of lymphomatous meningitis. DepoCyt(e) was granted accelerated approval by the FDA in 1999 and full approval in 2007. DepoDur is an extended release injectable formulation of morphine indicated for epidural administration for the treatment of pain following major surgery. DepoDur was approved by the FDA in 2004. On January 3, 2012, EKR delivered a notice to terminate the licensing, distribution and marketing agreement with us relating to DepoDur. Pursuant to the terms of the agreement, the associated supply agreement terminated concurrently with the termination of the licensing, distribution and marketing agreement. Both parties agreed to terminate the agreements effective June 8, 2012. As a result, we expect the supply and royalty revenue from DepoDur to decrease in the future and we do not expect to re-license out the rights to DepoDur.

We also partner with other companies who desire access to our proprietary DepoFoam extended release drug delivery technology to conduct research, feasibility and formulation work with their products. On June 29, 2012, we received a notice of termination from Novo Nordisk AS, or Novo, of a Development and License Agreement, dated January 14, 2011. Pursuant to the

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terms of the agreement, the termination of the agreement is effective 60 days from the date of the notice, or August 28, 2012. Under the agreement, we granted exclusive rights to Novo under certain of the Company's patents and know-how to develop, manufacture and commercialize formulations of a Novo proprietary drug using our DepoFoam drug delivery technology. The agreement was terminated due to Novo's decision to discontinue development of the proprietary drug subject to in the agreement. As a result, our future collaborative licensing and development revenue may be negatively impacted.

We do not expect our currently marketed products, other than EXPAREL, to generate revenue that is sufficient for us to achieve profitability because we expect to continue to incur significant expenses as we commercialize EXPAREL and advance the development of product candidates, seek FDA approval for our product candidates that successfully complete clinical trials and develop our sales force and marketing capabilities to prepare for their commercial launch. We also expect to incur additional expenses to add operational, financial and management information systems and personnel, including personnel to support

our product development efforts and our obligations as a public reporting company. For us to become and remain profitable, we believe that we must succeed in commercializing EXPAREL or other product candidates with significant market potential.

Results of Operations

Comparison of Three and Six Months Ended June 30, 2012 and 2011

Revenues

The following table sets forth a summary of revenues during the periods indicated (in thousands):

	Three Months Ended June 30,		% Increase/ Decrease	Six Months Ended June 30,		% Increase/ Decrease
	2012	2011		2012	2011	
Net product sales:						
EXPAREL	\$ 2,285	\$ —	N/A	\$ 2,285	\$ —	N/A
DepoCyt(e)	2,654	1,469	81%	3,079	3,185	(3)%
DepoDur	42	—	N/A	63	—	N/A
Total net product sales	4,981	1,469	239%	5,427	3,185	70%
Collaborative licensing and development revenue	6,600	1,283	414%	13,090	2,493	425%
Royalty revenue	763	884	(14)%	1,631	1,822	(10)%
Total revenues	\$ 12,344	\$ 3,636	239%	\$ 20,148	\$ 7,500	169%

Total revenues increased by \$8.7 million, or 239%, to \$12.3 million in the three months ended June 30, 2012 as compared to \$3.6 million in the three months ended June 30, 2011. In April 2012, we commercially launched EXPAREL resulting in \$2.3 million of net product sales for the three months ended June 30, 2012. We report product sales net of allowances for sales returns, prompt pay discounts, volume rebates and distribution service fees payable to wholesalers. We ship products directly to the end user based on orders placed to wholesalers or directly to us and have no product held by wholesalers.

We also sold our two other approved products, DepoCyt(e) and DepoDur, to commercial partners. We experienced a higher number of DepoCyt(e) lots sold to our commercial partners during the three months ended June 30, 2012 resulting in a \$1.2 million increase in DepoCyt(e) product sales. The increase in collaborative licensing and development revenue of \$5.3 million was primarily driven by the recognition of deferred revenue in connection with the termination of the licensing, distribution and marketing agreement with EKR for the DepoDur product. We recognized any unamortized deferred revenue related to milestones received under the agreement over the remaining contract period through June 2012.

Total revenues increased by \$12.6 million, or 169%, to \$20.1 million in the six months ended June 30, 2012 as compared to \$7.5 million in the six months ended June 30, 2011. Collaborative licensing and development revenue increased \$10.6 million primarily due to the recognition of deferred revenue in connection with the termination of the agreement with EKR as discussed above. The increase in net product sales of \$2.2 million was driven by the launch of EXPAREL in April 2012. Royalty revenue decreased by \$0.2 million in the six months ended June 30, 2012 due to lower end user sales by our commercial partners from which we generate a royalty.

Cost of Revenues

The following table provides information regarding our cost of revenues during the periods indicated (in thousands):

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	Three Months Ended June 30,		% Increase/ Decrease	Six Months Ended June 30,		% Increase/ Decrease
	2012	2011		2012	2011	
Cost of goods sold	\$ 6,531	\$ 2,754	137%	\$ 12,785	\$ 6,041	112%
Cost of collaborative licensing and development revenue	154	361	(57)%	395	740	(47)%
Total cost of revenues	\$ 6,685	\$ 3,115	115%	\$ 13,180	\$ 6,781	94%

Cost of revenues increased by \$3.6 million, or 115%, to \$6.7 million in the three months ended June 30, 2012 as compared to \$3.1 million the three months ended June 30, 2011. Cost of goods sold increased by \$3.8 million primarily due to (i) the cost of goods for EXPAREL sales which we commercially launched in April 2012, (ii) a \$0.6 million expense for a contingent loss associated with our DepoCyt(e) manufacturing site, and (iii) an increase in headcount for support functions, including pharmacovigilance.

Cost of revenues increased by \$6.4 million, or 94%, to \$13.2 million in the six months ended June 30, 2012 as compared to \$6.8 million the six months ended June 30, 2011. The increase was primarily driven by (i) the cost of goods for EXPAREL sales which we launched in April 2012, (ii) \$0.6 million charge as discussed above and (iii) EXPAREL production costs, which were expensed as incurred until March 2012 when the first commercial batch was produced. Additionally, we have a substantial level of infrastructure cost relating to running two cGMP facilities. Cost of collaborative licensing and development revenue decreased by \$0.3 million due to decreased services performed under the Novo agreement, for which we received a notice of termination in

June 2012.

Research and Development Expense

The following table provides information regarding our research and development expenses during the periods indicated (in thousands):

	Three Months Ended June 30,		Increase/ Decrease	Six Months Ended June 30,		Increase/ Decrease
	2012	2011		2012	2011	
Research and development expense	\$ 1,872	\$ 4,586	(59)%	\$ 3,166	\$ 8,382	(62)%

Research and development expenses decreased by \$2.7 million, or 59%, to \$1.9 million in the three months ended June 30, 2012 as compared to \$4.6 million in the three months ended June 30, 2011 due to the shift of EXPAREL production line expenses from research and development expenses to cost of revenues following the approval of EXPAREL by the FDA in October 2011. Research and development expenses in the three months ended June 30, 2012 primarily resulted from the continuation of our dose ranging EXPAREL nerve block trial, startup costs for the EXPAREL Phase 2/3 nerve block trials and the initiation of pre-clinical studies for a potential new manufacturing process. In the three months ended June 30, 2012 and 2011, research and development expenses attributable to EXPAREL were \$1.9 million or 100%, and \$4.5 million or 99%, of total research and development expenses, respectively.

Research and development expenses decreased by \$5.2 million, or 62%, to \$3.2 million in the six months ended June 30, 2012 as compared to \$8.4 million in the six months ended June 30, 2011 due to the shift of EXPAREL production line expenses from research and development expenses to cost of revenues as discussed above. In the six months ended June 30, 2012 and 2011, research and development expenses attributable to EXPAREL were \$3.2 million or 100%, and \$8.3 million or 99%, of total research and development expenses, respectively.

Selling, General and Administrative Expense

The following table provides information regarding our selling, general and administrative expenses during the periods indicated (in thousands):

	Three Months Ended June 30,		Increase/ Decrease	Six Months Ended June 30,		Increase/ Decrease
	2012	2011		2012	2011	
General and administrative	\$ 3,216	\$ 2,160	49%	\$ 6,861	\$ 4,535	51%
Sales and marketing	7,197	2,306	212%	14,704	3,453	326%
Total selling, general and administrative expense	\$ 10,413	\$ 4,466	133%	\$ 21,565	\$ 7,988	170%

Selling, general and administrative expenses increased by \$5.9 million, or 133%, to \$10.4 million in the three months ended

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June 30, 2012 as compared to \$4.5 million in the three months ended June 30, 2011 due to the following:

- sales and marketing expenses increased by \$4.9 million primarily due to a \$3.3 million increase in the cost of our sales force entirely dedicated to commercializing EXPAREL, which was comprised of approximately 60 hospital specialists, seven regional directors and a national sales director, a \$0.8 million increase in promotional costs to support the launch of EXPAREL including simulcasts, speaker trainings, educational programs, publications, promotional materials and health outcomes collaboratives, and a \$0.5 million increase related to our Phase IV IMPROVE health outcome studies in targeted surgeries, which we have been enrolling patients in throughout the second quarter of 2012; and
- general and administrative expenses increased by \$1.1 million due to increases of \$0.4 million in salaries and benefits associated with our increased headcount, \$0.3 million in consulting costs primarily to support our information technology structure and \$0.2 million in recruiting costs.

Selling, general and administrative expenses increased by \$13.6 million, or 170%, to \$21.6 million in the six months ended June 30, 2012 as compared to \$8.0 million in the six months ended June 30, 2011 due to the following:

- sales and marketing expenses increased by \$11.3 million primarily due to a \$6.6 million increase in the cost of our sales force entirely dedicated to commercializing EXPAREL, a \$2.1 million increase in promotional costs to support the launch of EXPAREL and a \$1.0 million increase related to our Phase IV IMPROVE health outcome studies as discussed above; and
- general and administrative expenses increased by \$2.3 million due to increases of \$0.7 million in salaries and benefits associated with higher headcount, \$0.7 million in consulting costs to support our information technology infrastructure, \$0.3 million in recruiting expenses and \$0.2 million in administrative costs to support our invoicing and collection processing and bank fees for investment of our short-term investments.

Other Income (Expense)

The following table provides information regarding our other income (expense) during the periods indicated (in thousands):

	Three Months Ended June 30,			Increase/ Decrease	Six Months Ended June 30,			Increase/ Decrease
	2012	2011			2012	2011		
Interest income	\$ 68	\$ 37		84%	\$ 131	\$ 65		102%
Interest expense	(494)	(676)		(27)%	(1,008)	(3,157)		(68)%
Loss on early extinguishment of debt	(1,062)	—		N/A	(1,062)	—		N/A
Royalty interest obligation	(143)	429		N/A	(425)	118		N/A
Other, net	(39)	(22)		77%	(63)	88		N/A
Total other (expense), net	\$ (1,670)	\$ (232)		620%	\$ (2,427)	\$ (2,886)		(16)%

Total other (expense) income, net increased by \$1.4 million, or 620%, to \$1.7 million in the three months ended June 30, 2012 as compared to \$0.2 million in the three months ended June 30, 2011 primarily due to a \$1.1 million loss on the extinguishment of our credit facility with Hercules Technology Growth Capital, Inc. and Hercules Technology II, L.P., as lenders, or Hercules Credit Facility, and a \$0.6 million increase in royalty interest obligation expense due to a forecast reduction in end user Depocyt(e) sales that took place in the second quarter of 2011. These increases were offset by a reduction in interest expense of \$0.2 million which was driven by an increase in capitalized interest related to our Suite C manufacturing expansion project.

Total other (expense) income, net decreased by \$0.5 million, or 16%, to \$2.4 million in the six months ended June 30, 2012 as compared to \$2.9 million in the six months ended June 30, 2011 primarily due to a \$2.1 million decrease in interest expense. The decrease in interest expense is due to the following:

- \$1.1 million of warrant expense recognized during the first quarter of 2011 in connection with the conversion of these warrants upon our initial public offering;
- \$0.6 million increase in capitalized interest related to our Suite C manufacturing expansion project;
- \$0.4 million decrease in interest expense associated with our 2009 and 2010 convertible and secured debt facilities which were converted to common shares in connection with our initial public offering in the first quarter of 2011.

The preceding decreases in interest expense were offset by a \$1.1 million loss on the extinguishment of our Hercules Credit Facility

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and a \$0.5 million increase in royalty interest obligation expense due to a forecast reduction in end user Depocyt(e) sales that took place in the second quarter of 2011.

Liquidity and Capital Resources

Since our inception in 2007, we have devoted most of our cash resources to manufacturing, research and development and selling, general and administrative activities primarily related to the development of EXPAREL. We have financed our operations primarily with the proceeds from the sale of convertible preferred stock and common stock, secured and unsecured notes and borrowings under debt facilities, product sales, collaborative licensing and development revenue and royalty revenue. We raised approximately \$37.1 million in net proceeds through an initial public offering completed on February 8, 2011 and approximately \$49.0 million in net proceeds through a follow-on offering completed on November 21, 2011.

On April 17, 2012, we sold 6,000,000 common shares at a price of \$9.75 per share in a registered public offering of common stock. We received approximately \$54.7 million in net proceeds after deducting underwriting discounts and offering expenses. On April 27, 2012, the underwriters exercised the overallotment option for 900,000 common shares at a price of \$9.75 per share, which provided an additional \$8.2 million in net proceeds after deducting underwriting discounts and offering expenses for total net proceeds to us of \$62.9 million.

We have generated limited revenue, and we are highly dependent on the commercial success of EXPAREL, which we launched in April 2012. We have incurred losses and generated negative cash flows from operations since inception. As of June 30, 2012, we had an accumulated deficit of \$200.4 million, cash and cash equivalents, restricted cash and short-term investments of \$86.1 million and working capital of \$84.8 million.

Summary of Cash Flows

The following table summarizes our cash flows from operating, investing and financing activities for the periods indicated (in thousands):

	Six Months Ended June 30,	
	2012	2011
Net cash provided by (used in):		
Operating activities	\$ (37,774)	\$ (14,910)
Investing activities	(50,072)	(21,790)
Financing activities	63,123	38,017
Net (decrease) increase in cash and cash equivalents	\$ (24,723)	\$ 1,317

Operating Activities

During the six months ended June 30, 2012 and 2011, our net cash used in operating activities was \$37.8 million and \$14.9 million, respectively. The \$22.9 million increase in net cash used in operating activities was driven by (i) higher selling, marketing and administrative expenses driven by the launch of EXPAREL in April 2012 including the hiring of our sales force dedicated to EXPAREL, (ii) increased manufacturing costs and an increase in inventory in connection with our commercial launch of EXPAREL, and (iii) a \$1.5 million up-front payment received in January 2011 from Novo.

Investing Activities

During the six months ended June 30, 2012 and 2011, our net cash used in investing activities was \$50.1 million and \$21.8 million, respectively. The increased cash used in investing activities was primarily due to a \$13.0 million increase in the purchase of short-term investments from the proceeds of our secondary offering in 2012, a \$10.0 million contingent milestone payment made in April 2012 to Skyepharma in connection with the first commercial sale of EXPAREL, and a \$5.2 million increase in the purchase of fixed assets relating to the construction of our Suite C manufacturing line for EXPAREL, which we re-commenced following approval from the United States Food and Drug Administration in October 2011.

Financing Activities

During the six months ended June 30, 2012 and 2011, net cash provided by financing activities was \$63.1 million and \$38.0 million, respectively. In April 2012, we raised \$62.9 million in net proceeds through a secondary offering of 6,900,000 shares of common stock. Additionally, in May 2012, we borrowed a principal amount of \$27.5 million from Oxford Finance LLC and used the funds to repay the remaining principal on the Hercules Credit Facility, early prepayment penalty of \$0.3 million and the end of term

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fee of \$0.6 million. In 2011, we raised approximately \$37.1 million in net proceeds from our initial public offering, after deducting \$4.9 million in offering expenses of which \$0.9 million was paid prior to December 31, 2010.

Debt Facilities

On May 2, 2012, we entered into a definitive loan and security agreement, or Loan Agreement, with Oxford Finance LLC, who we refer to as the Lender, and borrowed the principal amount of \$27.5 million, at a fixed rate of 9.75%, with the first principal payment due December 1, 2013. Payments under the Loan Agreement are interest-only in arrears through November 30, 2013, followed by 30 equal monthly payments of principal and interest. In addition, a final payment equal to 6% of the Loan Facility will be due on the final payment date, or such earlier date as specified in the Loan Agreement.

The proceeds from the Loan Agreement were used by us to repay all of our outstanding obligations with respect to the Hercules Credit Facility.

Our obligations under the Loan Agreement are secured by a first priority security interest in substantially all of our assets, other than our intellectual property. We have also agreed not to pledge or otherwise encumber our intellectual property assets, except for permitted liens or to the extent the intellectual property constitutes royalty collateral, as such terms are defined in the Loan Agreement and except as otherwise provided in the Loan Agreement.

If we repay all or a portion of the Loan Facility prior to maturity, we will pay the Lender a prepayment fee based on a percentage of the then outstanding principal balance equal to: 3.00% if the prepayment occurs prior to or on the first anniversary of the funding date, 2.00% if the prepayment occurs after the first anniversary of the funding date but prior to or on the second anniversary of the funding date, or 1.00% if the prepayment occurs after the second anniversary of the funding date.

The Loan Agreement includes customary affirmative and restrictive covenants for transactions of this type and customary events of default, including the following events of default: payment defaults, breaches of covenants, judgment defaults, cross defaults to certain other contracts, the occurrence of certain events under our royalty agreements, certain events with respect to governmental approvals if such events could cause a material adverse change, a material impairment in the perfection or priority of the Lender's security interest or in the value of the collateral, a material adverse change in the business, operations or condition of us or any of our subsidiaries and a material impairment of the prospect of repayment of the loans. Upon the occurrence of an event of default, a default increase in the interest rate of an additional 5.00% may be applied to the outstanding loan balance and the Lender may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Loan Agreement.

As of June 30, 2012, we had \$27.5 million in outstanding principal debt under the Oxford Loan Facility. As of June 30, 2012, we were in compliance with all covenants under the facility.

Future Capital Requirements

As of June 30, 2012, we had cash and cash equivalents, restricted cash and short-term investments of \$86.1 million. We believe that our existing cash and cash equivalents, restricted cash, short-term investments and revenue from product sales will be sufficient to enable us to meet our planned operating expenses, capital expenditure requirements and service our indebtedness for the next twelve months. However, changing circumstances may cause us to expend cash significantly faster than we currently anticipate, and we may need to spend more cash than currently expected because of circumstances beyond our control.

Our expectations regarding future cash requirements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures

or investments that we make in the future. We have no current understandings, agreements or commitments for any material acquisitions or licenses of any products, businesses or technologies. We may need to raise substantial additional capital in order to engage in any of these types of transactions.

We expect to continue to incur substantial additional operating losses as we commercialize EXPAREL and develop and seek regulatory approval for our product candidates. We will continue to incur significant sales and marketing and manufacturing expenses due to the commercialization of EXPAREL. In addition, we expect to incur additional expenses to add operational, financial and information systems and personnel, including personnel to support our planned product commercialization efforts. We also expect to incur significant costs to comply with corporate governance, internal controls and similar requirements to us as a public company.

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

- the level and timing of our sales of EXPAREL;

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- the costs of our commercialization activities for EXPAREL;
- the cost and timing of expanding our manufacturing facilities and purchasing manufacturing and other capital equipment for EXPAREL and our other product candidates;
- the costs of performing additional clinical trials for EXPAREL, including the pediatric trials required by the FDA as a condition of approval;
- the scope, progress, results and costs of development for additional indications for EXPAREL and for our other product candidates;
- the cost, timing and outcome of regulatory review of our other product candidates;
- the extent to which we acquire or invest in products, businesses and technologies;
- the extent to which we choose to establish collaboration, co-promotion, distribution or other similar agreements for our product candidates; and
- the costs of preparing, submitting and prosecuting patent applications and maintaining, enforcing and defending intellectual property claims.

To the extent that our capital resources are insufficient to meet our future operating and capital requirements, we will need to finance our cash needs through public or private equity offerings, debt financings, corporate collaboration and licensing arrangements or other financing alternatives. The covenants under the Oxford Loan Facility and the Amended and Restated Royalty Interests Assignment Agreement between us with Royalty Securitization Trust I, an affiliate of Paul Capital Advisors, LLC, and the pledge of our assets as collateral limit our ability to obtain additional debt financing. We have no committed external sources of funds. Additional equity or debt financing or corporate collaboration and licensing arrangements may not be available on acceptable terms, if at all.

If we raise additional funds by issuing equity securities, our stockholders will experience dilution. Additional debt financing, if available, would result in increased fixed payment obligations and may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. Any additional debt financing or additional equity that we raise may contain terms, such as liquidation and other preferences that are not favorable to us or our stockholders. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish valuable rights to our technologies, future revenue streams or product candidates or to grant licenses on terms that may not be favorable to us.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements, except for operating leases, or relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities. None of our off-balance sheet arrangements have, or are reasonably likely to have, a current or future material effect on our financial condition or changes in financial condition.

Critical Accounting Policies and Estimates

We sell EXPAREL to wholesalers based on orders of the product from hospitals and other end user customers such as ambulatory surgery centers and doctors. We recognize revenue when there is persuasive evidence that an arrangement exists, title has passed, collection is reasonably assured and the price is fixed or determinable. Sales to wholesalers provide for selling prices that are fixed on the date of sale. EXPAREL is delivered directly to the end user with the wholesaler never taking physical possession of the product. We record revenue at the time the product is delivered to the end-user.

At the time we recognize revenue, we also record certain sales reserves and allowances as a reduction of revenue. These reserves and allowances include a prompt payment reserve, product return reserve, volume rebate discount, chargeback reserve and wholesaler service fee. Due to estimates and assumptions inherent in determining some of our sales reserves, the actual amount of volume rebates, chargebacks and returns may be different from our estimates, at which time we would adjust our reserves accordingly.

Prompt pay reserve

The prompt payment reserve is based upon discounts offered to wholesalers as an incentive to meet certain payment terms. We account for these discounts at the time the sale is made and reduces accounts receivable accordingly.

Returns reserve

We allow customers to return product that is damaged or received in error. In addition, we allow for product to be returned beginning six months prior to, and twelve months following product expiration. As EXPAREL is a new commercially available product, we are estimating our sales return reserve based on return history from other hospital based products with similar distribution models, which we believe is the best estimate of the anticipated product to be returned. The returns reserve is recorded at the time of sale and as a reduction to sales and an increase in returns liability.

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Volume rebates and chargeback reserve

Volume rebates and chargeback reserve are based upon contracted discounts and promotional offers we provide to certain end users who are members of group purchasing organizations. The volume rebates and chargeback reserve are recorded as a reduction to sales and a customer payable and reduction to receivables, respectively.

Wholesaler fee payable

Our customers include major and regional wholesalers with whom we have contracted a fee for service based on a percentage of sales. This fee for service is recorded as a reduction to gross sales and a liability is established at the time the sale is recorded based on the contracted percentage.

Reserve for doubtful accounts

We evaluate accounts receivable to determine if a provision for an allowance for doubtful accounts is appropriate. Our sales are mostly to established customers. As of June 30, 2012, the accounts receivable was considered collectible and no allowance for doubtful accounts was recorded.

For a description of any other critical accounting policies that affect our other significant judgments and estimates used in the preparation of our consolidated financial statements, refer to our most recent Annual Report on Form 10-K for the year ended December 31, 2011. There have been no other significant changes to our critical accounting policies since December 31, 2011.

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Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

Item 4. CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission (“SEC”) rules and forms, and that such information is accumulated and communicated to our management, including our President and Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Based on their evaluation with the participation of the Company’s management, as of the end of the period covered by this Quarterly Report on Form 10-Q, our President and Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective.

(b) Changes in Internal Control over Financial Reporting

No change in the Company’s internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended June 30, 2012 that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

(c) Inherent Limitations on Effectiveness of Controls

Our management, including our President and Chief Executive Officer and Chief Financial Officer, do not expect that our disclosure controls or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within Pacira have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because

of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

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PART II—OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

From time to time, we have been and may again become involved in legal proceedings arising in the ordinary course of our business. We are not presently a party to any material litigation and we are not aware of any pending or threatened litigation against us that could have a material adverse effect on our business, operating results, financial condition or cash flows.

Item 1A. RISK FACTORS

In addition to the risks identified below and the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in Part I, “Item 1A: Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2011, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K for the year ended December 31, 2011, are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results. Other than the risk factors set forth below, there have been no material changes in the risk factors contained in our Annual Report on Form 10-K for the year ended December 31, 2011.

The Medicines and Healthcare products Administration recently issued an inspection report noting certain critical deficiencies in our manufacturing of DepoCyt(e) and remediation of these deficiencies could result in significant costs or delays in the production and sale of DepoCyt(e).

In July 2012, the Medicines and Healthcare products Administration, or MHRA, conducted its standard inspection of our DepoCyt(e) manufacturing facility, which is located in a separate building from our EXPAREL manufacturing facility. Following its inspection, the MHRA issued its inspection report in which the MHRA noted certain critical and major failures to comply with the Principles and Guidelines of Good Manufacturing Practices. We have responded to the MHRA regarding the inspectional observations. In connection with our response, we have temporarily ceased manufacturing DepoCyt(e) in order to implement our remediation plan and address the failures noted in the MHRA inspection report. While we are revising our procedures and will conduct additional training to address the MHRA inspection findings, we may be required to take additional steps to address the MHRA inspection findings, which could result in additional costs or delays in the production and sale of DepoCyt(e), which could have a material adverse effect on our business, financial position and results of operations.

We are the sole manufacturer of DepoCyt(e). Our inability to continue manufacturing adequate supplies of DepoCyt(e) could result in a disruption in the supply of DepoCyt(e) to our partners.

We are the sole manufacturer of DepoCyt(e). We develop and manufacture DepoCyt(e) at our facility in San Diego, California, which is the only FDA approved site for manufacturing DepoCyt(e) in the world. In connection with our response to the MHRA regarding their inspectional observations, we have temporarily ceased manufacturing DepoCyt(e) in order to implement our remediation plan and address the failures noted in the MHRA inspection report. This temporary cessation of the manufacturing of DepoCyt(e) could result in additional costs or delays in the production and sale of DepoCyt(e), which could have a material adverse effect on our business, financial position and results of operations.

Our San Diego facilities are also subject to the risks of a natural or man-made disaster, including earthquakes and fires, or other business disruption. In addition, we have obtained limited property and business interruption insurance coverage for our facilities in San Diego. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. There can be no assurance that we would be able to meet our requirements for DepoCyt(e) if there were a catastrophic event or failure of our current manufacturing system. If we are required to change or add a new manufacturer or supplier, the process would likely require prior FDA and/or equivalent foreign regulatory authority approval, and would be very time consuming. An inability to continue manufacturing adequate supplies of DepoCyt(e) at our facility in San Diego, California could result in a disruption in the supply of DepoCyt(e) to our partners and breach of our contractual obligations.

If we fail to manufacture DepoCyt(e) we will lose revenues and be in breach of our licensing obligations.

We have licensed the commercial rights in specified territories of the world to market and sell our product, DepoCyt(e). Under those licenses we have obligations to manufacture commercial product for our commercial partners. If we are unable to timely fill the orders placed with us by our commercial partners, we will potentially lose revenue and be in breach of our licensing obligations under the agreements. In addition,

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we may be in breach of our obligations to comply with our supply and distribution agreements, which would in turn be a breach of our obligations under our amended and restated royalty interests assignment agreement, or the Amended and Restated Royalty Interests Assignment Agreement, with Royalty

Securitization Trust I, an affiliate of Paul Capital Advisors, LLC, or Paul Capital. Under our financing arrangement with Paul Capital, upon the occurrence of certain events, Paul Capital may require us to repurchase the right to receive royalty payments that we assigned to it, or may foreclose on certain assets that secure our obligations to Paul Capital. Any exercise by Paul Capital of its right to cause us to repurchase the assigned right or any foreclosure by Paul Capital would adversely affect our cash flows, results of operations and our financial condition.

EXPAREL and any other products we may market, including DepoCyt(e), will remain subject to substantial regulatory scrutiny.

EXPAREL, DepoCyt(e) and any product candidates that we may develop, license or acquire will also be subject to ongoing FDA requirements with respect to the manufacturing, labeling, packaging, storage, distribution, advertising, promotion, record-keeping, post-market testing, and submission of safety and other post-market information on the drug. In addition, the subsequent discovery of previously unknown problems with a product, including undesirable side effects, may result in restrictions on the product, including withdrawal of the product from the market.

If EXPAREL, DepoCyt(e) or any other product that we may develop, license or acquire fails to comply with applicable regulatory requirements, such as cGMP regulations, a regulatory agency may:

- issue warning letters or untitled letters;
- require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- impose fines and other civil or criminal penalties;
- suspend regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve pending applications or supplements to approved applications filed by us;
- impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or require a product recall.

For example, in July 2012, the MHRA issued its inspection report in which the MHRA noted certain critical and major failures to comply with the Principles and Guidelines of Good Manufacturing Practices related to our Depocyt(e) manufacturing facility. We have responded to the MHRA regarding the inspectional observations, however the MHRA may require us to take additional steps to address the MHRA inspection findings, which could result in additional costs or delays in the production and sale of DepoCyt(e), which could have a material adverse effect on our business, financial position and results of operations.

If we fail to comply with the extensive regulatory requirements to which we and our products, EXPAREL and DepoCyt(e), are subject, such products could be subject to restrictions or withdrawal from the market and we could be subject to penalties.

The testing, manufacturing, labeling, safety, advertising, promotion, storage, sales, distribution, export and marketing, among other things, of our products EXPAREL and DepoCyt(e) are subject to extensive regulation by governmental authorities in the United States and elsewhere throughout the world. Quality control and manufacturing procedures regarding EXPAREL and DepoCyt(e) must conform to cGMP. Regulatory authorities, including the FDA and the MHRA, periodically inspect manufacturing facilities to assess compliance with cGMP. Our failure or the failure of our contract manufacturers to comply with the laws administered by the FDA, the MHRA or other governmental authorities could result in, among other things, any of the following:

- product recall or seizure;
- suspension or withdrawal of an approved product from the market;
- interruption of production;
- operating restrictions;
- warning letters;
- injunctions;
- fines and other monetary penalties;
- criminal prosecutions; and
- unanticipated expenditures.

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The design, development, manufacture, supply, and distribution of EXPAREL and DepoCyt(e) is highly regulated and technically complex.

The design, development, manufacture, supply, and distribution of our products EXPAREL and DepoCyt(e) is technically complex and highly regulated. We, along with our third-party providers, must comply with all applicable regulatory requirements of the FDA and foreign authorities. In addition, the facilities used to manufacture, store, and distribute our products are subject to inspection by regulatory authorities at any time to determine compliance with applicable regulations.

The manufacturing techniques and facilities used for the manufacture and supply of our products must be operated in conformity with cGMP and other FDA, DEA and MHRA regulations. In addition, any expansion of our existing manufacturing facilities or the introduction of any new manufacturing facilities would also require conformity with cGMP and other FDA, DEA and MHRA regulations. In complying with these requirements, we, along with our suppliers, must continually expend time, money and effort in production, record keeping, and quality assurance and control to ensure that our products meet

applicable specifications and other requirements for safety, efficacy and quality. In addition, we, along with our suppliers, are subject to unannounced inspections by the FDA, MHRA and other regulatory authorities.

Any failure to comply with regulatory and other legal requirements applicable to the manufacture, supply and distribution of our products could lead to remedial action (such as recalls), civil and criminal penalties and delays in manufacture, supply and distribution of our products. For instance, in July 2012, the MHRA issued its inspection report in which the MHRA noted certain critical and major failures to comply with the Principles and Guidelines of Good Manufacturing Practices related to our Depocyt(e) manufacturing facility. We have responded to the MHRA regarding the inspectional observations, however the MHRA may require us to take additional steps to address the MHRA inspection findings, which could result in additional costs or delays in the production and sale of DepoCyt(e), which could have a material adverse effect on our business, financial position and results of operations.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Unregistered Sales of Equity Securities

There were no issuances of unregistered shares of capital stock during the three month period ended June 30, 2012 covered by this report.

Use of Proceeds

Not applicable.

Item 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

Item 5. OTHER INFORMATION

Not applicable.

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Item 6. EXHIBITS

The exhibits listed in the Exhibit Index are incorporated herein by reference.

EXHIBIT INDEX

10.1	Construction Management Agreement, dated as of May 17, 2012, between the Registrant and DPR Construction, A General Partnership*
10.2	Loan and Security Agreement, dated as of May 2, 2012, by and among Oxford Finance LLC, the Lenders listed on Schedule 1.1 thereof, Pacira Pharmaceuticals, Inc., a Delaware corporation and Pacira Pharmaceuticals, Inc., a California corporation*
10.3	Warrant to Purchase Stock No. 1, dated as of May 2, 2012, issued by the Registrant to Oxford Finance LLC*
10.4	Warrant to Purchase Stock No. 2, dated as of May 2, 2012, issued by the Registrant to Oxford Finance LLC*
10.5	Warrant to Purchase Stock No. 3, dated as of May 2, 2012, issued by the Registrant to Oxford Finance LLC*
10.6	Warrant to Purchase Stock No. 4, dated as of May 2, 2012, issued by the Registrant to Oxford Finance LLC*
31.1	Certification of President and Chief Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a), as amended.*
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a), as amended.*
32.1	Certification of Executive Chairman of the Board pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**
101	The following materials from the Quarterly Report on Form 10-Q of Pacira Pharmaceuticals, Inc. for the quarter ended June 30,

2012, formatted in XBRL (eXtensible Business Reporting Language): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Comprehensive Loss, (iv) the Consolidated Statement of Stockholders' Equity, (v) the Consolidated Statements of Cash Flows, and (vi) the Condensed Notes to Consolidated Financial Statements, tagged as blocks of text

101.INS XBRL Instance Document.**
101.SCH XBRL Taxonomy Extension Schema Document. *
101.CAL XBRL Taxonomy Calculation Linkbase Document. *
101.LAB XBRL Taxonomy Label Linkbase Document. *
101.PRE XBRL Taxonomy Presentation Linkbase Document.*
101.DEF XBRL Taxonomy Extension Definition Linkbase Document.*

* Filed herewith

** Furnished herewith

*** Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

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SIGNATURES

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

PACIRA PHARMACEUTICALS, INC.
(REGISTRANT)

Dated: August 9, 2012

/s/ DAVID STACK

David Stack
President and Chief Executive Officer
(Principal Executive Officer)

Dated: August 9, 2012

/s/ JAMES SCIBETTA

James Scibetta
Chief Financial Officer
(Principal Financial Officer)

Dated: August 9, 2012

/s/ LAUREN RIKER

Lauren Riker
Executive Director, Accounting & Reporting
(Principal Accounting Officer)

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Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisks denote omissions.

AIA® Document A102™ — 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the ~~January~~ May day of ~~Tenth~~ 17th in the year Two Thousand Twelve
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Pacira Pharmaceuticals, Inc.
10450 Science Center Drive
San Diego, CA 92121

and the Contractor:
(Name, legal status, address and other information)

DPR Construction, ~~A General Partnership Inc.~~
5010 Shoreham Place
San Diego, CA 92122

for the following Project:
(Name, location and detailed description)

~~Pacira Suite~~ — B1 45L Production Suite C Restart
10450 Science Center Drive
San Diego, CA 92121
DPR Job No. D1-A11035-00

The Architect:
(Name, legal status, address and other information)

Ferguson Pape Baldwin Architects
4499 Ruffin Road, Suite 300
San Diego, CA 92123

The Prime Consultant is:
(Name, address and other information)

Clark, Richardson & Biskup Consulting Engineers, Inc.
7410 NW Tiffany Springs Parkway, Suite 100
Kansas City, MO 64153

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™—2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, or an Exhibit to this Agreement, is inconsistent with this Agreement, this Agreement shall govern. In the event of any conflict between the provisions of this Agreement and any Exhibit hereunto, the terms of the Exhibit shall govern. Wherever the term "Architect" appears in the Contract Documents, it shall mean "Prime Consultant" or "Clark, Richardson & Biskup Consulting Engineers, Inc." Wherever the term "architecture" appears in the Contract Documents, it shall mean "architecture/engineering."

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.1 The Owner acknowledges that the services to be provided by the Contractor under this Contract shall not constitute those of an architect or engineer nor impose on the Contractor any obligation to assume or perform on behalf of the Owner the professional responsibilities, duties, services and activities for which the Owner has contracted with the Architect; nor shall the Owner impose on the Contractor any liability with respect thereto.

§ 2.2 The Contractor shall not be responsible or liable in connection with the design of the Work nor for the failure of the Architect to provide the required

designs. The Contractor, in performing his duties, does not relieve the Architect from any responsibilities for services contained in the Agreement between the Owner and Architect; nor shall the Contractor incur any liability for non-performance of such services by the Architect.

§ 2.3 The Contractor shall notify the Owner and Architect promptly, in writing, if he becomes aware that necessary designs are lacking and shall not proceed with such part of the Work until so directed by Owner.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 4.1.1 The date of commencement of the construction of the Work shall be the later date of; (i) date of confirmation of Owner's funding for the Project if applicable; (ii) date of receipt of a valid building permit; (iii) date of receipt of an acceptable builder's risk insurance policy; and (iv) within three days (3) days of receipt of a written Notice to Proceed

~~If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:~~

§ 4.1.2 Included in the Contract Time and Guaranteed Maximum Price are zero (0) work days which are anticipated to be lost due to inclement weather. The Contractor will advise the Owner monthly as to the status of the delays claimed to be lost due to inclement weather. At such time as the accumulated number of lost days exceeds the allotment of zero (0) days, that difference shall constitute a time extension and the Owner shall issue a Change Order to this Contract extending the Contract Time the required number of days and adjusting the Guaranteed Maximum Price (including the Contractor's Fee) by a reasonable amount agreeable to the Contractor and Owner the delay has cost.

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion on or before October 4th, 2012, ~~November 29, 2010~~.

§ 4.4 In the event that the Contractor shall fail to achieve Substantial Completion within the Contract Time, subject to extensions of time to which it is entitled, Contractor shall be liable to Owner for liquidated damages of \$500.00 per day (the "Per Diem Liquidated Damages") until such date as Contractor shall achieve Substantial Completion, provided that following the initial fourteen (14) days of such continued failure (each 14 day delay period, a "Delay Period"), and upon the commencement of each Delay Period thereafter, the Per Diem Liquidated Damages shall be increased by \$500.00. In the interest of clarity and by way of example, the Per Diem Liquidated Damages during the first Delay Period shall equal \$500.00 per day; the Per Diem Liquidated Damages during the second Delay Period shall equal \$1,000.00 per day; the Per Diem Liquidated Damages during the third Delay Period shall equal \$1,500.00 **per day**; and so on. Recovery of such liquidated damages shall be Owner's sole and exclusive remedy in the event of Contractor's unexcused delay in achieving Substantial Completion (with respect to such delay only). The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Owner as a result of such delay; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Owner for such delay.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee shall be the amount of ~~Four Three and a half~~ percent (~~43.5~~%) of the estimated Cost of the Work of the Guaranteed Maximum Price. At the time of acceptance of the Guaranteed Maximum Price, such Contractor's Fee shall be converted to a stipulated amount,

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 5.1.2.1 For additive changes in the Guaranteed Maximum Price (GMP), the Fee will be increased by ~~43.5~~ % of the cost of the change, pursuant to the provisions of Article 7 of the A201 — 2007 General Conditions.

§ 5.1.2.2 For deductive changes, ~~there shall be no change in Fee,~~ **the Fee will be decreased by 43.5 % of the cost of the change, pursuant to the provisions of Section 7 of the General Conditions.**

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Subcontractor's mark-ups for overhead and profit shall be limited to a maximum of fifteen percent (15%) for all trades ~~except instrumentation and controls which will be limited to twenty percent (20%)~~.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$ 0.00)
N/A		

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Seven Million Six Hundred Seventy Nine Thousand Nine Hundred Eighty Five Dollars (\$7,679,985), as GMP estimate 3.3 dated 11/18/11, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. The Owner shall be entitled to 100% of any project saving.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: No Alternates will be included.
(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any: See Exhibit E — Guaranteed Maximum Price (GMP), Section 3
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
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§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:
The GMP is based upon the assumption as identified in the 'Basis of Estimate,' section one (1) of the GMP.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.3 Construction Contingency

§ 5.3.1 The amount for Construction Contingency is included in the Guaranteed Maximum Price as an amount to be applied at Contractor's discretion, to defray contractually allowable costs, including General Conditions, for which the Contractor is not otherwise entitled to a Change Order increasing the Contract Sum. Examples of allowable uses of Construction Contingency include, but are not limited to, scope gaps in buyout of the Work, market-driven price fluctuations, non-compensable delays, errors in the Work not caused by the negligence of the Contractor or its Subcontractors, necessary increases to prior negotiated or awarded subcontracts or purchase orders, and cleanup or repair of damage to the Work not identifiable to a particular contractor. Construction Contingency is not to be used to defray costs for which Contractor is entitled to an increase in the Guaranteed Maximum Price or Contract Sum by Change Order, such as for design changes or design corrections.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201—2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201—2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201—2007 shall have the meanings assigned to them in AIA Document A201—2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document

A201—2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor’s Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7. Wherever the Contract Documents state that the Contractor shall perform any Work or incur any expense, it shall be understood to mean, in the absence of specific language to the contrary in this Contract, that the Cost thereof shall be included in the Cost of the Work payable by the Owner.

§ 7.1.2 Where any cost is subject to the Owner’s prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Labor Wages of construction workers directly employed by the Contractor at the fixed rates of Exhibit B to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops, or performing the Work at the fixed rates defined in Exhibit ‘B’ hereto.

§ 7.2.2 Labor wages or salaries of Contractor’s supervisory and administrative personnel at the fixed rates of Exhibit B when stationed at the site and labor for Contractor’s project management, preconstruction services, scheduling services, engineering, design or BIM services, MEP Coordinators, safety, manpower planning, accounting, purchasing, estimating, information technology services and data processing, whether performed at the site or in the Contractor’s offices, all at the fixed rates defined in Exhibit ‘B’ hereto.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor’s principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Labor Rates of the Contractor’s supervisory or administrative personnel at the fixed rates of Exhibit B when engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner’s prior approval.

§ 7.2.6 All of the costs referred to in paragraphs 7.2.1 through 7.2.5 are included in the fixed rates listed on Exhibit ‘B’ to this Agreement between the Owner and Contractor. Said rates establish the hourly amount the Contractor will bill and the Owner will pay for the Work to be performed by the Contractor’s own forces for this project.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs, dismantling and removal. Rates and quantities of equipment rented shall be subject to the Owner's prior approval, or at rental rates consistent with those prevailing in the area. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of disposal, recycling and/or removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions, cellular and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. In addition, utility consumption costs, including, but not limited to, water, steam, gas, oil, electricity, winterizing and temporary toilets.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.5.6 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract at the fixed rates of Exhibit B.. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Contract and all insurance deductibles attributable to a loss not caused by the negligence of the Contractor or Subcontractors. See the attached Exhibit B — Contractor's Fixed Rates. The attributable portion of premiums for Contractor — furnished Contractor's Insurance is fixed at \$11.50 per thousand dollars of Contract Value.

§ 7.6.1.1 The Contractor shall have the right to provide subcontractor default insurance for eligible Projects.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

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§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201—2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid with the Owner's consent for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201—2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

~~§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

~~§ 7.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.~~

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.1.1 Job costs due to delays and extensions of time beyond Contractor's control, as defined in Article 8.3 of the AIA Document A201—2007. Such costs shall be treated as increases in the Contract Sum and the Guaranteed Maximum Price (GMP) shall be equitably adjusted, including Fee, pursuant to Article 5.1.4.

§ 7.7.1.2 All costs and fees associated with altering of public utilities, protection and repairs of adjoining property, and rental property for storage of materials to be incorporated in the Work.

§ 7.7.1.3 Except for the instances where payments, expenses or work are required as a result of the Contractor's failure to perform its obligations under this Contract (in which case such payments, expenses, and/or Work shall be the Contractor's sole responsibility), whenever this Contract or a governmental agency having jurisdiction over the Project require that the Contractor make any payment, incur any expense or perform any Work, it will be understood to mean, in the absence of specific language to the contrary that such payment, expense and/or Work shall be included in the Cost of the Work to be reimbursed.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201—2007.

~~§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a~~

~~specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.~~

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office, except as may be expressly included in Article 7
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded including any penalties imposed by any governmental authority due to negligence of Contractor or its Subcontractors.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall ~~make provisions~~ use reasonable efforts so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the

Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract, but only to the extent that these books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data are not related to any stipulated or fixed sums or rates defined in the Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Owner's accountants shall be subject to acceptance by Contractor prior to being permitted access to Contractor's records, books and documents as described herein.

ARTICLE 12 PAYMENTS — SEE EXHIBIT F - PAYMENTS

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201—2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim not involving enforcement of lien rights or subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201—2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A201—2007

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201—2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201—2007, the amount, if any, to be paid to the Contractor shall be as provided for in Article 14 of the AIA Document A201-2007.

§ 14.3 To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), pursuant to Section 5.4 of AIA Document A201—2007, the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201—2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201—2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201—2007 or another Contract Document, the reference refers to that

provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

§ 15.2.1 In the event that any undisputed payments are not made by the Owner to the Contractor when due in accordance with this Contract, said payments shall bear interest from the date the payment was due until paid at the rate of five percent (5%) per annum over the prime rate of the Wells Fargo Bank of San Francisco prevailing on the 25th day of the month preceding the date that payment was due. The fact that the Contractor is charging interest in accordance with this provision shall not constitute waiver by Contractor of any other rights or remedies provided for herein by reason of Owner's default in making such payments, including specifically, but not limited to, Contractor's rights to terminate this Contract for nonpayment, nor shall the Owner's payment of such interest or other amounts constitute waiver of any of Owner's rights under the Contract Documents

§ 15.3 The Owner's representative:
(Name, address and other information.)

Any written notices hereunder directed to Owner or Architect may be served on the Owner or Architect's representatives by means stated in 14.6.5 at:

Joseph Tunner, Ph.D. Director of Engineering
Pacira Pharmaceuticals, Inc.
10450 Science Center Drive
San Diego, CA 92121

§ 15.4 The Contractor's representative: and recipient for written notice required hereunder shall be Contractor's project manager:
(Name, address and other information.)

Jason Stewart
Preconstruction Manager
DPR Construction, A General Partnership

11

501 Shoreham Place
San Diego, CA 92122

§ 15.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 15.6 Other provisions: Notwithstanding the foregoing §14.5, Contractor shall not change the status of **Jason Stewart** as Contractor's representatives in connection with the Work, except in the event of death or termination of employment.

§ 15.6.1 **Attorney's Fees.** If either party becomes involved in litigation or arbitration arising out of this Contract or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit shall award attorney's fees to the prevailing party. Unless judgment is entered by default, the attorney's fees award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney's fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate the prevailing party for all attorney's fees incurred in good faith.

§15.6.2 Intentionally Deleted.

§ 15.6.3 ~~Intentionally Deleted. Destruction of the Work by Fire, Elements, Etc.~~

~~(a) In the event the Work is wholly or partially damaged or destroyed, by war, fire, storm, lightning, flood, earthquake, settlement or defective soils, expansion or contraction, cracking or deflection, tidal wave, surface or subsurface water, mob violence, vandalism or other casualty before the final completion of said Work, the Contractor, upon written instruction from the Owner, shall proceed to replace and/or repair said Work in accordance with the plans. In this event, the provisions of this Contract shall remain in full force and effect, except that the Contract Sum stated in Article 5 shall be increased by the total cost of removing and/or replacing all damaged and/or destroyed work, the time for completion shall be extended and the Contractor's Fee shall be increased pursuant to Article 5.1.2.1 and 5.1.2.2.~~

~~(b) In the event of damage or destruction to the Work by any cause, the Owner may, upon giving written notice to the Contractor, elect to terminate this Contract. In such case, the Owner shall pay the Contractor in accordance with General Conditions Article 14.4.~~

~~(c) Owner will obtain, prior to the commencement of the Work, Flood, Earthquake, Fire and Extended Coverage insurance, including "All Risk" insurance for malicious mischief and vandalism, including resulting damage arising out of any faulty workmanship, design error or omission, and such other additional insurance as so desired by Owner to insure those casualties enumerated in Paragraph 15.6.3 (a) upon the Work and upon all materials intended to become a part of the Work, whether on-site, temporarily and suitably stored elsewhere, or in transit. The Owner shall be responsible for any and all costs not covered by said Insurance except that Contractor is responsible for deductibles in the case any loss arising due to negligence by Contractor or its Subcontractors. A copy of each policy shall be submitted to the Contractor. The Contractor and all Subcontractors shall be named as "Additional Insureds" and each policy shall include a Waiver of Subrogation and Permission to Occupy Endorsement, and the policy shall be reasonably satisfactory to the Contractor.~~

§ 15.6.4 Intentionally Deleted

§ 15.6.5 **License.** Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning the Contractor may be referred to the Registrar of the Board whose address is: P.O. Box 26000, Sacramento, CA 95826.

§ 15.6.6 Intentionally Deleted

§ 15.6.7 Intentionally Deleted.

§ 15.6.8 **Damage and Indemnity.** Notwithstanding any of the provisions in the Contract to the contrary, Contractor shall in no event have any responsibility, nor be liable to Owner, for damages or delays resulting from the prior presence of pollutants, gaseous emissions, asbestos, hazardous or toxic substances, whether subsurface or otherwise, and/or from soil subsidence, unless solely caused by the negligence or misconduct of Contractor, and Owner will

fully hold harmless and indemnify Contractor from and against any and all claims or actions resulting from the prior presence of any such pollutants, gaseous emissions, asbestos, hazardous and/or toxic substances, whether subsurface or otherwise, and/or from soil subsidence.

§ 15.6.9 **Notice of Claims.** Contractor shall promptly notify Owner of any claim filed against Contractor or Contractor's insurance company arising from services performed by Contractor or any Subcontractor in connection with this Agreement.

§ 15.6.10 **Independent Contractor.** Contractor agrees that all services and work performed under this Agreement are being performed by Contractor as an independent contractor and not as an employee or agent of Owner. This Agreement is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind or create an employer/employee relationship between Owner and Contractor, Contractor's employees, subcontractors, subcontractors' employees or any person supplied by Contractor in the performance of Contractor's obligations under this Agreement and does not entitle said persons to rights or benefits from Owner normally associated with an employment relationship, such as, but not limited to, civil service, retirement, personnel rules which accrue to such persons, health insurance, motor vehicle insurance, life insurance, workers' compensation, sick leave or any other fringe benefits. Contractor and Subcontractors shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and shall indemnify, hold harmless and defend Owner with respect thereto, including payment of reasonable attorneys' fees and costs in the defense of any claim made in connection therewith.

§ 15.6.11 **Compliance with Laws.** Contractor shall comply, and shall cause all Subcontractors to comply, with all applicable federal and state laws and local ordinances and regulations.

§ 15.6.12 **Prime Consultant/Architect.** For purposes of the Contract Documents, Clark, Richardson & Biskup Consulting Engineers Inc. shall be deemed the Prime Consultant, and shall serve in such capacity as Owner's representative in connection with the Work.

§ 15.6.13 **Procurement.** Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any equipment or materials must be procured in connection with the Work, Owner may either procure such equipment and materials directly or designate Contractor as Owner's agent for purposes of such procurement, provided that in either event, Contractor shall retain responsibility for selecting the proper equipment and/or materials to be so procured and managing their use in connection with the Work in accordance with the terms of the Contract Documents.

§ 15.6.14 Intentionally Deleted.

§ 15.6.15 **A102 to Control.** Notwithstanding anything to the contrary contained herein, in the event of any conflict between the terms of this Agreement and those of any other Contract Document, including, without limitation, AIA Document A201-2007--General Conditions of the Contract for Construction, as modified by the parties in connection herewith, the terms of this Agreement shall govern and control.

In case of discrepancies or conflicts among the Contract Documents or within any of the Contract Documents, the Contract Documents, the Contract Documents shall be interpreted on the basis of the following priorities:

- .1 Written amendments to the Owner-Contract Agreement signed by both parties — those of a later date shall take precedence over those of an earlier date.
- .2 Change Orders — those of a later date shall take precedence over those of an earlier date.
- .3 Construction Change Directives.
- .4 Contractor's Qualifications and Assumptions.
- .5 Architect's Supplemental Instructions.
- .6 The Owner-Contract Agreement.
- .7 General Conditions.
- .8 Drawings and Specifications.

Among Drawings, large scale details shall control over small scale details, and figured dimensions shall control over Drawings not dimensioned. In the event of a conflict or ambiguity

within or between the Specifications or Drawings as to the quantity or quality of work or materials, the higher quality or greater quantity as reasonably interpreted by Architect shall be furnished unless otherwise directed in writing by the Architect.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102—2007, Standard Form of Agreement Between Owner and Contractor, as modified by the parties hereto.

§ 16.1.2 The General Conditions are AIA Document A201—2007, General Conditions of the Contract for Construction, as modified by the parties hereto.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

See Exhibit E, Section 5 for Document List

§ 16.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Exhibit C

See Exhibit E, Section 5 for Document List

§ 16.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Exhibit C

See Exhibit E, Section 5 for Document List

§ 16.1.6 The Addenda, if any:

See Exhibit E, Section 5 for Document List

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™—2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201—2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A — ~~Insurance Requirements~~ Not Used

Exhibit B — Contractor's Fixed Rates

Exhibit C — List of Contract Documents (See Exhibit E, Section 5 for Document List)

Exhibit D — Not Used

Exhibit E - Guaranteed Maximum Price (GMP)

Exhibit F ~~—~~ Payments

Rider "A" — Supplementary Conditions

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201—2007 and Exhibit A — Insurance Requirements.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201—2007.)

Refer to Paragraphs 7.6.1, 14.6.2 and Exhibit 'A' — ~~insurance Requirements~~ of this Agreement and to the General Conditions of the Contract for Construction A201-2007 and Rider 'A' thereto.

Type of insurance or bond

Limit of liability or bond amount (\$ 0.00)

This Agreement entered into as of the day and year first written above.

/s/ James S. Scibetta
OWNER (Signature)

James S. Scibetta, CFO
(Printed name and title)

/s/ illegible (for Peter Salyati)
CONTRACTOR (Signature)

Peter Salyati, Exec. V.P.
(Printed name and title)

AIA® Document A201™ — 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

~~Pacira Suite A Commercialization~~ — B1 45L Production Suite C Restart
10450 Science Center Drive
San Diego, CA 92121
DPR Job No. D1-A11035-00

THE OWNER:

(Name, legal status and address)

Pacira Pharmaceuticals, Inc.
10450 Science Center Drive
San Diego, CA 92121

THE CONTRACTOR:

(Name, address)

DPR Construction, A General Partnership
5010 Shoreham Place
San Diego, CA 92122

THE PRIME CONSULTANT:

(Name and address):

Clark, Richardson & Biskup Consulting Engineers, Inc.
7410 NW Tiffany Springs Parkway, Suite 100
Kansas City, MO 64153

THE ARCHITECT:

(Name, legal status and address)

Ferguson Pape Baldwin Architects
4499 Ruffin Road, Suite 300
San Diego, CA 92123

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- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS**§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. Wherever the term "Architect" appears in the Contract Documents, it shall mean "Prime Consultant" or "Clark, Richardson & Biskup Consulting Engineers, Inc." Wherever the term "architecture" appears in the Contract Documents, it shall mean "architecture/engineering"

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 Subject to the terms of any separate agreement between the Owner and the Architect, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Owner is responsible for notifying Contractor if any terms of the Owner Architect Agreement modify this Article or in any other way alter the terms of this provision.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior~~

~~approval of the Architect.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from

the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, communications, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation and approval by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the ; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 3.8.2.1 and Fee..

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent and project manager shall represent the Contractor, and communications given to the project manager shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste

materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor ~~has reason to believe~~ knows that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Should Contractor incur any claims pursuant to Section 3.18.1 which are subsequently determined not to be the responsibility of the Contractor, Owner shall then reimburse Contractor such cost including, without limitation, any applicable insurance deductibles and attorney's fees.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

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§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents ~~and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment~~. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and Contractor shall communicate directly with each other and the the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 ~~At the Owner's election, b~~Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise

specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect or Contractor if requested by the Owner, will prepare Change Orders and Construction Change Directives. Architect may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum

and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract occurring after the date of assignment to Owner under Section 5.4. Contractor is responsible only for those portions of work that were completed prior to assignment of the applicable Subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised, provided that Owner shall cause such schedule to be binding upon separate contractors employed by Owner.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects discovered in such other

construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, bodily injury to any of the Contractor's or Subcontractor's employees, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Architect~~ Contractor and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect, or Contractor, and signed by the Owner (and Architect if so required by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, Owner or the Architect shall determine the method and the adjustment on the basis of actual expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

The Architect's determination, as specified above, shall not be less than the actual costs expended by the Contractor in performing the changed Work and such cost shall be mutually agreeable between Owner and Contractor. If the Architect's determination is believed by the Contractor to be less than its actual costs (incurred or projected) in performing the Work, the Contractor may initiate mediation upon a statement of disagreement with the Architect.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 7.5 Notwithstanding any provision of any Contract Document to the contrary, no change in the Work, whether by way of alteration or addition to the Work, shall be the basis of any increase to the Contract Sum or extension of the Contract Time unless and until such alteration or addition has been authorized by a Change Order or Construction Change Directive executed and issued in accordance with and in compliance with the requirements of the Contract Documents. No Change Order or Construction Change Directive increasing the Contract Sum or extending the Contract Time shall be binding upon Owner unless approved in writing by Owner. The foregoing requirements are of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration or adjustments to the Work, whether or not in fact there is any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, ~~including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work,~~ commencing on the date of commencement of the Work and ~~reaching ending on the date of Substantial Completion~~, subject to adjustments in accordance with the terms of the work schedule attached to the contract as Exhibit "D" and made a part thereof.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date ~~certified by the Architect in accordance with~~ as established in Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract

Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of Contractor's insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as mutually agreed to by Owner and Contractor.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION — SEE EXHIBIT F — PAYMENTS

§ 9.1 CONTRACT SUM

~~The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.~~

§ 9.2 SCHEDULE OF VALUES

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

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§ 9.3 APPLICATIONS FOR PAYMENT

~~§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. With each Application for Payment, the Contractor shall submit statutory compliant conditional waivers and releases of liens for the amount in the current Application for Payment and statutory compliant unconditional waivers and release of liens for payments previously made by the Owner to the Contractor.~~

~~§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~

~~§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.~~

~~§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.~~

~~§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner at the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.~~

§ 9.4 CERTIFICATES FOR PAYMENT

~~§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.~~

~~§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the~~

point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

~~§ 9.5.1~~ The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot

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be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- ~~1. defective Work not remedied;~~
- ~~2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;~~
- ~~3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;~~
- ~~4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;~~
- ~~5. damage to the Owner or a separate contractor;~~
- ~~6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or~~
- ~~7. repeated failure to carry out the Work in accordance with the Contract Documents.~~

~~§ 9.5.2~~ When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

~~§ 9.5.3~~ If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

~~§ 9.6.1~~ After the Architect has issued a Certificate for Payment or seven (7) days after Architect's receipt of Contractor's Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

~~§ 9.6.2~~ The Contractor shall pay each Subcontractor upon receipt of payment from the Owner, in accordance to the terms of their subcontract agreements, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

~~§ 9.6.3~~ The Architect may, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

~~§ 9.6.4~~ The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

~~§ 9.6.5~~ Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

~~§ 9.6.6~~ A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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~~§ 9.6.7~~ Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or

furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding anything to the contrary in this Agreement, Contractor shall not be obligated to remove or be liable for liens recorded due to payment default by the Owner or for liens recorded solely due to expiration of lien rights caused by recordation of a Notice of Completion prior to final payment.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Thirty-five (35) days after Substantial Completion, any unpaid balance plus the remaining retention will be paid to the Contractor. Should minor items remain to be completed, the Contractor and Owner or Architect shall list such items and the Contractor's written acceptance of such list shall constitute its unconditional promise to complete said items within a reasonable time thereafter. The Owner may retain a sum equal to one hundred fifty percent (150%) of the estimated cost of completing any unfinished items, provided that such items are listed separately and

the estimated cost of completing any unfinished items is likewise listed separately. Thereafter, Owner shall pay to the Contractor monthly, the amount retained for incomplete items as each of said items is completed.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work. Commencement of warranties for such portion of the Work shall commence upon Owner's occupancy or use. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. For any partial occupancy or use, the Owner shall reduce retainage proportionately to the Contractor at the time of partial occupancy or use.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment. On or before thirty (30) days after Substantial Completion, execution of outstanding Change Orders, and completion of the punch list, the Contractor shall submit the final Application for Payment showing, in such form and detail, as the Owner shall reasonably require, the aggregate of all reimbursable costs paid or then due on account for the Cost of the Work. If the aggregate amount is greater than the total of previous payments, the Owner will pay the balance due within five (5) days of receiving the final Application for Payment. If the aggregate amount is less than the total of previous payments, the amount due to the Owner will be remitted with the final statement.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid, or will be paid from amounts in the final payment, or are reserved pursuant to Section 9.10.5 or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, conditional final payment releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as required by the Contract Documents.. If a Subcontractor refuses to furnish such a release or waiver required by the Contract, the Contractor

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may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent

sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under

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Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to

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perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and

expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below caused by the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, ~~for ten (10) years following the completion of work to cover the Statue of Repose. until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage-~~ as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner except that ten (10) days shall apply in the event of cancellation for non-payment of premium. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in

part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, before exposure to a covered loss may occur, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by Owner or others, comprising total value for the entire Project at the site on a replacement cost basis including cost to cover professional fees, without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Contractor, subcontractors and sub-subcontractors shall be named as additional insureds under such property policy.

§ 11.3.1.1 Property insurance shall be on a standard commercially available "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, including resulting damage arising out of any faulty workmanship, design error or omission, earthquake, flood, windstorm, falsework, settlement, expansion or contraction of soils, testing and startup, temporary buildings and debris removal including demolition occasioned by

enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 If Owner chooses not to purchase property insurance covering damage to Work caused by the perils of earthquake, windstorm, terrorism or flood, the Owner shall be responsible for the cost of any damage and repair to the Work resulting from such perils. The Owner, furthermore, waives claims against the Contractor for damage caused by such perils and agrees to indemnify the Contractor from any and all such claims.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. If the Owner has not provided acceptable evidence of property insurance coverage required herein before exposure to a covered loss may occur, then the Contractor may obtain such coverage and by appropriate Change Order the cost thereof shall be charged to the Owner. If adequate coverage is later obtained by the Owner, then the Contractor shall terminate any property insurance coverage so obtained.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary to the extent such costs are covered under the policy. The Owner shall deposit in a

separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers subject to Contractor's agreement of such adjustment and settlement and only in the event that the Contractor's and/or its subcontractors' interests are affected. Any disputes shall be resolved as provided in Sections 15.3 and 15.4. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.3.11 Notwithstanding anything to the contrary in this Contract, Contractor's performance of any replacement of the Work shall be performed pursuant to the Change Order provisions of Article 7, to the extent that; (i) the damage is covered by the property insurance provisions of the Contract; or (ii) the damage is not due to the negligence or willful misconduct of the Contractor.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.5 SUBCONTRACTOR DEFAULT INSURANCE

§ 11.5.1 The Contractor shall have the right to provide subcontractor default insurance for eligible Projects.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including reasonable and necessary additional testing and inspections, the cost of uncovering and replacement, and reasonable and necessary compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor

shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice (which shall include electronic transmission) shall be deemed to have been duly served when delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or three (3) business days after deposit in the United States Mail, if sent by registered or certified

mail, return receipt requested, or if transmitted before 5:00 p.m. local time, on a business day, on the date transmitted by electronic mail or facsimile (as evidenced by facsimile confirmation), otherwise on the next business day, or when delivered by a reputable courier service providing proof of delivery to, the last business address known to the party giving notice. Meeting minutes, whether prepared by the Owner, Contractor or Architect, shall not constitute written notice of any items to be approved hereunder.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals as provided for in the Contract Documents. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at five percent (5%) per annum over the prime rate of the Wells Fargo Bank of San Francisco prevailing on the 25th day of the month preceding the date that payment was due.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements

of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work, or termination of this Agreement, whichever is earlier. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 60 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment and tools purchased for incorporation into the Work ;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

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- .3 Finish the Work by whatever reasonable method the Owner or Architect may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible;
or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with overhead and profit on the Work calculated in accordance with the terms of the Contract Documents; provided, however, that in no event shall Contractor be entitled to any compensation for Work not executed. Contractor shall be entitled to general conditions for a reasonable period, not to exceed one month, to facilitate the reassignment of project staff.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.

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Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare

Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4,

9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 If a dispute arises out of or relating to this Contract or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall endeavor in good faith to settle the dispute in an amicable manner within 45 days of submission to mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The

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party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

ARTICLE 16 SUPPLEMENTARY CONDITIONS

The "Supplementary Conditions" attached hereto as Rider "A" shall be deemed part of this Agreement and shall govern and control in the event of any conflict with the terms hereof.

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EXHIBIT A

(NOT USED)

FOR THE AGREEMENT BETWEEN

PACIRA PHARMACEUTICALS, INC. AND DPR CONSTRUCTION, A GENERAL PARTNERSHIP

**EXHIBIT B
CONTRACTOR'S FIXED RATES**

for the Contract between
Pacira Pharmaceuticals, Inc. and DPR Construction
on Pacira - B1 45L Production Suite C Restart
DPR Job No. D1-A11035-00

1. Labor Rates

Classification	Rates	Overtime Rates	Double-time Rates
[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]
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[**]	[**]	[**]	[**]

The composite rates reflected above are fixed as stipulated rates by agreement of the Owner and DPR Construction and include all statutory fringes, benefits, payroll taxes, payroll insurance, and employee benefits. These composite fixed labor rates shall apply from January 1, 2012 thru

December 31, 2012. On January 1 of each subsequent year, these rates shall be increased by [**]% above the prior years rates.

2. Equipment Rates:

Item	Weekly Rate	Monthly Rate
[**]	[**]	[**]
[**]	[**]	[**]

3. Contractor's Insurance Cost:

- a) Contractor's Insurance for the Project is fixed at the stipulated rate of [**] Dollars (\$[**] .00) per thousand dollars of Contract Sum.
- b) Contractor's "Subcontractor Pollution Liability Insurance" is a wrap-up Pollution Insurance (including mold) policy for those subcontractors who are unable to provide such insurance. The cost is fixed at the stipulated rate of [**] per thousand dollars of each such enrolled subcontractor's subcontract value.

4. Contractor's Bond Cost:

- a) Contractor's cost to provide a Labor, Material and Performance Bond for the Project shall be fixed at the stipulated rate of Call if Applicable Dollars (\$ ###) per thousand dollars of Contract Sum.
- b) Contractor's cost to enroll all qualified Subcontractors into the Subguard Program for the Project is fixed at the stipulated rate of [**] per thousand dollars of Contract Sum.

The rates defined in this Exhibit are fixed as stipulated rates by agreement of the Owner and DPR Construction. Notwithstanding any language in the Contract Documents to the contrary, these fixed rates shall, when multiplied by actual, allowable units, constitute Cost of the Work, as that term is used in the Contract Documents, to calculate Contractor's Contract compensation and/or Change Order pricing for each Labor, Equipment, Insurance and Bond classification item listed. Where Owner has the right under the Contract Documents to audit Contractor's costs, such right with respect to these fixed rates shall be limited to auditing the quantity of allowable units, and verification that the appropriate Contract Labor, Equipment, Insurance and Bond rates are multiplied times the allowable units.

EXHIBIT C
LIST OF CONTRACT DOCUMENTS
FOR THE AGREEMENT BETWEEN
PACIRA PHARAMCEUTICALS, INC. AND DPR CONSTRUCTIONS, A GENERAL PARTNERSHIP

See Exhibit E, Section 5 for Document List.

EXHIBIT D
(NOT USED)
FOR THE AGREEMENT BETWEEN
PACIRA PHARMACEUTICALS, INC. AND DPR CONSTRUCTION, A GENERAL PARTNERSHIP

NOT USED



Pacira – B1 Suite C 45L Production Suite Restart

GMP Estimate 3.3 11/18/11
San Diego, California



Confidential Materials omitted and filed with the Securities and Exchange Commission pursuant to a request for confidential treatment. A total of 127 pages were omitted. [**]

Exhibit F - Payments

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one half of a calendar month ending on the fifteenth (15th) and the last day of the month. The Contractor shall, during the week prior to the first and the fifteenth of each month, meet with the Owner (and/or other parties designated in writing by the Owner) to review and approve an itemized draft Application for Payment. The approved draft will then be formalized into a final Application for Payment, and submitted to the Owner for payment.

§ 12.1.2.1 Some subcontractors may request special terms of payment which will be presented to the Owner for consideration and approval. When approved, a Change Order will be issued to indicate the subcontractors involved and the agreed upon terms.

§ 12.1.3 The Owner shall promptly process the Application for Payment. The amount approved in the Application for Payment shall be payable by Owner on or before the 10th business day following the date the application was submitted.

Payment shall be paid via electronic transfer to:
Harris Bank
111 West Monroe Street
Chicago, IL 60603
Contact: Claudia Gamboa (312) 461-5499

For the account of:
DPR Construction,- A General Partnership
1450 Veterans Blvd.
Redwood City, CA 94063
Account No. # [**]
Routing No. 071000288
Have the bank notify Rich Wong (650) 474-1450 ext. 5059 or Michele Leiva ext 5042

Job Name: Pacira - Suite C Precon
Job No: D1-A11035-00

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of 10% on the amount completed and stored to date, except that (1) retainage shall not be withheld on Contractor's General Conditions costs or Fee, subcontractors involving discounts, items of work performed by Contractor's own forces, or where payment is made by Contractor on a net basis such as engineering, temporary services, purchase order items, refundable deposits, or where a lesser retention is required by law, and (2) if Contractor retains more than 10% from disbursements to be made to a Subcontractor, the payment by Owner shall be subject to a retainage in an equal amount;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on

Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements. The retainage requirements for subcontractors may be reduced where full retainage is no longer warranted. In support of Contractor's 'Close As You Go' policy, the Owner shall release retention for Subcontractors when their work has been completed in accordance with the Contract Documents and accepted by the Contractor, Architect and Owner.

§ 12.1.10 Invoices submitted on the first of the month are due on the 15th of that month and invoices submitted on the 15th of the month are due by the last day of the month.. The Owner has five (5) business days to notify Contractor if adjustments are requested in the Application for Payment. Contractor then has three (3) business days to respond with corrections and payment to the Contractor remains due on the date shown.

§ 12.1.11 Contractor shall submit all applications for payment electronically to Pacira's electronic accounts payable system.

§ 12.1.12 Pacira may, at its choosing, review and approve contractors application for payment without the Architect's certification.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

§ 12.2.2 If the Owner so elects to audit the project accounting, the Owner's auditors will review and report in writing on the Contractor's final accounting within twenty (20) days after delivery of the final accounting to the Owner by the Contractor. Based upon such Cost of the Work as the Owner's auditor's report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Owner will, within ten (10) business days after receipt of the written report of the Owner's auditors, either issue to Contractor Final Payment, or notify the Contractor in writing of the Owner's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201-2007.

§ 12.2.3 If the Owner's auditor's report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Owner's auditor's report. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount of the Final Application for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Contractor's Final Application for Payment unless there is a dispute based upon the Owner's Auditor's report. In such case, all undisputed amounts will be paid to the contractor within ten (10) business days and a resolution for the reaming balance will be pursued per Section 12.2.3.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 12.3 For all work that the Contractor has received payment from the owner, Contractor shall not suffer or permit any laborer's, materialmen's, mechanic's, or other similar liens to be filed or otherwise imposed on any part of the Work or the property on which the Work is performed. If any such laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed or otherwise imposed against the Property, then Contractor, within ten (10) days of the filing of such lien or other imposition thereof, shall cause such lien to be released or otherwise discharged. If Contractor fails to cause such lien either to be released or discharged within said ten (10) day period, then, without limiting any other rights or remedies of Owner hereunder, under the Contract Documents or at law or in equity, Owner shall have the right to deduct 150% of the amount of the lien claim from the next progress payment until Contractor shall have caused such lien to be released or discharged. Without limiting the foregoing, so long as Owner is not in default with respect to payment of any amounts due to Contractor hereunder, the Contractor shall indemnify, defend and hold harmless Owner from all claims, losses, demands, causes of action or suits of whatever nature arising out of any such lien or that part of the Work covered thereby. The provisions of this section do not apply to any work that the owner has failed to make payment to the Contractor, whether or not there is a dispute associated with the claimed amount due, provided, however, that that if a dispute is resolved in Owner's favor, then Contractor shall reimburse any and all costs incurred by Owner in connection with causing any related liens to be removed, released, bonded over or otherwise discharged, including, without limitation, all attorneys' fees and costs.

§ 12.4 In each Application for Payment the Contractor shall certify as to Subcontractors as follows: "There are no known mechanics' or materialmen's liens outstanding as of the date hereof, all due and payable bills with respect to the Work have been paid to date through the date of the prior Application for Payment and waivers from all subcontractors and materialmen for which payment was made from the last advance made by the Owner have been obtained," it being understood that such lien waivers may be conditioned upon receipt by the applicable subcontractors and materialmen of payment from such last advance if the last month's advance has not been made as of the tenth (10th) business day before the date Contractor submits such Application for Payment.

§ 12.5 FINAL COMPLETION AND FINAL PAYMENT. In addition to the conditions to final payment set forth in Article 9 of the General Conditions, the Contractor shall submit the following to Owner before either final payment or any remaining retained percentage shall become due and payable:

(1) complete and accurate “as built” drawings, records and related data, (2) all guaranties and warranties to which the Owner is entitled hereunder, (3) all permits, licenses, approvals, certificates and authorizations (collectively, “Governmental Approvals”)

required by any authority having jurisdiction, (provided that such Governmental Approvals shall not be a condition precedent to Final Payment when the inability to obtain same is due solely to the fault or neglect of a party other than Contractor), (4) a project specific release of the Owner with respect to payment obligations on the contract from the Contractor, (5) all Subcontractor and vendor final lien releases, and (6) satisfactory proof that all claims, including taxes growing out of the Work to be performed hereunder and any liens growing out of the same which have been filed or recorded, have been released.

AIA® Document A201™ — 2007

General Conditions of the Contract for Construction

Rider “A”

SUPPLEMENTARY CONDITIONS

The following Supplementary Conditions modify, change, delete from or add to the “General Conditions of the Contract for Construction” AIA Document A201 — 2007 (“General Conditions”). Where apparent conflicts occur between these Supplementary Conditions and the provisions of the General Conditions, these Supplementary Conditions shall govern and control.

1. The following is added as Paragraph 3.2.5:

The Contractor represents that it has had adequate access to the job site and building area in which the Work is to be performed, it has satisfied itself as to the nature and location of the Work, including any possible reasonably observable obstructions, the equipment and facilities needed for the execution of the Work, and all other reasonably observable matters which can in any way affect the Work or cost thereof, and that it has studied the Contract Documents and all other documents relating to, or which may influence, the Work.

2. The following is added as Paragraph 3.4.4:

In connection with the Work, the Contractor shall cause all manufactured articles, materials and equipment to be applied, installed, connected, erected, used, cleaned and conditioned as directed by the respective manufacturers, unless otherwise specified.

3. The following is added as Paragraph 3.4.5:

In the event that it is necessary for Contractor to stockpile or to store quantities of materials or equipment on the job site, Contractor shall inform Owner of such necessity and Owner shall offer reasonable available space, if any, for storage of such materials or equipment, and Contractor shall be provided with keys to said storage area, if appropriate. Contractor shall use said space only for such purpose. Owner shall not be responsible to Contractor for loss of or damage to said material or equipment for any cause whatsoever, except where such loss or damage is covered by the property insurance provisions of the Contract. Combustible materials shall be sealed, kept, and watched over in strict

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

compliance with all Federal, State and City laws, rules, ordinances and regulations, and the directions and requirements of any insurance body or insurance carrier covering Contractor, Owner, the Premises or any part of the contents thereof. All permits, licenses and certificates required by law in connection with materials stored on the premises shall be kept on the premises and shall be open to inspection by Owner at all times. Contractor will not, without the prior consent of the Owner, store or maintain any explosive, dangerous, or hazardous materials (including environmentally hazardous materials) on the premises.

4. The following is added as Paragraph 3.4.6:

Notwithstanding anything contained herein to the contrary, all material delivered to the job site shall be unconditionally owned by Contractor at the time of delivery and shall be free of the lien or claim of any third party, for which materials Owner has made or shall make payment to the Contractor.

5. The following is added as Paragraph 3.5.1:

If any warranty shall be given by any manufacturer, installer, supplier, subcontractor, or by any other person involved in any manner or performing any work in relation to the Project to the Contractor or to any Subcontractor, whether such warranty is required by this Contract or otherwise, the Contractor or such Subcontractor hereby agrees unconditionally to assign all rights under such warranty to Owner. The Contractor or Subcontractor agrees to deliver a written assignment of such warranty and all other evidence of such warranty to Owner. Notwithstanding anything to the contrary, any warranty which shall be longer than the one (1) year warranty granted by a Contractor to Owner as provided in this Paragraph 3.5.2 shall remain in full force and effect and shall not be shortened by this paragraph or any other clause in this Agreement.

6. The following is added to Paragraph 3.7.1:

No portion of the Work shall be performed unless and until:

- (x) All permits required for the performance of the Work will have been obtained and will be in full force and effect; and
- (y) Any prior portion of the Work, which must be or customarily is Inspected by a governmental or insurance representative and the inspection of which would be made impossible or impractical by the performance of the portion of the Work to be performed, shall have been inspected.

The following is added to Paragraph 3.7.4:

In the event any violations are placed upon the premises by any public authority as a result of or in connection with the Work, the Contractor shall be solely responsible therefor and shall bear all costs attributable thereto. Final payment, in

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an amount at least sufficient to correct such violations as determined by the Architect, shall be withheld until all such violations are cured of record. In addition, Contractor shall indemnify Owner for all damage, cost and expense arising from such violations, including but not limited to reasonable attorneys' fees. In the event Contractor fails to cure such violations of record within a reasonable time, Owner may cause such violations to be cured and, upon demand, Contractor shall pay Owner the costs incurred in such cure, including reasonable attorneys' fees. The above is exclusive of C of O, previous violations or errors and omissions by Architect or other third party.

7. The following is added as Paragraph 3.15.1.1.:

Contractor shall obtain all applicable approvals and permits required for the placement of a dumpster on the premises. The location of the dumpster shall be subject to Owner's approval.

8. The following is added as Paragraph 3.18.3.

If any claim or demand is made against Owner or Architect arising out of or caused by any act or omission of Contractor, its subcontractors, agents and/or employees during the progress of the Work, Owner may, in its sole discretion, withhold payments to Contractor up to the amount of the claim or demand being asserted plus estimated costs and legal fees. Notwithstanding the preceding sentence, to the extent any such claims are covered by insurance ~~and the insurance carrier acknowledges without reservation that it will defend such claims and pay any judgments or settlements arising in connection therewith,~~ Owner shall not withhold payments. Any payments that are withheld in accordance with this paragraph will not affect Contractor's obligations to complete performance under this Contract. To the extent that Owner has not withheld payments, Contractor shall refund to Owner and Architect all monies that Owner or Architect may be compelled to pay in satisfying such claims and/or liabilities including all costs and reasonable legal fees. Contractor shall exercise proper care and caution so as to avoid accident or injury to persons and property and shall adopt and carry out any reasonable suggestions of Owner or Architect in an effort to ensure safety.

9. The following is added to Paragraph 6.2.4:

Should the Contractor cause damage to the Work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for

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all reasonable attorneys' fees and court or arbitration costs which the Owner has incurred.

10. The following is added to Exhibit F - Payments.

Each Application for Payment shall be in the form of AIA Document G702 "Application and Certificate for Payment," supported by Contractor's completed payment schedule form.

The submission of an Application for Payment shall constitute representations by Contractor to the Owner, that (1) the Work has progressed to the point indicated; (2) the quality of the Work is in accordance with the Contract Documents; (3) Contractor is entitled to payment in the amount certified; (4) Contractor has supervised the Work in accordance with the terms of the Contract Documents; (5) all documents and other data submitted by Contractor in order to substantiate Contractor's right to payment are true and correct; (6) all monies previously paid on account of the Contract Sum have been applied in accordance with the Contract Documents and in full compliance with any applicable law, including California lien laws.

11. The following is added to Exhibit F - Payments:

In the event that, at any time, there shall be evidence of any lien or claim for Work or material furnished in the performance of the Work which, if established, could be an encumbrance upon the property upon which said Work is to be performed or for which Owner is or may become liable, Owner shall have the right to retain out of any payment then due or to become due to Contractor the full amount of the lien or claim except to the extent such lien or claim was due to the non-payment of an undisputed amount by Owner to the Contractor. If any such claim or lien is asserted after all payments hereunder have been made, or should the amount owed to Contractor be insufficient to completely indemnify and defend Owner from and against any such claim or lien, Contractor shall refund to Owner the sums that Owner was compelled to pay in discharging such lien or satisfying such claim, including but not limited to reasonable legal, accounting and engineering fees, or Contractor shall bond such liens or claims. In the event that any lien shall be filed during the course of the Work, Contractor shall discharge same by bonding or in any other manner provided by law, within five (5) days from the date of filing thereof. In the event that Contractor shall fail or refuse to so discharge such lien, Owner shall have the right to cause the same to be removed by bonding or by payment, and the entire cost incurred by Owner in so doing, including reasonable legal and accounting fees, shall be deducted from the Contract Price.

12. The following is added to Exhibit F - Payments:

Before each progress payment, other than the final payment, shall be deemed earned or payable, Contractor and each Subcontractor and supplier shall execute

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and deliver to Owner a waiver of lien in form reasonably acceptable to Owner with respect to the payments made by Owner pursuant to the previous Certificate for Payment. Before the final payment shall be deemed earned and payable, Contractor and each Subcontractor and supplier shall execute and deliver to Owner a waiver of lien in form reasonably acceptable to Owner. Notwithstanding anything to the contrary in this Contract, Contractor shall not be obligated to execute unconditional waivers and releases of liens for amounts that have not yet been paid.

13. Paragraph 11.1.1 in the Contract is deleted and the following is added as Paragraph 11.1.1:

The Contractor shall purchase from and maintain in a company or companies with a Best Rating of A, X or better lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and the Owner from claims set forth below caused by the Contractor's or the Owner's operations and completed operations under the Contract and for which the Contractor or Owner may be legally liable, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

Paragraphs 11.1.1.1 through 11.1.1.8 in the Contract shall remain unchanged.

14. The following is added as Paragraph 11.1.1.9:

All coverages required under subsection 11.1.1 shall be written on an occurrence basis, by companies ~~authorized licensed~~ to do business in the State of California and otherwise acceptable to Owner for not less than the limits of liability set forth below:

- A. Worker's Compensation and Statutory Employers Liability: Statutory Limits
- B. Commercial General Public Liability: Including, but not limited to, Premises Operation, bodily injury, personal injury, death, explosion, collapse, subsidence, underground hazard independent contractors, products and completed operations, contractual liability and broad form property damage coverage in a combined single limit amount of not less than \$10,000,000.
- C. Automobile Liability: Per Person/Per ~~Accident Occurrence~~: Bodily Injury: \$1,000,000/\$1,000,000
- D. Products and Completed Operations Insurance shall be maintained for a minimum period often (10) years after final payment and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.

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Contractor shall ensure that all tiers of their Subcontractors shall procure and maintain insurance in like form as required by the Contract and these Supplementary Conditions.

15. Paragraph 11.1.3 in the Contract is deleted in its entirety and the following is added as Paragraph 11.1.3:

Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each endorsement evidencing coverage for Owner under Contractor's policy that includes insurance coverages required by these Supplementary Conditions. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner. If the Contractor has not provided acceptable evidence of property insurance coverage required herein before exposure to a covered loss may occur, then the Owner may obtain such coverage and by appropriate Change Order the cost thereof shall be charged to the Contractor. If adequate coverage is later obtained by Contractor, then the Owner may terminate any such insurance so obtained.

16. Paragraph 11.1.4 in the Contract is deleted in its entirety and the following is added as Paragraph 11.1.4:

Original or duplicate ~~original policies~~ endorsements of insurance acceptable to the Owner which specifically set forth evidence of all coverage required hereunder, and copies of all endorsements that are subsequently issued, shall be delivered by Contractor to the Owner prior to the commencement of the Work. Contractor shall not, by its actions or inactions, cause any insurance policies to be canceled or permit them to lapse prior to the issuance of the Final Certificate of Completion for the Work and all insurance policies shall include clauses to the effect that (i) the policy shall not be canceled, ~~changed &~~ non-renewed or coverage thereunder reduced until at least thirty (30) days (except ten (10) days for non-payment of premium) after Owner, ~~Architect and any mortgagee whose name and address has been provided to the insurer have~~ received written notice thereof; (ii) the act or omission of the named insured or any additional insured will not invalidate the policy as to the other additional insureds; and (iii) such insurance shall be primary and noncontributory. Specific arrangements can be made to view copies of policies at the local DPR office.

17. The following is added as Paragraph 11.1.5:

All insurance required hereunder shall be written, unless specified otherwise herein, without the inclusion of any defense costs within the limits of liability per job, and shall name Owner, Architect, and each of the aforesaid parties' agents, officers and employees and, upon notice from Owner, any mortgagee, as additional insureds thereunder.

In the event of the failure of Contractor to furnish and maintain any of the insurance required pursuant to this Contract, Owner shall have the right at its option to terminate this Contract for cause, as provided for in Paragraph 14.2.1 or to take out and maintain such insurance for and in the name of Contractor, and Contractor agrees to pay the cost thereof and to furnish all necessary information to permit Owner to take out and maintain such insurance for the account of Contractor. Compliance by Contractor with the foregoing requirements to carry insurance and furnish ~~policies~~ endorsements shall not relieve Contractor from liability assumed under any provision of this Contract.

18. The following is added as Paragraph 11.1.6:

The insurance required by this Paragraph 11, at the option of Contractor, may be effected by blanket and/or umbrella policies issued to Contractor covering the Premises, provided that the policies otherwise comply with the provisions of this Paragraph 11 and allocate to the Premises the coverage specified herein, without possibility of reduction or coinsurance by reason of, or damage to, any other premises named therein.

19. Paragraph 11.3.1.1.1 delete the following portion of final sentence "and agrees to indemnify the Contractor from any and all such claims"

20. Paragraph 11.3.1.2 the following sentence is to be added to the end of the paragraph "Contractor to provide Owner with written notice of its intent to purchase such insurance and shall allow fifteen (15) business days to review the insurance quote and coverages and to cure if Owner so desires."

21. Paragraph 11.3.3 delete "however caused" and replace with "not caused by Contractor"

22. Paragraph 11.3.5 is deleted in its entirety.

23. Paragraph 11.3.7 is deleted in its entirety.

24. Paragraph 11.3.10 is deleted in its entirety and the following is added as Paragraph 11.3.10:

The Owner shall have power to adjust and settle all losses with its insurers. Should Contractor have an insurable interest in the loss or

losses, then Owner shall act as Contractor's fiduciary solely with respect to such insurable interest and shall consult with Contractor and obtain Contractor's approval of any adjustment in which Contractor has an insurable interest, which approval shall not be unreasonably withheld. Any disputes shall be resolved as provided in Sections 15.3 and 15.4. The Owner shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

25. The following is added as Paragraph 11.6:

WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights of subrogation against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by insurance obtained pursuant to the Contract or these Supplementary Conditions, except such rights as they may have to any insurance proceeds maintained by any of them. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, sub-contractors, and sub-subcontractors separate contracts described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of any of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the loss.

26. The following is added as Paragraph 11.7:

The Owner acknowledges that the Contractor will not provide Professional Errors and Omissions Insurance as the Contractor in his role of Contractor is not acting as an Architect or other design professional. Professional Liability Insurance in forms and amounts acceptable to the Owner shall be carried if the Contractor is to provide design services to the project. Evidence of coverage in the form of a policy endorsement shall be provided to the Owner prior to the start of work.

27. The following is added as Paragraph 11.8:

Builders Risk deductibles shall not exceed \$10,000 except where only higher deductibles are available for select perils such as earthquake, flood, windstorm, etc. and shall be the responsibility of the Owner except to the extent a covered loss is due to the negligence or willful misconduct of the Contractor.

28. The following is added as Paragraph 11.9:

The Contractor shall have the right to provide subcontractor default insurance or employ other means to protect the Contractor from subcontractor default.

29. The following is added as Paragraph 11.10:

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

30. Notwithstanding the provisions of Paragraph 13.3, all notices hereunder shall be given by personal messenger or courier delivery, by facsimile transmission, by overnight or express mail service or by mailing certified, return receipt requested, addressed to Contractor, Architect or to Owner at the addresses set forth on the first page of the Standard Form Agreement.

31. The following is added as Paragraph 13.8:

Contractor warrants that it shall employ sufficient workers at the site to complete the Work in a timely manner.

32. The following is added as Paragraph 13.9:

For all Work done by Contractor in connection with this Contract, Contractor warrants that any and all materials used shall be equal to or superior in quality to the materials and standards required by the Contract Documents.

Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisks denote omissions.

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this “**Agreement**”) dated as of May 2, 2012 (the “**Effective Date**”) among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (“**Oxford**”), as collateral agent (in such capacity, “**Collateral Agent**”), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender (each a “**Lender**” and collectively, the “**Lenders**”), and PACIRA PHARMACEUTICALS, INC., a Delaware corporation (the “**Parent**”) and PACIRA PHARMACEUTICALS, INC., a California corporation, with offices located at 5 Sylvan Way, Parsippany, New Jersey 07054 (individually and collectively, jointly and severally, “**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

1.1 Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to “**Dollars**” or “**\$**” are United States Dollars, unless otherwise noted.

2. LOANS AND TERMS OF PAYMENT

2.1 **Promise to Pay.** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loans.

(a) Availability. Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate amount of Twenty Seven Million Five Hundred Thousand Dollars (\$27,500,000) according to each Lender’s Term Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a “**Term Loan**”, and collectively as the “**Term Loans**”). After repayment, no Term Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only in arrears commencing on the first (1st) Payment Date following the Funding Date of the Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender’s Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty (30) months. All unpaid principal and accrued and unpaid interest with respect to the Term Loan is due and payable in full on the Maturity Date. the Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Lenders’ Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loans. No Prepayment Fee shall be required in connection with any mandatory prepayment pursuant to Section 6.5 hereof.

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(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least ten (10) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Lenders’ Expenses and interest at the Default Rate with respect to any past due amounts.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on

each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the “**Default Rate**”). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days.

(d) Debit of Accounts. Collateral Agent may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off. Without limiting the foregoing, Collateral Agent and each Lender shall use commercially reasonable efforts to promptly notify Borrower of any amounts (other than principal and interest payments) debited from Borrower’s deposit accounts in respect of this Agreement.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender’s office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly in arrears on the Payment Date of each month. Payments of principal and/or interest received after 2:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

2.4 Secured Promissory Notes. The Term Loan shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a “**Secured Promissory Note**”), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender’s Secured Promissory Note, an appropriate notation on such Lender’s Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender’s Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender’s Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal of or interest on any

Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note (and including customary lost note indemnification provisions), Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

2.5 Fees. Borrower shall pay to Collateral Agent:

(a) Facility Fee. A fully earned, non-refundable facility fee of Two Hundred Seventy Five Thousand Dollars (\$275,000.00) to be shared between the Lenders pursuant to their respective Commitment Percentages, receipt of which Collateral Agent hereby acknowledges;

(b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares; and

(d) Lenders’ Expenses. All Lenders’ Expenses (including reasonable attorneys’ fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

2.6 Withholding. Payments received by the Lenders from Borrower hereunder will be made free and clear of any withholding taxes. Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority; provided, that a Lender that shall have become a Lender pursuant to a Lender Transfer shall be entitled to receive only such additional amounts as such Lender’s assignor would have been entitled to receive pursuant to this Section 2.6. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make a Term Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

- (a) original Loan Documents, duly executed by Borrower and each Subsidiary, as applicable;
- (b) duly executed original Control Agreements with respect to any domestic Collateral Accounts maintained by Borrower to the extent required under Section 6.6;
- (c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term Loan Commitment Percentage;
- (d) the certificate(s) for the Shares, together with Assignment(s) Separate from Certificate, duly executed in blank;

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(e) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date ;

(f) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

(g) the Annual Projections, for the current calendar year;

(h) duly executed original officer's certificate for Borrower that is a party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;

(i) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(j) a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's leased locations;

(k) a bailee waiver executed in favor of Collateral Agent by Integrated Commercialization Services, Inc.;

(l) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(m) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(n) a payoff letter from Hercules in respect of the Existing Indebtedness;

(o) evidence that (i) the Liens securing the Existing Indebtedness will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;

(p) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt by Collateral Agent of an executed Disbursement Letter in the form of Exhibit B attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

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(c) in such Lender's sole but reasonable discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the Annual Projections of Borrower presented to and accepted by Collateral Agent and each Lender;

(d) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes and Warrants, in number, form and content acceptable to each Lender, and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.3 Covenant to Deliver. Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan (other than the initial Term Loan to be made on the Effective Date), Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account (or as otherwise directed in the Disbursement Letter), an amount equal to its Term Loan Commitment.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's Lien. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower, shall promptly notify Collateral Agent in a writing signed by Borrower, as the case may be, of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

4.3 Pledge of Collateral. Borrower hereby pledges, assigns and grants to Collateral Agent, for the ratable benefit of the Lenders, a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Effective Date, or, to the extent not certificated as of the Effective Date, within ten (10) days of the certification of any Shares, the certificate or certificates for the Shares will be delivered to Collateral Agent, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Collateral Agent and cause new (as applicable) certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Shares. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows at all times:

5.1 Due Organization, Authorization: Power and Authority . Borrower is duly existing and in good standing as a Registered Organization, or equivalent, in its jurisdictions of organization or formation and Borrower is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. Each of Borrower's Subsidiaries is duly existing and in good standing as a Registered Organization, or equivalent, in its jurisdictions of organization or formation and each of Borrower's Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower or such Subsidiary (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). Borrower represents and warrants that (a) Borrower and each of its Subsidiaries' exact legal name is that which is indicated on its respective Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) each Perfection Certificate accurately sets forth each of Borrower's and its Subsidiaries' organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate accurately sets forth Borrower's and each of its Subsidiaries' place of business, or, if more than one, its chief executive office as well as Borrower's and each of its Subsidiaries' mailing address (if different than its chief executive office); (e) except as disclosed in the Perfection Certificate, Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete (it being understood and agreed that Borrower and each of its Subsidiaries may from time to time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement which updates may be provided by Borrower to Collateral Agent contemporaneously with the delivery of the Compliance Certificate delivered by Borrower pursuant to Section 6.2(b) relating to the fiscal quarter in which such change(s) occurs; the Lenders acknowledge that until the Perfection Certificates are so updated (and provided the perfection Certificates are so updated as required pursuant to this clause) the Perfection Certificates shall not be deemed inaccurate or incomplete); such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now

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a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect or are being obtained pursuant to Section 6.1(b)), or (v) constitute an event of default under any material agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein (to the extent required pursuant to Section 6.6 hereof). The Accounts are bona fide, existing obligations of the Account Debtors.

(b) On the Effective Date, and except as disclosed on the Perfection Certificates (i) the Collateral is not in the possession of any third party bailee (such as a warehouse), and (ii) no such third party bailee possesses components of the Collateral in excess of One Hundred Thousand Dollars (\$100,000.00). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 6.11.

(c) All Inventory is in all material respects of good and marketable quality for Inventory of like type, free from material defects.

(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could reasonably be expected to interfere with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or becoming bound by any material license or agreement with respect to with Borrower or any Subsidiary is the licensee (other than open source, over the counter software, prepackaged software and other software that is available to the general public without customization). Borrower shall, and shall cause its Subsidiaries to, take such commercially reasonable steps as Collateral Agent and any Lender requests to obtain the consent of, or waiver

by, any Person whose consent or waiver is necessary for (i) all licenses or agreements with respect to which Borrower or any Subsidiary is the licensee to be deemed “Collateral” and for Collateral Agent and each Lender to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (ii) Collateral Agent and each Lender shall have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Collateral Agent’s and such Lender’s rights and remedies under this Agreement and the other Loan Documents.

5.3 Litigation. Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing against Borrower or any of its Subsidiaries involving more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

5.4 No Material Deterioration in Financial Condition; Financial Statements . All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Borrower’s Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender.

5.5 Solvency. Borrower is solvent. Borrower and its Subsidiaries, taken as a whole, are Solvent.

5.6 Regulatory Compliance. Neither Borrower nor any of its Subsidiaries is an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower’s nor any of its Subsidiaries’ properties or assets has been used by Borrower or such Subsidiary or, to Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower’s or its Subsidiaries’ Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

5.7 Investments. Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the following sentence. Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a “Permitted Lien.” Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower’s or such Subsidiaries’, prior tax years which could result in material additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension,

profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan, in each case which could reasonably be expected to result in any material liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes. A portion of the proceeds of the Term Loans shall be used by Borrower to repay the Existing Indebtedness in full on the Effective Date.

5.10 Shares. Borrower has full power and authority to create a first lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To 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 be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6. AFFIRMATIVE COVENANTS

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Maintain Borrower's legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Maintain all Borrower's Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction, in each case, in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral. Borrower shall no less than quarterly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries.

6.2 Financial Statements, Reports, Certificates.

(a) Deliver to each Lender: (i) as soon as available, but no later than forty-five (45) days after the last day of each quarter, a company prepared consolidated balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries, for such quarter certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; (ii) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year or within five (5) days of filing with the SEC, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion (provided that the Collateral Agent and the Lenders acknowledge that J.H. Cohn LLP is an acceptable independent certified public accounting firm); (iii) as soon as available after approval thereof by Borrower's Board of Directors, but no later than thirty-one (31) days after the last day of each of Borrower's fiscal years, Borrower's annual financial projections for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual financial projections shall be set forth in a month-by-month format (such annual financial projections as originally delivered to Collateral Agent and the Lenders are referred to herein as the "Annual Projections"; provided that (x) prior to the delivery of the projections for the fiscal year 2013, the Annual Projections for fiscal year 2012 delivered to the Collateral Agent prior to the Effective Date shall be the "Annual Projections" and (y) any revisions of the Annual Projections approved by Borrower's Board of Directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval and the term "Annual Projections" shall include such revisions); (iv) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or holders of Subordinated Debt; (v) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission, (vi) quarterly (unless an Event of Default has occurred and is continuing, in which case, prompt) notice of (A) any material change in the composition of the Intellectual Property and (B) Borrower's knowledge of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property; (vii) as soon as available, but no later than forty-five (45) days after the last day of each quarter, copies of the month-end account statements for each deposit account or securities account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s), and (viii) (other than confidential treatment requests) other financial information as reasonably requested by Collateral Agent or any Lender. Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than forty-five (45) days after the last day of each fiscal quarter, deliver to the each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date. Borrower must promptly notify Collateral Agent and the Lenders of any individual return, recovery, written dispute and written claim, in each case, related to finished goods Inventory that involve more than One Million Dollars (\$1,000,000.00) based on the market value thereof. Borrower must notify Collateral Agent and the Lenders at least

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quarterly (within forty five (45) days after the last day of each such quarter) of all returns, recoveries, written disputes and written claims, in each case, related to finished goods Inventory that involve an amount in excess of five percent (5%) of Borrower's product revenue, individually or in the aggregate, for the preceding quarter.

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all material liabilities under any present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies for Borrower's Collateral shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies covering Borrower shall show, or have endorsements showing, Collateral Agent, as additional insured. All such policies of Borrower (or the loss payable and additional insured endorsements) shall provide that the insurer shall give the Borrower at least thirty (30) days' notice before canceling, amending, or declining to renew its policy (except ten (10) days for non-payment), and the Borrower shall give the Collateral Agent notice within three (3) days after receipt of any such notice from the insurer. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy of Borrower with respect to any loss of Collateral with respect to which the Collateral Agent has a first priority security interest shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Two Hundred Thousand Dollars (\$200,000.00) with respect to any loss of Borrower's Collateral, but not exceeding Four Hundred Thousand Dollars (\$400,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal, like or greater value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest (subject to Permitted Liens), and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

6.6 Operating Accounts.

(a) Maintain all of Borrower's and any Loan Party's, domestic Collateral Accounts in accounts which are subject to a Control Agreement in favor of Collateral Agent. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates or (ii) during the Royalty Assignment Period, to any Royalty Lockbox Account or Royalty Deposit Account.

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account at or with any Person other than (i) Silicon Valley Bank (or its Affiliates) or State Street Bank, which shall be subject to Control Agreements, or (ii) during the Royalty Assignment Period, any Royalty Lockbox Account or Royalty Deposit Accounts (during the Royalty Assignment Period, such Royalty Lockbox Account or Royalty Deposit Accounts shall not be required to be subject to Control Agreements in favor of the Collateral Agent or any Lender). In addition, for each Collateral Account that Borrower or any Loan Party, at any time maintains, Borrower or such Loan Party shall cause the applicable bank or

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financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated, without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates or (ii) during the Royalty Assignment Period, to any Royalty Lockbox Account or Royalty Deposit Account.

(c) Neither Borrower nor any Loan Party shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a) and (b).

6.7 Protection of Intellectual Property Rights. Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement of which it is aware by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

6.8 Litigation Cooperation. Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, at reasonable times and at reasonable intervals (unless an Event of Default has occurred and is continuing) to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

6.9 Notices of Litigation and Default. Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.10 Intentionally Omitted.

6.11 Landlord Waivers; Bailee Waivers. In the event that Borrower or any Loan Party, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary will first receive the written consent of Collateral Agent (except in respect of any items of Inventory which are maintained or stored in a particular location for a period of no longer than thirty (30) days all of which such Inventory is then (a) immediately transferred to a location in which a bailee or landlord waiver is in place (to the extent that a bailee or landlord waiver is required pursuant to the terms hereof or (b) otherwise sold) and, in the event that the Collateral at any new location is valued in excess of Two Hundred Thousand (\$200,000.00) in the aggregate based on the book value thereof (other than any items of Inventory which are maintained or stored in a particular location for a period of no longer than thirty (30) days all of which such Inventory is then (a) immediately transferred to a location in which a bailee or landlord waiver is in place (to the extent that a bailee or landlord waiver is required pursuant to the terms hereof) or (b) otherwise sold), such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, as reasonably requested by, and in form and substance reasonably satisfactory to, Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

6.12 Creation/Acquisition of Subsidiaries. In the event Borrower, or any of its Subsidiaries creates or acquires any Subsidiary, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or any Lender to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the Shares of each such Subsidiary; provided, however, that solely in the circumstance in which Borrower or any Subsidiary creates or acquires a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof (a "Foreign Subsidiary") in an acquisition permitted by Section 7.7 hereof or otherwise approved by the Required Lenders, (i) such Foreign Subsidiary shall not be required to guarantee the Obligations of Borrower under the Loan Documents and grant a continuing pledge and security interest in and to the assets of such Foreign Subsidiary, and (ii) Borrower shall not be required to grant and pledge to Collateral Agent, for the ratable benefit of Lenders, a perfected security interest in more than sixty-five percent (65%) of the Shares of such Foreign Subsidiary, if Borrower demonstrates to the reasonable satisfaction of Collateral Agent that such Foreign Subsidiary providing such guarantee or pledge and security interest or Borrower providing a perfected security interest in more than sixty-five percent (65%) of the Shares would create a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code.

6.13 Further Assurances.

(a) Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within five (5) Business Days after the same are sent or received, copies of all material

correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise reasonably be expected to have Material Adverse Change.

7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

7.1 Dispositions. Convey, sell, lease, transfer, assign, dispose of or otherwise make cash payments consisting of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) consisting of cash payments to trade creditors in the ordinary course of business; (b) of Inventory in the ordinary course of business; (c) of worn-out, surplus or obsolete Equipment at fair market value therefore in the ordinary course of business; (d) in connection with Permitted Liens and Permitted Investments; (e) in connection with Permitted Licenses; (f) during the Royalty Assignment Period, consisting of the Transfer of Assigned Interests, as such term is defined in the Royalty Assignment Agreement, pursuant to the terms and conditions of the Royalty Assignment Agreement; (g) during the Royalty Assignment Period, consisting of scheduled periodic payments required to be made to the Trust pursuant to the terms and conditions of the Royalty Assignment Agreement; and (h) of other assets not described in the preceding clauses (a) through (g), having a fair market value of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate in any fiscal year. Without limiting the foregoing, Borrower may not make Transfers in addition to those specifically enumerated above, unless and only to the extent the same are accounted for in the Annual Projections.

7.2 Changes in Business, Management, Ownership, or Business Locations . (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless a replacement for such Key Person is approved by Borrower's Board of Directors and engaged by Borrower within one hundred twenty (120) days of such change, or (ii) enter into any transaction or series of related transactions in which the stockholders of Parent (or their Affiliates) who were not stockholders immediately prior to the first such transaction own more than forty nine percent (49%) of

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the voting stock of Parent immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering, a private placement of public equity or to venture capital investors, institutional investors or strategic/collaborative partners). Borrower shall not, without at least thirty (30) days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Thousand Dollars (\$200,000.00) in assets or property of Borrower or any of its Subsidiaries); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions.

(i) Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person; provided that a Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a "co-Borrower" hereunder or has provided a secured guaranty of Borrower's Obligations hereunder) or into Borrower (or a Borrower may merge or consolidate into another Borrower) provided Borrower is the surviving legal entity, and in each case as long as no Event of Default has occurred prior thereto or would result after giving effect thereto.

(ii) acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person, provided however that the Borrower and its subsidiaries may enter into such acquisitions without the prior written consent of Lenders if, at the consummation thereof and after giving effect to any such acquisition, (a) Borrower has cash on hand equal to at least one hundred twenty-five percent (125%) of the outstanding Obligations or the total consideration paid is equity securities; and (b) any Indebtedness assumed in such transaction shall constitute Subordinated Indebtedness;

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts (other than, during the Royalty Assignment Period a Royalty Lockbox Account or Royalty Deposit Account), or permit any of its Subsidiaries to do so, in each case of the foregoing, except for Royalty Collateral (during the Royalty Assignment Period) or Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority over Collateral Agent's Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders or, during the Royalty Assignment Period, pursuant to the terms of the Royalty Agreements) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's owned Intellectual Property (except, during the Royalty Assignment Period, to the extent such Intellectual Property constitutes Royalty Collateral), except for agreements, documents, instruments or other arrangements permitted in Section 7.1 hereof and the definition of "**Permitted Liens**" herein.

7.6 Maintenance of Collateral Accounts . Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Distributions; Investments. (a) Pay any dividends (other than dividends payable solely in capital stock or dividends paid to a Borrower) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans,

provided such repurchases do not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate in any fiscal year) or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less

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favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, and (b) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.11 Compliance with Anti-Terrorism Laws. Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

7.12 Amendments to Royalty Agreements. Amend, modify or waive any provision of any Royalty Agreement to modify (i) the scope of the Royalty Collateral or (ii) Sections 5.11(c)(iv) or 6.01 of the Royalty Assignment Agreement.

7.13 Assets of Pacira UK. Permit the aggregate total value of the assets held by Pacira UK to exceed Twenty-Five Thousand Dollars (\$25,000) at any time.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or

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the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default),

6.12 (Creation/Acquisition of Subsidiaries) or 6.13 (Further Assurances) or Borrower violates any covenant in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within fifteen (15) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any fifteen (15) day cure period; and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any part of its business;

8.5 Insolvency. (a) Either (i) Borrower is or becomes or (ii) Borrower and their Subsidiaries, taken as a whole, are or become Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Five Hundred Thousand Dollars (\$500,000.00) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) Business Days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

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8.8 Misrepresentations. Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

8.10 Governmental Approvals. Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or

8.11 Lien Priority. Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement.

8.12 Royalty Agreements. A "Purchase Option Event", as defined in the Royalty Assignment Agreement, shall have occurred and the Trust shall have commenced the exercise of the purchase option pursuant to Section 5.07 of the Royalty Assignment Agreement (or the Trust shall have given written notice to Borrower of its intention to exercise such purchase option), or any "Event of Default", as such term is defined in the Royalty Security Agreement, shall have occurred and the Trust shall have commenced the exercise of remedies under the Royalty Security Agreement (or the Trust shall have given written notice to a Borrower of its intention to exercise such remedies).

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of any Lender shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

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(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "Exigent Circumstance" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence

and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign

Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned

as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

9.5 Liability for Collateral. So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the

Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: c/o PACIRA PHARMACEUTICALS, INC.
5 Sylvan Way
Parsippany, New Jersey 07054
Attn: Chief Financial Officer
Fax: (973) 267-0060

with a copy (which shall not constitute notice) to: WilmerHale
60 State Street
Boston, Massachusetts 02109
Attn: Mitchel Appelbaum
Fax: (617) 526-5000

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If to Collateral Agent: OXFORD FINANCE LLC
133 North Fairfax Street
Alexandria, Virginia 22314
Attention: Legal Department
Fax: (703) 519-5225

with a copy (which shall not constitute notice) to: DLA Piper LLP (US)
4365 Executive Drive, Suite 1100
San Diego, California 92121-2133
Attn: Troy Zander
Fax: (858) 638-5086

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

New York law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Lenders and Collateral Agent each submit to the exclusive jurisdiction of the State and Federal courts in the City of New York, Borough of Manhattan. NOTWITHSTANDING THE FOREGOING, COLLATERAL AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH COLLATERAL AGENT AND THE LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 9.1) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE COLLATERAL AGENT'S AND THE LENDERS' RIGHTS AGAINST BORROWER OR ITS PROPERTY. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, first class, registered or certified mail return receipt requested, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT, AND THE LENDERS EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided, however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**"). Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and

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shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer (i) in respect of the Warrants or (ii) in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties with notice to the Borrower; provided that Collateral Agent or any Lender's failure to provide such notice shall not constitute a breach of this Agreement.

12.6 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any

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Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date

fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term “ **Required Lenders**” or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger, consolidation or disposition permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Reserved.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders’ and Collateral Agent’s Subsidiaries or Affiliates, or in connection with a Lender’s own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee’s or purchaser’s agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders’ or Collateral Agent’s regulators or as otherwise required in connection with an examination or audit (provided, however, the Lenders and Collateral Agent shall use commercially reasonable efforts to notify Borrower of any disclosure under clauses (c) and (d), above); (e) as

Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders’ and/or Collateral Agent’s possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis, so long as Collateral Agent or the Lenders do not disclose Borrower’s identity or the identity of any person associated with Borrower unless otherwise expressly permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

12.10 Right of Set Off. Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property constituting Collateral (other than accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower’s or such Subsidiary’s employees and identified to Collateral Agent by Borrower as such), now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY,

VOLUNTARILY AND IRREVOCABLY WAIVED.

12.11 Cooperation of Borrower. If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

12.12 Borrower Liability. Either Borrower may, acting singly, request Credit Extensions hereunder. Each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay all Credit Extensions made hereunder, regardless of which Borrower actually receives said Credit Extension, as if each Borrower hereunder directly received all Credit Extensions. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require Collateral Agent or any Lender to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent and or any Lender may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, until the Obligations have been indefeasibly paid in full in cash and all obligations of the Collateral

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Agent and/or Lenders to make loans or otherwise extend credit to the Company have terminated, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent and the Lenders under this Agreement) 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 Borrower with respect to the Obligations in connection with this Agreement 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 Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Collateral Agent and the Lenders and such payment shall be promptly delivered to Collateral Agent for application to the Obligations, whether matured or unmatured.

13. DEFINITIONS

13.1 Definitions. As used in this Agreement, the following terms have the following meanings:

“**Account**” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Debtor**” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“**Affiliate**” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

“**Agreement**” is defined in the preamble hereof.

“**Amortization Date**” is December 1, 2013.

“**Annual Projections**” is defined in Section 6.2(a).

“**Anti-Terrorism Laws**” are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Approved Fund**” is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Approved Lender**” is defined in Section 12.1.

“**Basic Rate**” is, with respect to a Term Loan, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to nine and three quarters percent (9.75%).

“**Blocked Person**” is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law,

(d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., and (c) money market funds (i) which provide daily liquidity and (ii) at least ninety-five percent (95%) of which constitute Cash Equivalents of the kinds described in classes (a) and (b) of this definition, and (d) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent. For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity, in each case for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security.

“**Claims**” are defined in Section 12.2.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on (x) during the Royalty Assignment Period, Exhibit A-1; and (y) thereafter, Exhibit A-2.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account.

“**Collateral Agent**” is, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Communication**” is defined in Section 10.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit C.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include

endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any Loan Party maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any Loan Party maintains a Securities Account or a Commodity Account, Borrower and such Loan Party, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are 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.

“**Credit Extension**” is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower’s benefit.

“**Default Rate**” is defined in Section 2.3(b).

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is Borrower’s deposit account designated by Borrower in writing to the Collateral Agent at closing.

“**Disbursement Letter**” is that certain form attached hereto as Exhibit B.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Effective Date**” is defined in the preamble of this Agreement.

“**Eligible Assignee**” is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars (\$5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include,

unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower’s Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender’s own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

“**Existing Indebtedness**” is the indebtedness of Borrower to Hercules in the aggregate principal outstanding amount as of the Effective Date of approximately Twenty Five Million Six Hundred Thousand Dollars (\$25,600,000.00) pursuant to that certain Loan and Security Agreement, dated November 24, 2010, as amended and in effect, entered into by and between Hercules and Borrower.

“**Event of Default**” is defined in Section 8.

“**Final Payment**” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or Section 2.2(d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

“**Final Payment Percentage**” is six percent (6.00%).

“**Funding Date**” is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” are all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Guarantor**” is any Person providing a Guaranty in favor of Collateral Agent.

“**Guaranty**” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Hercules**” is Hercules Technology Growth Capital, Inc. and Hercules Technology III, L.P.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.2.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Insolvent**” means not Solvent.

“**Intellectual Property**” means all of Borrower’s or any Subsidiary’s right, title and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, 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; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“**Inventory**” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“**Investment**” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, payment or capital contribution to any Person.

“**Key Person**” is each of Borrower’s (i) Chief Executive Officer, who is David Stack as of the Effective Date and (ii) Chief Financial Officer, who is James Scibetta as of the Effective Date.

“**Lender**” is any one of the Lenders.

“**Lenders**” are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

“**Lenders’ Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement, the Warrants, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, the Post Closing Letter, each Guaranty, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person, in each case for the benefit of the Lenders and Collateral Agent in connection with this Agreement, all as amended, restated, or otherwise modified.

“**Loan Party**” is Borrower and each Subsidiary of Borrower that becomes a Co-Borrower or Guarantor hereunder and grants a security interest in its assets pursuant to Section 6.12 of this Agreement.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Collateral Agent’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Loan Party; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Maturity Date**” is, for each Term Loan, the date which is twenty-nine (29) months after the Amortization Date with respect to such Term Loan.

“**Obligations**” are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents (other than the Warrants), or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents (other than the Warrants).

“**OFAC**” is the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Pacira CA**” is Pacira Pharmaceuticals, Inc., a California corporation.

“**Pacira UK**” means Pacira Limited (UK), an entity organized under the laws of England and Wales, and a wholly-owned Subsidiary of Pacira Pharmaceuticals, Inc., a Delaware corporation.

“**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.

“**Payment Date**” is the first (1st) calendar day of each calendar month, commencing on June 1, 2012.

“**Perfection Certificate**” and “**Perfection Certificates**” is defined in Section 5.1.

“**Permitted Indebtedness**” is:

- (a) Borrower's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (e) unsecured reimbursement obligations under corporate credit cards not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate at any time.
- (f) Indebtedness not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) in the aggregate in any fiscal year secured by a lien described in clause (c) of the definition of "Permitted Liens," provided such Indebtedness does not exceed (x) in the case of financing the acquisition of the Equipment or assets subject to capital leases, the lesser of the cost or fair market value of the asset financed or leased with such Indebtedness, or (y) in the case of Receivables financings, the book amount of the Receivables financed with such Indebtedness;
- (g) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;
- (h) other Indebtedness in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) at any time outstanding; and
- (i) unsecured Indebtedness constituting Permitted Investments;
- (j) during the Royalty Assignment Period, Indebtedness pursuant to the Royalty Agreements;
- (k) Indebtedness incurred in connection with interest rate and other swap arrangements that are entered into to mitigate risk and not for speculative purposes; and
- (l) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

"Permitted Investments" are:

- (a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;
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- (b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;
 - (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;
 - (d) Investments consisting of Collateral Accounts maintained in accordance with Section 6.6 hereof;
 - (e) Investments in connection with Transfers permitted by Section 7.1;
 - (f) (i) Investments by the Borrower in any other Borrower; and (ii) Investments by Borrower in Pacira UK not to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate in any fiscal year;
 - (g) Investments 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 Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; provided such advances and loans do not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate in any fiscal year;
 - (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 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 paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;
 - (j) during the Royalty Assignment Period, Investments consisting of monies held exclusively in the Royalty Deposit Accounts, to the extent such Investments are made in accordance with the terms and conditions of the Royalty Lockbox Agreement;
 - (k) joint ventures, partnerships, or strategic alliances consisting of the non-exclusive licensing of technology, the development of

technology or the providing of technical support, provided that any cash investments by Borrower do not exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate in any fiscal year;

(l) Investments consisting of security deposits with landlords made in the ordinary course of Borrower's business in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) at any time.

(m) additional Investments that do not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate.

"Permitted Licenses" are (A) licenses of open source, over-the-counter software, prepackaged software and other software that is commercially available to the public, and (B) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in

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connection with the exclusive license promptly upon consummation thereof (in each case, subject to any confidentiality provisions in such documents), (y) any such license is made in connection with a bona fide corporate collaboration or partnership, and is approved by Borrower's (or the applicable Subsidiary's) board of directors, and (z) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory (i) with respect to products other than EXPAREL™ and (ii) with respect to EXPAREL™, only as to geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement.

"Permitted Liens" are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment or other assets subject to capital leases acquired or held by Borrower incurred for financing the acquisition of the Equipment or such assets subject to capital leases, or (ii) on existing Equipment or such assets subject to capital leases when acquired; in each case if the Lien is confined to the property and improvements and the proceeds of the Equipment or other assets subject to capital leases; provided that such Liens under this clause (c) (A) may have priority over liens granted to Collateral Agent hereunder to the extent provided under the Code so long as the Indebtedness secured by the Liens remain outstanding and (B) may secure Indebtedness of no more than One Million Five Hundred Thousand Dollars (\$1,500,000.00) in the aggregate in any fiscal year;

(d) Liens of carriers, mechanics, materialmen, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(g) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7; and

(i) Liens consisting of Permitted Licenses;

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- (j) during the Royalty Assignment Period, Liens on the Royalty Collateral;
- (k) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; and
- (l) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

“**Person**” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Post Closing Letter**” is that certain Post Closing Letter dated as of the Effective Date by and among Collateral Agent, the Lenders and Borrower.

“**Prepayment Fee**” is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

- (i) for a prepayment made on or after the Funding Date of such Term Loan through and including the first anniversary of the Funding Date of such Term Loan, three percent (3.00%) of the principal amount of such Term Loan prepaid;
- (ii) for a prepayment made after the date which is after the first anniversary of the Funding Date of such Term Loan through and including the second anniversary of the Funding Date of such Term Loan, two percent (2.00%) of the principal amount of the Term Loans prepaid; and
- (iii) for a prepayment made after the date which is after the second anniversary of the Funding Date of such Term Loan through and prior to the Maturity Date, one percent (1.00%) of the principal amount of the Term Loans prepaid.

“**Pro Rata Share**” is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

“**Registered Organization**” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“**Required Lenders**” means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an “**Original Lender**”) have not assigned or transferred any of their interests in their respective Term Loans, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loans, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loans, Lenders holding, sixty-six percent (66%) or more of the aggregate outstanding principal balance of the Term Loans, *plus*, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its respective Term Loan, (B) each assignee of an Original Lender provided such assignee was assigned or transferred and continues to hold one hundred percent (100%) of the assigning Original Lender’s interest in the Term Loans and (C) any Person or party providing financing to an Original Lender or formed to undertake a securitization transaction with respect to an Original Lender and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction (in each case in respect of clauses (A), (B) and (C) of this clause (ii), whether or not such Lender is included within the Lenders holding sixty-six percent (66%) of the Terms Loans. For purposes of this definition only, a Lender shall be deemed to include itself, and any Lender that is an Affiliate or Approved Fund of such Lender.

“**Requirement of Law**” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Responsible Officer**” is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

“**Royalty Agreements**” means, collectively, the Royalty Assignment Agreement, the Royalty Security Agreement, and the Royalty Lockbox Agreement.

“**Royalty Assignment Agreement**” means the Amended and Restated Royalty Interests Assignment Agreement dated as of March 23, 2007 (as in existence on the date hereof and as certified to Lender by Borrower, or as amended after the date hereof in accordance with Section 7.12) by and between Pacira CA, as seller, and Royalty Securitization Trust I (the “**Trust**”) as purchaser, pursuant to which Pacira CA has sold and assigned to Trust the “Assigned Interests” (as defined in the Royalty Assignment Agreement).

“**Royalty Assignment Period**” is the period during which the Royalty Agreements remain in effect and Borrower has any obligation to the Trust thereunder.

“**Royalty Collateral**” means the “Collateral”, as defined in the Royalty Security Agreement.

“**Royalty Deposit Accounts**” means any deposit accounts of Borrower that are subject to the Royalty Lockbox Agreement and are dedicated exclusively to the receipt of royalty payments resulting from the license of the DepoDur and DepoCyt products.

“**Royalty Lockbox Agreement**” means the Amended and Restated Lockbox Agreement dated as of March 23, 2007 (as in existence on the date hereof and as certified to Lender by Borrower, or as amended in accordance with Section 7.12) by and among Pacira CA, Deutsche Bank Trust Company in its capacity as custodian and JPMorgan Chase Bank, N.A.

“**Royalty Security Agreement**” means the Amended and Restated Security Agreement dated as of March 23, 2007 (as in existence on the date hereof and as certified to Lender by a Borrower, or as amended in accordance with Section 7.4, by and between Pacira CA and Trust, pursuant to which Pacira CA has granted to Trust a security interest in the Royalty Collateral.

“**Secured Promissory Note**” is defined in Section 2.4.

“**Secured Promissory Note Record**” is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

“**Securities Account**” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“**Shares**” is one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower, in any Subsidiary; provided that, in the event Borrower, demonstrates to Collateral Agent’s reasonable satisfaction, that a pledge of more than sixty five percent (65%) of the Shares of a Subsidiary of Borrower which is not an entity organized under the laws of the United States or any territory thereof, creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, “Shares” shall mean sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower in such Subsidiary.

“**Solvent**” is, with respect to any Person: the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities; such Person is not

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left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.

“**Subordinated Debt**” is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

“**Subsidiary**” is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or one or more of Affiliates of such Person.

“**Term Loan**” is defined in Section 2.2(a) hereof.

“**Term Loan Commitment**” is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**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 Borrower connected with and symbolized by such trademarks.

“**Transfer**” is defined in Section 7.1.

“**Warrants**” are those certain Warrants to Purchase Stock dated as of the Effective Date, or any date thereafter, issued by Borrower in favor of each Lender or such Lender’s Affiliates.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

PACIRA PHARMACEUTICALS, INC., a Delaware corporation

By /s/ James Scibetta
Name: James Scibetta
Title: CFO

PACIRA PHARMACEUTICALS, INC., a California corporation

By /s/ James Scibetta
Name: James Scibetta
Title: CFO

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By /s/ Mark Davis
Name: Mark Davis
Title: Vice President – Finance, Secretary & Treasurer

[Signature Page to Loan and Security Agreement]

SCHEDULE 1.1

Lenders and Commitments

Term Loans

<u>Lender</u>	<u>Term Loan Commitment</u>	<u>Commitment Percentage</u>
OXFORD FINANCE LLC	\$ 27,500,000.00	100.00%
TOTAL	\$ 27,500,000.00	100.00%

EXHIBIT A-1

Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Notwithstanding the foregoing, so long as and to the extent that the terms and conditions of the Royalty Agreements prohibit Borrower from granting a security interest in the Royalty Collateral to Lender (or so long as a default under any Royalty Agreement would result from such grant to Lender), the grant of security interest under this Agreement shall not extend to and the term "Collateral" shall not include (i) the Royalty Collateral and (ii) the Royalty Deposit Accounts and the Royalty Lockbox Account, provided, however, if (x) the Royalty Agreements are terminated or (y) the Royalty Agreements are amended to permit Borrower to grant a security interest in the Royalty Collateral to Lender, then the grant of security interest under this Agreement shall automatically extend to, and the term "Collateral" shall automatically include, the Royalty Collateral, the Royalty Deposit Accounts and the Royalty Lockbox Account.

Further, notwithstanding any provision in this Agreement to the contrary, the grant of security interest herein shall not extend to and the term "Collateral" shall not include: (i) more than sixty five percent (65%) of the issued and outstanding voting capital stock of any Subsidiary of Borrower that is incorporated or organized in a jurisdiction other than the United States or any state or territory thereof, if Debtor demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Foreign Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code (ii) any "intent-to-use" trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, and (iii) any (x) equipment subject to a Lien described in clause (c) of the definition of Permitted Liens or (y) license or contract, in each case if the granting of a Lien in such equipment, license or contract is prohibited by or would constitute a default under the agreement governing such equipment, license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Section 9-407(a) (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such equipment, license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Lender hereunder and become part of the "Collateral."

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property except as otherwise permitted under the Loan Agreement.

EXHIBIT A-2

Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property. Further, notwithstanding any provision in this Agreement to the contrary, the grant of security interest herein shall not extend to and the term "Collateral" shall not include: (i) more than sixty five percent (65%) of the issued and outstanding voting capital stock of any Subsidiary of Borrower that is incorporated or organized in a jurisdiction other than the United States or any state or territory thereof, if Debtor demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Foreign Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code (ii) any "intent-to-use" trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, and (iii) any (x) equipment subject to a Lien described in clause (c) of the definition of Permitted Liens or (y) license or contract, in each case if the granting of a Lien in such equipment, license or contract is prohibited by or would constitute a default under the agreement governing such equipment, license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Section 9-407(a) (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such equipment, license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Lender hereunder and become part of the "Collateral."

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property except as otherwise permitted under the Loan Agreement.

EXHIBIT B

Form of Disbursement Letter

[see attached]

DISBURSEMENT LETTER

May 2, 2012

The undersigned, being the duly elected and acting of PACIRA PHARMACEUTICALS, INC., a Delaware corporation (the "Parent") and PACIRA PHARMACEUTICALS, INC., a California corporation with offices located at 5 Sylvan Way, Parsippany, New Jersey 07054 ("Borrower"), does hereby certify, in the capacity as an officer of the Parent, to OXFORD FINANCE LLC ("Oxford" and "Lender"), as collateral agent (the "Collateral Agent") in connection with that certain Loan and Security Agreement dated as of May 2, 2012, by and among Borrower, Collateral Agent and the Lenders from time to time party thereto (the "Loan Agreement"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof.
2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.
3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.
4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied or waived by Collateral Agent.
5. No Material Adverse Change has occurred.
6. The undersigned is a Responsible Officer.

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7. The proceeds of the Term Loan shall be disbursed as follows:

Disbursement from Oxford:	
Loan Amount	\$ 27,500,000.00
Plus:	
—Deposit Received	\$ 275,000.00
Less:	
—Facility Fee	\$ (275,000.00)
—Existing Debt Payoff to be remitted to Hercules per the Payoff Letter dated April 30, 2012	\$ (25,142,252.79)
—Lender’s Legal Fees	\$ (92,604.20)*
Net Proceeds due from Oxford:	\$ 2,265,143.01
TOTAL TERM LOAN NET PROCEEDS FROM LENDERS	\$ 2,265,143.01

8. The Term Loan shall amortize in accordance with the Amortization Table attached hereto.
9. The aggregate net proceeds of the Term Loans shall be transferred to the Designated Deposit Account as follows:

Account Name:	PACIRA PHARMACEUTICALS, INC.
Bank Name:	[**]
Bank Address:	[**]
Account Number:	[**]
ABA Number:	[**]

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* Legal fees and costs are through the Effective Date. Post-closing legal fees and costs, payable after the Effective Date, to be invoiced and paid post-closing.

Dated as of the date first set forth above.

BORROWER:

PACIRA PHARMACEUTICALS, INC.

By _____
Name: _____
Title: _____

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By _____
Name: _____
Title: _____

[Signature Page to Disbursement Letter]

AMORTIZATION TABLE
(Term Loan)

[see attached]

EXHIBIT C

Compliance Certificate

TO: OXFORD FINANCE LLC, as Collateral Agent and Lender

FROM: PACIRA PHARMACEUTICALS, INC., a Delaware corporation (“Parent”) for itself and on behalf of PACIRA PHARMACEUTICALS, INC., a California corporation

The undersigned authorized officer (“**Officer**”) of PACIRA PHARMACEUTICALS, INC., a Delaware corporation for itself and on behalf of PACIRA PHARMACEUTICALS, INC., a California corporation (“**Borrower**”), hereby certifies, in the capacity as an officer of the Parent, that in accordance with the terms and conditions of the Loan and Security Agreement by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the “**Loan Agreement**,” capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

- (i) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below;
- (ii) There are no Events of Default, except as noted below;
- (iii) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (i), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.
- (iv) Borrower, and each of Borrower’s Subsidiaries, has timely filed all required tax returns and reports, Borrower, and each of Borrower’s Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;
- (v) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies, in the capacity as an officer of the Parent, that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under “Complies” column.

	<u>Reporting Covenant</u>	<u>Requirement</u>	<u>Complies</u>		
1)	Financial statements	Quarterly within 45 days	Yes	No	N/A

2)	Annual (CPA Audited) statements	Within 120 days after Fiscal Year End	Yes	No	N/A
3)	Annual Financial Projections/Budget	Annually (w/n 31 days of FYE). and when revised	Yes	No	N/A

(prepared on a monthly basis)

4)	8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing	Yes	No	N/A
5)	Compliance Certificate	Quarterly within 45 days	Yes	No	N/A
6)	IP Report	when required	Yes	No	N/A
7)	Copies of material Governmental Approvals	Quarterly within 45 days	Yes	No	N/A
8)	Returns, recoveries, written disputes and written claims related to finished goods Inventory in excess of 5% of Borrower's product revenue for the preceding quarter	Quarterly within 45 days	Yes	No	N/A
9)	Month end account statements for deposit/securities accounts	Quarterly within 45 days	Yes	No	N/A

Deposit and Securities Accounts

(Please list all accounts; attach separate sheet if additional space needed)

	<u>Bank</u>	<u>Account Number</u>	<u>New Account?</u>		<u>Acct Control Agmt in place?</u>	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No
5)			Yes	No	Yes	No
6)			Yes	No	Yes	No

Other Matters

Have there been any changes in Key Persons since the last Compliance Certificate?	Yes	No
Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement?	Yes	No
Have there been any new actions, suits, investigations or proceedings pending, or threatened in writing against Borrower that involve more than Two Hundred Fifty Thousand Dollars (\$250,000.00)?	Yes	No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

LENDERS USE ONLY

PACIRA PHARMACEUTICALS, INC.
By:

DATE

Received by:

Verified by:

Name: _____
Title: _____

Date: _____ Date: _____

Compliance Status Yes No

EXHIBIT D

Forms of Secured Promissory Note

[see attached]

**SECURED PROMISSORY NOTE
(Term Loan — Note No. 1)**

\$10,000,000.00

Dated: May 2, 2012

FOR VALUE RECEIVED, the undersigned, PACIRA PHARMACEUTICALS, INC., a Delaware corporation and PACIRA PHARMACEUTICALS, INC., a California corporation with offices located at 5 Sylvan Way, Parsippany, New Jersey 07054 (collectively, "**Borrower**") HEREBY PROMISES TO PAY to the order of OXFORD FINANCE LLC ("**Lender**") the principal amount of TEN MILLION DOLLARS (\$10,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated May 2, 2012 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term Loan, interest on the Term Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

PACIRA PHARMACEUTICALS, INC.,
a California corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Oxford Finance LLC
Secured Promissory Note — Term Loan Note No. 1

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

SECURED PROMISSORY NOTE
(Term Loan — Note No. 2)

\$8,000,000.00

Dated: May 2, 2012

FOR VALUE RECEIVED, the undersigned, PACIRA PHARMACEUTICALS, INC., a Delaware corporation and PACIRA PHARMACEUTICALS, INC., a California corporation with offices located at 5 Sylvan Way, Parsippany, New Jersey 07054 (collectively, “**Borrower**”) HEREBY PROMISES TO PAY to the order of OXFORD FINANCE LLC (“**Lender**”) the principal amount of EIGHT MILLION DOLLARS (\$8,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated May 2, 2012 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this “**Note**”). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term Loan, interest on the Term Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

PACIRA PHARMACEUTICALS, INC.,
a California corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

*Oxford Finance LLC
Secured Promissory Note — Term Loan Note No. 2*

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

**SECURED PROMISSORY NOTE
(Term Loan — Note No. 3)**

\$5,500,000.00

Dated: May 2, 2012

FOR VALUE RECEIVED, the undersigned, PACIRA PHARMACEUTICALS, INC., a Delaware corporation and PACIRA PHARMACEUTICALS, INC., a California corporation with offices located at 5 Sylvan Way, Parsippany, New Jersey 07054 (collectively, “**Borrower**”) HEREBY PROMISES TO PAY to the order of OXFORD FINANCE LLC (“**Lender**”) the principal amount of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated May 2, 2012 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this “**Note**”). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term Loan, interest on the Term Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

PACIRA PHARMACEUTICALS, INC.,
a California corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Oxford Finance LLC
Secured Promissory Note — Term Loan Note No. 3

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

SECURED PROMISSORY NOTE
(Term Loan — Note No. 4)

\$4,000,000.00

Dated: May 2, 2012

FOR VALUE RECEIVED, the undersigned, PACIRA PHARMACEUTICALS, INC., a Delaware corporation and PACIRA PHARMACEUTICALS, INC., a California corporation with offices located at 5 Sylvan Way, Parsippany, New Jersey 07054 (collectively, "**Borrower**") HEREBY PROMISES TO PAY to the order of OXFORD FINANCE LLC ("**Lender**") the principal amount of FOUR MILLION DOLLARS (\$4,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated May 2, 2012 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term Loan, interest on the Term Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

PACIRA PHARMACEUTICALS, INC.,
a California corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Oxford Finance LLC
Secured Promissory Note — Term Loan Note No. 4

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

EXHIBIT A TO UCC FINANCING STATEMENT

Description of Collateral

The Collateral consists of all of Debtor's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Debtor that are proceeds of the Intellectual Property. Notwithstanding the foregoing, so long as

and to the extent that the terms and conditions of the Royalty Agreements prohibit Debtor from granting a security interest in the Royalty Collateral to Lender (or so long as a default under any Royalty Agreement would result from such grant to Lender), the grant of security interest under this Agreement shall not extend to and the term "Collateral" shall not include (i) the Royalty Collateral and (ii) any Royalty Deposit Accounts or the royalty Lockbox Account; provided, however, if (x) the Royalty Agreements are terminated or (y) the Royalty Agreements are amended to permit Debtor to grant a security interest in the Royalty Collateral to Lender, then the grant of security interest under this Agreement shall automatically extend to, and the term "Collateral" shall automatically include, the Royalty Collateral, the Royalty Deposit Accounts and the Royalty Lockbox Account. Further, notwithstanding any provision in this Agreement to the contrary, the grant of security interest herein shall not extend to and the term "Collateral" shall not include: (i) more than sixty five percent (65%) of the issued and outstanding voting capital stock of any Subsidiary of Debtor that is incorporated or organized in a jurisdiction other than the United States or any state or territory thereof, if Debtor demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Foreign Subsidiary creates a present and existing adverse tax consequence to Debtor under the U.S. Internal Revenue Code (ii) any "intent-to-use" trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, (iii) any (x) equipment subject to a Lien described in clause (c) of the definition of Permitted Liens or (y) license or contract, in each case if the granting of a Lien in such equipment, license or contract is prohibited by or would constitute a default under the agreement governing such equipment, license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Section 9-407(a) (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such equipment, license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Lender hereunder and become part of the "Collateral."

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Debtor has agreed not to encumber any of its Intellectual Property.

Capitalized terms used but not defined herein have the meanings ascribed in the Uniform Commercial Code in effect in the State of New York as in effect from time to time (the "Code") or, if not defined in the Code, then in the Loan and Security Agreement by and between Debtor, Secured Party and the other Lenders party thereto (as modified, amended and/or restated from time to time).

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK — No. 1

Company: PACIRAPHARMACEUTICALS, INC., a Delaware corporation
 Number of Shares: 59,231
 Class of Stock: Common Stock, \$0.001 par value per share, of the Company ("Common Stock")
 Warrant Price: \$10.97 per share
 Issue Date: May 2, 2012
 Expiration Date: The tenth (10th) anniversary of the Issue Date
 Credit Facility: This Warrant is issued in connection with the Loan and Security Agreement dated as of May 2, 2012 among Oxford Finance LLC ("Oxford"), as Lender and Collateral Agent, the Lenders from time to time party thereto, and the Company (as amended from time to time, the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, including without limitation the mutual promises contained in the Loan Agreement, OXFORD FINANCE LLC ("Oxford;" together with any registered holder from time to time of this Warrant or any holder of the shares issuable or issued upon exercise of this Warrant, "Holder") is entitled to purchase the number of fully paid and nonassessable shares of Common Stock (the "Shares") at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, 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 Article 1.3.

1.3 Fair Market Value. The fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificate(s) for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the remainder of the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition, in each case of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger or sale of the outstanding capital stock of the Company pursuant to which the holders of the Company's securities immediately prior to the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity immediately following the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition in which the entire consideration in such Acquisition is cash, Marketable Securities, or a combination thereof either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such

reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the closing of any Acquisition other than as particularly described in subsection (A) above, the surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and/or property as would be payable in such Acquisition 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 of such Acquisition. The Warrant Price and/or number of Shares shall be adjusted accordingly.

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As used herein "Marketable Securities" shall mean securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is then listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system; (iii) Holder would not be contractually restricted from publicly re-selling such securities after the expiration of the three (3) month period following the closing of such Acquisition, nor restricted under applicable federal or state securities laws from publicly re-selling such securities after the expiration of the six (6) month period following the closing of such Acquisition (assuming for such determination that Holder would convert this Warrant pursuant to Article 1.2 above), all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to convert this Warrant pursuant to Section 1.2 above in full on or prior to the closing of such Acquisition; and (iv) the issuer of such securities has a market capitalization, as of the date immediately prior to and on the closing of such Acquisition of at least \$200,000,000.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its outstanding shares of Common Stock payable in common stock, or other securities, then upon exercise or conversion of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares as of the date the dividend occurred. If the Company subdivides the outstanding shares of Common Stock by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Intentionally Omitted.

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2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such reasonable action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that notwithstanding the foregoing, nothing in this Section 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences, and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Shares in the same manner as the other holders of outstanding shares of the same series and class as the Shares.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share on the date of exercise or conversion.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and a summary of 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.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to the Holder as follows: All Shares which may be issued upon the exercise or conversion of this Warrant 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.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to effect any reclassification or recapitalization of any of its stock; or (c) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: notice thereof at the same time and in the same manner as the Company notifies the holders of outstanding shares of Common Stock. Company will also provide information reasonably requested by Holder as is necessary to enable the Holder to comply with the Holder's accounting or reporting requirements.

3.3 No Shareholder Rights. Except as provided in this Warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

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ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (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:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT

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BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM

REGISTRATION.

5.3 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 (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any "affiliate" (as such term is defined in Regulation D promulgated under the Act) of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. After receipt by Holder of the executed Warrant, Oxford may transfer all or part of this Warrant to one or more of Oxford's affiliates (each, an "Oxford Affiliate"), by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Oxford, any such Oxford Affiliate and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, the Oxford Affiliate(s) or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance LLC
133 N. Fairfax Street
Alexandria, VA 22314
Attn: Legal Department
Telephone: (703) 519-4900

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Facsimile: (703) 519-5225

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

PACIRA PHARMACEUTICALS, INC.
5 Sylvan Way
Parsippany, New Jersey 07054
Attn: Chief Financial Officer
Telephone: (973) 254-3570
Facsimile: (973) 267-0060

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS WARRANT, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

5.11 Governing Law; Venue. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its principles regarding conflicts of law each submit to the exclusive jurisdiction of the State and Federal courts in the City of

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“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ David Stack

Name: David Stack
(Print)

Title: Chairman of the Board, President or Vice President

“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ James S. Scibetta

Name: James S. Scibetta
(Print)

Title: Chief Financial Officer, Secretary, Assistant Treasurer or
Assistant Secretary

“HOLDER”

OXFORD FINANCE LLC

By: /s/ Mark Davis

Name: Mark Davis
(Print)

Title: Vice President — Finance, Secretary & Treasurer

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase _____ shares of the Common Stock of PACIRA PHARMACEUTICALS, INC. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares in the manner specified in the Warrant. This conversion is exercised for _____ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

Holders Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

By: _____
Name: _____
Title: _____
(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [OXFORD TRANSFEREE]
Address: _____
Tax ID: _____

that certain Warrant to Purchase Stock issued by PACIRA PHARMACEUTICALS, INC. (the "Company"), on May 2, 2012 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By: _____
Name: _____
Title: _____

Date: _____

By its execution below, and for the benefit of the Company, [OXFORD TRANSFEREE] makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[OXFORD TRANSFEREE]

By: _____
Name: _____
Title: _____

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK — No. 2

Company:	PACIRAPHARMACEUTICALS, INC., a Delaware corporation
Number of Shares:	47,385
Class of Stock:	Common Stock, \$0.001 par value per share, of the Company ("Common Stock")
Warrant Price:	\$10.97 per share
Issue Date:	May 2, 2012
Expiration Date:	The tenth (10th) anniversary of the Issue Date
Credit Facility:	This Warrant is issued in connection with the Loan and Security Agreement dated as of May 2, 2012 among Oxford Finance LLC ("Oxford"), as Lender and Collateral Agent, the Lenders from time to time party thereto, and the Company (as amended from time to time, the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, including without limitation the mutual promises contained in the Loan Agreement, OXFORD FINANCE LLC ("Oxford;" together with any registered holder from time to time of this Warrant or any holder of the shares issuable or issued upon exercise of this Warrant, "Holder") is entitled to purchase the number of fully paid and nonassessable shares of Common Stock (the "Shares") at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, 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 Article 1.3.

1.3 Fair Market Value. The fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificate(s) for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the remainder of the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition, in each case of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger or sale of the outstanding capital stock of the Company pursuant to which the holders of the Company's securities immediately prior to the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity immediately following the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition in which the entire consideration in such Acquisition is cash, Marketable Securities, or a combination thereof either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to

Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the closing of any Acquisition other than as particularly described in subsection (A) above, the surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and/or property as would be payable in such Acquisition 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 of such Acquisition. The Warrant Price and/or number of Shares shall be adjusted accordingly.

As used herein "Marketable Securities" shall mean securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the

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Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is then listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system; (iii) Holder would not be contractually restricted from publicly re-selling such securities after the expiration of the three (3) month period following the closing of such Acquisition, nor restricted under applicable federal or state securities laws from publicly re-selling such securities after the expiration of the six (6) month period following the closing of such Acquisition (assuming for such determination that Holder would convert this Warrant pursuant to Article 1.2 above), all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to convert this Warrant pursuant to Section 1.2 above in full on or prior to the closing of such Acquisition; and (iv) the issuer of such securities has a market capitalization, as of the date immediately prior to and on the closing of such Acquisition of at least \$200,000,000.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its outstanding shares of Common Stock payable in common stock, or other securities, then upon exercise or conversion of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares as of the date the dividend occurred. If the Company subdivides the outstanding shares of Common Stock by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Intentionally Omitted.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant

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by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such reasonable action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that notwithstanding the foregoing, nothing in this Section 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences, and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Shares in the same manner as the other holders of outstanding shares of the same series and class as the Shares.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share on the date of exercise or conversion.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in

writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and a summary of 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.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to the Holder as follows: All Shares which may be issued upon the exercise or conversion of this Warrant 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.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to effect any reclassification or recapitalization of any of its stock; or (c) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: notice thereof at the same time and in the same manner as the Company notifies the holders of outstanding shares of Common Stock. Company will also provide information reasonably requested by Holder as is necessary to enable the Holder to comply with the Holder's accounting or reporting requirements.

3.3 No Shareholder Rights. Except as provided in this Warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

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ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (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:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT

5

BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND

APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 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 (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any "affiliate" (as such term is defined in Regulation D promulgated under the Act) of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. After receipt by Holder of the executed Warrant, Oxford may transfer all or part of this Warrant to one or more of Oxford's affiliates (each, an "Oxford Affiliate"), by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Oxford, any such Oxford Affiliate and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, the Oxford Affiliate(s) or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance LLC
133 N. Fairfax Street
Alexandria, VA 22314
Attn: Legal Department
Telephone: (703) 519-4900

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Facsimile: (703) 519-5225

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

PACIRA PHARMACEUTICALS, INC.
5 Sylvan Way
Parsippany, New Jersey 07054
Attn: Chief Financial Officer
Telephone: (973) 254-3570
Facsimile: (973) 267-0060

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS WARRANT, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

5.11 Governing Law; Venue. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its principles regarding conflicts of law each submit to the exclusive jurisdiction of the State and Federal courts in the City of New York, Borough of Manhattan.

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“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ David Stack

Name: David Stack
(Print)

Title: Chairman of the Board, President or Vice President

“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ James S. Scibetta

Name: James S. Scibetta
(Print)

Title: Chief Financial Officer, Secretary, Assistant Treasurer or
Assistant Secretary

“HOLDER”

OXFORD FINANCE LLC

By: /s/ Mark Davis

Name: Mark Davis
(Print)

Title: Vice President — Finance, Secretary & Treasurer

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase _____ shares of the Common Stock of PACIRA PHARMACEUTICALS, INC. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares in the manner specified in the Warrant. This conversion is exercised for _____ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

Holders Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

By: _____

Name: _____

Title: _____

(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [OXFORD TRANSFEREE]

Address: _____

Tax ID: _____

that certain Warrant to Purchase Stock issued by PACIRA PHARMACEUTICALS, INC. (the "Company"), on May 2, 2012 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By: _____

Name: _____

Title: _____

Date: _____

By its execution below, and for the benefit of the Company, [OXFORD TRANSFEREE] makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[OXFORD TRANSFEREE]

By: _____

Name: _____

Title: _____

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK — No. 3

Company: PACIRAPHARMACEUTICALS, INC., a Delaware corporation
 Number of Shares: 32,577
 Class of Stock: Common Stock, \$0.001 par value per share, of the Company ("Common Stock")
 Warrant Price: \$10.97 per share
 Issue Date: May 2, 2012
 Expiration Date: The tenth (10th) anniversary of the Issue Date
 Credit Facility: This Warrant is issued in connection with the Loan and Security Agreement dated as of May 2, 2012 among Oxford Finance LLC ("Oxford"), as Lender and Collateral Agent, the Lenders from time to time party thereto, and the Company (as amended from time to time, the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, including without limitation the mutual promises contained in the Loan Agreement, OXFORD FINANCE LLC ("Oxford;" together with any registered holder from time to time of this Warrant or any holder of the shares issuable or issued upon exercise of this Warrant, "Holder") is entitled to purchase the number of fully paid and nonassessable shares of Common Stock (the "Shares") at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, 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 Article 1.3.

1.3 Fair Market Value. The fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificate(s) for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the remainder of the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition, in each case of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger or sale of the outstanding capital stock of the Company pursuant to which the holders of the Company's securities immediately prior to the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity immediately following the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition in which the entire consideration in such Acquisition is cash, Marketable Securities, or a combination thereof either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to

Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the closing of any Acquisition other than as particularly described in subsection (A) above, the surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and/or property as would be payable in such Acquisition 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 of such Acquisition. The Warrant Price and/or number of Shares shall be adjusted accordingly.

As used herein "Marketable Securities" shall mean securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the

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Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is then listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system; (iii) Holder would not be contractually restricted from publicly re-selling such securities after the expiration of the three (3) month period following the closing of such Acquisition, nor restricted under applicable federal or state securities laws from publicly re-selling such securities after the expiration of the six (6) month period following the closing of such Acquisition (assuming for such determination that Holder would convert this Warrant pursuant to Article 1.2 above), all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to convert this Warrant pursuant to Section 1.2 above in full on or prior to the closing of such Acquisition; and (iv) the issuer of such securities has a market capitalization, as of the date immediately prior to and on the closing of such Acquisition of at least \$200,000,000.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its outstanding shares of Common Stock payable in common stock, or other securities, then upon exercise or conversion of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares as of the date the dividend occurred. If the Company subdivides the outstanding shares of Common Stock by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Intentionally Omitted.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant

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by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such reasonable action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that notwithstanding the foregoing, nothing in this Section 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences, and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Shares in the same manner as the other holders of outstanding shares of the same series and class as the Shares.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share on the date of exercise or conversion.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in

writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and a summary of 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.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to the Holder as follows: All Shares which may be issued upon the exercise or conversion of this Warrant 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.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to effect any reclassification or recapitalization of any of its stock; or (c) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: notice thereof at the same time and in the same manner as the Company notifies the holders of outstanding shares of Common Stock. Company will also provide information reasonably requested by Holder as is necessary to enable the Holder to comply with the Holder's accounting or reporting requirements.

3.3 No Shareholder Rights. Except as provided in this Warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

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ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (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:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT

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BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND

APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 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 (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any "affiliate" (as such term is defined in Regulation D promulgated under the Act) of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. After receipt by Holder of the executed Warrant, Oxford may transfer all or part of this Warrant to one or more of Oxford's affiliates (each, an "Oxford Affiliate"), by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Oxford, any such Oxford Affiliate and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, the Oxford Affiliate(s) or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance LLC
133 N. Fairfax Street
Alexandria, VA 22314
Attn: Legal Department
Telephone: (703) 519-4900

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Facsimile: (703) 519-5225

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

PACIRA PHARMACEUTICALS, INC.
5 Sylvan Way
Parsippany, New Jersey 07054
Attn: Chief Financial Officer
Telephone: (973) 254-3570
Facsimile: (973) 267-0060

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS WARRANT, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

5.11 Governing Law; Venue. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its principles regarding conflicts of law each submit to the exclusive jurisdiction of the State and Federal courts in the City of New York, Borough of Manhattan.

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“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ David Stack

Name: David Stack
(Print)

Title: Chairman of the Board, President or Vice President

“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ James S. Scibetta

Name: James S. Scibetta
(Print)

Title: Chief Financial Officer, Secretary, Assistant Treasurer or
Assistant Secretary

“HOLDER”

OXFORD FINANCE LLC

By: /s/ Mark Davis

Name: Mark Davis
(Print)

Title: Vice President — Finance, Secretary & Treasurer

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase _____ shares of the Common Stock of PACIRA PHARMACEUTICALS, INC. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares in the manner specified in the Warrant. This conversion is exercised for _____ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

Holders Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

By: _____

Name: _____

Title: _____

(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [OXFORD TRANSFEREE]

Address: _____

Tax ID: _____

that certain Warrant to Purchase Stock issued by PACIRA PHARMACEUTICALS, INC. (the "Company"), on May 2, 2012 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By: _____

Name: _____

Title: _____

Date: _____

By its execution below, and for the benefit of the Company, [OXFORD TRANSFEREE] makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[OXFORD TRANSFEREE]

By: _____

Name: _____

Title: _____

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK — No. 4

Company: PACIRA PHARMACEUTICALS, INC., a Delaware corporation
 Number of Shares: 23,692
 Class of Stock: Common Stock, \$0.001 par value per share, of the Company ("Common Stock")
 Warrant Price: \$10.97 per share
 Issue Date: May 2, 2012
 Expiration Date: The tenth (10th) anniversary of the Issue Date
 Credit Facility: This Warrant is issued in connection with the Loan and Security Agreement dated as of May 2, 2012 among Oxford Finance LLC ("Oxford"), as Lender and Collateral Agent, the Lenders from time to time party thereto, and the Company (as amended from time to time, the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, including without limitation the mutual promises contained in the Loan Agreement, OXFORD FINANCE LLC ("Oxford;" together with any registered holder from time to time of this Warrant or any holder of the shares issuable or issued upon exercise of this Warrant, "Holder") is entitled to purchase the number of fully paid and nonassessable shares of Common Stock (the "Shares") at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, 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 Article 1.3.

1.3 Fair Market Value. The fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificate(s) for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the remainder of the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition, in each case of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger or sale of the outstanding capital stock of the Company pursuant to which the holders of the Company's securities immediately prior to the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity immediately following the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition in which the entire consideration in such Acquisition is cash, Marketable Securities, or a combination thereof either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to

Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the closing of any Acquisition other than as particularly described in subsection (A) above, the surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and/or property as would be payable in such Acquisition 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 of such Acquisition. The Warrant Price and/or number of Shares shall be adjusted accordingly.

As used herein "Marketable Securities" shall mean securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the

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Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is then listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system; (iii) Holder would not be contractually restricted from publicly re-selling such securities after the expiration of the three (3) month period following the closing of such Acquisition, nor restricted under applicable federal or state securities laws from publicly re-selling such securities after the expiration of the six (6) month period following the closing of such Acquisition (assuming for such determination that Holder would convert this Warrant pursuant to Article 1.2 above), all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to convert this Warrant pursuant to Section 1.2 above in full on or prior to the closing of such Acquisition; and (iv) the issuer of such securities has a market capitalization, as of the date immediately prior to and on the closing of such Acquisition of at least \$200,000,000.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its outstanding shares of Common Stock payable in common stock, or other securities, then upon exercise or conversion of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares as of the date the dividend occurred. If the Company subdivides the outstanding shares of Common Stock by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Intentionally Omitted.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant

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by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such reasonable action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that notwithstanding the foregoing, nothing in this Section 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences, and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Shares in the same manner as the other holders of outstanding shares of the same series and class as the Shares.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share on the date of exercise or conversion.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in

writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and a summary of 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.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to the Holder as follows: All Shares which may be issued upon the exercise or conversion of this Warrant 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.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to effect any reclassification or recapitalization of any of its stock; or (c) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: notice thereof at the same time and in the same manner as the Company notifies the holders of outstanding shares of Common Stock. Company will also provide information reasonably requested by Holder as is necessary to enable the Holder to comply with the Holder's accounting or reporting requirements.

3.3 No Shareholder Rights. Except as provided in this Warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

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ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (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:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT

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BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND

APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 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 (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any "affiliate" (as such term is defined in Regulation D promulgated under the Act) of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. After receipt by Holder of the executed Warrant, Oxford may transfer all or part of this Warrant to one or more of Oxford's affiliates (each, an "Oxford Affiliate"), by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Oxford, any such Oxford Affiliate and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, the Oxford Affiliate(s) or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such Holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance LLC
133 N. Fairfax Street
Alexandria, VA 22314
Attn: Legal Department
Telephone: (703) 519-4900

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Facsimile: (703) 519-5225

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

PACIRA PHARMACEUTICALS, INC.
5 Sylvan Way
Parsippany, New Jersey 07054
Attn: Chief Financial Officer
Telephone: (973) 254-3570
Facsimile: (973) 267-0060

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS WARRANT, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

5.11 Governing Law; Venue. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its principles regarding conflicts of law each submit to the exclusive jurisdiction of the State and Federal courts in the City of New York, Borough of Manhattan.

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“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ David Stack

Name: David Stack
(Print)

Title: Chairman of the Board, President or
Vice President

“COMPANY”

PACIRA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ James S. Scibetta

Name: James S. Scibetta
(Print)

Title: Chief Financial Officer, Secretary,
Assistant Treasurer or Assistant
Secretary

“HOLDER”

OXFORD FINANCE LLC

By: /s/ Mark Davis

Name: Mark Davis
(Print)

Title: Vice President — Finance, Secretary & Treasurer

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase _____ shares of the Common Stock of PACIRA PHARMACEUTICALS, INC. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares in the manner specified in the Warrant. This conversion is exercised for of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

Holders Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

By: _____
Name: _____
Title: _____
(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [OXFORD TRANSFEREE]
Address: _____
Tax ID: _____

that certain Warrant to Purchase Stock issued by PACIRA PHARMACEUTICALS, INC. (the "Company"), on May 2, 2012 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By: _____
Name: _____
Title: _____

Date: _____

By its execution below, and for the benefit of the Company, [OXFORD TRANSFEREE] makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[OXFORD TRANSFEREE]
By: _____
Name: _____
Title: _____

CERTIFICATION

I, David Stack, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Pacira Pharmaceuticals, Inc. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: August 9, 2012

/s/David Stack

David Stack
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, James Scibetta, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Pacira Pharmaceuticals, Inc. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: August 9, 2012

/s/ James Scibetta

James Scibetta
Chief Financial Officer
(Principal Financial Officer)

STATEMENT PURSUANT TO 18 U.S.C. §1350

Pursuant to 18 U.S.C. §1350, the undersigned certifies that this Quarterly Report on Form 10-Q of Pacira Pharmaceuticals, Inc. for the quarter ended June 30, 2012 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of Pacira Pharmaceuticals, Inc.

Date: August 9, 2012

/s/ David Stack

David Stack
President and Chief Executive Officer
(Principal Executive Officer)

STATEMENT PURSUANT TO 18 U.S.C. §1350

Pursuant to 18 U.S.C. §1350, the undersigned certifies that this Quarterly Report on Form 10-Q of Pacira Pharmaceuticals, Inc. for the quarter ended June 30, 2012 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of Pacira Pharmaceuticals, Inc.

Date: August 9, 2012

/s/ James Scibetta

James Scibetta
Chief Financial Officer
(Principal Financial Officer)
