

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 8-K

CURRENT REPORT

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

October 27, 2017

Date of Report (Date of earliest event reported)

**Windtree Therapeutics, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**000-26422**

(Commission File Number)

**94-3171943**

(IRS Employer Identification Number)

**2600 Kelly Road, Suite 100**

**Warrington, Pennsylvania 18976**

(Address of principal executive offices)

**(215) 488-9300**

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01**            **Entry into a Material Definitive Agreement.**

Effective October 27, 2017, Windtree Therapeutics, Inc. (the "**Company**") entered into a Securities Purchase Agreement (the "**SPA**") with LPH Investments Limited, a company incorporated in the Cayman Islands with limited liability ("**LPH**"). LPH is a wholly-owned subsidiary of Lee's Pharmaceutical Holdings Limited, a company incorporated in the Cayman Islands with limited liability ("**Lee's**"). Under the SPA, LPH invested \$10,000,000 (the "**Investment**") in the Company and acquired from the Company 46,232,085 shares of the Company's common stock (the "**Shares**"), at a price of \$0.2163 per share, which represents a 15% premium over the average of the daily volume-weighted average price per share (VWAP) over the 10-day trading period ending on and including the date of the SPA. Following the transactions described herein, Lee's beneficially owned 73% of the Company's issued and outstanding shares of common stock (the "**Common Stock**"). The Investment includes cancellation of \$3,900,000 in outstanding loans that the Company borrowed from Lee's Pharmaceutical (HK) Ltd., a Hong Kong company organized and existing under the laws of Hong Kong ("**Lee's (HK)**") under that certain Loan Agreement, effective August 14, 2017, between the Company and Lee's (HK). Pursuant to the SPA, the Company granted LPH the right to appoint up to two individuals to serve on the Company's Board of Directors, and LPH may designate such individuals on or prior to the 30th day following the closing of the transactions contemplated by the SPA (the "**Closing**"). In addition, the SPA also amends the executive employment agreement of each of the Company's President and Chief Executive Officer (Craig Fraser), Senior Vice President and Chief Financial Officer (John A. Tattory) and Senior Vice President and Chief Medical Officer (Steven G. Simonson, M.D.), such that in lieu of the Annual Bonuses (as defined in each executive's employment agreement) that would have been payable to the executives during the 24 month period following the Closing, the executives are entitled to an award of equity under the Company's 2011 Long-Term Incentive Plan, as amended, having a value when issued equal to the combined total value of the 2017 and 2018 Target Bonus Amounts (as defined in each executive's employment agreement) and vesting in two equal installments on March 15, 2018 and March 15, 2019. Under the terms of the SPA, the Company also granted to LPH a preemptive right to purchase in future offerings of equity securities up to that number of shares of the Company's equity securities needed to maintain LPH's percentage of beneficial ownership of the Company's outstanding voting stock immediately prior to each such offering, subject to certain limitations and exclusions.

Contemporaneously with the execution of the SPA, the Company and LPH entered into a registration rights agreement pursuant to which the Company has agreed to provide certain registration rights with respect to the Shares under the SPA, which rights are limited to registration of up to 25% of the Shares during the initial 18-month period following the closing of the SPA. The Company issued the Shares to LPH pursuant to Rule 506(b) of Regulation D and Regulation S under, and Section 4(a)(2) of, the Securities Act of 1933.

Contemporaneously with the execution of the SPA, the Company and affiliates of Deerfield Management Company, L.P. ("**Deerfield**") entered into an Exchange and Termination Agreement (the "**Exchange and Termination Agreement**"). Under the Exchange and Termination Agreement, (i) promissory notes evidencing an aggregate principal amount of \$25,000,000 owed to Deerfield under that certain Facility Agreement dated as of February 13, 2013 (the "**Facility Agreement**"), as amended from time to time, and (ii) warrants to purchase up to 500,000 shares of the Company's Common Stock at an exercise price of \$39.34 per share held by Deerfield (the "**Deerfield Warrants**") were cancelled in consideration for (i) a cash payment in the aggregate amount of \$2,500,000, (ii) an aggregate of 1,422,250 shares of Common Stock and (iii) the right to receive certain milestone payments ("**Milestone Payments**") based on achievement of specified development and commercial milestones related to the Company's AEROSURF® development program, which, if achieved, could potentially total up to \$15,000,000. Contemporaneously with the execution of the Exchange and Termination Agreement, the Company and Deerfield entered into a registration rights agreement pursuant to which the Company has agreed to provide certain registration rights with respect to the shares of Common Stock issued to Deerfield under the Exchange and Termination Agreement. The Company issued the shares of Common Stock to Deerfield pursuant to Rule 506(b) of Regulation D under, and Section 4(a)(2) of, the Securities Act of 1933.

On November 1, 2017 (the "**Closing Date**"), the Company, Lee's and Deerfield consummated the transactions contemplated by the SPA and the Exchange and Termination Agreement. Effective upon the Closing Date, (i) the Facility Agreement, including the outstanding promissory notes thereunder, and (ii) that certain Security Agreement, dated as of February 13, 2013, among Deerfield and the Company were cancelled and terminated.

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The foregoing descriptions of the SPA, the Exchange and Termination Agreement, and the registration rights agreements do not purport to be complete and are qualified in their entirety by reference to the agreements themselves. A copy of the SPA, the Exchange and Termination Agreement and the registration rights agreements are attached as Exhibits 10.1, 10.2, 99.1 and 99.2, respectively, to this Current Report on Form 8-K. Such agreements are being filed to provide investors and the Company's stockholders with information regarding the terms thereof and in accordance with applicable rules and regulations of the SEC. Pursuant to such agreements, each of the parties thereto made customary representations, warranties and covenants and agreed to indemnify each other for certain losses arising out of breaches of such representations, warranties, covenants and other specified matters. The representations, warranties and covenants were made by the parties to and solely for the benefit of each other and any expressly intended third-party beneficiaries in the context of all of the terms and conditions of the agreements and in the context of the specific relationship between the parties. Accordingly, investors and stockholders should not rely on the representations, warranties and covenants. Furthermore, investors and stockholders should not rely on the representations, warranties and covenants as characterizations of the actual state of facts or continuing intentions of the parties, since they were only made as of the date of the agreements. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the agreements, which subsequent information may or may not be fully reflected in the Company's reports or other filings with the Commission. The foregoing description of the transactions does not purport to be complete and is qualified in its entirety by reference to the agreements filed as exhibits to this report and incorporated herein by reference.

**Item 3.02**                    **Unregistered Sales of Equity Securities.**

The information in Item 1.01 above relating to the transactions is incorporated into this Item 3.02.

**Item 5.01**                    **Changes in Control of the Registrant.**

The information in Item 1.01 above relating to the transactions is incorporated into this Item 5.01.

**Item 5.02**                    **Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

As described above in Item 1.01 above, the SPA amends the executive employment agreement of each of the Company's President and Chief Executive Officer (Craig Fraser), Senior Vice President and Chief Financial Officer (John A. Tattory) and Senior Vice President and Chief Medical Officer (Steven G. Simonson, M.D.).

**Item 7.01.**                    **Regulation FD Disclosure.**

Reference is made to Item 1.01 above. The Company will host a conference call and webcast (including a slide presentation) at 8:00 a.m. EDT on Thursday, November 2, 2017 to review and provide an overview of the transactions discussed above and answer questions. The live webcast, including the slide presentation, can be accessed at <http://windtreteix.investorroom.com/events>. To participate in the live call and take part in the question and answer session, dial (844) 802-2436 (domestic) or (412) 317-5129 (international). A copy of the presentation materials is attached as Exhibit 99.3 to this Current Report on Form 8-K.

A replay of the conference call will be available one hour after completion of the call through November 9, 2017 and may be accessed by dialing (877) 344-7529 (domestic) or (412) 317-0088 (international) and referencing conference number 10114113. An archive of the webcast can be accessed on the Company's website at <http://windtreteix.investorroom.com/events>.

Pursuant to General Instruction B.2 of Form 8-K, the information in this Item 7.01 of this Current Report on Form 8-K and Exhibit 99.3 hereto are being furnished and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise be subject to the liabilities of that section, nor is it incorporated by reference into any filing of Windtree Therapeutics, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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### **Item 8.01. Other Events.**

Reference is made to the SPA described in Item 1.01. To facilitate consummation of the SPA, effective upon the Closing, Battelle Memorial Institute, holder of an aggregate of 1,095 shares of Series A Convertible Preferred Stock, par value \$0.001 per share, of the Company ("**Preferred Shares**"), executed a waiver wherein Battelle waived its right to the Liquid Preference (as defined in the Designation Of Preferences, Rights And Limitations for the Preferred Shares) with respect to their Preferred Shares. In addition, the Company and Battelle entered into a non-binding memorandum of understanding outlining the key terms for a potential restructuring of the amounts due to Battelle under development and collaboration agreements between the Company and Battelle.

On November 1, 2017, the Company issued a press release announcing the closing of the SPA with LPH, and the Exchange and Termination Agreement with Deerfield. A copy of the press release is attached as Exhibit 99.4.

During the conference call, the Company plans to review its key objectives for 2018, which include, among other things (i) completing development and validation of an improved next generation aerosol delivery system ("NextGen ADS") based on the same aerosolization technology used in the Company's phase 2 clinical program, with significantly improved ergonomics, interface, controls, dose monitoring and a new modular design. Importantly, changes to filter size and specifications, and certain other design enhancements are expected to mitigate the risks of clogging and related treatment interruptions experienced during the phase 2b clinical trial; and (ii) a confirmatory bridging clinical study to gain experience with the NextGen ADS, to confirm whether development objectives have been met, and to generate additional higher dose treatment data to augment the higher dose data obtained in the phase 2b clinical trial, which was adversely affected by treatment interruptions due to device clogging.

In addition, the Company reports that, as of November 1, 2017, the Company had cash and cash equivalents of \$5.4 million. Before any additional financings, the Company anticipates that it will have sufficient cash available to fund its operations and support the continued development of AEROSURF into January 2018, while it seeks to secure the additional capital required to satisfy its existing obligations and support its development programs and continuing operations through 2018.

### **Item 9.01. Financial Statements and Exhibits.**

#### (d) Exhibits

- 10.1 Securities Purchase Agreement, by and between the Company and Lee's Pharmaceutical (HK) Ltd., effective on October 27, 2017, 2017.
  - 10.2 Exchange and Termination Agreement, by and between the Company and affiliates of Deerfield Management Company, L.P., effective on October 27, 2017, 2017.
  - 99.1 Registration Rights Agreement, by and between the Company and Lee's Pharmaceutical (HK) Ltd., effective on October 27, 2017, 2017.
  - 99.2 Registration Rights Agreement, by and between the Company and affiliates of Deerfield Management Company, L.P. effective on October 27, 2017.
  - 99.3 Slide Presentation dated November 2, 2017.
  - 99.4 Press Release dated November 1, 2017.
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Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

**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 hereunto duly authorized.

**Windtree Therapeutics, Inc.**

By: /s/ Craig Fraser  
Craig Fraser  
President and Chief Executive Officer

Date: November 1, 2017

## SECURITIES PURCHASE AGREEMENT

**SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of October 27, 2017 (the "**Effective Date**"), by and among Windtree Therapeutics, Inc., a Delaware corporation, with headquarters located at 2600 Kelly Road, Suite 100, Warrington, PA 18976 (the "**Company**") and LPH Investments Limited, a company incorporated in the Cayman Islands with limited liability and located at : Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008 (the "**Buyer**").

### WHEREAS:

A. The Company and Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506 of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act;

B. Buyer wishes to purchase, and the Company wishes to sell to Buyer, upon the terms and conditions stated in this Agreement, 46,232,085 newly-issued shares of common stock, par value \$0.001 per share (the "**Shares**"), of the Company (the "**Common Stock**"); and

C. Contemporaneously with the execution and delivery of this Agreement, the Company and Deerfield Private Design Fund II, L.P. ("**DPDF II**"), Deerfield Private Design International II, L.P. ("**DPDI II**"), and Deerfield Special Situations Fund, L.P. ("**DSSF**", and together with DPDF II and DPDI II, collectively and individually, "**Deerfield**") are executing and delivering an Exchange and Termination Agreement (the "**Deerfield Agreement**") dated as of the date hereof, pursuant to which the loan currently outstanding under a Facility Agreement, dated as of July 22, 2015, by and between Deerfield and the Company ("**Deerfield Loan**") will be retired and fully discharged in consideration of (and subject to) (i) the Company paying to Deerfield \$2.5 million out of the proceeds received by the Company under this Agreement, (ii) the Company issuing to Deerfield shares of common stock equal to two percent (2%) of the fully-diluted stock of the Company post-Closing (as defined in the Deerfield Agreement) and (iii) the Company paying to Deerfield regulatory and commercial AEROSURF<sup>®</sup> milestone payments (as defined in the Deerfield Agreement) potentially totaling up to \$15 million.

**NOW, THEREFORE**, the Company and Buyer hereby agree as follows:

#### 1. PURCHASE AND SALE OF THE SHARES

(a) Purchase of Shares. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, on the Closing Date (as defined below), the Company shall issue and sell the Shares to Buyer, and Buyer agrees to purchase the Shares from the Company. In accordance with Section 158 of the Delaware General Corporation Law, the Shares shall be issued in un-certificated, book-entry form, and, upon issuance, the ownership (and subsequent transfers) of the Shares shall be recorded on the books and records of the Company.

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(b) Purchase Price. The purchase price for the Shares shall be US \$0.2163 per Share and the aggregate purchase price for the number of Shares to be purchased by Buyer shall be TEN MILLION U.S. DOLLARS (\$10,000,000) (the "**Purchase Price**").

(c) Closing Date. The date and time of the closing of the transactions contemplated by this Securities Purchase Agreement (the "**Closing**") shall be 10:00 a.m. EDT, October 30, 2017, or such other date and time as is agreed to by the Company and Buyer (the "**Closing Date**").

(d) Form of Payment. On the Closing Date, (i) Buyer shall pay the Purchase Price to the Company for the Shares to be issued and sold to Buyer on the Closing Date, by wire transfer of immediately available funds in accordance with the Company's written wire instructions, provided that, in lieu of cash and as a portion of the Purchase Price, the outstanding principal amount of the loan ("**Loan**") made by Buyer to the Company under that certain Loan Agreement between Buyer and the Company dated as of August 14, 2017 (the "**Loan Agreement**") shall be applied in full satisfaction of a like amount of the Purchase Price and the Loan shall thereby be discharged in full, and (ii) the Company shall instruct its transfer agent to record in the Company's books and records, the Shares issued and sold to Buyer pursuant to this Agreement at the Closing.

## 2. BUYER REPRESENTATIONS, WARRANTIES AND COVENANTS.

Buyer represents and warrants to the Company that as of the date hereof and as of the Closing Date (unless as of a specified date therein):

(a) Organization and Qualification. Buyer is an entity duly organized and validly existing in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate, partnership, limited liability company or similar power and authorization, as applicable, to enter into and perform its obligations under this Agreement, the Registration Rights Agreement dated the date hereof by and between the Company and the Buyer substantially in the form as set forth as Exhibit A attached hereto (the "**Registration Rights Agreement**"), and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (together with this Agreement, the Registration Rights Agreement, collectively, the "**Transaction Documents**").

(b) No Public Sale or Distribution. Buyer is acquiring the Shares for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act; provided however, by making the representations herein, the Buyer does not agree to hold any of the Securities for any minimum or other specific term.

(c) Accredited Investor Status. Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

(d) Reliance on Exemptions. Buyer understands that the Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of Buyer to acquire the Shares.

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(e) Information. Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Shares which have been requested by Buyer. Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by the Buyer or its representatives shall modify, amend or affect the Buyer's right to rely on the Company's representations and warranties contained in Section 3 below. Buyer understands that its investment in the Shares involves a high degree of risk and is able to afford a complete loss of such investment. Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Shares.

(f) No Governmental Review. Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Shares or the fairness or suitability of the investment in the Shares nor have such authorities passed upon or endorsed the merits of the offering of the Shares.

(g) Transfer or Resale. Buyer understands that except as provided in the Registration Rights Agreement: (i) the Shares have not been registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder or (B) Buyer shall have delivered to the Company a representation letter, in a form reasonably acceptable to the Company, to the effect that such Shares to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, such as pursuant to Rule 144 promulgated under the 1933 Act, as amended, (or a successor rule thereto) ("**Rule 144**"); (ii) any sale of the Shares made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Shares under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other person is under any obligation to register the Shares under any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(h) Legends. Buyer understands that the Shares, if issued in certificated form, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT, OR APPLICABLE STATE SECURITIES LAWS, UNLESS SOLD PURSUANT TO (1) RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (2) AN OPINION OF HOLDER'S COUNSEL, IN A CUSTOMARY FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS."

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(i) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of Buyer and shall constitute the legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with its terms, except as rights to indemnity and contribution may be limited by state or federal securities laws or the public policy underlying such laws, except as such enforceability may be limited by general principles of equity, including as to limitations on the enforcement of the remedy of specific performance and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law), or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' and contracting parties' rights and remedies.

(j) State of Organization. The Buyer is organized under the laws of the Cayman Islands.

(k) No Prior Short Selling. Buyer has not, directly or indirectly, engaged in any Short Sales (as defined in Section 242.200 of Regulation SHO of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")) of the Company's Common Stock since the time that Buyer was first contacted by the Company regarding the investment in the Company contemplated by this Agreement.

(l) No Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Buyer.

(m) Compliance with Stock Exchange of Hong Kong. To the Buyer's knowledge, no approval, authorization, consent or order of or filing with The Stock Exchange of Hong Kong Limited ("**SEHK**"), and no approval of the shareholders of Lee's (as defined in Section 4(n) below) is required in connection with the issuance of the Shares contemplated hereby. To the Buyer's knowledge, no approval with the SEHK, and no approval of the shareholders of Lee's is required to keep the Company's Existing Equity Plans (as defined herein) after Closing if each of them was adopted by the Company before the Closing.

### 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to Buyer as of the date hereof and as of the Closing Date (unless as of a specified date therein) that:

(a) Organization and Qualification. Each of the Company and its "**Subsidiaries**" (which for purposes of this Agreement means any entity (i) in which the Company, directly or indirectly, owns capital stock or holds an equity or similar interest and (ii) which has operations and material assets) are corporations duly organized and validly existing in good standing under the laws of the jurisdiction in which they are incorporated, and have the requisite corporate power and authorization to own their properties and to carry on their business as now being conducted. Each of the Company and its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect. The Company has no Subsidiaries other than its presently inactive subsidiary, Discovery Laboratories, Inc., formerly known as Acute Therapeutics, Inc. Unless the context otherwise requires, all references to the "Company" in this Agreement include Windtree Therapeutics, Inc. and its Subsidiary, Discovery Laboratories, Inc. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on any of: (i) the business, properties, assets, operations, results of operations, condition (financial or otherwise) or prospects of the Company, taken as a whole, (ii) the transactions contemplated hereby and by the other Transaction Documents or by the agreements and instruments to be entered into in connection herewith or therewith, or (iii) the authority or ability of the Company to perform its obligations under the Transaction Documents.

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(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement and each of the other Transaction Documents and to issue the Shares in accordance with the terms hereof and thereof. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Shares, have been duly authorized by the Company's Board of Directors, do not conflict with the Company's Certificate of Incorporation, as amended and as in effect on the date hereof, including any Certificate of Designations, Preferences and Rights of any outstanding series of preferred stock of the Company (the "**Certificate of Incorporation**") or Bylaws, as amended and as in effect on the date hereof (the "**Bylaws**") and no further consent or authorization is required by the Company, the Board of Directors of the Company (the "**Board of Directors**") or its stockholders. This Agreement, the Registration Rights Agreement and the other Transaction Documents have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as rights to indemnity and contribution may be limited by state or federal securities laws or the public policy underlying such laws, except as such enforceability may be limited by general principles of equity, including as to limitations on the enforcement of the remedy of specific performance and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law), or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' and contracting parties' rights and remedies. The Board of Directors has approved resolutions (the "**Signing Resolutions**") to authorize this Agreement, the Registration Rights Agreement, and the transactions contemplated hereby and thereby. The Signing Resolutions are valid, in full force and effect and have not been modified or supplemented in any material respect. The Company has delivered to the Buyer a true and correct copy of the Signing Resolutions as approved by the Board of Directors of the Company.

(c) Issuance of Shares. The Shares are duly authorized and, upon issuance and payment in accordance with the terms hereof, shall be validly issued, fully paid and non-assessable, and free from all taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Shares) will not (i) result in a violation of the Certificate of Incorporation or the Bylaws, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of the securities exchange or securities quotation service where the Common Stock is principally listed or quoted for trading (the "**Principal Market**")) applicable to the Company or by which any property or asset of the Company is bound or affected, except in the case of clauses (i) through (iii), above, for such matters which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The Company is not in violation of any term of or in default under any material contract, agreement, mortgage, indebtedness, indenture, instrument, judgment, decree or order or any statute, rule or regulation applicable to the Company, except for possible violations, defaults, terminations or amendments that could not reasonably be expected to have a Material Adverse Effect.

(e) Consents. Except for (i) registration of the Shares under the 1933 Act pursuant to the Registration Rights Agreement, and (ii) such consents, notifications, approvals, authorizations, registrations or qualifications as may be required under the 1934 Act and applicable state securities or "blue sky" laws in connection with the purchase of the Shares by Buyer, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other person in order for it to execute, deliver or perform any of its obligations under or contemplated hereby and by the other Transaction Documents, in each case in accordance with the terms hereof and thereof. The Company is unaware of any facts or circumstances that might prevent the Company from obtaining or effecting any of the registration, application or filings pursuant to the preceding sentence.

(f) SEC Documents; Financial Statements. During the two years prior to the date hereof, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof or prior to the Closing Date, and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The SEC Documents, taken as a whole, complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company's Subsidiary is not required to file any reports or other documents with the SEC. As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with United States generally accepted accounting principles ("**U.S. GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

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(g) Absence of Certain Changes. Except as disclosed in the SEC Documents and Schedule 3(g), since June 30, 2017, there has been no material adverse change and no material adverse development in the business, properties, operations, condition (financial or otherwise), results of operations or prospects of the Company other than losses incurred in the ordinary course of business. Except as disclosed in the SEC Documents and Schedule 3(g), since June 30, 2017, the Company has not (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, in excess of \$250,000 outside of the ordinary course of business or (iii) had capital expenditures, individually or in the aggregate, in excess of \$250,000. The Company has not taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings.

(h) No Undisclosed Events, Liabilities, Developments or Circumstances. Except for the transactions contemplated by this Agreement, no material event, liability, development or circumstance has occurred or exists with respect to the Company, or its business, properties, prospects, operations or financial condition, that would require public disclosure or announcement by the Company under applicable securities laws and which has not been publicly disclosed or announced.

(i) Conduct of Business; Regulatory Permits. The Company is not in violation of any term of or in default under the Certificate of Incorporation or Bylaws. Except as disclosed in the SEC Documents and Schedule 3(i), the Company is not in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company, and the Company will not conduct its business in violation of any of the foregoing, except for possible violations which would not, individually or in the aggregate, have a Material Adverse Effect. Since May 5, 2017, (i) the Common Stock has been designated for quotation on the OTC Markets Group Inc.'s OTCQB® Market ("**OTCQB**"), (ii) trading in the Common Stock has not been suspended by the SEC or OTCQB since May 5, 2017 and (iii) since May 5, 2017, the Company has received no communication, written or oral, from the SEC or OTCQB regarding the violation of a rule or the suspension or delisting of the Common Stock from OTCQB. The Company possesses all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct its business, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and, the Company has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

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(j) Foreign Corrupt Practices. Neither the Company, nor any director, officer, agent, employee or other person acting on behalf of the Company has, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(k) Sarbanes-Oxley Act. The Company is in compliance with all applicable provisions of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof.

(l) Transactions With Affiliates. Except as set forth in the SEC Documents, none of the officers, directors or employees of the Company is presently a party to any transaction with the Company that would be required to be disclosed in the SEC Documents under Item 404 of Regulation S-K under the 1933 Act.

(m) Equity Capitalization. The Company's equity capitalization, on a fully diluted basis, as of the date hereof, is set forth on Schedule 3(m). All outstanding shares set forth therein have been validly issued and are fully paid and nonassessable. Except as disclosed in Schedule 3(m) or as permitted under this Agreement: (i) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional capital stock of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company; (iii) except for indebtedness of the Company incurred in the ordinary course of business of the Company, which in the aggregate would not reasonably be expected to have a Material Adverse Effect, other than the Deerfield Loan, there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing material indebtedness of the Company or by which the Company is or may become bound; (iv) except for financing statements related to indebtedness of the Company described in the SEC Documents, there are no financing statements securing obligations in any material amounts, either singly or in the aggregate, filed in connection with the Company; (v) there are no outstanding securities or instruments of the Company which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem a security of the Company; (vi) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Shares; (vii) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (viii) the Company has no material liabilities or obligations required to be disclosed in the SEC Documents but not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's business and which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The Company has furnished or made available to the Buyer true and correct copies of the Company's Certificate of Incorporation and the Bylaws.

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(n) Absence of Litigation. Except as disclosed in Schedule 3(n), there are no actions, suits, proceedings, inquiries or investigations before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company, the Common Stock or any of the Company's officers or directors, whether of a civil or criminal nature or otherwise, which, individually or in the aggregate, might reasonably be expected to have a Material Adverse Effect.

(o) Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company is engaged. The Company has not received any notice or obtained any knowledge of circumstances indicating that it will not be able to renew its existing insurance coverage (modified to the extent deemed prudent and customary by the management of the Company) as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that is commercially reasonable and not reasonably likely to result in a Material Adverse Effect.

(p) Employee Relations. The Company believes that its relations with its employees are good. No executive officer of the Company (as defined in Rule 501(f) of the 1933 Act) has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company. No executive officer of the Company, to the knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any restrictive covenant to which the Company and such executive are parties, and, to the knowledge of the Company, the continued employment of each such executive officer does not subject the Company to any liability with respect to any of the foregoing matters. The Company is in compliance with all federal, state, local and foreign laws and regulations respecting employment and employment practices, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(q) Title. Except as disclosed in Schedule 3(q), the Company has good and marketable title to all personal property owned by it which is material to its business, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company. Any real property and facilities held under lease by the Company are held under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company. The Company owns no real property.

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(r) Intellectual Property Rights. The Company owns or possesses adequate rights or licenses to use all material trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights (collectively, "**Intellectual Property Rights**") which are necessary to conduct its business as now conducted, except to the extent that failure to own, possess, license or otherwise hold adequate Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect. The Company has delivered to the Buyer a schedule setting forth the Company's active and registered Intellectual Property Rights that will expire or terminate by the terms and conditions thereof within two years from the date of this Agreement (the foregoing schedule, the "**IPR Schedule**"). Except as disclosed in the IPR Schedule, none of the Company's active and registered Intellectual Property Rights will expire or terminate by the terms and conditions thereof within two years from the date of this Agreement. Except for any infringement, claim, action, proceeding, or other circumstance that would not reasonably be expected to have a Material Adverse Effect, the Company does not have any knowledge of any infringement by the Company of Intellectual Property Rights of others. There is no claim, action or proceeding being made, brought or, to the knowledge of the Company, threatened against the Company regarding its Intellectual Property Rights, (iii) any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company has taken commercially reasonable measures to protect the secrecy, confidentiality and value of all of its Intellectual Property Rights.

(s) Environmental Laws. The Company (i) is in compliance with any and all Environmental Laws (as hereinafter defined), (ii) has received all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its business and (iii) is in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state or local laws and regulations relating to pollution or protection of human health, safety or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(t) Tax Status. The Company (i) has made or timely filed all federal and material state income and other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of any taxes payable for periods subsequent to the periods to which such returns, reports or declarations apply. To the knowledge of the Company, there are no unpaid taxes in any material amount claimed to be due and payable by the taxing authority of any jurisdiction and no factual basis for any such claim.

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(u) Internal Accounting and Disclosure Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any difference. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 under the 1934 Act) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act (i) is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, and (ii) is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure.

(v) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed.

(w) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the sale and transfer of the Shares to be sold to Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(x) No Poison Pill. There are no rights agreement, "poison pill" anti-takeover plan or other agreement or understanding to which the Company is a party or by which it is bound with respect to any equity security of the Company.

(y) Disclosure. All disclosure provided by the Company to Buyer regarding the Company, its business and the transactions contemplated hereby, including the Schedules to this Agreement, furnished by or on behalf of the Company are true and correct and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. To the knowledge of the Company, no event or circumstance has occurred or information exists with respect to the Company or its business, properties, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed (assuming for this purpose that the Company's reports filed under the 1934 Act are being incorporated into an effective registration statement filed by the Company under the 1933 Act). The Company acknowledges and agrees that Buyer does not make and has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth herein.

(z) No Broker. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

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(aa) Amendment to the 2011 Long-term Incentive Plan. The amendment to the 2011 Long-term Incentive Plan to increase the number of shares available for issuance under the 2011 Long-term Incentive Plan (as approved by the Board of Directors of the Company on October 25, 2017) shall be effective on or before the Closing Date.

#### 4. COVENANTS.

(a) Corporate Existence; No Conflicting Agreements. Until the earlier of (i) the date that is four (4) years from the Closing Date or (ii) the date on which Buyer initially ceases to be the owner, either directly or indirectly through one or more affiliates, of at least twenty percent (20%) of the Issued and Outstanding Equity Stock of the Company ("**20% Holder**"), the Company (i) will take all steps necessary to preserve and continue the corporate existence of the Company, and (ii) without the prior written consent of Buyer, shall not enter into any agreement, the terms of which agreement would restrict or impair the right or ability of the Company to perform any of its obligations under this Agreement, the Registration Rights Agreement or any of the other Transaction Documents. For purposes of this Agreement, "Issued and Outstanding Equity Stock" means as of any date, the sum of (i) the number of shares of Common Stock issued and outstanding, plus (ii) the number of shares of Common Stock directly or indirectly issuable upon exercise, conversion or exchange of (A) issued and outstanding fully-paid prefunded warrants and (B) issued and outstanding convertible preferred securities directly or indirectly convertible into or exchangeable or exercisable for capital stock; in each case without giving effect to any limitations on exercise, conversion or exchange thereof as of such date.

(b) Form D and Blue Sky. The Company agrees to file a Form D with respect to the Shares as required under Regulation D. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Shares for sale to Buyer pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification). The Company shall make all filings and reports relating to the offer and sale of the Shares required under applicable securities or "Blue Sky" laws of the states of the United States only in such jurisdictions as Buyer shall reasonably request following the Closing Date applicable to Buyer.

(c) Disclosure of Transactions and Other Material Information. The Company shall, on or before 8:30 a.m., New York City Time, no later than the first trading day after the Closing Date, issue a press release (the "**Press Release**") disclosing the material terms of the transactions contemplated hereby. The Company shall provide Buyer an advance copy of the Press Release and agrees to consider comments that Buyer may provide but shall nevertheless be entitled to make such disclosure as it deems appropriate to meet its disclosure obligations under the 1934 Act. On or before 8:30 a.m., New York City Time, no later than the third trading day following the Closing Date, the Company shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act. The Company shall not, and shall cause each of its officers, directors, employees and agents not to, provide Buyer with any material, nonpublic information regarding the Company from and after the filing of the Press Release without the express written consent of Buyer pursuant to a Confidentiality and Nondisclosure Agreement.

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(d) Conduct of Business. The Company shall use commercially reasonable efforts to conduct its business to avoid violations of any law, ordinance or regulation of any governmental entity, except where such violations would not, either individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect.

(e) Compliance with Laws. The Company shall comply in all material respects with its reporting, filing and other obligations under the applicable securities laws.

(f) Listing, Reporting and Rules 144 Requirements. So long as Buyer is a 20% Holder, the Company shall not take any action or file any document (whether or not permitted by the 33 Act or the rules promulgated thereunder) to terminate or suspend its reporting and filing obligations under the 33 Act or the 34 Act without the approval of the Buyer. So long as Buyer is a 20% Holder, the Company will take all actions necessary to continue the quotation or listing of its Common Stock on the OTC markets as it is currently quoted, and will use its reasonable best efforts to seek listing of the Common Stock on a national stock exchange by means necessary and lawful as soon as practicable, including without limitation taking actions to effectuate a reverse stock split of the equity securities. The Company further covenants that it will take such further actions as the Buyer may reasonably request, all to the extent required from time to time to enable the Buyer to sell the Shares without registration under the 33 Act within the limitation of the exemptions provided by Rule 144. Upon the request of the Buyer, the Company shall deliver to the Buyer (and/or its successor and assigns, as applicable) a written certification of a duly authorized officer as to whether it has complied with such requirements.

(g) Board of Directors. On or prior to thirty (30) days following the Closing Date, the Company shall cause up to two individuals designated by Buyer to be elected to the Board of Directors in accordance with Section 11 and/or Section 12 of the Bylaws, provided that the Company shall have a reasonable opportunity to review the credentials of such individuals, each of whom shall provide such information as the Company may reasonably request to complete its diligence activities. The Company shall take all necessary actions in accordance with its Certificate of Incorporation and Bylaws, the relevant rules and regulations so that the annual meeting of stockholders of the Company for 2018 to, among other things, elect directors of the Board of Directors (the “**2018 Annual Meeting**”) shall be held no later than June 30, 2018.

(h) Battelle Waiver. On or prior to the Closing Date, the Company shall obtain from Battelle Memorial Institute (“**Battelle**”) a waiver of its right, as a holder of the Company’s Series A Convertible Stock, par value \$0.001 per share (the “**Series A Preferred Stock**”), to certain liquidation preferential payments pursuant to and in accordance with the Certificate of Designations of Preferences, Rights and Limitations of Series A Convertible Preferred Stock, as amended and as in effect as of the date hereof, in form and substance that is acceptable to the Buyer (the “**Battelle Waiver**”) and shall have delivered to the Buyer a copy of such duly executed Battelle Waiver.

(i) Battelle MOU. On or prior to the Closing Date, the Company shall use its best efforts to enter into a memorandum of understanding with Battelle in form and substance that is reasonably acceptable to the Buyer (the “**Battelle MOU**”) and shall have delivered a copy of the duly executed Battelle MOU to the Buyer.

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(j) Executive Incentives and Amendments to Employment Agreements.

(i) Effective as of the Closing Date, the Company, the Company's President and Chief Executive Officer (Craig Fraser), Senior Vice President and Chief Financial Officer (John A. Tattory) and Senior Vice President and Chief Medical Officer (Steven G. Simonson) hereby amend Section 6(a) of each such executive's employment agreement (each an "**Employment Agreement**"; each such executive, an "**Executive**") to reflect the terms set forth on Schedule 4(j) attached hereto (the "**Amendment**"; and each Employment Agreement so revised, a "**Revised Employment Agreement**"). Within fifteen (15) days after the Closing Date, the parties to each Revised Employment Agreement shall restate the Revised Employment Agreement to incorporate the Amendment which shall take effect retrospectively at a time immediately before the Closing Date (each a "**Restated Employment Agreement**"). For the avoidance of doubt, until such time as the Restated Employment Agreements are executed and delivered by the Company and the Executives, the Company and each of the Executives hereby agree to abide by the terms of the Revised Employment Agreement.

(ii) The parties to the Revised Employment Agreement further acknowledge and agree that no action is required and no additional benefits arise under Section 6(b) of the Revised Employment Agreements as a result of the consummation of the transactions contemplated by the Transaction Documents. The parties to the Revised Employment Agreement further agree that all options granted to Executives that are outstanding as of the Closing Date shall remain outstanding and continue to vest in accordance with their terms. For the avoidance of doubt, each of the Executives shall not be entitled to receive in exchange for or to acquire any equity securities of Lee's as a result of the exercise of any outstanding options and awards of shares that the Company has previously granted to the Executive. Other than as set forth on Schedule 4(j)(ii) attached hereto, there are no other outstanding options and awards of shares that the Company has previously granted to the Executives.

(iii) Schedule 4(j)(iii) sets forth all of the Company's equity plans, arrangements and other agreements to which the Company is a party (including the governing documents or any other terms and conditions for the options but except for the Revised Employment Agreements) (together with the Revised Employment Agreements, collectively, the "**Existing Equity Plans**"), pursuant to which the Company may grant shares of, options or other rights to acquire, the Company's stock to employees or members of the Board of Directors of the Company. For so long the Company is a direct or indirect Subsidiary of Lee's, the Company shall not adopt any new equity plan or amend any Existing Equity Plan without the approval of the Buyer. At the written request of the Company from time to time, the Buyer shall give a reply to the Company based on the Buyer's knowledge and the circumstances of fact at the time when the reply is made so as to (i) confirm that the Company is a direct or indirect Subsidiary of Lee's or (ii) advise that the Company is not a direct or indirect Subsidiary of Lee's and the Company shall be entitled to rely on such reply provided by the Buyer. For purpose of the foregoing, the term "Subsidiary" refers to (i) a "subsidiary undertaking" as defined in schedule 1 to the Companies Ordinance (Cap 622, Laws of Hong Kong); (ii) any entity which is accounted for and consolidated in the audited consolidated accounts of another entity as a subsidiary pursuant to applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards; and (iii) any entity which will, as a result of acquisition of its equity interest by another entity, be accounted for and consolidated in the next audited consolidated accounts of such other entity as a subsidiary pursuant to applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards.

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(k) Convertible and Derivative Equity Securities. For so long as the Company is a direct or indirect Subsidiary of Lee's, the Company shall not amend any terms and conditions of the warrants, Pre-Funded Warrants, Preferred Stock or any other similar rights or convertible securities of the Company (collectively, the "**Convertible and Derivative Equity Securities**") and each of their instrument, governing document or similar document ("**T&C**") unless the Company has notified the Buyer and Lee's and given reasonable time sufficient for Lee's to obtain approval from SEHK for any amendment to the T&C (if necessary) in advance before the amendment(s) to the T&C become effective. For the avoidance of doubt, holders of any Convertible and Derivative Equity Securities shall not be entitled to receive, in exchange for, or to acquire any equity securities of Lee's as a result of the conversion or exercise of such Convertible and Derivative Equity Securities.

(l) Use of Proceeds. The Company will use the net proceeds from the sale of the Shares, after payment of legal fees and other closing costs, to retire the Deerfield debt, support the Lee's License Agreement activities, and general working capital requirements focused on the advancement of the AEROSURF, lyophilized KL4 surfactant and aerosol delivery system development programs.

(m) Expenses. At Closing, the Company shall disperse to the Buyer out of the proceeds received by the Company at Closing the sum of \$50,000 for its expenses related to the consummation of the transactions contemplated hereunder.

(n) Covenants to comply with the Listing Rules. The Company agrees that if any term of any Existing Equity Plan or T&C conflicts or is inconsistent with the requirements under the Rules Governing the Listing of Securities on the SEHK (as amended from time to time) in which Lee's Pharmaceutical Holdings Limited, a company incorporated in the Cayman Islands with limited liability ("**Lee's**") and/or its subsidiaries shall be subject to (the "**Listing Rules**"), it shall upon written notice from the Buyer, refrain from (i) any act or actions (including the grant of options but excluding the issue of shares of the Company upon the exercise of the existing outstanding options) which may result in the contravention of the Listing Rules; and (ii) upon the written request of the Buyer or Lee's, promptly take any and all such action, as may be necessary to amend the terms of the Existing Equity Plans for the purpose of compliance with the relevant requirements under the Listing Rules, it being understood that the Company has no obligation to make an investigation or analysis of the Listing Rules and the Company may rely on the Buyer for such investigation or analysis.

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(o) Preemptive Rights of the Buyer.

(i) The Company hereby grants the Buyer the right during the Effective Period (as defined below) to purchase up to the Buyer's Pro Rata Share of any new Equity Securities (as defined below) (other than any Excluded Securities (as defined below)) (the "**New Securities**") that the Company may from time to time propose to issue or sell to any party (the "**Proposed Transaction**"). "**Buyer's Pro Rata Share**" means the percentage of the Company's total outstanding voting stock owned by the Buyer immediately prior to the Proposed Transaction. "**Equity Securities**" means any and all equity securities of the Company and any securities of the Company convertible into, exchangeable for, or exercisable for, such equity securities, and warrants or other rights to acquire such Membership Interests. "**Excluded Securities**" means equity securities of the Company issued in connection with: (i) a grant to any existing or prospective consultants, employees, officers or directors pursuant to any profits interest plan or similar equity-based plans or other compensation agreement, (ii) the conversion or exchange of any securities of the Company into equity securities of the Company, or the exercise of any warrants or other rights to acquire equity securities of the Company, and (iii) any acquisition by the Company of any equity interests, assets, properties, or business of any person, any merger, consolidation, or other business combination involving the Company; an equity split, payment of distributions, or any similar recapitalization; any joint venture, strategic partnership, licensing arrangement or other similar business ventures for a bona-fide business purpose other than primarily for capital raising purposes; provided, that such transaction shall have been approved by the Board of Directors. "**Effective Period**" means the period commencing on the date hereof and ending on the earlier of (i) the third anniversary of this Agreement, and (ii) the date on which the Buyer (together with its affiliate (as defined in Rule 405 promulgated under the 1933 Act)) shall hold less than 35% of the Company's total outstanding voting stock.

(ii) The Company shall give written notice (an "**Issuance Notice**") of any Proposed Transaction to the Buyer within five (5) days following approval of any such Proposed Transaction. The Issuance Notice shall set forth the material terms and conditions of the Proposed Transaction, including:

- (1) the number and description of the New Securities proposed to be issued and the percentage interest in the Company such issuance would represent, as well as the Buyer's Pro Rata Share;
- (2) the proposed closing date of the Proposed Transaction, which shall be at least six (6) trading days after the date of the Issuance Notice;
- (3) the proposed purchase price; and
- (4) if the consideration to be paid by any prospective purchaser includes non-cash consideration, the Board of Director's good-faith determination of the fair market value thereof.

(iii) The Buyer shall for a period of five (5) trading days following the receipt of an Issuance Notice (the "**Exercise Period**") have the right to elect to purchase up to the Buyer's Pro Rata Share of the New Securities at the purchase price set forth in the Issuance Notice by delivering a written notice to the Company (an "**Acceptance Notice**"). The failure of the Buyer to deliver an Acceptance Notice by the end of the Exercise Period shall constitute a waiver of its rights under this Section 4(o) with respect to the purchase of such New Securities, but shall not affect its rights with respect to any Proposed Transaction in the future.

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(p) Further Actions. The Company agrees that it shall, in good faith, promptly take any and all such action, including without limitation the amendment of the Certificate of Incorporation and/or Bylaws, as may, in the opinion of its counsel, be necessary to effect the transactions contemplated hereby and in any of the other Transaction Documents.

5. TRANSFER RESTRICTIONS.

If all or any of the Shares are sold or otherwise transferred at a time when there is an effective registration statement to cover the issuance or resale of the Shares or Rule 144 is available for resale of such Shares without volume or manner of sale restrictions, the Shares issued pursuant to any such sale or transfer shall be issued free of all legends, provided that, in the case of legend-free issuance in reliance on Rule 144, the holder of the Shares provides a representation letter in the form and substance reasonably acceptable to the Company that such Shares may be issued without a restrictive legend.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the Shares to Buyer at the Closing is subject to the satisfaction by Buyer, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing Buyer with prior written notice thereof:

(a) This Agreement shall not have been terminated pursuant to Section 8.

(b) Buyer shall have executed each of the Transaction Documents and delivered the same to the Company.

(c) Buyer shall have delivered to the Company the Purchase Price for the Shares on the Closing Date by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company (or, if applicable, in lieu of cash, Shares may be delivered in consideration of satisfaction of the outstanding Loan under the Loan Agreement).

(d) The representations and warranties of Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date), and Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by Buyer at or prior to the Closing Date applicable to Buyer.

7. CONDITIONS TO BUYER'S OBLIGATION TO PURCHASE.

The obligation of Buyer to purchase the Shares on the Closing Date is subject to the satisfaction by the Company of each of the following conditions at or before the Closing Date, provided that these conditions are for Buyer's sole benefit and may be waived by Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) This Agreement shall not have been terminated pursuant to Section 8 hereof.

(b) The Company shall have duly executed each of the Transaction Documents and delivered the same to the Buyer.

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(c) The Common Stock shall remain listed or quoted on the OTCQB market (or a national securities exchange), shall not have been suspended by the SEC or the national securities exchange, if applicable.

(d) The Battelle MOU shall have been duly approved and executed by the parties thereto and an executed copy of which shall have been delivered by the Company to the Buyer.

(e) The Deerfield Agreement shall have been duly approved and executed by the parties thereto and an executed copy of which shall have been delivered to the Buyer.

(f) The Company shall have issued to the Buyer Shares sold to the Buyer pursuant to this Agreement and shall have instructed its transfer agent to record in the Company's books and records the Shares in the name of the Buyer on the Closing Date.

(g) The Battelle Waiver shall have been duly approved, executed by the parties thereto and shall remain in full force and effect and a copy of the Battelle Waiver shall have been delivered to the Buyer.

(h) The representations and warranties of the Company shall be true and correct as of the date when made and as of the applicable Closing Date as though made at that time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by this Agreement, the Registration Rights Agreement and the other Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the applicable Closing Date.

(i) The Buyer shall have received the opinion of the Company's legal counsel dated as of the date hereof in customary form and substance that is acceptable to the Buyer.

(j) The Signing Resolutions shall remain in full force and effect without any amendment or supplement thereto as of the Closing Date.

(k) The Company shall have delivered to the Buyer a good standing certificate issued by the Secretary of State of the State of Delaware as of a date within five (5) trading days of the Closing Date.

(l) The Company shall have delivered to the Buyer a certified copy of the Certificate of Incorporation, as certified by the Secretary of State of the Delaware within five (5) trading days of the Closing Date.

(m) The Company shall have delivered to the Buyer a secretary's certificate executed by the Secretary of the Company, dated as of the Closing Date, as to the Certificate of Incorporation and Bylaws of the Company and the Signing Resolutions.

(n) The Company shall have obtained all governmental, regulatory or third party consents (including without limitation, any anti-assignment consent related to the change of control of the Company) and approvals, if any, necessary for the sale of the Shares, and

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(o) The Company shall have delivered to Buyer such other documents relating to the transactions contemplated by this Agreement as Buyer or its counsel may reasonably request.

8. TERMINATION. THIS AGREEMENT MAY BE TERMINATED AT ANY TIME PRIOR TO THE CLOSING DATE AS FOLLOWS:

(a) by mutual written consent of the Company and the Buyer;

(b) In the event that on the Closing Date the Company or Buyer has failed to satisfy the conditions set forth in Sections 6 or 7 above, as applicable (and the non-breaching party has failed to waive such unsatisfied condition(s)), the non-breaching party shall have the option to terminate this Agreement without liability of either party to the other party.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

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(e) Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between Buyer, the Company, their affiliates and persons acting on their behalf with respect to the matters discussed herein, and this Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and Buyer. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Common Shares then outstanding.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile or email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one trading day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Windtree Therapeutics, Inc.  
2600 Kelly Road, Suite 100  
Warrington, PA 18976  
Telephone: (215) 488-9300  
Facsimile: (215) 488-9557  
Attention: Legal Department  
Email: MTempleton@Windtreetxt.com  
Attention: Finance Department  
Email: JTattory@Windtreetxt.com

with a copy to (which shall not constitute notice):

Dentons US LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Telephone: (212) 398-5787  
Facsimile: (212) 768-6800  
Attention: Ira L. Kotel  
Email: ira.kotel@dentons.com

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If to Buyer:

c/o Lee's Pharmaceutical (HK) Ltd.  
Share 110-111, Bio-Informatics Centre  
No. 2 Science Park West Avenue  
Hong Kong Science Park, Shatin, Hong Kong  
Telephone: (852) 2314 1282  
Facsimile: (852) 2314 1708  
Attention: Dr. Benjamin Li  
Email: drli@leespharm.com

with a copy to (which shall not constitute notice):

King & Wood Mallesons LLP  
500 5<sup>th</sup> Avenue, 50<sup>th</sup> Floor  
New York, New York 10110  
Telephone: (347) 926-7542  
Facsimile: (917) 591-8167  
Attention: Laura H. Luo  
Email: laura.luo@us.kwm.com

or to such other address and/or facsimile number and/or to the attention of such other person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

(i) Survival. Unless this Agreement is terminated under Section 8, the representations and warranties of the Company and Buyer contained in Sections 2 and 3, the agreements and covenants set forth in Sections 4, 5, 8 and 9 shall survive the Closing and the delivery of Shares.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

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(k) Indemnification. In consideration of Buyer's execution and delivery of the Transaction Documents and acquiring the Shares thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless Buyer, any affiliate of Buyer and each of their respective partners, members, officers, directors, employees and investors and any of the foregoing persons' accounting and legal representatives retained in connection with the transactions contemplated by this Agreement (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated thereby, or (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any certificate, instrument or document contemplated thereby. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(l) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Remedies. Buyer shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have under any law. Any person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

**[Signature Page Follows]**

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**IN WITNESS WHEREOF**, Buyer and the Company have caused their respective signature pages to this Securities Purchase Agreement to be duly executed as of the date first written above.

**COMPANY:**  
**WINDTREE THERAPEUTICS, INC.**

By: /s/ Craig Fraser  
Name: Craig Fraser  
Title: President and Chief Executive Officer

**BUYER:**  
**LPH INVESTMENTS LIMITED**

By: /s/ Benjamin Li, Ph.D  
Name: Benjamin Li, Ph.D  
Title: Chief Executive Officer

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**IN WITNESS WHEREOF**, Buyer and the Company have caused their respective signature pages to this Securities Purchase Agreement to be duly executed as of the date first written above.

**Executive Officers of the Company:**

With respect to Section 4(j) only

Craig Fraser

/s/ Craig Fraser

Title: President and Chief Executive Officer

John Tattory

/s/ John Tattory

Title: Senior Vice President and Chief Financial Officer

Steven G. Simonson, M.D.

/s/ Steven G. Simonson

Title: Senior Vice President and Chief Medical Officer

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## **SCHEDULES**

- Schedule 3(g) – Absence of Certain Changes
- Schedule 3(i) – Conduct of Business; Regulatory Permits
- Schedule 3(m) – Equity Capitalization
- Schedule 3(n) – Absence of Litigation
- Schedule 3(q) – Title to Property
- Schedule 4(j)(i) – Amendment to Employment Agreements
- Schedule 4(j)(ii) – Executive Options and Awards
- Schedule 4(j)(iii) – Executive Options and Awards; Equity Plans

## **EXHIBITS**

- Exhibit A – Registration Rights Agreement
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Schedule 3(g)

Absence of Certain Changes

None

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Schedule 3(i)

Conduct of Business; Regulatory Permits

None

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## Schedule 3(m)

Equity Capitalization

<i>in thousands of shares</i>	<b>Conversion and Exercise Prices</b>	<b>Expiration Date</b>	<b>Agreement Date</b>	<b>Closing Date</b>
<b>Authorized Shares</b>				
Preferred Stock			5,000	5,000
Common Stock			120,000	120,000
<b>Outstanding Shares and Derivatives</b>				
Series A Preferred Stock, as converted*			3,203	3,203
Common Stock			15,560	63,214
Prefunded Warrants			893	893
Warrants				
2017 February Financing (Series A-1)	\$ 1.37	02/15/24	7,049	7,049
2015 July Financing (Series A & Series B)	\$ 9.80	07/22/22	4,792	4,792
2014 Battelle Collaboration Agreement	\$ 70.00	10/10/24	71	71
2013 February Deerfield Loan	\$ 39.34	02/13/19	167	-
2013 December Deerfield Loan	\$ 39.34	02/13/19	333	-
Employee Options				
February 2017 grant	\$ 1.23	03/01/27	677	677
August 2016 BOD grant	\$ 1.84	08/04/26	60	60
July 2016 grant	\$ 1.77	07/28/26	209	209
February 2016 grant	\$ 2.33	02/02/26	163	163
Fraser Inducement	\$ 2.33	02/02/26	205	205
Miscellaneous new hire grants 2015-2016	\$1.78 - \$6.86	08/03/25 - 07/25/26	18	18
Other	> \$16	08/14/25	374	374
	<b>Grant Price</b>	<b>Vesting Dates</b>	<b>Agreement Date</b>	<b>Closing Date</b>
Employee RSUs				
Executive RSUs	\$ 0.2163	3/15/2018 3/15/2019	3,800	3,800
<b>Fully Diluted Equity Capitalization</b>			<b>37,574</b>	<b>84,728</b>
Treasury Stock			1,492	1,492

\*Right of Redemption: In the event of a Deemed Liquidation Event (as defined in the Certificate of Designations, Preferences and Rights) involving the sale of all or substantially all the assets of the Company, then the holders of at least a majority of outstanding shares of Preferred Stock may require the redemption of such shares. The investors to the Preferred Stock pursuant to their securities purchase agreement, dated February 13, 2017, hold a participation right that grants them the right, during the period ending on February 13, 2018, to participate in the next bona fide capital raising transaction of the Company (a "Subsequent Financing"), such that investors of the Preferred Stock has the right to participate in the Subsequent Financing to maintain the same Beneficial Ownership Percentage (as defined in their securities purchase agreement) immediately after the Subsequent Financing that such investors had immediately prior to the Subsequent Financing. Asset Lien: Substantially all of the assets of the Company are subject to a lien in favor of Deerfield under the Facility Agreement and related documents. These liens will be terminated effective with the Closing.



Schedule 3(n)

Absence of Litigation

None

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Schedule 3(q)

Title to Property

Substantially all of the assets of the Company are subject to a lien in favor of Deerfield under the Facility Agreement and related documents. These liens will be terminated effective with the Closing.

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Schedule 4(j)(i)

Amendment to Employment Agreements

Each Employment Agreement is hereby amended by this Amendment to Employment Agreements (this “**Amendment**”) to incorporate and reflect the following terms:

1. Solely with respect to the Change of Control (as defined in the applicable Executive's Employment Agreement) occurring as a result of the transactions contemplated by this Agreement, in lieu of the Annual Bonus (as defined in such Executive's Employment Agreement) that otherwise would be payable pursuant to Section 6(a) of such Employment Agreement, the executive shall be entitled to an award of equity granted on or before the Closing under the Company's 2011 Long-term Incentive Plan (“**2011 Incentive Plan**”), as amended, having a value when issued equal to the combined total value of the 2017 and 2018 Target Bonus Amounts (as defined in such executive's Employment Agreement).
2. Payment Terms:
  - a. Form of equity: Paid in Restricted Stock Units (RSUs) (as defined or permitted under the 2011 Incentive Plan) equal to the combined total value of the 2017 and 2018 Annual Bonus provided under each applicable Employment Agreement for such Executive.
  - b. Timing: RSUs shall be approved and granted on or before the Closing and will be issued within 10 days after authorization of additional shares available for issuance under the 2011 Long-term Incentive Plan and registration with the Securities and Exchange Commission.
  - c. Vesting: 50% on March 15, 2018 and 50% on March 15, 2019 (each a “Vesting Date”), subject to continued full-time employment with the Company at the time of each Vesting Date.

The final grant document will include customary provisions related to delivery of shares, tax obligations, and any other pertinent details.

3. With respect to the Option as referred to in Section 5(c), the parties hereto acknowledge and agree that such Option was granted on February 2, 2016. With respect to Section 6, the parties hereto acknowledge and agree that the outstanding options of the Executive on the Closing Date under the 2011 Long-Term Incentive Plan for each Executive, shall remain outstanding and shall continue to vest in accordance with their respective terms.
  4. The Company and each Executive agree and acknowledge that there is and shall be no assumption by the Buyer nor its parent company, Lee's Pharmaceutical Holdings Limited, a company incorporated in the Cayman Islands with limited liability, of (i) any vested or unvested shares of stock and any vested and unvested options to acquire the Company's stock held by such Executive, or (ii) any Convertible and Derivative Equity Securities (as defined in the SPA as defined below) as a result of the consummation of the transactions contemplated by the Securities Purchaser Agreement dated as of October 27, 2017 by and between the Company and the Buyer (the “**SPA**”). (Capitalized terms used in this paragraph 4 but not otherwise defined in this Amendment) shall have the meanings ascribed to such terms in the SPA.)
  5. If during the Effective Period (as defined in the Employment Agreement, as amended by this Amendment) following the transaction contemplated by the SPA and for so long as the Buyer is the controlling stockholder of the Company, if the Buyer nominates candidates for election to replace a majority of the Board of Directors during any 12 consecutive month period, no benefits shall accrue or be payable to Executive on account of such a “Change of Control” as defined in the respective Employment Agreement, as amended by this Amendment.
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## Schedule 4(j)(ii)

Executive Options and Awards**FRASER**

Option Plan	Grant Date	Expiration Date	Exercise Price	Options Outstanding
Inducement	02/02/2016	02/02/2026	\$2.33	204,863
2011	07/28/2016	07/28/2026	\$1.77	40,000
2011	03/01/2017	03/01/2027	\$1.23	100,000
TOTAL				344,863

Option Plan	Grant Date	Vesting Dates	Grant Price	RSUs Outstanding
2011	10/30/2017	3/15/2018 3/15/2019	\$0.2163	1,976,190

**TATTORY**

Option Plan	Grant Date	Expiration Date	Exercise Price	Options Outstanding
2007	01/28/2008	01/28/2018	\$378.00	357
2007	09/26/2008	09/26/2018	\$405.30	238
2007	12/12/2008	12/12/2018	\$254.10	95
2011	10/07/2011	10/07/2021	\$25.62	5,357
2011	05/04/2012	05/04/2022	\$37.94	2,857
2011	03/26/2013	03/26/2023	\$33.04	5,715
2011	03/06/2014	03/06/2024	\$36.12	6,429
2011	03/27/2015	03/27/2025	\$16.38	10,714
2011	02/02/2016	02/02/2026	\$2.33	23,214
2011	07/28/2016	07/28/2026	\$1.77	25,000
2011	03/01/2017	03/01/2027	\$1.23	55,000
TOTAL				134,976

Option Plan	Grant Date	Vesting Dates	Grant Price	RSUs Outstanding
2011	10/30/2017	3/15/2018 3/15/2019	\$0.2163	883,144

**SIMONSON**

Option Plan	Grant Date	Expiration Date	Exercise Price	Options Outstanding
2011	05/19/2014	05/19/2024	\$23.80	8,571
2011	03/27/2015	03/27/2025	\$16.38	19,643
2011	02/02/2016	02/02/2026	\$2.33	35,714
2011	07/28/2016	07/28/2026	\$1.77	25,000
2011	03/01/2017	03/01/2027	\$1.23	55,000
TOTAL				143,928

Option Plan	Grant Date	Vesting Dates	Grant Price	RSUs Outstanding
2011	10/30/2017	3/15/2018 3/15/2019	\$0.2163	940,564

Schedule 4(j)(iii)

Executive Options and Awards; Equity Plans

2007 Long-Term Incentive Plan

- 2007 Stock Option Agreement (Directors)
- 2007 Stock Option Agreement (Employees)

2011 Long-Term Incentive Plan

- 2011 Stock Option Agreement (Employees)
- 2011 Stock Option Agreement (Non-Employees)
- Restricted Stock Unit Award Agreement
- Notice of Grant of Stock Options and Option Agreement

Inducement Grant

- Stock Option Agreement - CEO

Executive Employment Agreement – CEO

Executive Employment Agreement – CFO

- Amendment to Executive Employment Agreement – CFO

Executive Employment Agreement – CMO

- Amendment to Executive Employment Agreement – CMO

Executive Employment Agreement – SVPs

Retention Agreements – SVP and VPs

## EXCHANGE AND TERMINATION AGREEMENT

This **EXCHANGE AND TERMINATION AGREEMENT** (this “**Agreement**”) dated as of October 27, 2017 (the “**Agreement Date**”), is by and among Windtree Therapeutics, Inc., a Delaware corporation (f/k/a Discovery Laboratories, Inc.) (“**Borrower**”), Deerfield Private Design Fund II, L.P. (“**DPDF II**”), Deerfield Private Design International II, L.P. (“**DPDI II**”) and Deerfield Special Situations Fund, L.P. (“**DSSE**,” and together with DPDF II and DPDI II, “**Lenders**,” and each, a “**Lender**”), and as expressly provided herein, Deerfield PDI Financing II, L.P. (“**DPDI Financing II**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Facility Agreement (as defined below).

### RECITALS:

A. Borrower and Lenders have entered into that certain Facility Agreement, dated as of February 13, 2013, as amended pursuant to a First Amendment to Facility Agreement dated as of July 9, 2015 and a Second Amendment to Facility Agreement dated as of July 22, 2015 (the “**Facility Agreement**”).

B. The Facility Agreement provides for the issuance of Notes, and the advancement of funds to Borrower in two disbursements, of \$10 million and \$20 million, respectively, each of which has been made prior to the Agreement Date.

C. Prior to the Agreement Date, Borrower has repaid \$5,000,000 in principal under the Notes, and Lenders have collectively converted an additional \$5,000,000 in prepaid interest under the Notes into shares of Common Stock (as defined below), Class A Warrants, pre-funded Series B Warrants and Series B Warrants. As of the Agreement Date, the aggregate outstanding principal, accrued and unpaid interest, and outstanding fees due and owing Lenders under the Notes is \$25,000,000 (the “**Outstanding Indebtedness**”).

D. As of August 14, 2017, Borrower, Lenders and Lee’s Pharmaceutical (HK) Ltd., a Hong Kong company (“**Lee’s**”), executed that certain Subordination Agreement whereby Lenders agreed to subordinate their right to certain payments under the Facility Agreement to the payment by Borrower of all liabilities and obligations owing to Lee’s pursuant to that certain Senior Loan Agreement, dated as of August 14, 2017, between Borrower and Lee’s.

E. Concurrent with, and conditioned upon, the execution of this Agreement, Borrower and Lee’s have entered enter into a Share Purchase Agreement, dated of even date herewith, pursuant to which (and subject to the terms and conditions set forth therein) Lee’s, either directly or through an affiliate, has agreed to purchase from Borrower, and Borrower has agreed to sell to Lee’s, 46,232,085 shares of Common Stock, for an aggregate purchase price of \$10,000,000 (the “**Share Purchase Consideration**”), which will result in Lee’s owning a controlling interest in Borrower following the closing thereof (such agreement, in the form provided to the Lenders prior to the date hereof, the “**Share Purchase Agreement**”).

F. Pursuant to this Agreement (and subject to the terms and conditions hereof), the Lenders collectively have agreed to terminate the Facility Agreement and related agreements and exchange their respective Notes for (i) a cash payment in the aggregate amount of \$2,500,000 at Closing (the “**Cash Payment**”), (ii) an aggregate of 1,422,250 shares of Common Stock (the “**Exchange Shares**”) and (iii) the right to receive certain Milestone Payments (as defined below), as hereinafter set forth.

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**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE I.

### DEFINITIONS

Section 1.01. Capitalized terms used in this Agreement shall have the meanings set forth below.

“8-K Filing” has the meaning set forth in Section 6.03.

“2019 Warrants” means the warrants to purchase shares of Common Stock held by Lenders that have an exercise price of \$39.34 per share and expire on February 13, 2019.

“Affiliate” means any corporation or other business entity controlled by, controlling, or under common control with a party to this Agreement. For this purpose, “control” means (i) direct or indirect beneficial ownership of more than fifty percent (50%) of the voting stock in such corporation or other business entity, or (ii) the possession, directly or indirectly, of any other power to direct or cause the direction of the management and policies of such corporation or other business entity, whether through ownership of voting securities, by contract or otherwise.

“Applicable Law” means any applicable law, rule or regulation of any Governmental Authority of competent jurisdiction, or judgment, order, writ, decree, permit or license of any Governmental Authority of competent jurisdiction.

“Average Sale Price” means the weighted average sale price of the Product, Bundled Product or other product or service included in a Bundled Product, as applicable, sold by Borrower or a Distributor during a defined period, and determined by dividing (i) the total gross sales of such Bundled Product or other product or service during such period by Borrower or such Distributor by (ii) the units of the Product, such Bundled Product or other product or service sold during such period by Borrower or such Distributor. When determining the gross sales for the Product included in a Bundled Product, the methodology used to allocate a portion of the gross proceeds of the Bundled Product to the Product, as set forth in the definition of Net Sales, shall be used to allocate gross sales proceeds to the Product.

“Borrower” has the meaning set forth in the Preamble.

“Bundled Product” means the Product, together with any other product(s) and/or service(s) that are sold at a single unit price, whether packaged together or separately.

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“Business Day” means any day other than Saturday and Sunday and any other day on which commercial banks located in New York are authorized or required by law to be closed.

“Bylaws” has the meaning set forth in Section 5.02(g).

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of Borrower and any and all equivalent ownership interests in Borrower.

“Cash Payment” has the meaning set forth in the Recitals.

“Certificate of Incorporation” has the meaning set forth in Section 5.02(g).

“Closing” has the meaning set forth in Section 2.03.

“Closing Date” has the meaning set forth in Section 2.03.

“Code” means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations promulgated thereunder.

“Collateral” has the meaning set forth in the Security Agreement.

“Common Stock” means the common stock, par value \$0.001 per share, of Borrower.

“Convertible Securities” means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for Capital Stock.

“Cover” means that the use, manufacture, sale, offer for sale, development, commercialization or importation of the subject matter in question by an unlicensed entity would infringe a claim of a Patent or other intellectual property right.

“CRE Considerations” means issues relating to safety, efficacy, the regulatory requirements and other scientific and technical factors, and, with respect to commercialization in markets other than the U.S. and the EU3, the anticipated viability and profitability of the Product in a particular market, including the projected cost to develop and gain approval of the Product, the forecasted market value and revenue potential compared to other potential opportunities, and the expected exclusivities, including regulatory and IP Rights.

“Develop” or “Developing” or “Development” means engaging in manufacturing, preclinical, clinical and other research and development activities directed towards obtaining either U.S. Approval or E.U. Approval.

“Distributor” means a Third Party or Affiliate of Borrower which Borrower selects to market, promote and/or distribute the Product on Borrower’s behalf.

“DPDF II” has the meaning set forth in the Preamble.

“DPDI II” has the meaning set forth in the Preamble.

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“DPDI Financing II” has the meaning set forth in the Preamble.

“DSSF” has the meaning set forth in the Preamble.

“DTC” has the meaning set forth in Section 5.02(m).

“DWTC” has the meaning set forth in Section 5.02(m).

“EMA” means the European Medicines Agency, or any successor agency thereto.

“Effective Date” has the meaning set forth in Section 6.04(b).

“EU3” means the United Kingdom, Germany and France; provided that, in the event that (i) the United Kingdom withdraws from the E.U., and (ii) in order to market and sell the Product in the United Kingdom, the Company would need to obtain the approval of a regulatory authority other than the EMA of a type similar to the approval resulting from a submission to the EMA and the Company reasonably and in good faith determines that it is not in the best interests of the Company to pursue such approval ((i) and (ii), collectively, a “**Brexit Event**”), thereafter, “EU3” shall mean the United Kingdom, Germany, France and Italy.

“European Union” or “E.U.” means the European Union, as its membership may be constituted from time to time, and any successor thereto, and which, as of the Agreement Date, consists of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. For the purposes of this Agreement, the United Kingdom shall at all times be deemed to be a member of the European Union, except following a Brexit Event.

“Exchange” has the meaning set forth in Section 2.02.

“Exchange Shares” has the meaning set forth in the Recitals.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“E.U. Approval” means (i) the approval resulting from the submission of a single marketing authorization application or applications to EMA (including supplements, amendments, pre- and post-approvals, licenses, registrations and other authorizations of the EMA), and, (ii) any other national, supra-national (e.g., the European Commission or the Council of the European Union), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity; in each case that are necessary and appropriate for the manufacture, distribution, use, storage, transport, sale and marketing of the Product within the E.U. Borrower plans to seek marketing approval in the E.U. using the centralized process of the EMA.

“FDA” means the United States Food and Drug Administration.

“Facility Agreement” has the meaning set forth in the Recitals.

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“First Commercial Sale” means the first bona fide commercial sale invoiced to a Third Party or otherwise made by Borrower or a Distributor with respect to the Product after receiving U.S. Approval or E.U. Approval, as the case may be.

“Fully Diluted Shares” means, as of the Closing Date, giving effect to the issuance of shares of Common Stock pursuant to this Agreement and the Share Purchase Agreement, the sum of (i) the number of shares of Common Stock outstanding (ii) the number of shares of Common Stock directly or indirectly issuable upon exercise, conversion or exchange of outstanding Options and Convertible Securities (without giving effect to any limitations on exercise, conversion or exchange thereof as of such date), excluding any such Options and Convertible Securities that have a conversion or exercise price that is equal to or greater than \$0.6475, and (iii) the number of shares issued or issuable pursuant to preemptive rights, rights of participation or similar rights as result of, or in connection with, the issuance of shares of Common Stock pursuant to this Agreement or the Share Purchase Agreement (“Preemptive Rights”).

“Fraud Policy” has the meaning set forth in Section 5.02(s)(iii).

“GAAP” means United States generally accepted accounting principles, or, for purposes of the calculation of Net Sales made by any direct or indirect assignee or licensee of Borrower and not reported as net sales by the Company in its own financial statements, the national or international accounting standards used by such assignee or licensee in connection with reporting to the Company of such assignee’ or licensee’s sales of the Product, in each case consistently applied.

“Governmental Authority” means any supranational (*e.g.*, the European Union), national, regional, state, provincial, local or other government, or other court of competent jurisdiction, legislature, governmental, administrative or regulatory agency, department, body, bureau, council or commission or any other supranational, national, regional, state, provincial, local or other governmental authority or instrumentality, or securities exchange or self-regulatory authority, in each case having jurisdiction in any country or other jurisdiction.

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“Knowledge of Borrower” or “Borrower’s Knowledge” means the knowledge, after due inquiry, of the President and Chief Executive Officer, the Senior Vice President and Chief Financial Officer, the Senior Vice President and General Counsel, the Senior Vice President and Chief Medical Officer and any other Senior Vice President or Person holding comparable positions in the Company.

“Lee’s” has the meaning set forth in the Recitals.

“Lender” and “Lenders” has the meaning set forth in the Preamble.

“MAA” means a ‘Marketing Authorization Application’ submitted to the EMA for purposes of obtaining E.U. Approval of a newly developed medicinal product.

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“Material Adverse Effect” means a material adverse effect on (i) the validity or enforceability of this Agreement or any of the other Transaction Documents, (ii) the ability of Borrower to perform any of its material obligations under this Agreement or any of the other Transaction Documents, (iii) on Borrower’s business, operations, Product Assets, results of operations, condition (financial or otherwise) or prospects, or (iv) the Development, marketing, sale or other commercialization of the Product; provided, however, that changes relating to the economy in general or Borrower’s industry in general shall not in themselves be deemed to arise to a Material Adverse Effect unless such changes have a materially disproportionate impact on Borrower.

“Milestone Event” has the meaning set forth in Section 2.02(b).

“Milestone Payment” has the meaning set forth in Section 2.02(b).

“NDA” means a ‘New Drug Application’ submitted to the FDA for purposes of obtaining U.S. Approval of a newly developed medicinal product.

“Net Sales” means, without duplication, the gross amount (calculated in U.S. Dollars) invoiced or otherwise recorded by or on behalf of Borrower or any direct or indirect assignee or licensee of Borrower for the Product sold globally in *bona fide*, arm’s length transactions, less customary deductions determined without duplication in accordance with GAAP and reported on a quarterly basis. Customary deductions include, among others, (i) cash or terms discounts, (ii) sales, use and value added taxes (if and only to the extent included in the gross invoice amount), (iii) reasonable and customary accruals for third party rebates and chargebacks, (iv) returns and (v) recalls.

With respect to a Bundled Product, the Net Sales of such Bundled Product shall first be calculated in accordance with the definition of Net Sales above, and then the Net Sales of the Product as included in such Bundled Product shall be determined, on a territory by territory basis, as follows:

(i) multiply the Net Sales of such Bundled Product in the territory by the fraction  $A/(A+B)$  where “A” is the Average Sale Price of the Product when sold separately in the territory and “B” is the total of the Average Sale Prices of each of the other products(s) and/or services(s) included in such Bundled Product when sold separately in the territory;

(ii) if the Average Sale Price of the Product included in such Bundled Product can be determined but the Average Sale Price of the other product(s) and/or services(s) included in such Bundled Product cannot be determined, then multiply the Net Sales of such Bundled Product in the territory by the fraction  $A/C$  where “A” is the Average Sale Price of the Product when sold separately in the territory and “C” is the Average Sale Price of such Bundled Product in the territory; or

(iii) if (x) the Average Sale Price of the Product in the territory is not available for such period or (y) the Product included in such Bundled Product is not sold separately in the territory, then multiply the Net Sales of such Bundled Product in the territory by a percentage, determined by Borrower reasonably and in good faith and disclosed by Borrower to the Lenders, that represents the proportionate economic value of the Product included in such Bundled Product relative to the economic value contributed by the other product(s) and/or service(s) included in such Bundled Product.

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“Options” means any rights, warrants or options to subscribe for or purchase Capital Stock or Convertible Securities.

“Outstanding Indebtedness” has the meaning set forth in the Recitals.

“Patents” means all patents (including all reissues, extensions, substitutions, confirmations, re-registrations, re-examinations, revalidations, supplementary protection certificates and patents of addition) and patent applications (including all provisional applications, continuations, continuations-in-part and divisions).

“Person” means any natural person, corporation, trust, joint venture, association, unincorporated organization, cooperative, company, partnership, trust, limited liability company, government (domestic or foreign), or any agency or instrumentality thereof, or any other entity recognized by law.

“Product” means AEROSURF, a drug/device combination product being Developed by Borrower for the treatment of respiratory distress syndrome in premature infants.

“Product Assets” means all assets owned by, licensed to or otherwise controlled by Borrower or any Affiliate of Borrower related to the Product, including Product IP Rights, Product IP Agreements (subject to their terms), regulatory filings, product packaging, product inserts, product labels, regulatory approval applications, regulatory approvals, regulatory exclusivity, copies of correspondence with regulatory authorities, copies of pre-clinical and clinical data, copies of pharmacology and biology data, agreements related to the Development, marketing, promotion, manufacture, sale or distribution of the Product and inventory.

“Product IP Agreements” means any contract pursuant to which Borrower or any Affiliate of Borrower have been granted, assigned or otherwise conveyed any right, title or interest in or to any Product IP Rights.

“Product IP Rights” means all intellectual property relating to the Product that is owned or licensed by Borrower or any Affiliate of Borrower and is material to the Development or commercialization of the Product, including (i) the Product Know-How, (ii) Patents Covering the Product (including its composition, formulation, delivery, manufacture or use), and (iii) trademarks, service marks, trade names and works protectable under copyright laws relating to the Product.

“Product Know-How” means material to the Development and commercialization of the Product, all technical information and know-how, including analytical methods, inventions, discoveries, trade secrets, specifications, instructions, processes, formulae, materials (including cell lines, vectors, plasmids, nucleic acids and the like), methods, protocols, expertise and other technology applicable to formulations, compositions or products or to their manufacture, development, registration, use or marketing or to methods of assaying or testing them or processes for their manufacture, formulations containing them or compositions incorporating or comprising them, and including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, preclinical and clinical data, instructions, processes, formula and expertise.

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“Pro Rata Share” means, with respect to each Lender, the percentage set forth opposite such Lender’s name on Schedule I hereto.

“Registration Rights Agreement” has the meaning set forth in Section 2.02(a)(ii).

“Regulatory Agency” means any federal, state or local regulatory agency, department, bureau or other Governmental Authority in the United States or the European Union, as applicable, including the FDA and the EMA, in each case which is responsible for issuing approvals, licenses, registrations, permits or authorizations necessary for, or otherwise governs, the manufacture, handling, use, storage, import, transport, distribution or sale of the Product.

“Responsible Parties” means (i) Borrower and its Affiliates and (ii) Lee’s and each other Third Party that is licensee of any of the Product Assets or otherwise engaged by Borrower or any of its Affiliates, in each case to perform services for or on behalf of Borrower, for purposes of the Development, manufacture, distribution, use, storage, transport, sale or marketing of the Product or otherwise in connection with the commercialization thereof (in any case, in whole or in part).

“SEC” has the meaning set forth in Section 5.01(f).

“SEC Reports” has the meaning set forth in Section 5.02(h).

“Securities Act” means the Securities Act of 1933, as amended.

“Security Agreement” means that certain Security Agreement, dated as of February 13, 2013, among Borrower and Lenders.

“Share Purchase Agreement” has the meaning set forth in the Recitals.

“Share Purchase Consideration” has the meaning set forth in the Recitals.

“Surviving Provisions” has the meaning set forth in Section 3.01.

“Third Party” means any Person, including a Governmental Authority, other than Borrower, Lenders and their respective Affiliates.

“Transaction Documents” means, collectively, this Agreement, the Registration Rights Agreement, the Share Purchase Agreement, and any other agreements entered into by Borrower in connection with the transactions contemplated hereby and thereby.

“Transfer Agent” has the meaning set forth in Section 2.02(a)(ii).

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“United States” or “U.S.” means the United States of America, including its territories and possessions.

“Unrestricted Conditions” has the meaning set forth in Section 6.04(b).

“U.S. Approval” means any and all approvals (including supplements, amendments, pre- and post-approvals), licenses, registrations or authorizations of the FDA and any other federal, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, that are necessary and appropriate for the manufacture, distribution, use, storage, transport, sale and marketing of the Product within the U.S.

## ARTICLE II.

### CASH PAYMENT AND EXCHANGE

Section 2.01. Cash Payment. At the Closing, Borrower shall pay to each Lender in cash, by wire transfer of immediately available funds to an account or accounts designated by such Lender in writing, the applicable amount set forth opposite such Lender’s name on Schedule I hereto, representing such Lender’s Pro Rata Share of the Cash Payment.

Section 2.02. Exchange. Subject to the terms and conditions hereof, each Lender hereby agrees to exchange such Lender’s Notes and the right to collect such Lender’s allocable portion of the remaining Outstanding Indebtedness (after applying the Cash Payment in accordance with the terms of the Facility Agreement), for the following consideration (the “**Exchange**”):

(a) Issuance of Shares. At the Closing, Borrower shall, in accordance with this Section 2.02(a), issue to each Lender the number of shares of Common Stock set forth opposite such Lender’s name on Schedule I hereto, representing such Lender’s Pro Rata Share of the Exchange Shares.

(i) Delivery of Exchange Shares. On the Closing Date, Borrower shall cause the transfer agent for the Common Stock (the “**Transfer Agent**”) to deliver to the Lenders’ custodian (as directed prior to the Closing by the Lenders) stock certificates, in the names of the respective Lenders, duly executed on behalf of Borrower and by the Transfer Agent, representing the Exchange Shares to which each Lender is entitled pursuant to the Exchange. In the event that any of the Exchange Shares or any portion of the Cash Payment are not delivered on the Closing Date in accordance herewith (x) the Lenders shall have the right to rescind and terminate any or all of this Agreement and the transactions contemplated hereby and/or to exercise any and all other rights and remedies available at law or in equity and (y) the Notes shall not be terminated and Borrower’s obligations thereunder shall not be released pursuant to Article III. Notwithstanding the foregoing, if any shares of Common Stock are issued after the Closing Date pursuant to Preemptive Rights (any such shares “Preemptive Shares”), Borrower shall, within five (5) Business Days thereafter, issue to each Lender its Pro Rata Share of such additional shares of Common Stock as shall be necessary to cause the Lenders to have been issued two percent (2%) of the Fully Diluted Shares, as if such Preemptive Shares had been outstanding as of the Closing Date, such additional shares to be deemed Exchange Shares for all purposes hereunder.

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(ii) Registration Rights Agreement. On or before the Closing Date, Borrower and Lenders will execute and deliver a Registration Rights Agreement, in the form attached hereto as Exhibit A (as the same may be amended, supplemented, restated or modified and in effect from time to time, the “**Registration Rights Agreement**”), pursuant to which Borrower will provide certain registration rights with respect to the Exchange Shares under the Securities Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

(b) Milestone Payments. In accordance with this Section 2.02(b), in connection with the occurrence of a Milestone Event, Borrower shall make a non-refundable cash payment to each Lender in the amount of such Lender’s Pro Rata Share of the amount set forth opposite such Milestone Event in the table below (each, a “**Milestone Payment**”), by wire transfer of immediately available funds to an account or accounts designated by such Lender; provided, however, that Borrower shall only be required to make one (1) Milestone Payment to each Lender per Milestone Event. Notwithstanding the foregoing, DPDI II hereby assigns its entire right, title and interest in and to the right to receive its Pro Rata Share of any Milestone Payments (including information and audit rights) to DPDI Financing II, which hereby accepts such assignment, and Borrower hereby acknowledges such assignment, and the parties hereto accordingly acknowledge and agree that all amounts that, but for such assignment would have been paid to DPDI II pursuant to this Section 2.02(b), shall instead be paid to an account or accounts designated by DPDI Financing II and that DPDI Financing II shall succeed to and be entitled to directly enforce the right to receive payment of, and exercise all applicable rights and remedies with respect to, DPDI II’s Pro Rata Share of the Milestone Payments. Milestone Payments under this Section 2.02(b) shall be paid no later than fifteen (15) days following the occurrence of such Milestone Event; provided, however, that Milestone Payments in respect of Net Sales Milestone Events shall be paid no later than thirty (30) days following the end of the calendar quarter in which such Milestone Event shall occur; and provided, further, that if such fifteenth (15<sup>th</sup>) day or thirtieth (30<sup>th</sup>) day should fall on a day that is not a Business Day, then such Milestone Payment may be paid on the next Business Day. The first occurrence of each of the following events shall be deemed a “**Milestone Event**” for purposes of this Agreement for which the applicable Milestone Payment is due and payable in accordance with this Section 2.02(b):

<u>Milestone Event</u>	<u>Milestone Payment</u>
Acceptance of filing of an NDA for the Product at the FDA.	\$2,500,000
First Commercial Sale of the Product in the U.S.	\$2,500,000
Acceptance of filing of a MAA for the Product at the EMA.	\$1,000,000
First Commercial Sale of the Product in one (1) EU3 country.	\$1,500,000
First Commercial Sale of the Product in a second (2nd) EU3 country.	\$1,500,000
Net Sales first equals or exceeds \$50,000,000.	\$500,000
Net Sales first equals or exceeds \$75,000,000.	\$1,000,000
Net Sales first equals or exceeds \$150,000,000.	\$1,000,000
Net Sales first equals or exceeds \$250,000,000.	\$1,500,000
Net Sales first equals or exceeds \$500,000,000.	\$2,000,000

(c) Withholding. Any and all Milestone Payments pursuant to this Agreement shall be made free and clear of and without deduction for any taxes except as required by applicable tax law. Borrower shall provide the applicable payee with ten (10) Business Days' advance notice of any such required withholding and shall reasonably cooperate with the payee to mitigate or reduce such withholding.

Section 2.03. Closing. Subject to the satisfaction (or waiver) of all of the conditions to the Exchange set forth in Section 7.01 and Section 7.02, the delivery of the Cash Payment and the Exchange shall be consummated (the "**Closing**") on the Agreement Date or such other date as is mutually agreed to by Borrower and Lenders (the "**Closing Date**"). The Closing shall occur on the Closing Date at the offices of Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022-2585 or at such other place as Borrower and Lenders may collectively designate in writing.

Section 2.04. Deliverables at Closing.

(a) Deliverables by Borrower. On the Closing Date, Borrower shall deliver to Lenders:

- (i) the Cash Payment, in accordance with Section 2.01;
- (ii) the Exchange Shares, in accordance with Section 2.02(a)(i);
- (iii) the Registration Rights Agreement, duly executed by Borrower;

(iv) a secretary's certificate, dated as of the Agreement Date, certifying as to: (i) the resolutions of the board of directors of Borrower authorizing and approving this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby; (ii) the Certificate of Incorporation; and (iii) the Bylaws, each as in effect on the Closing Date; and

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(v) such other documents relating to the transactions contemplated by this Agreement as such Lender or its counsel may reasonably request.

(b) Deliveries by Lenders. On or before the Closing Date, each Lender shall deliver to Borrower's counsel, to hold in escrow pending the Closing, the Registration Rights Agreement, duly executed by such Lender, and no later than the third Business Day following the Closing Date, each Lender shall deliver to Borrower such Lender's Notes and such Lender's 2019 Warrants (as set forth on Schedule I hereto).

### ARTICLE III.

#### TERMINATION OF FACILITY AGREEMENT AND NOTES

Section 3.01. Termination of Facility Agreement and 2019 Warrants. Subject to the terms and conditions hereof, including receipt of the Cash Payment and Exchange Shares at the Closing, each Lender hereby agrees that, effective on the Closing Date, (i) the Facility Agreement shall terminate and shall have no further force or effect, (ii) all Outstanding Indebtedness under the Facility Agreement shall be deemed satisfied in full and discharged, terminated and released, (iii) all security interests and other liens granted to or held by Lenders in any Collateral as security for such Outstanding Indebtedness shall be satisfied, released and discharged, (iv) the Security Agreement shall immediately terminate and shall have no further force or effect, and (v) the 2019 Warrants shall immediately terminate and shall have no further force or effect (in each case, regardless of when the Notes and the 2019 Warrants are delivered by the Lenders to Borrower). Thereafter, each of the Lenders agrees to take all reasonable additional steps requested by Borrower as may be necessary to release its security interests in the Collateral and hereby authorize Borrower to file any necessary UCC-3 termination statements. Borrower hereby confirms that any commitments and obligations of Lenders under the Facility Agreement shall terminate as of the Closing Date, and as of the Closing Date, no Lender shall have any further obligation to make loans, or otherwise advance funds, to Borrower.

Section 3.02. Release by Lenders. Lenders agree that, subject to the terms and conditions hereof, including receipt of the Cash Payment and the Exchange Shares, each Lender hereby releases Borrower and its Affiliates and their respective officers, directors, employees, shareholders, agents and representatives, as well as their respective successors and assigns, from any and all claims, obligations, rights, causes of action, and liabilities, of whatever kind or nature, whether known or unknown, whether foreseen or unforeseen, arising on or before the date hereof, which such Lender ever had, now has or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, which are based upon, arise under or are related to the Facility Agreement or the Security Agreement, other than the Surviving Provisions (and, for the avoidance of doubt, any claims, obligations, rights, causes of action and liabilities based upon, arising under or related to this Agreement or any of the other Transaction Documents).

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Section 3.03. Release by Borrower. Borrower agrees that, subject to the terms and conditions hereof, Borrower (on its own behalf and behalf of its Affiliates) hereby releases each of the Lenders and their respective Affiliates and their officers, directors, employees, partners, members, managers, equity holders, agents and representatives, as well as their respective successors and assigns, from any and all claims, obligations, rights, causes of action, and liabilities, of whatever kind or nature, whether known or unknown, whether foreseen or unforeseen, arising on or before the date hereof, which Borrower or any of its Affiliates ever had, now has or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, which are based upon, arise under or are related to the Facility Agreement or the Security Agreement (other than, for the avoidance of doubt, those obligations and any claims, obligations, rights, causes of action and liabilities based upon, arising under or related to this Agreement or any of the other Transaction Documents).

#### ARTICLE IV.

##### DEVELOPMENT AND COMMERCIALIZATION

###### Section 4.01. Efforts to Develop and Commercialize.

(a) Development. Borrower shall use commercially reasonable efforts (taking into account the CRE Considerations) to (and shall ensure that each other Responsible Party shall use commercially reasonable efforts to) Develop the Product in a manner that is intended to ensure that Borrower is reasonably likely to achieve U.S. Approval and E.U. Approval. Such activities shall include (i) performing or arranging for all manufacturing, preclinical, clinical or other research and Development activities, (ii) filing an NDA for the Product with the FDA and a MAA with the EMA as soon as reasonably practicable following completion of the AEROSURF Development program for such market and (iii) submitting all additional documentation to the applicable Regulatory Agencies as shall be necessary to obtain the requisite approvals of the FDA and EMA. Borrower agrees to use commercially reasonable efforts to raise adequate cash to fund any and all necessary or desirable activities in connection with the Development of the Product.

(b) Commercialization. Borrower shall use commercially reasonable efforts (taking into account the CRE Considerations) to (and shall ensure that each other Responsible Party shall use commercially reasonable efforts to) launch, market, promote, sell and otherwise commercialize the Product in all of the U.S. and appropriate markets of the E.U. (including, for the avoidance of doubt, each of the EU3, but excluding the United Kingdom following a Brexit Event).

Section 4.02. Achievement of Milestones. Without limiting Borrower's obligations under Section 4.01 and elsewhere in this Agreement, Borrower shall use commercially reasonable efforts to cause each of the Milestones to be satisfied as reasonably possible after the Closing Date, taking into account the CRE Considerations.

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Section 4.03. Commercially Reasonable Efforts. Without limiting Borrower's obligations under Sections 4.01 and 4.02 or elsewhere in this Agreement, Borrower's obligation to exercise "commercially reasonable efforts" hereunder shall require Borrower to (i) except where CRE Considerations would indicate otherwise, assume the commercial viability of the Product and (ii) (a) promptly assign responsibility for all Development and commercialization activities with respect to the Product to appropriate employees or Third Parties, (b) establish a Development plan with meaningful objectives and timelines for carrying out such Development and commercialization activities, (c) allocate appropriate resources designed to advance progress with respect to such objectives and timelines, (d) employ (and/or cause the applicable Third Parties to employ) compensation systems for its sales representatives and other employees and agents that are no less favorable than the compensation systems that Borrower and its Affiliates and/or the Third Parties, as applicable, apply to their other comparable Development and commercialization programs, in order to reasonably incentivize such sales representatives and other employees and agents to achieve such objectives and timelines and (e) use reasonable care in (x) selecting any Distributor or other Third Party (in addition to Lee's) to which Borrower may grant any rights with respect to the Development, marketing, sale, distribution or other commercialization of the Product, and (y) negotiating and enforcing the terms of any license or other agreement entered into between Borrower and any Distributor or other Third Party with respect thereto.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES

Section 5.01. Representations and Warranties of Lenders. Each Lender hereby represents and warrants to Borrower as of the Agreement Date and as of the Closing Date as follows:

(a) Organization and Good Standing. Such Lender is a limited partnership duly organized, validly existing and in good standing under the laws of Delaware, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

(b) Authority. Such Lender has the requisite limited partnership power and authority to enter into and to consummate the transactions contemplated by this Agreement and the other Transaction Documents to which such Lender is a party and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the other Transaction Documents to which such Lender is a party by such Lender and the consummation by such Lender of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of such Lender.

(c) Valid and Binding Agreement. This Agreement has been duly executed and delivered by such Lender and constitutes the valid and binding obligations of such Lender, enforceable against such Lender in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies. As of the Closing Date, each of the other Transaction Documents to which such Lender is a party will have been duly executed and delivered by such Lender and will constitute valid and binding obligations of such Lender, enforceable against such Lender in accordance with its terms, except: (y) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (z) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

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(d) Non-Contravention. The execution and delivery of this Agreement and the other Transaction Documents to which such Lender is a party, and the performance by such Lender of its obligations hereunder and thereunder do not and will not (i) violate any provision of such Lender's limited partnership agreement, or (ii) conflict with or result in a material violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which such Lender is subject.

(e) No Public Sale or Distribution. Such Lender is acquiring its Pro Rata Share of the Exchange Shares in the ordinary course of business for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act, and such Lender does not have a present arrangement to effect any distribution of the Exchange Shares to or through any Person; provided, however, that by making the representations herein, such Lender does not agree to hold any of the Exchange Shares for any minimum or other specific term and reserves the right to dispose of the Exchange Shares at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act.

(f) Accredited Investor Status; Not a Broker or Dealer. Such Lender is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D as promulgated by the United States Securities and Exchange Commission (the "SEC") under the Securities Act. Such Lender is not a broker or dealer registered pursuant to Section 15 of the Exchange Act and is not affiliated with any registered broker-dealer.

(g) Reliance on Exemptions. Such Lender understands that the Exchange Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of the United States federal and state securities laws and that Borrower is relying in part upon the truth and accuracy of such Lender's representations and warranties set forth herein in order to determine the availability of such exemptions.

(h) Title to Notes. Such Lender holds its Notes free and clear of all claims, liens, security interests, objections or any other encumbrance of any kind or nature whatsoever.

Section 5.02. Representations and Warranties of Borrower. Borrower hereby represents and warrants to each Lender as of the Agreement Date and the Closing Date as follows:

(a) Organization and Good Standing. Borrower is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

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(b) Authority. Borrower has the requisite corporate power and authority, as applicable, to enter into and to consummate the transactions contemplated by this Agreement and the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the other Transaction Documents by Borrower and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Borrower, and no further action of Borrower, its board of directors or stockholders is required in connection herewith or therewith.

(c) Consents. Borrower is not required to obtain any consent from, authorization or order of, or make any filing or registration with any Governmental Authority or any Regulatory Agency or any other Person (including Lee's) in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Agreement or the other Transaction Documents, in each case, in accordance with the terms hereof or thereof, except for E.U. Approval and U.S. Approval required with respect to the Product, the filings and listings contemplated by the Registration Rights Agreement and the 8-K Filing with the SEC as contemplated by Section 6.03 hereof.

(d) Valid and Binding Agreement. Each of this Agreement and the Share Purchase Agreement has been duly executed and delivered by Borrower and constitutes the valid and binding obligations of Borrower, enforceable against Borrower in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies. As of the Closing Date, each of the other Transaction Documents will have been duly executed and delivered by Borrower and will constitute valid and binding obligations of Borrower, enforceable against Borrower in accordance with its terms, except: (y) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (z) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(e) Non-Contravention. The execution and delivery of this Agreement and the other Transaction Documents and the performance by Borrower of its obligations hereunder and thereunder does not and will not (i) violate any provision of Borrower's Certificate of Incorporation, Bylaws or other organizational documents, (ii) conflict with or result in a material violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or Governmental Authority to which Borrower is subject, or by which any property or asset of Borrower is bound or affected, or (iii) violate, conflict with, result in a material breach of, or constitute (with or without notice or lapse of time or both) a material default under, or an event which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination under, or in any manner release any party thereto from any material obligation under any permit, agreement, instrument or contract to which Borrower is a party or by which any of its properties or assets are bound.

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(f) Issuance of Exchange Shares. The Exchange Shares are duly authorized and, when issued in accordance with this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens or encumbrances, and will not be issued in violation of, or subject to, any preemptive or similar rights of any Person. Borrower has reserved from its duly authorized Common Stock the Exchange Shares issuable pursuant to this Agreement.

(g) Capitalization. As of the Agreement Date, the authorized, issued and outstanding shares of Capital Stock of Borrower are as set forth on Schedule II hereto. As of the Closing Date, taking into account all issuances of Capital Stock pursuant to the Share Purchase Agreement, the authorized, issued and outstanding shares of Capital Stock of Borrower will be as set forth on Schedule II hereto. All of such outstanding shares are, validly issued, fully paid and nonassessable. Upon payment of any required consideration therefor, all such issuable shares, upon issuance, will be validly issued, fully paid and nonassessable. Except as disclosed in Schedule II hereto and except as provided in this Agreement and the Share Purchase Agreement: (A) no shares of Borrower's Capital Stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by Borrower; (B) there are no outstanding Options or Convertible Securities, or contracts, commitments, understandings or arrangements by which Borrower is or may become bound to issue additional shares of Capital Stock, Options or Convertible Securities or commitments of any character whatsoever relating to any shares of Capital Stock, Options or Convertible Securities; (C) there are no agreements or arrangements under which Borrower is obligated to register the offer and/or sale of any of its securities under the Securities Act (except the Registration Rights Agreement); (D) there are no outstanding securities or instruments of Borrower which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which Borrower or any of its Affiliates is or may become bound to redeem a security of Borrower; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Exchange Shares; and (G) Borrower does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plans or agreements. The Exchange Shares will represent two percent (2%) of the Fully Diluted Shares. Borrower has furnished to each Lender true and correct copies of Borrower's certificate of incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**"), and Borrower's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), and the terms of all Options and Convertible Securities (including their exercise and conversion prices).

(h) SEC Reports. Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and Section 13(a) or 15(d) of the Exchange Act for the two years preceding the date hereof (including, in each case, the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**"). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

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(i) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by Borrower or any of its Affiliates or representatives to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. Lenders shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 5.02(i) that may be due in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Borrower or any Affiliate of Borrower.

(j) Exemption from Registration. No registration under the Securities Act is required for the offer and issuance of the Exchange Shares by Borrower to Lenders as contemplated hereby.

(k) Not Investment Company. None of Borrower, any subsidiary of Borrower or any Person controlling Borrower is (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act, or otherwise registered or required to be registered, or subject to the restrictions imposed, by the Investment Company Act.

(l) Not Shell Company. Borrower is not, and never has been, a "shell company" (as defined in Rule 12b-2 under the Exchange Act).

(m) DTC Eligibility. The Common Stock is eligible for clearing through The Depository Trust Company ("DTC"), through its Deposit/Withdrawal At Custodian ("DWAC") system. The transfer agent for the Common Stock is a participant in, and the Common Stock is eligible for transfer pursuant to, DTC's Fast Automated Securities Transfer Program. The Common Stock is not, and, since obtaining DWAC eligibility, has not at any time been, subject to any DTC "chill," "freeze" or similar restriction with respect to any DTC services, including the clearing of transactions in shares of Common Stock through DTC.

(n) OTCQB Quotation. Borrower is not in material violation of any of the rules, regulations or requirements of the OTCQB Market, and, to Borrower's Knowledge, there are no facts or circumstances that could reasonably lead to suspension or termination of trading of the Common Stock on the OTCQB Market. Since May 5, 2017, (i) the Common Stock has been designated for quotation on the OTCQB Market, (ii) trading in the Common Stock has not been suspended or deregistered by the SEC or OTC Markets Group, and (iii) the Company has received no communication, written or oral, from the SEC or OTC Markets Group regarding the suspension or termination of trading of the Common Stock on the OTCQB Market.

(o) No Integrated Offering. Neither Borrower, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, has made, or will make, any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering and issuance of the Exchange Shares to be integrated with other offerings of securities by Borrower for purposes of the Securities Act and which would require the registration of any such securities under the Securities Act.

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(p) Product Property. Borrower has licensed or otherwise legally controls the right, title and interest in and to (i) the Product, (ii) Patents that Cover the manufacture, use or sale of the Product and (iii) material data, trade secrets, Product Know-How and other intellectual property rights used in the research, Development and manufacture of Product.

(q) Litigation. There is no action, suit, claim, proceeding or investigation pending or, to the Knowledge of Borrower, threatened against Borrower or any Affiliate of Borrower, at law or in equity, arbitration proceeding to which Borrower is a party, or Governmental Authority inquiry pending or, to the Knowledge of Borrower, threatened against Borrower or any Affiliate of Borrower, that, if adversely determined, would (i) question or defeat the validity or enforceability of, or Borrower's ownership of, any Patent Covering the Product or any Product Know-How owned by Borrower, (ii) prevent the consummation of the transactions contemplated by this Agreement and the other Transaction Documents; (iii) prevent the Development or commercialization of the Product or (iv) otherwise adversely affect in any material respect any Product Assets.

(r) Infringement. Neither Borrower or any Affiliate of Borrower has received written notice from any Third Party claiming that the making, use, sale, offer for sale and import of the Product by Borrower or any Affiliate of Borrower infringes any patent claim of any Third Party or misappropriates or makes any unauthorized use of any patent or intellectual property rights of any Third Party. To the Knowledge of Borrower, the manufacture, formulation, sale or use of the Product does not infringe any patent or other intellectual property right of any Third Party. To the Knowledge of Borrower, no Third Party is infringing, misappropriating or making any unauthorized use of a Patent Covering the Product or Product Know-How. None of the Patents Covering the Product or Product Know-How is subject to any outstanding decree, order, judgment or stipulation restricting in any manner the use or licensing thereof by Borrower.

(s) Other Agreements. Borrower has not entered into, or is currently negotiating, any contract, agreement, commitment or undertaking that does or could limit or restrict Borrower's ability to Develop or commercialize the Product or perform any of its obligations under this Agreement or any of the other Transaction Documents.

(t) Compliance with Law; Certain Regulatory Matters.

(i) The Product is being and at all times has been Developed, tested, manufactured, labeled, stored and distributed in compliance in all material respects with all Applicable Law, including with respect to investigational use, good clinical practices, good laboratory practices, good manufacturing practices, record keeping, security and filing of reports, and Borrower and its Affiliates are, and have been at all times been, otherwise in compliance with all Applicable Law applicable to the ownership or use of any Product Asset, except where any non-compliance with Applicable Law would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

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(ii) Other than E.U. Approval and U.S. Approval with respect to the Product, Borrower holds all material approvals and authorizations from Governmental Authorities reasonably necessary for Borrower to conduct its business in the manner in which such business is being conducted with respect to the Product, including the Development, manufacture and testing of the Product, and all such approvals and authorizations are in good standing and in full force and effect. Borrower has not received any notice or any other communication from any Governmental Authority regarding any actual or possible revocation, withdrawal, suspension, cancellation, termination or material modification of any such approvals or authorizations.

(iii) Borrower has not, with respect to the Product, knowingly made any untrue statement of a material fact or fraudulent statement to the FDA, the EMA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA, the EMA or other Governmental Authority, or committed an act, made a statement or failed to make a statement, that provides or would reasonably be expected to provide a basis for the FDA, the EMA or other Governmental Authority to invoke the FDA's policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" set forth in 56 Fed. Reg. 46191 (September 10, 1991) ("**Fraud Policy**") or any similar policy of the EMA or any other Governmental Authority.

(iv) Borrower is not, and has never been, (A) debarred by a Governmental Authority, (B) a party to a settlement, consent or similar agreement with a Governmental Authority regarding the Product, or (C) charged with, or convicted of, violating Applicable Law with respect to the Product.

(v) The Product has not been the subject of or subject to any recall, suspension, market withdrawal, seizure, warning letter, or other written communication asserting lack of compliance with any Applicable Law in any material respect or serious adverse event. No clinical trial of the Product has been suspended, put on hold or terminated prior to completion as a result of any action by the FDA, the EMA or any other Governmental Authority or voluntarily. To the Knowledge of Borrower or any Affiliate of Borrower, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for any of the foregoing events.

(vi) Neither Borrower nor any Affiliate of Borrower has received any material adverse written notice from the FDA, the EMA or any other Governmental Authority regarding the approvability or approval of the Product.

#### ARTICLE VI.

#### COVENANTS

Section 6.01. Blue Sky Filings. Borrower shall take such action as is necessary in order to obtain an exemption for, or to qualify the Exchange Shares for, issuance and sale to Lenders under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of Lenders.

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Section 6.02. Record Keeping; Reporting; Audit and Other Information Rights.

(a) Records. Borrower shall keep and maintain until the later of (i) ten (10) years after the Agreement Date and (ii) the payment of each of the Milestone Payments, accounts and records of all data reasonably required to verify (x) any information required to be provided to Lenders under this Agreement and (y) (A) the gross amounts invoiced or otherwise sold in respect of the Product and (B) the calculation of cumulative Net Sales.

(b) Reporting of Milestone Events. Borrower shall, within two (2) Business Days of (i) the occurrence of any of the Milestone Events or (ii) in the case of Milestone Events relating to Net Sales thresholds, the good faith determination by Borrower of the achievement of such threshold within thirty (30) days following the end of the calendar quarter in which such Milestone Event shall occur, but in no event later than the payment of the Milestone Payment associated with such Milestone Event, notify Lenders of each occurrence of a Milestone Event (and, upon any Lender's reasonable request, shall promptly provide material documents and information related to such Milestone Event including, in the case of Net Sales, as to the calculation thereof, with respect to Bundled Products or otherwise), and shall make public disclosure thereof (in the form of a widely disseminated press release or filing of a Form 8-K with the SEC) on or prior to the notification thereof to Lenders.

(c) Audit Rights. From the Agreement Date until the termination of this Agreement, upon prior written notice to Borrower, Lenders shall have the right, no more than once in any twelve (12) month period, to audit, through an independent certified public accountant selected by Lenders and reasonably acceptable to Borrower, those financial accounts and records of Borrower and any Affiliate of Borrower (excluding Lee's or other licensee) relating to Net Sales of the Product as may be reasonably necessary to verify Borrower's and any Affiliates' of Borrower's compliance with Section 2.02(b) of this Agreement (including any accounts or records of Borrower and any Affiliate of Borrower relating to sales of the Product by any Distributors); *provided, however*, that Lenders may conduct an additional "for cause" audit upon written notice to Borrower if the final report of the independent certified public accountant on the prior audit shows that, in respect of any audit then being reviewed, a Milestone Payment was due and owing by Borrower, but was not timely paid within fifteen (15) or thirty (30) days of the due date therefor as herein provided. Such audits must occur during normal business hours, shall be concluded as expeditiously as possible under the circumstances and shall be conducted in a manner so as not to disrupt the ongoing operations of Borrower. Lenders shall be solely responsible for all the expenses of any such audit, unless the independent certified public accountant's report shows, in respect of any period then being reviewed, that a Milestone Payment was due and owing by Borrower, but was not timely paid within fifteen (15) or thirty (30) days of the due date therefor as herein provided, in which case Borrower shall be responsible for the reasonable expenses incurred by Lenders for the independent certified public accountant's services. At least ten (10) Business Days prior to providing Lenders with the final audit report, the independent certified public accountant shall provide Borrower with a preliminary report, in order to ensure Borrower has provided, and the independent certified public accountant has received and properly considered, all necessary information to make its conclusion in the final audit report. A copy of the independent certified public accountant's final report shall be provided to the Lenders and Borrower simultaneously. If the final report shows that Borrower failed to make a Milestone Payment, then Borrower will pay the amount of such Milestone Payment to Lenders within five (5) days after receipt of the audit report (without limiting Lender's rights and remedies with respect to Borrower's failure to timely make such Milestone Payment). All accounting hereunder, including all determinations of Net Sales (including all adjustments and deductions permitted to be made hereunder in calculating the same), and all calculations underlying such determinations, shall be made in accordance with GAAP as consistently applied by Borrower in the preparation of its financial statements at the time of such payment.

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(d) Information Rights. In addition to Borrower's reporting requirements under Section 6.02(b) and Lender's audit rights under Section 6.02(c), Borrower shall provide to each Lender access to view (through Borrower's virtual document review facility (VDR) any material documents related to, and any other documentation, records and information related to the Development or commercialization of the Product, as may be reasonably requested by such Lender, provided that such Lender enters into a confidentiality agreement in customary form with the Company (a "**Confidentiality Agreement**") in connection therewith. Notwithstanding the foregoing, Borrower shall not be obligated to provide any materials that constitute trade secrets of Borrower or that otherwise are the subject of a third party confidentiality agreement that prohibits such disclosure. Each of the Lenders acknowledges and agrees that it will not create or permit the creation of screen prints of any of Borrower's confidential materials and will not share the contents thereof with any persons except on a need to know basis.

Section 6.03. Disclosure: Material Non-public Information. On or before 7:00 a.m., New York time, on the Business Day after the Closing Date, Borrower shall file one or more Current Reports on Form 8-K describing all *the material terms* of the transactions contemplated by this Agreement and the other Transaction Documents (including the consummation thereof), attaching this Agreement and the other Transaction Documents and disclosing any other presently material non-public information (if any) provided or made available to Lenders (or Lenders' agents or representatives) on or prior to the Closing Date (collectively, the "**8-K Filing**"). From and after the 8-K Filing, Borrower shall have disclosed all material, non-public information (if any) provided or made available to Lenders (or Lenders' agents or representatives) by Borrower or any of its respective officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement or the other Transaction Documents or otherwise on or prior to the Agreement Date. In the event that Borrower believes that a notice or communication to any such Lender contains material non-public information relating to Borrower or any of its Affiliates, Borrower shall so indicate to such Lender and shall not effect delivery of such notice or communication unless such Lender expressly agrees in writing to make such matters subject to a Confidentiality Agreement or Borrower shall contemporaneously with delivery of such notice or communication publicly discloses such material non-public information (provided, for the avoidance of doubt, that the foregoing shall not affect Borrower's filing and public disclosure obligations under Section 6.02(b), the first sentence of this Section 6.03 and Section 6.05). In the absence of any such indication, such Lender shall be allowed to presume that all matters relating to such notice or communication do not constitute material non-public information relating to Borrower or any of its Affiliates. In the event of a breach of the covenants set forth in this Section 6.03 by Borrower or any of its Affiliates, agents, advisors, attorneys or other representatives acting on Borrower's behalf, in addition to, and without limiting, any other remedy provided herein or in the other Transaction Documents, and notwithstanding anything to the contrary contained herein, a Lender shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of material non-public information disclosed to such Lender in violation of this Section 6.03 without the prior approval of any of Borrower or any of its Affiliates, agents, advisors, attorneys or representatives; provided that, in the event of a breach of this Section 6.03 by Borrower, such Lender shall first provide Borrower with an opportunity to make immediate public disclosure of such information in lieu of such Lender making public disclosure of such information in accordance with this Section 6.03. No Lender shall have any liability to Borrower or any of its Affiliates, officers, directors, employees, stockholders, agents, advisors, attorneys or other representatives for any public disclosure made in accordance with this Section 6.03. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, after giving effect to the 8-K Filing, Borrower expressly acknowledges and agrees that no Lender shall have (unless expressly agreed to by such Lender after the date hereof in a Confidentiality Agreement) any duty of trust or confidence with respect to, or a duty not to trade on the basis of, any information regarding Borrower that such Lender has received from Borrower or any of its Affiliates, agents, advisors, attorneys or other representatives acting on Borrower's behalf.

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Section 6.04. Legends.

(a) Restrictive Legend. Each Lender understands that until such time as the resale of the Exchange Shares has been registered under the Securities Act as contemplated by the Registration Rights Agreement or the Exchange Shares otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Exchange Shares may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such securities):

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULE 144 UNDER SAID ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER SECTION 4(a)(7) OF THE SECURITIES ACT OR APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED “4[(a)](1) AND A HALF SALE.” NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.”

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(b) Removal of Restrictive Legends. The certificates evidencing the Exchange Shares shall not contain any legend restricting the transfer thereof (including the legend set forth above in Subsection 6.04(a)): (A) while a registration statement covering the resale of such Exchange Shares by the Lender is effective under the Securities Act, or (B) following any sale of such Exchange Shares pursuant to Rule 144, or (C) if such Exchange Shares are eligible for sale under rule 144(b)(1) (collectively, the “**Unrestricted Conditions**”). Each Lender agrees that the removal of the restrictive legend from the Exchange Shares in accordance with the immediately preceding sentence is predicated upon Borrower’s reliance that (i) such Lender will dispose of such Exchange Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such Exchange Shares are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein. Borrower agrees that, following the Effective Date or at such time as any of the Unrestricted Conditions are otherwise met or such legend is otherwise no longer required under this Section 7.03, it will, no later than two (2) Trading Days following the delivery by any Lender to Borrower or the transfer agent for the Common Stock of any certificate representing Exchange Shares, as applicable, issued with a restrictive legend, deliver or cause to be delivered the Exchange Shares to such Lender’s or its designee’s balance account with DTC through its DWAC system, free from all restrictive and other legends and stop transfer instructions. For purposes hereof, “**Effective Date**” shall mean the date that the first registration statement that Borrower is required to file pursuant to the Registration Rights Agreement has been declared effective by the SEC.

Section 6.05. Public Filings. During the period commencing on the Agreement Date and ending on the later of (a) the first (1<sup>st</sup>) anniversary of the Closing Date and (b) the first date on which the Lenders collectively hold no more than ten percent (10%) of the Exchange Shares, but in no event later than the third (3<sup>rd</sup>) anniversary of the Closing Date, Borrower shall (a) timely file all reports required to be filed with the SEC pursuant to the Exchange Act, (b) not terminate the registration of the Common Stock under the Exchange Act or otherwise terminate its status as an issuer required to file reports under the Exchange Act, even if the securities laws would otherwise permit any such termination, and (c) take all commercially reasonable actions necessary to cause the Common Shares to remain at all times quoted on the OTCQB Market or listed on a U.S. national securities exchange.

Section 6.06. Material Contracts. Borrower shall observe and perform, and to cause its Affiliates to observe and perform, all of the conditions and obligations to be observed and performed by Borrower or any Affiliate of Borrower under any material contract, license or other agreement relating to the Product, all in accordance with the terms and conditions thereof.

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Section 6.07. Compliance with Laws.

(a) Borrower shall (and shall cause the other Responsible Parties to) at all times comply in all material respects with Applicable Law applicable to the ownership or use of any Product Assets, (ii) the Development, manufacture, marketing, sale of other commercialization of the Product, or (iii) the performance of Borrower's obligations under this Agreement and the other Transaction Documents.

(b) Borrower shall (and shall cause the other Responsible Parties to) maintain all material approvals and authorizations from Governmental Authorities reasonably necessary for Borrower to conduct its business in the manner in which such business is being conducted with respect to the Product, including the Development, manufacture and testing of the Product.

(c) Borrower shall not (and shall cause the other Responsible Parties to not), with respect to the Product, knowingly make any untrue statement of a material fact or fraudulent statement to the FDA, the EMA or any other Governmental Authority, fail to disclose a material fact required to be disclosed to the FDA, the EMA or other Governmental Authority, or commit an act, make a statement or fail to make a statement, that provides or would reasonably be expected to provide a basis for the FDA, the EMA or other Governmental Authority to invoke the Fraud Policy or any similar policy of the EMA or any other Governmental Authority.

(d) Borrower shall (and shall cause the other Responsible Parties to) Develop, test, manufacture, label, store and distribute the Product in compliance in all material respects with all Applicable Laws, including with respect to investigational use, good clinical practices, good laboratory practices, good manufacturing practices, record keeping, security and filing of reports.

Section 6.08. No Disposition of Rights. Borrower shall not encumber, sell, assign, transfer, license, sublicense, deliver, or otherwise dispose of all or any of Borrower's or any Affiliate's right, title, or interest in or to any Product Assets that are material to the manufacture, Development or commercialization of the Product if such disposition would prevent, or otherwise, materially impair or delay Borrower in the performance of any of its obligations under this Agreement or the achievement of any of the Milestone Events.

Section 6.09. IP Obligations. Borrower shall use (and shall cause the other Responsible Parties to use) commercially reasonable efforts to:

(a) prosecute and maintain in full force and effect the Patents Covering the Product that are material to the performance of its obligations under this Agreement and that are owned or controlled by it on or after the Agreement Date;

(b) maintain, keep in full force and effect and seek available patent term extensions for any such Patents Covering the Product that are material to the performance of its obligations under this Agreement and that are owned or controlled by it on or after the Agreement Date;

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(c) maintain, enforce and protect the Product IP Rights; and

(d) maintain all material Product Know-How in confidence.

Section 6.10. Taxes. Borrower shall be responsible for timely paying all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment or issuance made under, from the execution, delivery, performance or enforcement of, or otherwise with respect to, this Agreement, including the issuance of the Exchange Shares to the Lenders.

Section 6.11. Efforts. Subject to the terms and conditions of this Agreement, each of Borrower and each Lender agrees to use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective, as soon as practicable after the Agreement Date, the transactions contemplated hereby and by the other Transaction Documents, including using commercially reasonable efforts to satisfy the conditions to closing set forth in Article VII.

Section 6.12. Termination of Facility Agreement, Notes, and Security Interests. Borrower and each Lender agree, upon the reasonable request of the other such party, at any time and from time to time after the Closing, to promptly execute and deliver all such further documents (including, without limitation, lien releases, Uniform Commercial Code termination statements and other similar documents, instruments and agreements), and to promptly take all such other action, as may be reasonably necessary or appropriate in order to carry out the purposes of terminating the Facility Agreement and the Notes, including without limitation the discharge and release of all liens thereunder. In furtherance of the foregoing, subject to the terms and conditions hereof, including receipt of the Cash Payment and Exchange Shares at the Closing, effective on the Closing Date, each Lender hereby irrevocably authorizes Borrower, its successors and assigns, and their respective counsel, agents and designees to file or record lien releases, Uniform Commercial Code termination statements and such other documents, instruments and agreements, in any jurisdiction, as Borrower may deem necessary or appropriate to effectuate, evidence or reflect the satisfaction, release and discharge of any and all liens arising under or in connection with the Facility Agreement and the Notes.

#### ARTICLE VII.

#### CONDITIONS PRECEDENT.

Section 7.01. Conditions to Borrower's Obligation. The obligation of Borrower to consummate the Exchange with each Lender is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for Borrower's sole benefit and may be waived by Borrower at any time in its sole discretion by providing each Lender with prior written notice thereof:

(a) The representations and warranties of such Lender contained in Section 5.01 herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such date), and such Lender shall have performed, satisfied and complied with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by such Lender on or prior to the Closing Date; and

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(b) The Lenders shall have delivered to Borrower at Closing the Registration Rights Agreement, duly executed by the Lenders;

Section 7.02. Conditions to Lenders' Obligation. The obligation of each Lender to consummate the Exchange is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for such Lender's sole benefit and may be waived by such Lender at any time in its sole discretion by providing Borrower with prior written notice thereof:

(a) The representations and warranties of Borrower contained in Section 5.02 herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such date), Borrower shall have performed, satisfied and complied with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by Borrower on or prior to the Closing Date, and such Lender shall have received an officer's certificate, executed by the President and Chief Executive Officer of Borrower, dated the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Lender;

(b) Borrower shall have delivered to Lenders at Closing the deliverables set forth in Section 2.04(a);

(c) Borrower and Lee's shall contemporaneously consummate the transactions contemplated by the Share Purchase Agreement and Borrower shall contemporaneously receive the Share Purchase Consideration;

(d) No stock split, stock dividend, stock combination, recapitalization or similar event of Borrower or its Capital Stock, and no liquidation, dissolution or similar event of Borrower shall have been effected or authorized during the period commencing on (and including) the Agreement Date and ending at (and including) the Closing Date; and

(e) Borrower shall have paid all interest and other amounts due under the Facility Agreement through the Closing Date.

#### ARTICLE VIII.

#### MISCELLANEOUS

Section 8.01. Entire Agreement. This Agreement (including the exhibits and schedules hereto) and the other Transaction Documents constitute the entire agreement, and supersede all other prior and contemporaneous agreements and understandings, both oral and written, among Lenders and Borrower with respect to the subject matter hereof.

Section 8.02. Amendments and Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by the parties hereto. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

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Section 8.03. Successors and Assigns. Neither this Agreement nor any rights or obligations hereunder may be assigned in whole or in part by any party hereto, by operation of law or otherwise, without the prior written consent of the other parties hereto; provided, however, that (a) the parties acknowledge that DPDI II has assigned certain rights as provided in Section 2.02(b), and (b) after the Closing, without the prior written consent of Borrower, but on [ ] days prior written notice to Borrower, each of the Lenders and DPDI Financing II, respectively, may assign, sell, pledge, contribute or otherwise transfer, in whole or in part, any of such Person's rights hereunder to any Person, other than a Person that is engaged in (a) the business of developing, manufacturing, importing or exporting, marketing or distributing or selling any product for (i) the prevention and/or treatment of respiratory distress syndrome ("RDS") in premature infants, or diseases and conditions (other than RDS) in humans, in either case, that administers, utilizes or contains pulmonary surfactant, or (b) the development of (1) surfactants for research purposes, (2) any device or system (including related methods and processes) using, based on, or similar to (x) Borrower's capillary generation technology or (y) Borrower's aerosolized pulmonary surfactant delivery system; or a controlled Affiliate of any such Person (any such Person or controlled Affiliate, a "Competitor of Borrower"); provided, however, that no Person (nor an Affiliate thereof) shall be deemed a Competitor of Borrower if such Person engages in such business or development, or owns equity interests in a Person that engages in such business or development, as part of (A) a brokerage, insurance business, pension fund (or other benefit fund), or investment banking, investment management, investment advisory or private equity vehicle or enterprise or (B) a non-profit research or non-profit vehicle or enterprise; and each of the Lenders and DPDI Financing II may assign, sell, pledge, contribute or otherwise transfer, in whole or in part, its rights to receive Milestone Payments under Section 2.02(b) to any Person, including a Competitor of Borrower (or an Affiliate thereof).

Section 8.04. This Agreement shall be binding upon, and subject to the terms of the foregoing sentence, inure to the benefit of the parties hereto, their permitted successors, legal representatives and assigns. Any assignment or attempted assignment not in accordance with this Section 8.03 shall be null and void.

Section 8.05. Notices. Any notices required or permitted to be given under the terms hereof shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile or by electronic mail and shall be effective five (5) days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile, or when received by electronic mail in each case addressed to a party as follows (or such other address, facsimile or electronic mail address provided by such party to such other parties pursuant to the below (or such later address, facsimile or electronic mail address provided in accordance herewith):

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If to Borrower:

Windtree Therapeutics, Inc.  
2600 Kelly Road  
Suite 100  
Warrington, PA 18976-3622  
Facsimile: 215-488-9557  
Attn: John Tattory, Senior Vice President and Chief Financial Officer  
E-mail: jtattory@windtreetwork.com  
Attn: Mary B. Templeton, Senior Vice President and General Counsel  
E-mail: mtempleton@windtreetwork.com  
With a copy (which shall not constitute notice) to:

Dentons US LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Attention: Ira L. Kotel  
Telephone: (212) 398-5787  
Facsimile: (212) 768-6800  
Email: ira.kotel@dentons.com

If to any Lender of DPDI Financing II:

c/o Deerfield Management Company, L.P.  
780 Third Avenue, 37<sup>th</sup> Floor  
New York, NY 10017  
Facsimile: 212-599-3075  
E-mail: dclark@deerfield.com  
Attn: David J. Clark, Esq.

With a copy (which shall not constitute notice) to:

Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, NY 10022-2585  
Facsimile: 212-894-5877  
E-mail: mark.fisher@kattenlaw.com and mark.wood@kattenlaw.com  
Attn: Mark I. Fisher, Esq.  
Attn: Mark D. Wood, Esq.

Section 8.06. Applicable Law; Consent to Jurisdiction.

(a) As part of the consideration and mutual promises being exchanged and given in connection with this Agreement, the parties hereto agree that all claims, controversies and disputes of any kind or nature arising under or relating in any way to the enforcement or interpretation of this Agreement or to the parties' dealings, rights or obligations in connection herewith, including disputes relating to the negotiations for, inducements to enter into, or execution of, this Agreement, and disputes concerning the interpretation, enforceability, performance, breach, termination or validity of all or any portion of this Agreement shall be governed by the laws of the State of New York without regard to its choice or conflicts of laws principles.

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(b) The parties hereto agree to submit to the exclusive jurisdiction of the commercial division, New York State Supreme Court, or the federal courts, in each case sitting in the City of New York, borough of Manhattan (and, in each case, the applicable state and federal appeals courts sitting in the City of New York or, if not available or applicable, the State of New York), which shall hear any dispute, claim or controversy arising in connection with or related to this Agreement, including the validity, breach, enforcement or termination hereof. With respect to any such disputes, claims or controversies, each of the parties hereby irrevocably:

(i) submits itself and its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action in any court or tribunal other than the aforesaid courts;

(ii) waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding (A) any claim that it is not personally subject to the jurisdiction of the above named court for any reason other than the failure to serve process in accordance with this Section 8.05, (B) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in any such court (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (C) to the fullest extent permitted by the applicable law, any claim that (1) the suit, action or proceeding in any such court is brought in an inconvenient forum, (2) the venue of such suit, action or proceeding is improper or (3) this Agreement, or the subject matter hereof, may not be enforced in or by any such court; and

(iii) WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (II) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.05.

(iv) Notwithstanding the foregoing in this Section 8.05, a party may commence any action or proceeding in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

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Section 8.07. Counterparts; Effectiveness. This Agreement and any amendment hereto may be executed and delivered in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. In the event that any signature to this Agreement or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof. No party hereto shall raise the use of a facsimile machine or e-mail delivery of a “.pdf” format data file to deliver a signature to this Agreement or any amendment hereto or the fact that such signature was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a “.pdf” format data file as a defense to the formation or enforceability of a contract, and each party hereto forever waives any such defense.

Section 8.08. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon the Person (other than the parties to this Agreement) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except as provided in Section 8.09.

Section 8.09. Specific Performance. The parties to this Agreement agree that irreparable damage would occur and that the parties to this Agreement would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case without the necessity of posting bond or other security or showing actual damages, and this being in addition to any other remedy to which they are entitled at law or in equity.

Section 8.10. Indemnification. Borrower hereby agree to indemnify, defend, hold harmless and reimburse each Lender and its Affiliates, and their respective managers, directors, officers, employees, agents and its and their respective successors, heirs and assigns, from and against any losses, costs, claims, damages, liabilities or expenses (including reasonable attorneys’ and professional fees and other expenses of litigation) arising out of claims, suits, actions or demands, in each case brought by a Third Party, or settlements or judgments arising therefrom (including personal injury, products liability and intellectual property infringement or misappropriation claims) as a result or arising out of (i) any Responsible Party’s or its or agent’s or contractor’s development, promotion, marketing, handling, manufacture, packaging, labeling, storage, distribution, pricing, reimbursement, transport, use, sale or other disposition of the Product; (ii) any breach by Borrower of a representation or warranty of Borrower contained in this Agreement; (iii) any breach by Borrower of any covenant, agreement or obligation of Borrower contained in this Agreement; (iv) any Responsible Party’s failure to comply with Applicable Law in the performance of its obligations related to the Product; or (v) any negligence or willful misconduct by a Responsible Party or the directors, officers, employees or agents of any Responsible Party in the performance of its or their obligations related to the Product; provided, however, that Borrower shall have no obligation to indemnify any Lender for any losses, costs, claims, damages, liabilities or expenses (including reasonable attorneys’ and professional fees and other expenses of litigation) which are finally judicially determined by a court of competent jurisdiction to have resulted primarily from Lenders’ willful misconduct, negligence or material breach of this Agreement or a Confidentiality Agreement.

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Section 8.11. Effect of Headings. The section and subsection headings herein are for convenience only and not part of this Agreement and shall not affect the interpretation thereof.

Section 8.12. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

Section 8.13. Further Assurances. Borrower and Lenders hereby agree, from time to time, as and when requested by another party, to execute and deliver or cause to be executed and delivered, all such documents, instruments and agreements, including secretary's certificates, stock powers and transfer agent instructions, and to take or cause to be taken such further or other action, as such party may reasonably deem necessary or desirable in order to carry out the intent and purposes of this Agreement.

Section 8.14. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

Section 8.15. Interpretative Matters. Unless otherwise indicated or the context otherwise requires, (i) all references to Sections, Schedules or Exhibits are to Sections, Schedules, Appendices or Exhibits contained in or attached to this Agreement, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (c) the words "hereof," "herein" and words of similar effect shall reference this Agreement in its entirety, and (d) the use of the word "including" in this Agreement shall be by way of example rather than limitation.

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IN WITNESS WHEREOF, each party hereto has caused this Exchange and Termination Agreement to be duly executed as of the date first written above.

**BORROWER:**

**WINDTREE THERAPEUTICS, INC.**

By: /s/ Craig Fraser

Name: Craig Fraser

Title: President and Chief Executive Officer

**DEERFIELD PRIVATE DESIGN FUND II, L.P.**

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN INTERNATIONAL II, L.P.**

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark, Authorized Signatory

**DEERFIELD SPECIAL SITUATIONS FUND, L.P.**

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

**DEERFIELD PDI FINANCING II, L.P.**

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

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**SCHEDULE I**

**LENDERS' PRO RATA SHARES**

	<b>Outstanding Indebtedness</b>	<b>Pro Rata Share</b>	<b>Cash Payment</b>	<b>Exchange Shares</b>	<b>2019 Warrants</b>
Deerfield Special Situations Fund, L.P.	\$ 3,750,000	15.00%	\$ 375,000	213,338	75,000
Deerfield Private Design Fund II, L.P.	9,902,500	39.61%	990,250	563,353	198,050
Deerfield Private Design International II, L.P.	11,347,500	45.39%	1,134,750	645,559	226,950
<b>Total</b>	<b><u><u>\$ 25,000,000</u></u></b>	<b><u><u>100.00%</u></u></b>	<b><u><u>\$ 2,500,000</u></u></b>	<b><u><u>1,422,250</u></u></b>	<b><u><u>500,000</u></u></b>

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**SCHEDULE II**

**CAPITALIZATION**

	<b>Conversion and Exercise Price</b>	<b>Expiration Date</b>	<b>Agreement Date</b>	<b>Closing Date</b>
<b>Authorized Shares</b>				
Preferred Stock			5,000,000	5,000,000
Common Stock			120,000,000	120,000,000
<b>Outstanding Shares and Derivatives</b>				
Series A Preferred Stock, as converted*			3,203,000	3,203,000
Common Stock			15,559,638	63,213,973
Prefunded Warrants			892,857	892,857
<b>Warrants</b>				
2017 February Financing (Series A-1)	\$ 1.37	02/15/24	7,049,000	7,049,000
2015 July Financing (Series A & Series B)	\$ 9.80	07/22/22	4,791,667	4,791,667
2014 Battelle Collaboration Agreement	\$ 70.00	10/10/24	71,429	71,429
2013 February Deerfield Loan	\$ 39.34	02/13/19	167,143	-
2013 December Deerfield Loan	\$ 39.34	02/13/19	332,857	-
<b>Employee Options</b>				
February 2017 grant	\$ 1.23	03/01/27	677,000	677,000
August 2016 BOD grant	\$ 1.84	08/04/26	60,000	60,000
July 2016 grant	\$ 1.77	07/28/26	209,017	209,017
February 2016 grant	\$ 2.33	02/02/26	163,149	163,149
Fraser Inducement	\$ 2.33	02/02/26	204,863	204,863
	\$ 1.78 –			
Miscellaneous new hire grants 2015-2016	\$ 6.86	08/03/25 - 07/25/26	18,471	18,471
Other	> \$16	08/14/25	373,649	373,649
<b>Employee RSUs</b>				
	<b>Grant Price</b>	<b>Vesting Date</b>	<b>Agreement Date</b>	<b>Closing Date</b>
Executive RSUs	\$ 0.2163	3/15/2018 3/15/2019	3,799,635	3,799,635
<b>Fully Diluted Equity Capitalization</b>			<b>37,573,375</b>	<b>84,727,710</b>
Treasury Stock			1,492	1,492



**EXHIBIT A**

**REGISTRATION RIGHTS AGREEMENT**

## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of October 27, 2017, by and among Windtree Therapeutics, Inc., a Delaware corporation (the “**Company**”), and LPH Investments Limited, a company incorporated in the Cayman Islands with limited liability (the “**Buyer**”).

### WHEREAS:

A. In connection with the Securities Purchase Agreement, dated as of the date hereof, by and between the Company and the Buyer (the “**SPA**”), pursuant to which the Company shall issue and sell, and the Buyer shall purchase, 46,232,085 shares of common stock, par value US\$0.001 per share of the Company (“**Common Stock**”, such number of shares of Common Stock, the “**Shares**”) for a total purchase price of US\$10,000,000.

B. To induce the Buyer to execute and deliver the SPA, the Company has agreed to provide certain registration rights for the Shares under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “**Securities Act**”), and applicable state securities laws.

**NOW, THEREFORE**, In consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Buyer hereby agree as follows:

### 1. DEFINITIONS.

a. As used in this Agreement, the following terms shall have the following meanings:

(i) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, and any successor statute.

(ii) “**Person**” means and includes any natural person, partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.

(iii) “**Register**,” “**Registered**,” and “**Registration**” refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis, and the declaration or ordering of effectiveness of such Registration Statement by the United States Securities and Exchange Commission (the “**SEC**”).

(iv) “**Registrable Securities**” means (a) the Shares, and (b) any shares of Common Stock issued or issuable with respect to any shares described in subsection (a) above by way of a stock dividend or stock split or otherwise in connection with a combination of shares, distribution, recapitalization, merger, consolidation, other reorganization or other similar event with respect to the Common Stock.

(iv) “**Registration Statement(s)**” means a registration statement of the Company under the Securities Act required to be filed hereunder.

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## 2. REGISTRATION.

### a. Demand Registrations.

(i) At any time and from time to time after the 180th day following the date of this Agreement (the last day of such 180-day period, the “**Right Commencement Date**”), and prior to the expiration of a 12-month period following the Right Commencement Date (the “**First Tranche Registration Period**”), the Buyer may request the registration by the Company under the Securities Act of the Registrable Securities for the resale of such Registrable Securities on an appropriate registration statement of the SEC as shall permit the disposition of such Registrable Securities in accordance with the intended method of disposition specified in the registration statement (each, an “**Initial Registration Statement**”); PROVIDED, HOWEVER, that the total number of such Registrable Securities covered by the Initial Registration States filed during the First Tranche Registration Period pursuant to this Section 2.a. shall not exceed 25% of the Registrable Securities.

(ii) At any time, and from time to time, after the expiration of the First Tranche Registration Period, but in any event not more than (ii) once in each 12-month period if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, or (ii) twice in each 12-month period if the Company is then eligible to register for resale the Registrable Securities on Form S-3, the Buyer may request the registration by the Company under the Securities Act of all or part of the Registrable Securities outstanding that are not registered under an effective registration statement under the Securities Act.

### b. Piggy-back Registration.

If at any time the Company files with the SEC a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its securities (other than debt securities or securities being registered on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans) (each, a “**Piggy-back Registration Statement**”), the Company shall include in such Piggy-back Registration Statement for the resale of (i) the number of Registrable Securities that, together with the total number of Registrable Securities covered under existing effective Registration Statements, shall not exceed 25% of the Registrable Securities, if such Piggy-back Registration Statement is filed on or prior to the last day of the First Tranche Registration Period, or (ii) all or a part of Registrable Securities, as determined by the Buyer in its sole discretion, if such Piggy-back Registration Statement is filed after the last day of the First Tranche Registration Period.

**3. OBLIGATIONS OF THE COMPANY.** In connection with the registration of the Registration Securities pursuant to this Agreement, the Company shall have the following obligations:

a. The Company shall prepare promptly, and file with the SEC, as soon as practicable; provided that, with respect to any registration request made by the Buyer pursuant to Section 2(a), in no event later than 30 days following such registration request, a Registration Statement with respect to the Registrable Securities and thereafter use its reasonable best efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as possible after such filing, but in any event shall cause such Registration Statement relating to the Registrable Securities to become effective no later than 90 days from the date of filing, and shall keep the Registration Statement current and effective, and available for the resale of the Registrable Securities by the Buyer pursuant to Rule 415 under the Securities Act, at all times until such date as is the earlier of (i) the date on which all of the Registrable Securities for such Registration Statement have been sold and (ii) the date on which all of the Registrable Securities for such Registration Statement (in the reasonable opinion of counsel to the Buyer) may be immediately sold to the public without registration or restriction (including without limitation as to volume by each holder thereof), and without compliance with any “current public information” requirement, pursuant to Rule 144 (or successor thereto) under the Securities Act (the “**Registration Period**”), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein), shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading (except that such provision shall not apply to any information provided by the Buyer or any transferee of the Buyer pursuant to Section 4(a)). The Registration Statement shall contain a plan of distribution approved by the Buyer.

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b. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectus used in connection with such Registration Statement as may be necessary to keep such Registration Statement current and effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement.

c. The Company will immediately notify the Buyer by email or facsimile of the effectiveness of the Registration Statement or any post-effective amendment. The Company will respond to any and all comments received from the SEC as soon as reasonably practicable, with a view towards causing such Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and shall file an acceleration request as soon as practicable, but no later than five (5) business days, following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review. No later than the second business day after the Registration Statement becomes effective, if required, the Company will file with the SEC the final prospectus included therein pursuant to Rule 424 (or successor thereto) under the Securities Act.

d. The Company shall use its reasonable best efforts to (i) register and qualify, in any jurisdiction where registration and/or qualification is required, the Registrable Securities covered by the Registration Statements under such other securities or "blue sky" laws of such jurisdictions in the United States as the Buyer shall reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; PROVIDED, HOWEVER, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction.

e. As promptly as practicable after becoming aware of such event, the Company shall notify the Buyer of the happening of any event, of which the Company has knowledge, as a result of which the prospectus included in any Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and use its reasonable best efforts promptly to prepare a supplement or amendment to any Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to the Buyer as the Buyer may reasonably request.

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f. The Company shall use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of any Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest possible moment and to notify the Buyer who holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.

g. The Company shall permit a single firm of counsel designated by the Buyer (“**Legal Counsel**”) to review, at Buyer' own cost, such Registration Statement, and all amendments and supplements thereto, a reasonable period of time (but not less than five (5) business days) prior to their filing with the SEC and not file any documents in a form to which Legal Counsel reasonably objects and will not request acceleration of such Registration Statement without prior notice to Legal Counsel. The Company shall hold in confidence and not make any disclosure of information concerning the Buyer provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning the Buyer is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Buyer prior to making such disclosure, and allow the Buyer, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

h. Within two (2) business days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company cause the transfer agent for the Registrable Securities (with copies to Buyer) an appropriate instruction and, if required by the transfer agent, an opinion of such counsel in the form required by the transfer agent in order to issue the Registrable Securities free of restrictive legends.

i. At the reasonable request of the Buyer, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and any prospectus used in connection with the Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

j. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Buyer of Registrable Securities pursuant to a Registration Statement.

**4. OBLIGATIONS OF THE BUYER.** In connection with the registration of the Registrable Securities, the Buyer shall have the following obligations:

a. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of the Buyer that the Buyer shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) business days prior to the first anticipated filing date of a Registration Statement, the Company shall notify the Buyer of the information the Company requires from the Buyer. Any such information shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading.

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b. The Buyer agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless the Buyer has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

c. The Buyer agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e) or 3(f), the Buyer will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Buyer's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) or 3(f) and, if so directed by the Company, the Buyer shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Buyer's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

**5. EXPENSES OF REGISTRATION.** All reasonable expenses incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees, and the fees and disbursements of counsel for the Company (but not including fees and disbursements for counsel for any Buyer) shall be borne by the Company.

**7. INDEMNIFICATION.** In the event any Registrable Securities are included in a Registration Statement under this Agreement:

a. The Company will indemnify, hold harmless and defend (i) the Buyer and (ii) the directors, officers, partners, managers, members, employees, agents and each Person who controls the Buyer within the meaning of the Securities Act or the Exchange Act, if any (each, an "**Indemnified Person**"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "**Claims**") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in the Registration Statement or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus (preliminary, final, free writing or otherwise), or any amendment thereof or supplement thereto, or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities (the matters in the foregoing clauses (i) through (iii) being, collectively, "**Violations**"). The Company shall reimburse the Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification provision contained in this Section 7(a) shall not apply (i) to a Claim arising out of or based upon a Violation to the extent that such Violation occurs in reliance upon and in conformity with information furnished in writing to the Company by or behalf of any Indemnified Person for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto, or (ii) to any amounts paid in settlement of any Claim effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the sale of the Registrable Securities by the Buyer.

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b. Promptly after receipt by an Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall, if a Claim in respect thereof is to be made against the Company under this Section 7, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnified Person, as the case may be.

**PROVIDED, HOWEVER,** that an Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the Company, if, in the opinion of counsel for the Buyer, the representation by such counsel of the Indemnified Person and the Company would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by such counsel in such proceeding. The Company shall pay for only one separate legal counsel (as well as local counsel) for the Indemnified Persons, and such legal counsel shall be selected by Buyer. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnified Person under this Section 7, except to the extent that the Company is actually prejudiced in its ability to defend such action, and shall not otherwise relieve the Company of any liability. The Company shall not, without the prior written consent of the Indemnified Persons, consent to entry of any judgment or enter into any settlement or other compromise with respect to any Claim in respect of which indemnification or contribution may be or has been sought hereunder (whether or not any such Indemnified Party is an actual or potential party to such action or claim) which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Persons of a full release from all liability with respect to such Claim or which includes any admission as to fault or culpability on the part of any Indemnified Person.

c. The Buyer will indemnify, hold harmless and defend (i) the Company, and (ii) the directors, officers, partners, managers, members, employees, or agents of the Company, if any (each, a “**Company Indemnified Person**”), against any Claims to which any of them may become subject insofar as such Claims arise out of or are based upon any Violation which occurs due to the inclusion by the Company in a Registration Statement of false or misleading information about the Buyer, where such information was furnished in writing to the Company by the Buyer or on behalf of the Buyer for the purpose of inclusion in such Registration Statement. Notwithstanding anything herein to the contrary, the indemnity agreement contained in this Section 7(c) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Buyer, which consent shall not be unreasonably withheld or delayed; and provided, further, however, that a Buyer shall be liable under this Section 7(c) for only that amount of an Indemnity Claim as does not exceed the net amount of proceeds received by such Buyer as a result of the sale of Registrable Securities pursuant to such Registration Statement.

d. Promptly after receipt by a Company Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Company Indemnified Person shall, if a Claim in respect thereof is to be made against a Buyer under this Section 7, deliver to such Buyer a written notice of the commencement thereof, and such Buyer shall have the right to participate in, and, to the extent such Buyer so desires, to assume control of the defense thereof with counsel mutually satisfactory to such Buyer and the Company Indemnified Person, as the case may be.

**PROVIDED, HOWEVER,** that a Company Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the Buyer, if, in the reasonable opinion of counsel for the Company, the representation by such counsel of the Company Indemnified Person and the Buyer would be inappropriate due to actual or potential differing interests between the Company Indemnified Person and any other party represented by such counsel in such proceeding. The Buyer shall pay for only one separate legal counsel for the Company Indemnified Persons, and such legal counsel shall be selected in the reasonable judgment of the Company.

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e. The indemnification required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

**8. CONTRIBUTION.** To the extent any indemnification by the Company or the Buyer is prohibited or limited by law, each of the Company and the Buyer agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 7 to the fullest extent permitted by law, based upon a comparative fault standard.

**9. REPORTS UNDER THE 1934 ACT.** With a view to making available to the Buyer the benefits of Rule 144 promulgated under the Securities Act (“**Rule 144**”) or any other similar rule or regulation of the SEC that may at any time permit the Buyer to sell securities of the Company to the public without registration, the Company agrees to:

a. make and keep public information available, as those terms are understood and defined in Rule 144;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

c. so long as the Buyer owns Registrable Securities, promptly upon request, furnish to the Buyer (i) a written statement by the Company that it has complied with the reporting requirements of the Securities Act and the Exchange Act as required for applicable provisions of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (iii) such other information as may be reasonably requested to permit the Buyer to sell such securities pursuant to Rule 144 without registration.

**10. ASSIGNMENT OF REGISTRATION RIGHTS.** The rights under this Agreement shall be automatically assignable by the Buyer to any transferee of all or any portion of the Registrable Securities if: (i) such Buyer agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, and (iii) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. In the event that a Buyer transfers all or any portion of its Registrable Securities pursuant to this Section, the Company shall have at least ten (10) days to file any amendments or supplements necessary to keep a Registration Statement current and effective, and available for the resale of all of the Registrable Securities, pursuant to Rule 415 of the Securities Act.

**11. AMENDMENT OF REGISTRATION RIGHTS.** Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with written consent of the Company and the holders of a majority in interest of then-outstanding Registrable Securities. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon each of the Buyer and the Company.

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## 12. MISCELLANEOUS.

a. A Person is deemed to be a holder of Registrable Securities (the “**Registered Owner**”) whenever such Person owns of record or beneficially through a “street name” holder such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the Registered Owner of such Registrable Securities.

b. Any notices required or permitted to be given under the terms hereof shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile or email and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile or email, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Windtree Therapeutics, Inc.  
2600 Kelly Road  
Suite 100  
Warrington, Pennsylvania 18976  
Fax: 215-488-9557  
Attn: General Counsel

with copy to:

Dentons US LLP  
1221 Avenue of the Americas  
New York, New York 10020  
Fax: (212) 768-6800  
Email: ira.kotel@dentons.com  
Attn: Ira L. Kotel  
If to the Buyer

c/o Lee’s Pharmaceutical (HK) Ltd.  
Share 110-111, Bio-Informatics Centre  
No. 2 Science Park West Avenue  
Hong Kong Science Park, Shatin, Hong Kong  
Telephone: (852) 2314 1282  
Facsimile: (852) 2314 1708  
Attention: Dr. Benjamin Li  
Email: drli@leespharm.com

with a copy to (which shall not constitute notice):

King & Wood Mallesons LLP  
500 5<sup>th</sup> Avenue, 50<sup>th</sup> Floor  
New York, New York 10110  
Telephone: (347) 926-7542  
Facsimile: (917) 591-8167  
Attention: Laura H. Luo  
Email: laura.luo@us.kwm.com

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Each party shall provide notice to the other party of any change in address.

c. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

d. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each of the parties hereto hereby agrees to submit to the exclusive jurisdiction of the commercial division, New York State Supreme Court, or the federal courts, in each case sitting in the City of New York, borough of Manhattan (and, in each case, the applicable state and federal appeals courts sitting in the City of New York or, if not available or applicable, the State of New York), which shall hear any dispute, claim or controversy arising in connection with or related to this Agreement, including the validity, breach or enforcement hereof, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is in an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

e. This Agreement and the SPA (including all schedules and exhibits thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement and the SPA supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 10 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, and the provisions of Sections 7 and 8 hereof shall inure to the benefit of, and be enforceable by, each Indemnified Person and Company Indemnified Person (as applicable).

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile or other electronic transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

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j. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Buyer by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for breach of its obligations hereunder will be inadequate and agrees, in the event of a breach or threatened breach by the Company of any of the provisions hereunder, that the Buyer shall be entitled, in addition to all other available remedies in law or in equity, to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

k. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

l. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

m. In the event a Buyer shall sell or otherwise transfer any of its Registrable Securities, each transferee shall be allocated a pro rata portion of the number of Registrable Securities included in a Registration Statement for such transferor.

n. There shall be no oral modifications or amendments to this Agreement. This Agreement may be modified or amended only in writing.

**[Remainder of page left intentionally blank]**

**[Signature page follows]**

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IN WITNESS WHEREOF, the undersigned Buyer and the Company have caused this Registration Rights Agreement to be duly executed as of the date first written above.

**COMPANY:**

**WINDTREE THERAPEUTICS, INC.**

By: /s/ Craig Fraser  
Name: Craig Fraser  
Title: President & CEO

**BUYER**

**LPH INVESTMENTS LIMITED**

By: /s/ Benjamin Li, Ph.D  
Name: Benjamin Li, Ph.D  
Title: Chief Executive Officer

## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of October 27, 2017, by and among Windtree Therapeutics, Inc., a Delaware corporation (the "Company"), Deerfield Private Design Fund II, L.P. ("DPDF II"), Deerfield Private Design International II, L.P. ("DPDI II") and Deerfield Special Situations Fund, L.P. ("DSSF," and together with DPDF II and DPDI II, "Lenders," and each, a "Lender").

### WHEREAS:

A. In connection with the Exchange and Termination Agreement by and among the parties hereto and Deerfield PDI Financing II, L.P. of even date herewith (the "Exchange and Termination Agreement"), the Company and the Lenders (and, as applicable, Deerfield PDI Financing II, L.P.) have agreed, upon the terms and subject to the conditions contained therein, to terminate that certain Facility Agreement, dated February 13, 2013, as amended, and related agreements and exchange their respective Notes for (i) a cash payment in the aggregate amount of \$2,500,000, (ii) an aggregate of 1,422,250 shares of Common Stock (together with any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to such shares, the "Exchange Shares") and (iii) the right to receive certain Milestone Payments, as set forth in the Exchange and Termination Agreement.

B. To induce the Lenders and Deerfield PDI Financing II, L.P. to execute and deliver the Exchange and Termination Agreement, the Company has agreed to provide certain registration rights for the Exchange Shares under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "Securities Act"), and applicable state securities laws.

**NOW, THEREFORE**, In consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Lenders hereby agree as follows:

### 1. DEFINITIONS.

a. As used in this Agreement, the following terms shall have the following meanings:

- (i) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, and any successor statute.
  - (ii) "Person" means and includes any natural person, partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.
  - (iii) "Register," "Registered," and "Registration" refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis, and the declaration or ordering of effectiveness of such Registration Statement by the United States Securities and Exchange Commission (the "SEC").
  - (iv) "Registration Statement(s)" means the registration statement of the Company under the Securities Act required to be filed hereunder.
  - (v) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, and any successor statute.
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## 2. REGISTRATION.

**a. PIGGY-BACK REGISTRATIONS.** If at any time prior to the date that is five business days following the date that Company files its Annual Report on Form 10-K for the year ending December 31, 2017 (the "Piggy-back Registration Period"), the Company files with the SEC a Registration Statement relating to an offering for its own account or the account of others under the Securities Act of any of its securities (other than debt securities or securities being registered on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans), the Company shall include in such registration statement all of the Exchange Shares, and use its reasonable best efforts to cause such Registration Statement to be declared effective by the SEC as soon as possible, and in no event later than 90 days, after the date of filing thereof.

**b. MANDATORY REGISTRATION.** If the Company shall have failed to include all of the Exchange Shares in a Registration Statement relating to an offering for its own account or the account of others under the Securities Act of any of its securities pursuant to Section 2(a) above during the Piggy-back Registration Period, or shall have failed to cause such Registration Statement to be declared effective by the SEC no later than 90 days from the date of filing thereof (the "Effectiveness Deadline"), then the Company shall file with the SEC a Registration Statement for the resale of all of the Exchange Shares no later than (i) one business day following the end of the Piggy-back Registration Period or (ii) in the event that the Company has included all of the Exchange Shares in a Registration Statement pursuant to Section 2(a) and used its reasonable best efforts to cause such Registration Statement to be declared effective by the SEC as soon as possible thereafter, but such Registration Statement has not been declared effective by the Registration Deadline, no later than one business day following the Effectiveness Deadline.

**3. OBLIGATIONS OF THE COMPANY.** In connection with the registration of the Exchange Shares, the Company shall have the following obligations:

a. The Company shall prepare promptly, and file with the SEC, as soon as practicable, a Registration Statement with respect to the Exchange Shares (whether pursuant to Section 2(a) or 2(b)) and thereafter use its reasonable best efforts to cause such Registration Statement relating to the Exchange Shares to become effective as soon as possible after such filing, but in any event shall cause such Registration Statement relating to the Exchange Shares to become effective no later than the 90 days from the date of filing, and shall keep the Registration Statement current and effective, and available for the resale of all of the Exchange Shares by the Lenders pursuant to Rule 415 under the Securities Act, at all times until such date as is the earlier of (i) the date on which all of the Exchange Shares for such Registration Statement have been sold and (ii) the date on which all of the Exchange Shares for such Registration Statement (in the reasonable opinion of counsel to the Lenders) may be immediately sold to the public without registration or restriction (including without limitation as to volume by each holder thereof), and without compliance with any "current public information" requirement, pursuant to Rule 144 under the Securities Act (the "Registration Period"), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein), shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading (except that such provision shall not apply to any information provided by a Lender or any transferee of a Lender pursuant to Section 4(a)). The Registration Statement shall contain a plan of distribution approved by the Lenders.

b. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectus used in connection with such Registration Statement as may be necessary to keep such Registration Statement current and effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Exchange Shares of the Company covered by such Registration Statement until such time as all of such Exchange Shares have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement.

c. The Company will immediately notify the Lenders by email or facsimile of the effectiveness of the Registration Statement or any post-effective amendment. The Company will respond to any and all comments received from the SEC as soon as reasonably practicable, with a view towards causing such Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and shall file an acceleration request as soon as practicable, but no later than five (5) business days, following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review. No later than the second business day after the Registration Statement becomes effective, the Company will file with the SEC the final prospectus included therein pursuant to Rule 424 (or successor thereto) under the Securities Act.

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d. The Company shall use its reasonable best efforts to (i) register and qualify, in any jurisdiction where registration and/or qualification is required, the Exchange Shares covered by the Registration Statements under such other securities or “blue sky” laws of such jurisdictions in the United States as the Lenders shall reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Exchange Shares for sale in such jurisdictions; PROVIDED, HOWEVER, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction.

e. As promptly as practicable after becoming aware of such event, the Company shall notify each Lender of the happening of any event, of which the Company has knowledge, as a result of which the prospectus included in any Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and use its reasonable best efforts promptly to prepare a supplement or amendment to any Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to each Lender as such Lender may reasonably request.

f. The Company shall use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of any Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest possible moment and to notify each Lender who holds Exchange Shares being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.

g. The Company shall permit a single firm of counsel designated by the Lenders (“Legal Counsel”) to review, at Lenders' own cost, such Registration Statement, and all amendments and supplements thereto, a reasonable period of time (but not less than five (5) business days) prior to their filing with the SEC and not file any documents in a form to which Legal Counsel reasonably objects and will not request acceleration of such Registration Statement without prior notice to Legal Counsel. The Company shall hold in confidence and not make any disclosure of information concerning a Lender provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning such Lender is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Lender prior to making such disclosure, and allow such Lender, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

h. Within two (2) business days after a Registration Statement which includes Exchange Shares is ordered effective by the SEC, the Company cause the transfer agent for the Exchange Shares (with copies to each Lender) an appropriate instruction and, if required by the transfer agent, an opinion of such counsel in the form required by the transfer agent in order to issue the Exchange Shares free of restrictive legends.

i. At the reasonable request of a Lender, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and any prospectus used in connection with the Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

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j. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Lenders of Exchange Shares pursuant to a Registration Statement.

**4. OBLIGATIONS OF THE DEERFIELD PARTY.** In connection with the registration of the Exchange Shares, each Lender shall have the following obligations:

a. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Exchange Shares of a Lender that such Lender shall furnish to the Company such information regarding itself, the Exchange Shares held by it and the intended method of disposition of the Exchange Shares held by it as shall be reasonably required to effect the registration of such Exchange Shares and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) business days prior to the first anticipated filing date of a Registration Statement, the Company shall notify each Lender of the information the Company requires from such Lender. Any such information shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading.

b. Each Lender, by such Lender's acceptance of the Exchange Shares, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Lender has notified the Company in writing of the Lender's election to exclude all of such Lender's Exchange Shares from such Registration Statement.

c. Each Lender agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e) or 3(f), the Lender will immediately discontinue disposition of Exchange Shares pursuant to the Registration Statement covering such Exchange Shares until the Lender's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) or 3(f) and, if so directed by the Company, the Lender shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Lender's possession, of the prospectus covering such Exchange Shares current at the time of receipt of such notice.

**5. EXPENSES OF REGISTRATION.** All reasonable expenses incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees, and the fees and disbursements of counsel for the Company (but not including fees and disbursements for counsel for any Lender) shall be borne by the Company.

**7. INDEMNIFICATION.** In the event any Exchange Shares are included in a Registration Statement under this Agreement:

a. The Company will indemnify, hold harmless and defend (i) each Lender and (ii) the directors, officers, partners, managers, members, employees, agents and each Person who controls any Lender within the meaning of the Securities Act or the Exchange Act, if any (each, an "Indemnified Person"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in the Registration Statement or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus (preliminary, final, free writing or otherwise), or any amendment thereof or supplement thereto, or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Exchange Shares (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). The Company shall reimburse the Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification provision contained in this Section 7(a) shall not apply (i) to a Claim arising out of or based upon a Violation to the extent that such Violation occurs in reliance upon and in conformity with information furnished in writing to the Company by or behalf of any Indemnified Person for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto, or (ii) to any amounts paid in settlement of any Claim effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the sale of the Exchange Shares by the Lenders.

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b. Promptly after receipt by an Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall, if a Claim in respect thereof is to be made against the Company under this Section 7, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnified Person, as the case may be.

**PROVIDED, HOWEVER,** that an Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the Company, if, in the opinion of counsel for the Lenders, the representation by such counsel of the Indemnified Person and the Company would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by such counsel in such proceeding. The Company shall pay for only one separate legal counsel (as well as local counsel) for the Indemnified Persons, and such legal counsel shall be selected by Lenders. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnified Person under this Section 7, except to the extent that the Company is actually prejudiced in its ability to defend such action, and shall not otherwise relieve the Company of any liability. The Company shall not, without the prior written consent of the Indemnified Persons, consent to entry of any judgment or enter into any settlement or other compromise with respect to any Claim in respect of which indemnification or contribution may be or has been sought hereunder (whether or not any such Indemnified Party is an actual or potential party to such action or claim) which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Persons of a full release from all liability with respect to such Claim or which includes any admission as to fault or culpability on the part of any Indemnified Person.

c. Each Lender will indemnify, hold harmless and defend (i) the Company, and (ii) the directors, officers, partners, managers, members, employees, or agents of the Company, if any (each, a "Company Indemnified Person"), against any Claims to which any of them may become subject insofar as such Claims arise out of or are based upon any Violation which occurs due to the inclusion by the Company in a Registration Statement of false or misleading information about a Lender, where such information was furnished in writing to the Company by such Lender or on behalf of such Lender for the purpose of inclusion in such Registration Statement. Notwithstanding anything herein to the contrary, the indemnity agreement contained in this Section 7(c) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Lenders, which consent shall not be unreasonably withheld or delayed; and provided, further, however, that a Lender shall be liable under this Section 7(c) for only that amount of an Indemnity Claim as does not exceed the net amount of proceeds received by such Lender as a result of the sale of Exchange Shares pursuant to such Registration Statement.

d. Promptly after receipt by a Company Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Company Indemnified Person shall, if a Claim in respect thereof is to be made against a Lender under this Section 7, deliver to such Lender a written notice of the commencement thereof, and such Lender shall have the right to participate in, and, to the extent such Lender so desires, to assume control of the defense thereof with counsel mutually satisfactory to such Lender and the Company Indemnified Person, as the case may be.

**PROVIDED, HOWEVER,** that a Company Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the Lenders, if, in the reasonable opinion of counsel for the Company, the representation by such counsel of the Company Indemnified Person and the Lender would be inappropriate due to actual or potential differing interests between the Company Indemnified Person and any other party represented by such counsel in such proceeding. A Lender shall pay for only one separate legal counsel for the Company Indemnified Persons, and such legal counsel shall be selected in the reasonable judgment of the Company.

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e. The indemnification required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

**8. CONTRIBUTION.** To the extent any indemnification by the Company or any Lender is prohibited or limited by law, each of the Company and each Lender agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 7 to the fullest extent permitted by law, based upon a comparative fault standard.

**9. REPORTS UNDER THE 1934 ACT.** With a view to making available to the Lenders the benefits of Rule 144 promulgated under the Securities Act (“Rule 144”) or any other similar rule or regulation of the SEC that may at any time permit the Lenders to sell securities of the Company to the public without registration, the Company agrees to:

a. make and keep public information available, as those terms are understood and defined in Rule 144;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

c. so long as any of the Lenders own Exchange Shares, promptly upon request, furnish to the Lenders (i) a written statement by the Company that it has complied with the reporting requirements of the Securities Act and the Exchange Act as required for applicable provisions of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (iii) such other information as may be reasonably requested to permit the Lenders to sell such securities pursuant to Rule 144 without registration.

**10. ASSIGNMENT OF REGISTRATION RIGHTS.** The rights under this Agreement shall be automatically assignable by each Lender to any transferee of all or any portion of the Exchange Shares if: (i) such Lender agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, and (iii) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. In the event that a Lender transfers all or any portion of its Exchange Shares pursuant to this Section, the Company shall have at least ten (10) days to file any amendments or supplements necessary to keep a Registration Statement current and effective, and available for the resale of all of the Exchange Shares, pursuant to Rule 415 of the Securities Act.

**11. AMENDMENT OF REGISTRATION RIGHTS.** Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with written consent of the Company and the holders of a majority in interest of then-outstanding Exchange Shares. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon each of the Lenders and the Company.

## **12. MISCELLANEOUS.**

a. A Person is deemed to be a holder of Exchange Shares whenever such Person owns of record or beneficially through a “street name” holder such Exchange Shares. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Exchange Shares, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Exchange Shares.

b. Any notices required or permitted to be given under the terms hereof shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile or email and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile or email, in each case addressed to a party. The addresses for such communications shall be:

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If to the Company:

Windtree Therapeutics, Inc.  
2600 Kelly Road  
Suite 100  
Warrington, Pennsylvania 18976  
Fax: 215-488-9557  
Attn: General Counsel

With copy to:

Dentons US LLP  
1221 Avenue of the Americas  
New York, New York 10020  
Fax: (212) 768-6800  
Email: ira.kotel@dentons.com  
Attn: Ira L. Kotel  
If to a Lender:

c/o Deerfield Mgmt, L.P.  
780 Third Avenue, 37<sup>th</sup> Floor  
New York, New York 10017  
Fax: (212) 599-1248  
Attn: James E. Flynn

With a copy to:

Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, New York 10022  
Fax: (212) 940-8776  
Attn: Mark I. Fisher, Esq.  
Elliot Press, Esq.

Each party shall provide notice to the other party of any change in address.

c. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

d. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each of the parties hereto hereby agrees to submit to the exclusive jurisdiction of the commercial division, New York State Supreme Court, or the federal courts, in each case sitting in the City of New York, borough of Manhattan (and, in each case, the applicable state and federal appeals courts sitting in the City of New York or, if not available or applicable, the State of New York), which shall hear any dispute, claim or controversy arising in connection with or related to this Agreement, including the validity, breach or enforcement hereof, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is in an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

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e. This Agreement and the Exchange and Termination Agreement (including all schedules and exhibits thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement and the Exchange and Termination Agreement supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 10 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, and the provisions of Sections 7 and 8 hereof shall inure to the benefit of, and be enforceable by, each Indemnified Person and Company Indemnified Person (as applicable).

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile or other electronic transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

j. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Lenders by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for breach of its obligations hereunder will be inadequate and agrees, in the event of a breach or threatened breach by the Company of any of the provisions hereunder, that the Lenders shall be entitled, in addition to all other available remedies in law or in equity, to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

k. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

l. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

m. In the event a Lender shall sell or otherwise transfer any of such holder's Exchange Shares, each transferee shall be allocated a pro rata portion of the number of Exchange Shares included in a Registration Statement for such transferor.

n. There shall be no oral modifications or amendments to this Agreement. This Agreement may be modified or amended only in writing.

**[Remainder of page left intentionally blank]**

**[Signature page follows]**

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IN WITNESS WHEREOF, the undersigned Lenders and the Company have caused this Registration Rights Agreement to be duly executed as of the date first written above.

**COMPANY:**

**WINDTREE THERAPEUTICS, INC.**

By: /s/ Craig Fraser

Name: Craig Fraser

Title: President & CEO

**DEERFIELD PRIVATE DESIGN FUND II, L.P.**

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN**

**INTERNATIONAL II, L.P.**

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

**DEERFIELD SPECIAL SITUATIONS FUND, L.P.**

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory



**WINDTREE**  
THERAPEUTICS™



**Investor Conference Call**  
**Financial Restructuring Initiative and Transactions**  
**November 2, 2017**

OTCQB:WINT

## Forward-looking Statement

To the extent that statements in this presentation are not strictly historical, including statements about the Company's clinical development programs, business strategy, outlook, objectives, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development activities, or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this presentation are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. These risks are further described in the Company's periodic filings with the Securities and Exchange Commission (SEC), including the most recent reports on Forms 10-K, 8-K and 10-Q, and any amendments thereto ("Company Filings")

*Under no circumstances shall this presentation be construed as an offer to sell or as a solicitation of an offer to buy any of the Company's securities. In addition, the information presented in this deck is qualified in its entirety by the Company Filings. The reader should refer to the Company Filings for a fuller discussion of the matters presented here.*

# Successfully Completed Financial Restructuring Program

- Closed \$10 million Share Purchase Agreement resulting in Lee's Pharm obtaining a controlling interest in Windtree
- Windtree and Deerfield restructured and retired \$25 million long-term debt
- Windtree and Battelle Memorial Institute have signed a memorandum of understanding outlining terms to restructure the payment terms of existing development cost obligations to minimize near-term cash requirements
- Improved capital structure and balance sheet better position Windtree for longer term financial stability and growth



## Rationale for Transactions

- Our KL4 platform assets – beginning with AEROSURF® for the treatment of respiratory distress syndrome (RDS) in premature infants – represent a significant opportunity. However, significant additional investment is required to advance and realize the full potential of these assets given this stage of clinical and device development.
- Securing the required additional capital was a challenge due in significant part to the financial overhang of \$25MM of secured debt, with the first installment of \$12.5MM due in February 2018
- Improving the Company's balance sheet and capital structure has been a critical success factor to better enable the prospects for long-term financial stability

***Execute a broad financial restructuring initiative via a strategic transaction that would:***

1. Rapidly secure the cash needed to fund operations with a focus on maintaining our assets and advancing the AEROSURF® program
2. Remove the financial overhang caused by long-term debt; address the barrier to further funding by retiring the debt
3. Lower ongoing, non-program related cash burn
4. Better position Windtree for growth and longer term stability

## 1 Lee's Share Purchase

- To fund a cash resource gap, Lee's entered into the previously announced August 2017 Loan Agreement and advanced Windtree \$3.9 million
- Lee's purchased \$10 million of common stock at approximately \$0.22 per share
  - \$6.1 million cash received at closing
  - \$3.9 million previously advanced under the August 2017 Loan Agreement
- Purchase price represents a 15% premium to the average 10-day VWAP through October 27, 2017
- Lee's owns approximately 73% of currently outstanding Windtree shares of common stock

### 2 **Deerfield Debt Retirement**

- Deerfield agreed to restructure and retire its \$25 million secured loan to facilitate the Lee's share purchase. In exchange for the retirement of debt, Deerfield received:
  - \$2.5 million of share purchase proceeds
  - 1.4 million shares of Windtree common stock representing 2% ownership on a fully-diluted basis (as defined)
  - up to \$15 million in future AEROSURF regulatory and commercial milestones beginning with filing for U.S. marketing approval

### 3 **Battelle Collaboration Development Payables**

- Battelle (our medical device partner) agreed to restructure payment terms of existing payables
  - To be addressed through a combination of lowered amount of cash payment, conversion of debt into common shares through participation in the next financing and the balance set against future milestones

## Results and Benefits of the Restructuring Initiative

- ✓ Significantly improved capital structure by removing the financial overhang of long-term debt
- ✓ Lowered the ongoing, non-program related cash burn rate through a combination of a 40% headcount reduction and other cost cutting measures
- ✓ Better positioned to access new capital – including potentially with China / Hong Kong capital markets and investors
- ✓ Windtree becomes part of a well respected and resourced, global organization that is committed to building the KL4 platform and Windtree; expands our revenue potential and opportunities to diversify and build a broader portfolio

- Hong Kong based and listed, research and development focused biopharmaceutical company
- Founded in 1994 with over HK\$900MM in net revenues in 2016
- Business anchored in proprietary drug development with a BD focus on late stage co-development and mature product registrations
  - Specialty areas include Neonatal, PAH, acute CV, Onc & Immuno-Onc , gynecology, and ophthalmology . Acute Pulmonology products include INOMAX for pre-term infants, REMODULIN for pulmonary arterial hypertension (PAH) and Surfaxin, Lucinactant LS and AEROSURF
- Integrated capabilities:
  - R&D – In 2015-2017 completed 7 trials, 13 ongoing
  - Regulatory – In 2015-2017 - 7 approvals, 7 submissions
  - Manufacturing – two large scale facilities for development and commercial manufacturing of oral, injection / lyophilization, ophthalmic and gels
  - Commercial: Sales – 250 reps, 70 managers in 5,000 hospital accounts along with distributors. Supported by market access and medical.

# Rationale and Intent for Lee's

## *Lee's stated rationale for the deal and intent:*

### **1. High belief in the assets and program**

- Dr Li has followed Windtree for some time and is compelled by the synthetic surfactant platform (both aerosolized and non-aerosolized in RDS as well as other potential indications) and the significant opportunity it represents in China and globally
- Attracted to the balanced investment / balanced risk approach of having 3 separate assets including an approved product, a new, better formulation in LS and the potentially game-changing AEROSURF program

### **2. Desire for globalization from a major interest in a U.S. public company to build and access to new capital markets. Specifically, Windtree was an attractive way to achieve this because:**

- They see a significant opportunity to gain this position at a bargain, clean up the capital structure and make healthy, and have a management team and assets they know and believe in

### **3. Moving forward intent – Execute programs, potential to diversify with new assets and build a valuable business**

## Financial Update

- Cash and cash equivalents of \$5.4 million as of November 1, 2017
  - The Company anticipates that currently existing cash will be sufficient to fund operations into January 2018 while we seek to secure the additional capital required to satisfy existing obligations and fund our operations and development activities through 2018
- Completing the Lee's share purchase, the Deerfield debt retirement and restructuring of Battelle payables results in an improved and more appropriate balance sheet and capital structure for a Company of Windtree's size and stage of development
- We believe the Company is better positioned to secure the additional capital necessary to continue investment in AEROSURF and other potential KL4 surfactant pipeline products



# Focused on Our Key Objectives

1



**Complete Device Development** delivering an **extremely consistent, high performing Phase 3 / “go to market” drug delivery platform**

2



**Solid execution in the clinic** with the **Bridge / Confirm Study**

3



AEROSURF and LS **Global Regulatory Clarity** and employed in development

4



Successful funding supporting a **financially healthy organization**

5



Investment / Portfolio **Diversification** (including **LS** business case)



- **Potentially transformative therapy** addressing both the unmet efficacy and safety needs in the important, acute neonatology market
- Multiple **phase 2 clinical trials producing and replicating efficacy** while continuing to build **safety and tolerability data** base
- **Developing positive health economic position** as well as opportunity to **expand the use of surfactants** due to easier, less specialized administration
- **Broad IP** with potential to **build a pipeline** of KL4 surfactant therapies to address a variety of respiratory diseases
- **Fast Track and Orphan designations**
- **Part of a highly capable, diverse, global pharmaceutical company committed to the build and growth of Windtree**

# Windtree Therapeutics



***“Striving to deliver Hope for a Lifetime!”***

## Windtree Successfully Completes Financial Restructuring Program

*-Windtree and Lee's Pharm Close \$10 Million Share Purchase Agreement Giving Lee's Pharm Controlling Interest in Windtree-*

*- Windtree and Deerfield Restructure and Retire \$25 Million Long-term Debt -*

*-Windtree Improves Capital Structure to Support Advancing AEROSURF® and KL4 Platform-*

*-Windtree to Host Investor Conference Call Tomorrow November 2, 2017 at 8:00 AM ET-*

**WARRINGTON, PA and SHATIN, HONG KONG – November 1, 2017** – Windtree Therapeutics, Inc. (OTCQB: WINT), a biotechnology company focused on developing aerosolized KL4 surfactant therapies for respiratory diseases, and LPH Investments Limited (“LPHIL”), a wholly-owned subsidiary of Lee's Pharmaceutical Holdings Limited (“Lee's Pharm,” SEHK Stock Code: 0950), today announced that they have completed a financial restructuring of Windtree that includes a purchase by Lee's Pharm via LPHIL of \$10 million of Windtree's common stock, giving Lee's Pharm a controlling interest in Windtree, and a simultaneous restructuring and retirement of \$25 million of long-term debt under the 2013 secured loan facility agreement between Windtree and affiliates of Deerfield Management Company, L.P. (“Deerfield”). The completion of these transactions improves Windtree's balance sheet and better positions the Company to raise the capital needed to fund continued development of AEROSURF® for respiratory distress syndrome (RDS) and potentially its pipeline of surfactant products utilizing its proprietary KL4 surfactant and aerosol device technologies.

“The successful completion of this financial restructuring is significant for Windtree. We now have a capital structure free of the financial overhang of long-term debt, and are better positioned to secure the additional capital necessary to realize the full potential of our KL4 surfactant and aerosol delivery platforms beginning with AEROSURF,” said Craig Fraser, President and Chief Executive Officer of Windtree. “Strategically, our broader collaboration with Lee's Pharm expands our revenue potential and provides options to access capital from new markets and opportunities to diversify and build a broader portfolio.”

Under terms of the share purchase agreement, LPHIL purchased from Windtree \$10 million of common stock to acquire a controlling interest of the Company at a price per share of \$0.2163, representing a 15 percent premium to the average 10-day volume weighted average price per share (VWAP) through October 27, 2017. As partial consideration for the share purchase, Lee's Pharm cancelled \$3.9 million principal outstanding under an August 2017 loan agreement, which Lee's Pharm had advanced in three equal installments in August, September, and October, 2017, to support AEROSURF development activities and sustain Windtree's operations through October 31, 2017, while the parties negotiated the share purchase agreement.

To facilitate the share purchase by Lee's Pharm, Deerfield agreed to restructure its \$25 million secured loan to Windtree effective as of the closing of the share purchase agreement. Under the loan restructuring agreement, in exchange for return and cancellation of the Deerfield notes, Windtree paid to Deerfield \$2.5 million in cash, and issued to Deerfield shares of common stock representing two percent of Windtree's common stock post-closing on a fully-diluted basis, as defined in the loan restructuring agreement. In addition, Deerfield will be entitled to receive up to \$15 million in future AEROSURF regulatory and commercial milestones, beginning with the filing for marketing approval in the United States.

“We firmly believe that Windtree's KL4 surfactant platform represents a significant opportunity in China and elsewhere globally, with near-term potential that can be realized with the commercialization of SURFAXIN for RDS in FDA reference countries and even greater potential with SURFAXIN LS and especially AEROSURF in the future,” said Dr. Benjamin Li, Chief Executive Officer of Lee's Pharm. “It has long been our goal to globalize our business and have a majority interest in a public U.S. company that would strengthen our position in critical neonatal care and potentially allow us to further expand the reach of our acute pulmonary care portfolio. This transaction, and the potential it represents, comes at a value we could not ignore. The strength of Windtree's management and revenue potential of its portfolio provide an opportunity that we are both confident in and very excited about.”

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### **Conference Call and Webcast Details**

The Company will host a conference call and webcast (including a slide presentation) at 8:00 a.m. EDT on Thursday, November 2, 2017.

To participate in the live call and take part in the question and answer session, dial (844) 802-2436 (domestic) or (412) 317-5129 (international).

To access the live webcast, including a slide presentation, please visit the investor page of the Company's website at <http://windtreetx.investorroom.com/events>.

A replay of the conference call will be available one hour after completion of the call through November 9, 2017 and may be accessed by dialing (877) 344-7529 (domestic) or (412) 317-0088 (international) and referencing conference number 10114113. An archive of the webcast can be accessed on the Company's website at <http://windtreetx.investorroom.com/events>.

### **About Windtree Therapeutics**

Windtree Therapeutics, Inc. is a clinical-stage biotechnology company focused on developing novel surfactant therapies for respiratory diseases and other potential applications. Windtree's proprietary technology platform includes a synthetic, peptide-containing surfactant (KL4 surfactant) that is structurally similar to endogenous pulmonary surfactant and novel drug-delivery technologies being developed to enable noninvasive administration of aerosolized KL4 surfactant. Windtree is focused initially on improving the management of respiratory distress syndrome (RDS) in premature infants and believes that its proprietary technology may make it possible, over time, to develop a pipeline of KL4 surfactant product candidates to address a variety of respiratory diseases for which there are few or no approved therapies.

For more information, please visit the Company's website at [www.windtreetx.com](http://www.windtreetx.com).

### **About Lee's Pharmaceutical Holdings Limited ("Lee's Pharm")**

Lee's Pharm is a research-based Hong Kong biopharmaceutical company listed in Hong Kong with more than 20 years of operation in China's pharmaceutical industry. It is fully integrated with strong infrastructures in drug development, manufacturing, sales and marketing. It has established extensive partnership with more than 20 international companies and currently has 15 products in the market place. Lee's Pharm focuses on several key disease areas such as cardiovascular, oncology, gynecology, dermatology and ophthalmology. The company's development program is lauded with over 40 products stemming from both internal R&D efforts and collaborations with US, European and Japanese companies, including promising compounds to treat diseases such as liver cancer and pulmonary hypertension. The mission of Lee's Pharm is to become a successful biopharmaceutical group in Asia providing innovative products to fight diseases and improve health and quality of life.

Additional information about Lee's Pharm is available at [www.leespharm.com](http://www.leespharm.com).

### **Forward-Looking Statements for Windtree Therapeutics**

*To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of such risks and uncertainties include: the risk that, as a development company, with limited resources and no operating revenues, the Company's ability to continue as a going concern in the near term is highly dependent upon the success of its AEROSURF® development program and whether clinical results at anytime will support a strategic or financing transaction and potential initiation of phase 3 development activities; risks that Windtree will be unable to secure significant additional capital as and when needed, if at all, whether through debt or equity financings or other strategic transactions; risks related to having the Company's common stock trade on the OTCQB® market; risks related to Windtree's AEROSURF development program and other aerosolized KL4 surfactant development programs in the future, which may involve time-consuming and expensive preclinical and clinical trials and which may be subject to potentially significant delays or regulatory holds, or fail; risks related to the development of aerosol delivery systems (ADSs) and related components; risks related to technology transfers to contract manufacturers and problems or delays encountered by Windtree, contract manufacturers or suppliers in manufacturing drug products, drug substances, ADSs on a timely basis and in sufficient amounts; risks relating to rigorous regulatory requirements, including those of (i) the FDA or other regulatory authorities that may require significant additional activities, or may not accept or may withhold or delay consideration of applications, or may not approve or may limit approval of Windtree's products and (ii) changes in the national or international political and regulatory environment, which may make it more difficult to gain regulatory approvals; and other risks and uncertainties described in Windtree's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.*

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**Forward-Looking Statement for Lee's Pharm**

*The performance and the results of operation of Lee's Pharm during the past years are historical in nature and past performance can be no guarantee of future results of the Lee's Pharm. This news release may contain forward-looking statements and opinions that involve risks and uncertainties. Actual results may differ materially from expectations discussed in such forward-looking statements and opinions. Neither Lee's Pharm nor the Directors, employees or agents of Lee's Pharm assume (a) any obligation to correct or update the forward-looking statements or opinions contained in this news release; and (b) any liability in the event that any of the forward-looking statements or opinions does not materialize or turns out to be incorrect.*

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