

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
Name	Formerly	Execution Date	Entity Type
Therabiogen, Inc.		10/06/2011	CORPORATION: NEVADA
<b>RECEIVING PARTY DATA</b>			
Name:	ECAP Capital, LLC		
Street Address:	65 Court Street		
Internal Address:	Suite 4		
City:	White Plains		
State/Country:	NEW YORK		
Postal Code:	10601		
Entity Type:	CORPORATION: NEW YORK		
<b>PROPERTY NUMBERS Total: 1</b>			
Property Type	Number	Word Mark	
Registration Number:	3981907	THERA MAX	
<b>CORRESPONDENCE DATA</b>			
Fax Number:	2126843999		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	212-684-3900		
Email:	tweisz@grr.com		
Correspondent Name:	Tiberiu Weisz		
Address Line 1:	270 Madison Avenue		
Address Line 2:	8th Floor		
Address Line 4:	New York, NEW YORK 10016		
ATTORNEY DOCKET NUMBER:	8315/0002		
NAME OF SUBMITTER:	Tiberiu Weisz		
Signature:	/Tiberiu Weisz/		

OP \$40.00 3981907

Date:

06/05/2012

**Total Attachments: 8**

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## TRADEMARKS & LICENSES SECURITY AGREEMENT

ASSIGNMENT made as of this 6<sup>th</sup> day of October, 2011 by THERABIOGEN, INC., a Nevada corporation, having a place of business at 120 Wall Street, Suite 2401, New York, New York 10005 (the "Assignor"), and ECAP CAPITAL, LLC, having an office at 65 Court Street, Suite 4, White Plains, New York 10601 (the "Assignee").

### WITNESSETH

WHEREAS, in consideration of credit and/or other financial accommodations, which have been or which may from time to time be extended to Assignor by Assignee, as evidenced by such promissory notes, loan applications and agreements, security agreements, loan and/or credit agreements, security agreements, mortgages, guarantees of payment and such other documents as may from time to time be delivered for the benefit of Assignee (the "Credit Documents") Assignor has agreed to pledge and assign to Assignee all of Assignor's right, title and interest in certain trademarks, service marks, tradenames, service trademark applications and service tradenames (collectively, "Trademarks") and licenses ("Licenses") and any and all renewals, continuations in part, extensions or other modifications thereof and goodwill associated thereto ("Goodwill") as listed on Schedule "A" of the Trademarks and Licenses Assignment executed on the date hereof, a copy of which appears as Exhibit 1 and will be forwarded to the designated office of U.S. Patent, Trademark office for filing; (all such Trademarks, Licenses or Goodwill hereinafter referred to as the "Assets");

NOW, THEREFORE, as collateral security all indebtedness, obligations and liabilities, direct or indirect, absolute or contingent, joint, several, or independent, secured or unsecured, liquidated or unliquidated, contractual or tortious, of the Assignor, due or to become due, now existing or hereafter arising or incurred for the indebtedness of Assignor to Assignee, and for the period of the indebtedness, the Assignor, and now or hereafter payable to or held by the Assignee for its own account or as agent for another or others, whether created directly or acquired by assignment, participation or otherwise, and whether incurred as primary debtor, comaker, surety, endorser, guarantor or otherwise, the Assignor hereby irrevocably pledges, assigns, transfers and sets over to the Assignee, and grants to the Assignee all right, title and interest of the Assignor in and to the Assets;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns of the Assignee in accordance with the terms and provisions hereof.

1. The Assignor represents, warrants and covenants to the Assignee as follows: (a) The Assets are owned and held by the Assignor, and assigned to the Assignee, free and clear of debts, pledges, liens, charges and other encumbrances and they are in full force and effect; (b) Assignor has not made and will make no sale, assignment, pledge, grant of any option, transfer license or other encumbrance of the Assets; (c) The execution and delivery of this instrument will not conflict with or contravene any contractual restriction binding on the Assignor, including any license agreement relating to the Assets or any part thereof; (d) Borrower has complied with and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §§ 1051-1127, 17 U.S.C. § 101, et seq., 35 U.S.C. § 101 et seq., and any other applicable

statutes, rules and regulations in connection with its use of the Assets; (e) There are no actions, suits or proceedings pending, or to the knowledge of the Assignor threatened, against or affecting the Assets, or involving the validity or enforceability of the Assets nor any defaults or other occurrence or event which may give rise to any of the foregoing; (f) The Assignor shall give prompt written notice to the Assignee of any claim(s) or actions related to the Assets together with a complete copy of each such claim, and shall defend any such claim or action related to the Assets and protect such Assets from infringement, unfair competition or dilution or damage by all appropriate actions at Assignor's sole cost and expense. Unless and until an Event of Default (as defined below) shall occur, the Assignor shall retain the right to use the Assets in the ordinary course of Assignor's business, but shall not be permitted to sell, assign, transfer, license or otherwise encumber the Assets or any part thereof without the prior written consent of the Assignee in each instance.

2. The occurrence of any of the following events ("Events of Default") shall constitute a default hereunder: (a) A material misrepresentation or breach by the Assignor of any statement, covenant, condition, agreement, or warranty contained herein; (b) A "Default", under the Credit Documents; (c) If the Assignor shall: (i) commence a voluntary case for relief as a debtor under the United States Bankruptcy Code or file a petition to take advantage of any other present or future insolvency act or other applicable law relating to bankruptcy, insolvency, reorganization or relief of debtors; or (ii) make an assignment for the benefit of creditors; or (iii) consent to, or acquiesce in, the appointment of a receiver, liquidator, trustee, custodian or other similar official of itself or the whole or any substantial part of its properties or assets. Upon the occurrence of an Event of Default, the Assignee shall be entitled to enforce any and all of its rights hereunder and/or under the Credit Documents. Upon any Event of Default, Assignor's license under the Assets, as set forth in this Agreement, shall terminate and the Assignee shall have, in addition to all other rights and remedies given to it by this Assignment and the Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any Jurisdiction in which the Assets may be located and, without limiting the generality of the foregoing, the Assignee shall, but not be bound to immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which Assignor hereby expressly waives, and without advertisement, sell at public or private sale or otherwise realize upon, at Assignor's place of business or elsewhere, all or from time to time any of the Assets, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Assets all expenses (including all reasonable attorney or broker's fees), shall apply the proceeds to payment of the indebtedness in such order as Assignee may determine. Any remainder of the proceeds after payment in full of the indebtedness shall be paid over to the Assignor. In the event Assignee decides to sell the Assets, notice of any sale or other disposition of the Assets shall be given to Assignor at least five (5) days before the time of any intended public or private sale or other disposition of the Assets is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, if Assignee decides to sell or dispose of the Assets, Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Assets sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

3. Any and all fees, costs, and expenses, of whatever kind or nature, including the reasonable attorney fees (both outside counsel and allocated costs of in-house counsel) and legal

expenses incurred by Assignee in connection with the preparation of this Assignment and all other documents relation hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Assets, or in defending or prosecuting any actions or proceedings arising out of or related to the Assets, shall be borne and paid by Assignor on demand by Assignee and until so paid shall be added to the principal amount of the indebtedness and shall bear interest at the rate prescribed in the Credit Documents.

4. Assignor hereby irrevocably authorizes and empowers Assignee to make, constitute, and appoint any officer or agent of Assignee as Assignee may select, in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Assets, or to grant or issue any exclusive or nonexclusive license under the Assets to anyone else, or necessary for Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Assets to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

5. Assignor hereby grants to Assignee and its employees and agents the right to visit Assignor's facilities which create any Assets and to inspect the books and records relating thereto at reasonable times during regular business hours.

6. This Assignment shall not operate to impose any liability or responsibility whatsoever upon the Assignee or its successors, legal representatives or assigns for any of the debts, liabilities or obligations, present and/or future, of the Assignor or for the performance of any of the Assignor's obligations in connection with the Assets for which the Assignor shall remain liable with the same effect as though this Assignment had not been given. The Assignor hereby agrees to indemnify, hold harmless and defend the Assignee from and against any such loss, claim or expense incurred by any such imposition of liability or responsibility (actual or attempted), such indemnity to include, in each such case, reasonable counsel fees and disbursements.

7. Assignee shall have no duty of care with respect to the Assets, except that Assignee shall exercise reasonable care with respect to Assets in Assignee's custody, but shall be deemed to have exercised reasonable care if such Assets are accorded treatment substantially equal to that which Assignee accords its own property, or if Assignee takes such action with respect to the Assets as the Assignor shall request in writing, but no failure to comply with any such request nor any omission to do any such act requested by the Assignor shall be deemed a failure to exercise reasonable care, nor shall Assignee's failure to take steps to preserve rights against any parties or property be deemed a failure to have exercised reasonable care with respect to the Assets in Assignee's custody.

8. Neither any failure nor any delay on the part of the Assignee in exercising any right, power or privilege hereunder or under the Credit Documents shall operate as a waiver thereof. No modification or waiver of any provision of this Agreement, nor consent to any departure by Assignee from any of the terms or conditions thereof, shall in any event effect any rights of Assignee under the Credit Documents unless it shall be in writing and executed in

accordance with the provisions of the Credit Documents, and then such modification, waiver or consent shall be effective only in the specific instance and for the purpose for which given.

9. The Assignor hereby authorizes the U.S. Patent and Trademark Office to issue or transfer all said Assets to the Assignee or otherwise as the Assignee may direct in accordance with this instrument of assignment.

10. The Assignor hereby authorizes Assignee to modify this Assignment by amending Schedule A to include any future Assets and shall cooperate in all requests of Assignee for the assignment to Assignee of such future Assets.

This Assignment is made and delivered in the State of New York and shall be construed in accordance with and governed by the laws of said State. The word "Assignor" or "Assignee" shall be construed as if it read "Assignors" or "Assignees" whenever the sense of this instrument so requires. This Assignment cannot be changed or terminated orally, cannot be orally waived and shall be binding on the Assignor and its successors and assigns.

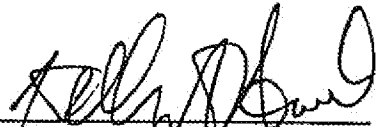
THE PARTIES HERETO HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF EITHER PARTY OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Without limiting the right of the Assignee to bring any action or proceeding against the Assignor or against property of the Assignor arising out of or relating to any obligation or this Agreement (an "Action") in the courts of other jurisdictions, the Assignor hereby irrevocably submits to the jurisdiction of any New York State or Federal Court sitting in New York City, and the Assignor hereby irrevocably agrees that any Action may be heard and determined in such New York State court or in such Federal court. The Assignor hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any action in any jurisdiction. The Assignor hereby irrevocably agrees that the summons and complaint or any other process in any Action in any jurisdiction may be served by mailing to any of the addresses set forth in the first paragraph of this Agreement or by hand delivery to a person of suitable age and discretion at any of the addresses set forth in the first paragraph of this Agreement. Such service will be complete on the date such process is so mailed or delivered, and the Assignor will have thirty days from such completion of service in which to respond in the manner provided by law. The Assignor may also be served in any other manner permitted by law, in which event the Assignor's time to respond shall be the time provided by law.

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the Assignor has duly executed this Assignment, as of the 6<sup>th</sup>. day of October, 2011.

THERABIOGEN, INC.

By:   
Print Name: Robert T. Hirsch  
Print Title: CO

Schedule A

Number	Registration Number	Title Of Work
1.	3,981,907	THERA MAX

Licensed Products

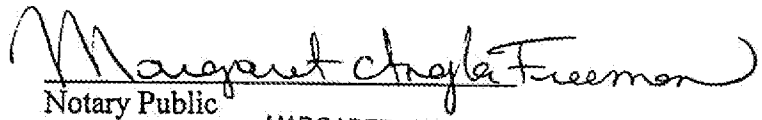
Number	Product
1.Nasal Therapeutics.TheraBiogen license agreement 7.21.08	THERA MAX
2.Nasal Therapeutics.TheraBiogen amended license agreement 7.28.09	THERA MAX



UNIVERSAL ACKNOWLEDGMENT IN NEW YORK

COUNTY OF NY,  
STATE OF NEW YORK.

On the 6<sup>TH</sup> day of OCTOBER in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared KELLY T. HICKEL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

MARGARET ANGELA FREEMAN  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN QUEENS COUNTY  
REC. #01FNS23433  
MY COMM. ENDS APRIL 7, 2012

Exhibit 1

TRADEMARKS AND LICENSES ASSIGNMENT

WHEREAS, THERABIOGEN, INC., a Nevada corporation ("Grantor") having a place of business at 120 Wall Street, Suite 2401, New York, New York 10005 is the registered owner of the United States trademarks, service marks, tradenames, service trademark applications, and service tradenames and licenses listed on Schedule A attached hereto and made a part hereof (the "Assets"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, ECAP CAPITAL, LLC, having an office at 65 Court Street, Suite 4, White Plains, New York 10601 ("Grantee"), is desirous of receiving an assignment said Assets as security for lending agreements;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, subject to the terms of the Patents, Trademarks, Licenses and Copyrights Security Agreement, of even date herewith, between Grantor and Grantee, all of its present and future right, title and interest in and to the Assets and all proceeds thereof and all goodwill associated therewith for the period of the lending agreements. Grantor agrees to take all necessary actions to transfer, assign and set over to Grantor when the lending agreements are terminated or expire or are paid off in their entirety by Grantor.

IN WITNESS WHEREOF, the undersigned has caused this Patents, Trademarks, Licenses and Copyrights Assignment to be executed as of the 6<sup>th</sup> day of October, 2011.

THERABIOGEN, INC.

By: \_\_\_\_\_

Print Name:

Print Title: