

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

**AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT**

*UNDER
THE SECURITIES ACT OF 1933*

Ocuphire Pharma, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

11-3516358
(I.R.S. Employer
Identification Number)

3700 Grand River Avenue, Suite 120
Farmington Hills, MI 48335
(248) 681-9815

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

Mina Sooch
President and Chief Executive Officer
Ocuphire Pharma, Inc.
3700 Grand River Avenue, Suite 120
Farmington Hills, MI 48335
(248) 681-9815

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

Copy to:
Phillip D. Torrence, Esq.
Emily J. Johns, Esq.
Honigman LLP
650 Trade Center Way, Suite 200
Kalamazoo, Michigan 49002-0402
(269) 337-7700

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
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 7(a)(2)(B) of the Securities Act.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.



EXPLANATORY NOTE

This Amendment No. 1 (this “Amendment”) to the Registration Statement on Form S-3 (the “Registration Statement”) of Ocuphire Pharma, Inc. is being filed solely for the purpose of replacing Exhibit 5.1 to the Registration Statement. This Amendment does not modify any provision of the prospectus that forms a part of the Registration Statement and accordingly, such prospectus has been omitted.

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated costs and expenses, other than the underwriting discounts and commissions, payable by us, in connection with the offering of the securities pursuant to this Registration Statement:

| | |
|--|-------------|
| SEC Registration Fee | \$23,162.76 |
| Financial Industry Regulatory Authority Filing Fee | (1) |
| Legal Fees and Expenses | (1) |
| Nasdaq Capital Market Listing Fees | (1) |
| Accounting Fees | (1) |
| Printing and Miscellaneous Fees | (1) |
| Total | (1) |

(1) The amount of securities and number of offerings are indeterminable and the expenses cannot be estimated at this time. An estimate of the aggregate expenses in connection with the sale and distribution of securities being offered will be included in the applicable prospectus supplement.

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation’s board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. Our amended and restated certificate of incorporation provides for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and our amended and restated bylaws provide for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law.

We have entered into indemnification agreements with our directors and officers whereby we have agreed to indemnify our directors and officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or officer was, or is threatened to be made, a party by reason of the fact that such director or officer is or was a director, officer, employee or agent of Ocuphire Pharma, Inc., provided that such director or officer acted in good faith and in a manner that the director or officer reasonably believed to be in, or not opposed to, the best interest of Ocuphire Pharma, Inc. At present, there is no pending litigation or proceeding involving a director or officer of Ocuphire Pharma, Inc. regarding which indemnification is sought, nor is the registrant aware of any threatened litigation that may result in claims for indemnification.

We maintain insurance policies that indemnify our directors and officers against various liabilities arising under the Securities Act and the Securities Exchange Act of 1934, as amended, that might be incurred by any director or officer in his capacity as such.

The underwriting agreement(s) that the Registrant may enter into may provide for indemnification by any underwriters of the Registrant, its directors, its officers who sign the registration statement and the Registrant's controlling persons for some liabilities, including liabilities arising under the Securities Act.

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

Item 16. Exhibits.

| Exhibit Number | Description |
|----------------------------|--|
| 1.1* | Form of Underwriting Agreement. |
| <u>3.1</u> | Amended and Restated Certificate of Incorporation, filed as Appendix G to the Company's Definitive Proxy Statement on Schedule 14A filed on April 29, 2005, is incorporated herein by reference. |
| <u>3.2</u> | Certificate of Amendment of Amended and Restated Certificate of Incorporation, filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on May 5, 2017, is incorporated herein by reference. |
| <u>3.3</u> | Certificate of Amendment of Amended and Restated Certificate of Incorporation, filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on August 30, 2018 is incorporated herein by reference. |
| <u>3.4</u> | Certificate of Amendment of Amended and Restated Certificate of Incorporation, filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on April 12, 2019, is incorporated herein by reference. |
| <u>3.5</u> | Certificate of Amendment of Amended and Restated Certificate of Incorporation, filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on November 6, 2020, is incorporated herein by reference. |

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| 3.6 | Certificate of Amendment of Amended and Restated Certificate of Incorporation, filed as Exhibit 3.2 to the Company's Current Report on Form 8-K, filed on November 6, 2020, is incorporated herein by reference. |
| 3.7 | Second Amended and Restated Bylaws of the Registrant, filed as Exhibit 3.3 to the Company's Current Report on Form 8-K, filed on November 6, 2020, is incorporated herein by reference. |
| 4.1 | Form of common stock certificate of the Registrant., filed as Exhibit 4.3 to the Company's Registration Statement on Form S-8, filed on October 28, 2005, is incorporated herein by reference. |
| 4.2* | Form of Preferred Stock Certificate and Form of Certificate of Designation of Preferred Stock. |
| 4.3 | Form of Indenture. |
| 4.4* | Form of Debt Securities. |
| 4.5 | Form of Common Stock Warrant Agreement and Warrant Certificate. |
| 4.6 | Form of Preferred Stock Warrant Agreement and Warrant Certificate. |
| 4.7 | Form of Debt Securities Warrant Agreement and Warrant Certificate. |
| 4.8 | Form of Series A/B Warrants filed as Exhibit 4.1 to the Company's Current Report on Form 8-K, filed on July 1, 2020, is incorporated herein by reference. |
| 4.9 | Form of Waiver Agreement, dated as of February 3, 2021, by and between Ocuphire Pharma, Inc. and the Holder(s) filed as Exhibit 4.1 to the Company's Current Report on Form 8-K, filed on February 4, 2021, is incorporated herein by reference. |

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| 5.1 | Opinion of Honigman LLP. |
| 23.1** | Consent of Independent Registered Public Accounting Firm. |
| 23.2** | Consent of Independent Registered Public Accounting Firm. |
| 23.3 | Consent of Honigman LLP (reference is made to Exhibit 5.1). |
| 24.1** | Power of Attorney |
| 25.1*+ | Statement of Eligibility of Trustee under the Indenture. |

* To be filed by amendment or as an exhibit to a Current Report on Form 8-K and incorporated herein by reference, if applicable.

** Previously filed.

+ To be filed separately under electronic form type 305B2, if applicable.

Item 17. Undertakings.

The undersigned registrants hereby undertakes:

- (a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
 - (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
 - (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that the undertakings set forth in paragraphs (i), (ii) and (iii) of this section do not apply if the registration statement is on Form S-3, Form SF-3 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (b) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
 - (d) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
 - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
 - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
 - (e) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
 - (f) That for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (g) That, for purposes of determining any liability under the Securities Act, (i) the information omitted from the form of prospectus filed as part of the registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be a part of the registration statement as of the time it was declared effective; and (ii) each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (h) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.
 - (i) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.
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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Farmington Hills, state of Michigan, on February 11, 2021.

OCUPHIRE PHARMA, INC.

By: /s/ Mina Sooch
Mina Sooch
President and Chief Executive Officer

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---------------------------------------|---|-------------------|
| <u>/s/ Mina Sooch</u> Mina Sooch | President, Chief Executive Officer (Principal Executive Officer) | February 11, 2021 |
| <u>/s/ Amy Rabourn</u> Amy Rabourn | Vice President of Finance (Principal Financial and Accounting Officer) | February 11, 2021 |
| <u>*</u> Sean Ainsworth | Director | February 11, 2021 |
| <u>*</u> James S. Manuso | Director | February 11, 2021 |
| <u>*</u> Cam Gallagher | Director | February 11, 2021 |
| <u>*</u> Alan R. Meyer | Director | February 11, 2021 |
| <u>*</u> Richard J. Rodgers | Director | February 11, 2021 |
| <u>*</u> Susan K. Benton | Director | February 11, 2021 |

*By: /s/ Mina Sooch
Mina Sooch, Attorney-in-Fact

February 11, 2021

Ocuphire Pharma, Inc.
37000 Grand River Avenue, Suite 120
Farmington Hills, Michigan 48335

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Ocuphire Pharma, Inc., a Delaware corporation (the "Company"), in connection with a Registration Statement on Form S-3 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission"), for the registration of the Securities (defined below) under the Securities Act of 1933, as amended (the "Securities Act").

The Registration Statement includes a form of prospectus (the "Prospectus"), which provides that it will be supplemented in the future by one or more supplements to the Prospectus (each, a "Prospectus Supplement"). The Prospectus, as supplemented by one or more Prospectus Supplements, may cover the offer, issue and sale of (A) (i) shares of common stock, \$0.0001 par value per share, of the Company (the "Common Stock"); (ii) one or more series of shares of preferred stock, \$0.0001 par value per share, of the Company (the "Preferred Stock"); (iii) warrants to purchase Preferred Stock, Common Stock or Debt Securities (as defined below) (the "Warrants"); and (iv) one or more series of debt securities of the Company (the "Debt Securities"); and (B) the resale of up to 6,987,400 shares (the "Resale Shares") of Common Stock issuable upon exercise of certain outstanding Series A Warrants and Series B Warrants to purchase shares of Common Stock (the "Series A/Series B Warrants") currently held by certain selling stockholders.

Any Debt Securities will be issued under one or more indentures in the form to be filed as an exhibit to the Registration Statement (the "Indenture") relating to the issuance of Debt Securities by the Company. The Warrants may be issued under one or more warrant agreements (each, a "Warrant Agreement") between the Company and a third party to be identified therein as warrant agent (each, a "Warrant Agent"). The Indenture and the Warrant Agreements are herein collectively referred to as the "Agreements." The shares of Common Stock, shares of Preferred Stock, Debt Securities, Warrants and the Resale Shares are herein collectively referred to as the "Securities."

In connection with this opinion letter, we have examined and relied upon originals or copies of such records, instruments, certificates, opinions, memoranda and other documents as in our judgment are necessary or appropriate to enable us to render the opinions expressed below. As to certain factual matters, we have relied upon a certificate of officers of the Company and have not independently sought to verify such matters. In rendering the opinions in this opinion letter, we have assumed the genuineness and authenticity of all signatures on original documents; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents where authorization, execution and delivery are prerequisites to the legal effectiveness of such documents.

With respect to our opinions as to the Common Stock to be offered and sold by the Company and the Resale Shares to be offered and sold by the selling stockholders after exercise of the Series A/Series B Warrants, we have assumed that, at the time of issuance and sale, a sufficient number of shares of Common Stock will be authorized and available for issuance and, except for the Resale Shares, that the consideration for the issuance and sale of the Common Stock (or the conversion price for Preferred Stock or Debt Securities convertible into Common Stock or the exercise price for Warrants exercisable for Common Stock) is in an amount that is not less than the par value of the Common Stock. With respect to our opinion as to the Preferred Stock, we have assumed that, at the time of issuance and sale, a sufficient number of shares of Preferred Stock will be authorized, designated and available for issuance and that the consideration for the issuance and sale of the Preferred Stock (or the conversion price for Debt Securities convertible into Preferred Stock or the exercise price for Warrants exercisable for Preferred Stock) is in an amount that is not less than the par value of the Preferred Stock. We have also assumed that any Warrants offered under the Registration Statement, and any related Warrant Agreement, will be executed in the forms filed as exhibits to the Registration Statement or any required post-effective amendment thereto or incorporated by reference therein. We have also assumed that any Debt Securities offered under the Registration Statement will be issued pursuant to the form of Indenture filed as an exhibit to the Registration Statement or any required post-effective amendment thereto or incorporated by reference therein. We have also assumed that (i) with respect to Securities being issued upon conversion of any convertible Preferred Stock, the applicable convertible Preferred Stock will be duly authorized, validly issued, fully paid and non-assessable; and (ii) with respect to any Securities being issued upon conversion of any convertible Debt Securities or upon exercise of any Warrants, the applicable convertible Debt Securities or Warrants will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms.

With your consent, we have also assumed (i) that each of the Agreements, the Debt Securities and the Warrants (collectively, the “Documents”) will be governed by the internal laws of the State of New York, (ii) that each of the Documents has been or will be duly authorized, executed and delivered by the parties thereto, (iii) that each of the Documents constitutes or will constitute legally valid and binding obligations of the parties thereto other than the Company, enforceable against each of them in accordance with their respective terms and (iv) that the status of each of the Documents as legally valid and binding obligations of the parties will not be affected by any (a) breaches of, or defaults under, agreements or instruments, (b) violations of statutes, rules, regulations or court or governmental orders, or (c) failures to obtain required consents, approvals or authorizations from, or to make required registrations, declarations or filings with, governmental authorities.

Our opinions herein are expressed solely with respect to (i) the internal laws of the State of New York; (ii) the Delaware General Corporation Law, as amended; and (iii) the federal laws of the United States, and we express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or, in the case of Delaware, any other laws, or as to any matters of municipal law or the laws of any local agencies within any state. Our opinions are based on these laws as in effect on the date hereof. We express no opinion as to whether the laws of any jurisdiction are applicable to the subject matter hereof. We are not rendering any opinion as to compliance with any federal or state antifraud law, rule or regulation relating to securities, or to the sale or issuance thereof. It is understood that this opinion letter is to be used only in connection with the offer and sale of the Securities while the Registration Statement is in effect and only speaks as of the date of this opinion letter.

On the basis of the foregoing and in reliance thereon, and subject to the qualifications herein stated, it is our opinion that:

1. With respect to the Common Stock offered by the Company under the Registration Statement, provided that (i) the Registration Statement and any required post-effective amendment thereto have become effective under the Securities Act and the Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (ii) the issuance of the Common Stock has been duly authorized by all necessary corporate action on the part of the Company; (iii) the issuance and sale of the Common Stock do not violate any applicable law, are in conformity with the Company's then operative certificate of incorporation (the "Certificate of Incorporation") and bylaws (the "Bylaws"), do not result in a default under or breach of any agreement or instrument binding upon the Company and comply with any applicable requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (iv) the certificates, if any, for the Common Stock have been duly executed by the Company, countersigned by the transfer agent therefor and duly delivered to the purchasers thereof against payment therefor, then the Common Stock, when issued and sold as contemplated in the Registration Statement, the Prospectus and the related Prospectus Supplement(s), and in accordance with any applicable duly authorized, executed and delivered purchase, underwriting or similar agreement, or upon conversion of any convertible Preferred Stock or convertible Debt Securities in accordance with their terms, or upon exercise of any Warrants in accordance with their terms, will be validly issued, fully paid and non-assessable.

2. With respect to the Preferred Stock offered by the Company under the Registration Statement, provided that (i) the Registration Statement and any required post-effective amendment thereto have become effective under the Securities Act and the Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (ii) the terms and issuance of the Preferred Stock have been duly authorized by all necessary corporate action on the part of the Company and any applicable amendment to the Company's Certificate of Incorporation, including any certificate of designation, fixing the terms of such Preferred Stock has been filed with the State of Delaware; (iii) the terms of the shares of the Preferred Stock and their issuance and sale do not violate any applicable law, are in conformity with the Certificate of Incorporation and the Bylaws, do not result in a default under or breach of any agreement or instrument binding upon the Company and comply with any applicable requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (iv) the certificates, if any, for the Preferred Stock have been duly executed by the Company, countersigned by the transfer agent therefor and duly delivered to the purchasers thereof against payment therefor, then the Preferred Stock, when issued and sold as contemplated in the Registration Statement, the Prospectus and the related Prospectus Supplement(s) and in accordance with any applicable duly authorized, executed and delivered purchase, underwriting or similar agreement, or upon conversion of any convertible Debt Securities in accordance with their terms, or upon exercise of any Warrants in accordance with their terms, will be validly issued, fully paid and non-assessable.

3. When (i) the Registration Statement and any required post-effective amendment thereto have become effective under the Securities Act and the Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws, (ii) all necessary corporate action has been taken by the Company to approve the creation, the terms and the issuance of the Warrants and the underlying securities, the terms of the offering of the Warrants and related matters, including the consideration to be received therefor, if any, and for the underlying securities, and, if applicable, to authorize the form, terms, execution and delivery of a Warrant Agreement or Warrant Agreements (including a form of certificate evidencing the Warrants, if applicable) relating to the Warrants, (iii) the Warrant Agreement or Warrant Agreements, if applicable, relating to the Warrants have been duly authorized and validly executed and delivered by the Company and the Warrant Agent, if any, appointed by the Company, (iv) the Warrants have been issued under a valid and legally binding Warrant Agreement, or agreements, if applicable, relating to the Warrants that conforms to the description thereof provided in a Prospectus Supplement and any related offering material and do not violate any applicable law, do not result in a default under or breach of any agreement or instrument binding upon the Company, are in conformity with the Certificate of Incorporation and Bylaws of the Company, and comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company and (vi) the Warrants or certificates representing the Warrants have been duly executed, countersigned and registered, if applicable, issued and delivered in accordance with the Prospectus and applicable Prospectus Supplement relating to the Registration Statement and in accordance with the appropriate Warrant Agreement, if any, and any applicable duly authorized, executed and delivered purchase, underwriting or similar agreement, as applicable, and such corporate action, in exchange for payment of the consideration for such Warrants, if any, provided for in such agreement, such Warrants will be binding obligations of the Company.

4. When (i) the Registration Statement and any required post-effective amendment thereto have become effective under the Securities Act and the Prospectus and any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws, (ii) all necessary corporate action has been taken by the Company to approve the creation, the terms and the issuance of such Debt Securities and the consideration to be received therefor in accordance with the Indenture and the Indenture has been duly authorized by the Company and the trustee by all necessary corporate action and has been executed and delivered by the Company and the trustee, (iii) the Indenture is qualified under the United States Trust Indenture Act of 1939, as amended, (iv) the terms of the Debt Securities and of their issuance and sale have been duly established in conformity with the Indenture and as described in the Registration Statement and any required post-effective amendment thereto, the related Prospectus and the applicable Prospectus Supplement(s), and by such corporate action, do not violate any applicable law, do not result in a default under or breach of any agreement or instrument binding upon the Company, are in conformity with the Certificate of Incorporation and Bylaws of the Company, and comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (v) notes, certificates or other evidence of the Debt Securities have been duly executed, issued and delivered by the Company and authenticated by the Trustee pursuant to the Indenture and delivered to the purchasers thereof against payment therefor in accordance with such corporate action and the Prospectus and applicable Prospectus Supplement relating to the Registration Statement, and in accordance with any applicable duly authorized, executed and delivered purchase, underwriting or similar agreement, the Indenture or upon exercise of any Warrant under any Warrant Agreement in accordance with their terms, as applicable, such Debt Securities will be binding obligations of the Company. For purposes of rendering the opinions set forth in this paragraph 4, we have assumed that immediately prior to the issuance of any Debt Securities, the Indenture and any applicable supplemental indenture will be in full force and effect, with no unwaived Events of Default or breaches thereunder and will constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

5. Upon the valid exercise of the Series A/Series B Warrants in accordance with their terms, including proper execution and delivery to the persons exercising the Series A/Series B Warrants of certificates for the underlying the Resale Shares (in the form approved by the Company's Board of Directors), the Resale Shares issued will be validly issued, fully paid and non-assessable.

In giving the opinions set forth above, with respect to each Security opined on in this opinion letter we have assumed that (i) at or prior to the time of the delivery of such Security, the authorization of such Security will not have been modified or rescinded, and there will not have occurred any change in law affecting such Security, including its validity or enforceability and (ii) none of the terms of any such Security to be established subsequent to the date hereof, nor the issuance and delivery of such Security nor the compliance by the Company, with the terms of such Security, will violate any applicable law or will result in a violation of any provision of any instrument or agreement then binding upon the Company or any restriction imposed by any court or governmental body having jurisdiction over the Company.

Our opinions set forth above are subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance, fraudulent transfer and voidable transaction laws), general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law and limitations regarding the availability of indemnification and contribution where such indemnification or contribution may be limited by applicable law or the application of principles of public policy.

We express no opinion as to the validity, binding effect or enforceability of (i) provisions that relate to choice of law, forum selection or submission to jurisdiction (including, without limitation, any express or implied waiver of any objection to venue in any court or of any objection that a court is an inconvenient forum), (ii) waivers by the Company of any statutory or constitutional rights, defenses or remedies, (iii) terms which excuse any person or entity from liability for, or require the Company to indemnify such person or entity against, such person's or entity's negligence or willful misconduct, (iv) obligations to pay any prepayment premium, default interest rate, early termination fee, late charges, monetary penalties, make-whole premiums or other form of liquidated damages, if the payment of such premium, interest rate, fee, late charge, monetary penalty, make-whole premium or damages may be construed as unreasonable in relation to actual damages or disproportionate to actual damages suffered as a result of such prepayment, default or termination, usury and other interest-related restrictions, (v) provisions providing that the terms of agreement may not be waived or modified except in writing, (vi) the creation, validity, attachment, perfection, or priority of any lien or security interest, (vii) advance waivers of claims, defenses, rights granted by law, or notice, opportunity for hearing, evidentiary requirements, statutes of limitation, trial by jury or at law, or other procedural rights, (viii) provisions for exclusivity, election or cumulation of rights or remedies, (ix) provisions authorizing or validating conclusive or discretionary determinations, (x) proxies, powers and trusts, (x) provisions prohibiting, restricting, or requiring consent to assignment or transfer of any right or property, or (xi) the severability, if invalid, of provisions to the foregoing effect.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. We also hereby consent to the use of our name under the heading “Legal Matters” in the Prospectus included in the Registration Statement. In giving such consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission under the Securities Act.

Very truly yours,

/s/ Honigman LLP

Honigman LLP

PDT/EBJY/RZK/MSB/JHC/GSWA

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