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VIROPHARMA INC

FORM 10-Q
(Quarterly Report)

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

FORM 10-Q

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

For the quarterly period ended March 31, 2008

or

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

Commission File Number: 0-21699

VIROPHARMA INCORPORATED

(Exact Name of Registrant as Specified in its Charter)

Delaware	**23-2789550**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

397 Eagleview Boulevard
Exton, Pennsylvania 19341
(Address of Principal Executive Offices and Zip Code)

610-458-7300
(Registrant's Telephone Number, Including Area Code)

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

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

Large Accelerated Filer ☒ Accelerated Filer ☐ Non-accelerated filer ☐ Smaller Reporting Company ☐

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

Number of shares outstanding of the issuer's Common Stock, par value $.002 per share, as of April 25, 2008: 69,946,880 shares.

VIROPHARMA INCORPORATED
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ViroPharma Incorporated
Condensed Consolidated Balance Sheet
(unaudited)

(in thousands, except share and per share data)	March 31, 2008	December 31, 2007
Assets		
Current assets:		
Cash and cash equivalents	$324,211	$ 179,691
Short-term investments	274,794	404,637
Accounts receivable, net	22,690	17,684
Inventory	5,172	4,703
Interest receivable	3,374	5,095
Prepaid expenses and other	6,493	2,980
Deferred income taxes	7,277	7,983
Total current assets	644,011	622,773
Intangible assets, net	122,891	122,502
Property, equipment and building improvements, net	11,678	10,890
Deferred income taxes	8,146	12,312
Debt issue costs, net	7,211	7,550
Other assets	175	39
Total assets	$794,112	$ 776,066
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 2,038	$ 2,017
Due to partners	1,066	1,008
Accrued expenses and other current liabilities	21,447	25,345
Total current liabilities	24,551	28,370
Non-current income tax payable and other noncurrent liabilities	2,131	1,133
Long-term debt	250,000	250,000
Total liabilities	276,682	279,503
Commitments and Contingencies		
Stockholders' equity:		
Preferred stock, par value $0.001 per share. 5,000,000 shares authorized; Series A convertible participating preferred stock; no shares issued and outstanding	—	—
Series A junior participating preferred stock, par value $0.001 per share. 200,000 shares designated; no shares issued and outstanding	—	—
Common stock, par value $0.002 per share. 175,000,000 shares authorized; issued and outstanding 69,946,884 shares at March 31, 2008 and 69,904,659 shares at December 31, 2007	140	140
Additional paid-in capital	500,549	498,350
Accumulated other comprehensive income (loss)	672	(546)
Retained earnings (accumulated deficit)	16,069	(1,381)
Total stockholders' equity	517,430	496,563
Total liabilities and stockholders' equity	$794,112	$ 776,066

See accompanying notes to unaudited consolidated financial statements.

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ViroPharma Incorporated
Consolidated Statements of Operations
(unaudited)

(in thousands, except per share data)	Three months ended March 31, 2008	2007
Revenues:		
Net product sales	$50,937	$49,029
Total revenues	50,937	49,029
Costs and Expenses:		
Cost of sales (excluding amortization of product rights)	1,918	2,230
Research and development	14,968	5,529
Selling, general and administrative	12,846	6,973
Intangible amortization	1,688	1,376
Total costs and expenses	31,420	16,108
Operating income	19,517	32,921
Other Income (Expense):		
Interest income	6,311	3,580
Interest expense	(1,419)	(92)
Income before income tax expense	24,409	36,409
Income tax expense	6,959	14,351
Net income	$17,450	$22,058
Net income per share:		
Basic	$ 0.25	$ 0.32
Diluted	$ 0.22	$ 0.31
Shares used in computing net income per share:		
Basic	69,926	69,769
Diluted	84,272	71,547

See accompanying notes to unaudited consolidated financial statements.

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ViroPharma Incorporated
Consolidated Statements of Stockholders' Equity
(unaudited)

(in thousands)	Preferred Stock Number of shares	Preferred Stock Amount	Common Stock Number of shares	Common Stock Amount	Additional paid-in capital	Accumulated other comprehensive income	Retained Earnings (accumulated deficit)	Total stockholders' equity
Balance, December 31, 2007	—	$ —	69,905	$ 140	$498,350	$ (546)	$ (1,381)	$ 496,563
Exercise of common stock options	—	—	42	—	127	—	—	127
Share-based compensation	—	—	—	—	2,072	—	—	2,072
Unrealized gain on available for sale securities, net of income tax	—	—	—	—	—	1,295	—	1,295
Cumulative translation adjustment	—	—	—	—	—	(77)	—	(77)
Net income	—	—	—	—	—	—	17,450	17,450
Balance, March 31, 2007	—	$ —	69,947	$ 140	$500,549	$ 672	$ 16,069	$ 517,430

See accompanying notes to unaudited consolidated financial statements.

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ViroPharma Incorporated
Consolidated Statements of Cash Flows
(unaudited)

(in thousands)	Three months ended March 31, 2008	2007
Cash flows from operating activities:		
Net income	$ 17,450	$ 22,058
Adjustments to reconcile net income to net cash provided by operating activities:		
Non-cash share-based compensation expense	2,073	1,588
Non-cash interest expense	188	13
Deferred tax provision	4,872	5,787
Depreciation and amortization expense	2,006	1,576
Changes in assets and liabilities:		
Accounts receivable	(5,006)	(13,536)
Inventory	(469)	(1,011)
Interest receivable	1,721	(274)
Prepaid expenses and other current assets	(3,513)	626
Other assets	(136)	49
Accounts payable	21	(75)
Accrued expenses and other current liabilities	(4,806)	(2,176)
Non-current income tax payable and other non-current liabilities	22	—
Net cash provided by operating activities	14,423	14,625
Cash flows from investing activities:		
Purchase of property, plant and equipment	(1,091)	(8,409)
Purchases of short-term investments	—	(178,597)
Maturities of short-term investments	131,138	154,040
Net cash provided by (used in) investing activities	130,047	(32,966)
Cash flows from financing activities:		
Net proceeds from the issuance of senior convertible notes	—	241,825
Net purchase of call spread transactions	—	(23,250)
Net proceeds from issuance of common stock	127	255
Excess tax benefits from share-based payment arrangements	—	39
Net cash provided by financing activities	127	218,869
Effect of exchange rate changes on cash	(77)	—
Net increase in cash and cash equivalents	144,520	200,528
Cash and cash equivalents at beginning of period	179,691	51,524
Cash and cash equivalents at end of period	324,211	$ 252,052

See accompanying notes to unaudited consolidated financial statements.

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements

Note 1. Organization and Business Activities

ViroPharma Incorporated and subsidiaries ("ViroPharma" or the "Company") is a biopharmaceutical company dedicated to the development and commercialization of products that address serious infectious diseases, with a focus on products used by physician specialists or in hospital settings. The Company intends to grow through sales of its marketed product, Vancocin, through continued development of its product pipeline and through potential acquisition or licensing of products or acquisition of companies. ViroPharma has one marketed product and one product candidate in clinical development.

The Company markets and sells Vancocin HCl capsules, the oral capsule formulation of vancomycin hydrochloride, in the U.S. and its territories. Vancocin is a potent antibiotic approved by the U.S. Food and Drug Administration, or FDA, to treat antibiotic-associated pseudomembranous colitis caused by *Clostridium difficile* infection, or *C. difficile* , and enterocolitis caused by *Staphylococcus aureus* , including methicillin-resistant strains.

ViroPharma is developing Camvia ™ (maribavir) for the prevention and treatment of cytomegalovirus, or CMV, disease, and non-toxigenic strains of C. *difficile* (NTCD) for the treatment and prevention of CDI. We have licensed the U.S. and Canadian rights for a third product development candidate, an intranasal formulation of pleconaril, to Schering-Plough for the treatment of picornavirus infections.

Basis of Presentation

The consolidated financial information at March 31, 2008 and for the three months ended March 31, 2008 and 2007, is unaudited but includes all adjustments (consisting only of normal recurring adjustments) which, in the opinion of management, are necessary to state fairly the consolidated financial information set forth therein in accordance with accounting principles generally accepted in the United States of America. The interim results are not necessarily indicative of results to be expected for the full fiscal year. These unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements for the year ended December 31, 2007 included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission.

Adoption of Standards

In June 2007, the Emerging Issues Task Force ("EITF") issued EITF No. 07-3, *Accounting for Nonrefundable Advance Payments for Goods or Services to Be Used in Future Research and Development Activities* , ("EITF 7-03") that provides guidance for upfront payments related to goods and services of research and development costs. The Company adopted this EITF as of January 1, 2008 with no material impact on operating results or financial position.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, which allow companies to elect fair-value measurement when an eligible financial asset or financial liability is initially recognized or when an event, such as a business combination, triggers a new basis of accounting for that financial asset or financial liability. The election must be applied to individual contracts, is irrevocable for every contract chosen to be measured at fair value, and must be applied to an entire contract, not to only specified risks, specific cash flows, or portions of that contract. Changes in the fair value of contracts elected must be measured at fair value and recognized in earnings each reporting period. The Company adopted this SFAS as of January 1, 2008 with no impact on operating results or financial position.

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," (SFAS 157) which is effective for fiscal years beginning after November 15, 2007 and for interim periods within those years. This statement defines fair value, establishes a framework for measuring fair value and expands the related disclosure requirements. This statement applies under other accounting pronouncements that require or permit fair value measurements. The statement indicates, among other things, that a fair value measurement assumes that the transaction to sell an asset or transfer a liability occurs in the principal market for the asset or liability or, in the absence of a principal market, the most advantageous market for the asset or liability. SFAS 157 defines fair value based upon an exit price model. Relative to SFAS 157, the FASB issued FASB Staff Positions (FSP) 157-1, 157-2, and proposed 157-c. FSP 157-1 amends SFAS 157 to exclude SFAS 13 and its related interpretive accounting pronouncements that address leasing transactions, while FSP 157-2 delays the effective date of SFAS 157 for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis. FSP 157-c clarifies the principles in SFAS 157 on the fair value measurement of

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

liabilities. Public comments on FSP 157-c were due in February 2008, and responses and recommendations were presented to the board on April 9, 2008. We adopted SFAS 157 as of January 1, 2008, with the exception of the application of the statement to non-recurring nonfinancial assets and nonfinancial liabilities. While we are currently evaluating the impact of the application of the statement to non-recurring nonfinancial assets and nonfinancial liabilities on our financial statements upon adoption, we do not anticipate a material impact on our operating results or financial position. Refer to Note 11 to the Unaudited Consolidated Financial Statements for additional discussion on fair value measurements.

Reclassification

Certain prior year amounts have been reclassified to conform to the current year presentation.

Note 2. Short-Term Investments

Short-term investments consist of fixed income securities with remaining maturities of greater than three months at the date of purchase and debt securities. At March 31, 2008 and December 31, 2007, all of the investments were classified as available for sale investments and measured as Level 1 instruments under SFAS 157.

The following summarizes the available for sale investments at March 31, 2008 and December 31, 2007:

(in thousands)	Cost	Gross unrealized gains	Gross unrealized losses	Fair value
March 31, 2008				
Debt securities:				
Corporate	$273,643	$ 1,151	$ —	$274,794
	$273,643	$ 1,151	$ —	$274,794
Maturities of investments were as follows:				
Less than one year	$273,643	$ 1,151	$ —	$274,794
December 31, 2007				
Debt securities:				
Corporate	$405,487	$ 262	$ 1,112	$404,637
	$405,487	$ 262	$ 1,112	$404,637
Maturities of investments were as follows:				
Less than one year	$405,487	$ 262	$ 1,112	$404,637

Note 3. Inventory

Inventory is related to Vancocin and is stated at the lower of cost or market using the first-in first-out method. The following represents the components of the inventory at March 31, 2008 and December 31, 2007:

(in thousands)	March 31, 2008	December 31, 2007
Raw Materials	$ 3,624	$ 3,355
Finished Goods	1,548	1,348
Total	$ 5,172	$ 4,703

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

Note 4. Intangible Assets

The following represents the balance of the intangible assets at March 31, 2008:

(in thousands)	Gross Intangible Assets	Accumulated Amortization	Net Intangible Assets
Trademarks	$ 12,725	$ 1,726	$ 10,999
Know-how	89,076	12,083	76,993
Customer relationship	40,376	5,477	34,899
Total	$142,177	$ 19,286	$ 122,891

The following represents the balance of the intangible assets at December 31, 2007:

(in thousands)	Gross Intangible Assets	Accumulated Amortization	Net Intangible Assets
Trademarks	$ 12,359	$ 1,575	$ 10,964
Know-how	87,774	11,025	76,749
Customer relationship	39,786	4,997	34,789
Total	$140,099	$ 17,597	$ 122,502

In March 2006, the Company learned that the FDA's Office of Generic Drugs ("OGD") had changed its approach regarding the conditions that must be met in order for a generic drug applicant to request a waiver of in-vivo bioequivalence testing for copies of Vancocin. Since this change in approach is, in accordance with SFAS No. 144, a triggering event and potentially impacts the recoverability or useful life of the Vancocin-related intangible assets, the Company assessed the Vancocin-related intangible assets for potential impairment or change in useful life. While the Company is opposing this attempt by the OGD, the outcome can not be reasonably determined and the impact of this change on market share and net sales is uncertain. However, the Company determined that no impairment charge was appropriate at that time as management believes the undiscounted cash flows, which consider some level of generic impact, will be sufficient to recover the carrying value of the asset and there has been no change to fair value.

In the event the OGD's revised approach for Vancocin remains in effect, the time period in which a generic may enter the market would be reduced. This could result in a reduction to the useful life of the Vancocin-related intangible assets. Management currently believes there are no indicators that would require a change in useful life as management believes that Vancocin will continue to be utilized along with generics that may enter the market.

Additionally, the timing and number of generics, will impact our cash flow assumptions and estimate of fair value, perhaps to a level that could result in an impairment charge. The Company will continue to monitor the actions of the OGD and consider the effects of our opposition actions and the announcements by generic competitors or other adverse events for additional impairment indicators and will reevaluate the expected cash flows and fair value of our Vancocin-related assets at such time.

The Company is obligated to pay Eli Lilly and Company ("Lilly") additional purchase price consideration based on net sales of Vancocin within a calendar year. The additional purchase price consideration is determined by the annual net sales of Vancocin, is paid quarterly and is due each year through 2011. The Company accounts for these additional payments as additional purchase price in accordance with SFAS No. 141, *Business Combinations* , which requires that the additional purchase price consideration is recorded as an increase to the intangible assets of Vancocin, is allocated over the asset classifications described above and is amortized over the remaining estimated useful life of the intangible assets. In addition, at the time of recording the additional intangible assets, a cumulative adjustment is recorded to accumulated intangible amortization, in addition to ordinary amortization expense, in order to reflect amortization as if the additional purchase price had been paid in November 2004.

As of March 31, 2008, we have paid an aggregate of $23.1 million to Lilly in additional purchase price consideration, as our net sales of Vancocin surpassed the maximum obligation level of $65 million in 2007, 2006 and 2005. The $23.1 million paid to Lilly was based upon 35% of $17 million in 2007, 35% of $19 million in 2006 and 50% of $21 million in 2005. The

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

Company is obligated to pay Lilly additional amounts based on 35% of annual net sales between $45 and $65 million of Vancocin during 2008 through 2011.

Based on net sales in the first quarter of 2008, $2.1 is due to Lilly on net sales of Vancocin above the net sales levels reflected above.

Note 5. Property, Equipment and Building Improvements

On January 30, 2007, the Company purchased its corporate headquarters in Exton, Pennsylvania for $7.65 million, which was funded from available cash.

In March 2008, we entered into a lease for a new corporate headquarters located in Exton, Pennsylvania. See further discussion of this lease in the commitments and contingencies footnote.

Note 6. Long-Term Debt

Long-Term debt as of March 31, 2008 and December 31, 2007 is summarized in the following table:

(in thousands)	March 31, 2008	December 31, 2007
Senior convertible notes	$250,000	$ 250,000
less: current portion	—	—
Total debt principal	$250,000	$ 250,000

On March 26, 2007, the Company issued $250.0 million of 2% senior convertible notes due March 2017 (the “senior convertible notes”) in a public offering. The $250.0 million includes an issuance pursuant to the underwriters’ exercise of an overalloment in the amount of $25.0 million that was closed concurrently on March 26, 2007. Net proceeds from the issuance of the senior convertible notes were $241.8 million. The senior convertible notes are unsecured unsubordinated obligations and rank equally with any other unsecured and unsubordinated indebtedness. The senior convertible notes bear interest at a rate of 2% per annum, payable semi-annually in arrears on March 15 and September 15 of each year commencing on September 15, 2007. As of March 31, 2008, the Company has accrued $0.2 million in interest payable to holders of the senior convertible notes. Debt issuance costs of $8.2 million have been capitalized and are being amortized over the term of the senior convertible notes, with the balance to be amortized as of March 31, 2008 being $7.2 million.

The senior convertible notes are convertible into shares of the Company’s common stock at an initial conversion price of $18.87 per share. The senior convertible notes may only be converted: (i) anytime after December 15, 2016; (ii) during the five business-day period after any five consecutive trading day period (the “measurement period”) in which the price per note for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such day; (iii) during any calendar quarter (and only during such quarter) after the calendar quarter ending June 30, 2007, if the last reported sale price of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the applicable conversion price in effect on the last trading day of the immediately preceding calendar quarter; or (iv) upon the occurrence of specified corporate events. Upon conversion, holders of the senior convertible notes will receive shares of common stock, subject to ViroPharma’s option to irrevocably elect to settle all future conversions in cash up to the principal amount of the senior convertible notes, and shares for any excess. We can irrevocably elect this option at any time on or prior to the 35th scheduled trading day prior to the maturity date of the senior convertible notes. The senior convertible notes may be required to be repaid on the occurrence of certain fundamental changes, as defined in the senior convertible notes. As of March 31, 2008, the fair value of the $250.0 million convertible senior notes outstanding was approximately $182.7 million, based on the level 2 valuation hierarchy under SFAS 157.

Concurrent with the issuance of the senior convertible notes, the Company entered into privately-negotiated transactions, comprised of purchased call options and warrants sold, to reduce the potential dilution of our common stock upon conversion of the senior convertible notes. The transactions, taken together, have the effect of increasing the initial conversion price to $24.92 per share. The net cost of the transactions was $23.3 million.

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

The call options allow ViroPharma to receive up to approximately 13.25 million shares of its common stock at $18.87 from the call option holders, equal to the number of shares of common stock that ViroPharma would issue to the holders of the senior convertible notes upon conversion. These call options will terminate upon the earlier of the maturity dates of the related senior convertible notes or the first day all of the related senior convertible notes are no longer outstanding due to conversion or otherwise. Concurrently, the Company sold warrants to the warrant holders to receive shares of its common stock at an exercise price of $24.92 per share. These warrants expire ratably over a 60-day trading period beginning on June 13, 2017 and will be net-share settled.

The purchased call options are expected to reduce the potential dilution upon conversion of the senior convertible notes in the event that the market value per share of ViroPharma common stock at the time of exercise is greater than $18.87, which corresponds to the initial conversion price of the senior convertible notes, but less than $24.92 (the warrant exercise price). The warrant exercise price is 75.0% higher than the price per share of $14.24 of the Company's stock on the pricing date. If the market price per share of ViroPharma common stock at the time of conversion of any senior convertible notes is above the strike price of the purchased call options ($18.87), the purchased call options will entitle the Company to receive from the counterparties in the aggregate the same number of shares of our common stock as the Company would be required to issue to the holder of the converted senior convertible notes. Additionally, if the market price of ViroPharma common stock at the time of exercise of the sold warrants exceeds the strike price of the sold warrants ($24.92), the Company will owe the counterparties an aggregate of approximately 13.25 million shares of ViroPharma common stock. If we have insufficient shares of common stock available for settlement of the warrants, we may issue shares of a newly created series of preferred stock in lieu of our obligation to deliver common stock. Any such preferred stock would be convertible into 10% more shares of our common stock than the amount of common stock we would otherwise have been obligated to deliver under the warrants.

The purchased call options and sold warrants are separate transactions entered into by the Company with the counterparties, are not part of the terms of the senior convertible notes, and will not affect the holders' rights under the senior convertible notes. Holders of the senior convertible notes will not have any rights with respect to the purchased call options or the sold warrants. The purchased call options and sold warrants meet the definition of derivatives under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* . These instruments have been determined to be indexed to the Company's own stock (in accordance with the guidance of EITF Issue No. 01-6, *The Meaning of Indexed to a Company's Own Stock*) and have been recorded in stockholders' equity in the Company's Consolidated Balance Sheet (as determined under EITF Issue No. 00-19, *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock*). As long as the instruments are classified in stockholders' equity they are not subject to the mark to market provisions of SFAS No. 133. We also recorded a net deferred tax asset of $4.5 million in additional paid in capital for the effect of future tax benefits that are more likely than not expected to be utilized related to the tax basis of the convertible note hedges in accordance with SFAS 109 and EITF No. 05-8, *Income Tax Consequences of Issuing Convertible Debt with a Beneficial Conversion Feature* .

Note 7. Share-based Compensation

In accordance with Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* ("SFAS 123R"), the Company recorded share-based compensation expense as follows:

(in thousands)	Three months ended March 31,	
	2008	2007
Research and development	$ 671	$ 454
Selling, general and administrative	1,402	1,134
Total	$ 2,073	$ 1,588

Refer to Note 11 of the Company's 2007 Annual Report on Form 10-K for information on the valuation and accounting for these plans.

Employee Stock Option Plans

The Company currently has three option plans in place: a 1995 Stock Option and Restricted Share Plan ("1995 Plan"), a 2001 Equity Incentive Plan ("2001 Plan") and a 2005 Stock Option and Restricted Share Plan ("2005 Plan") (collectively, the "Plans").

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

The following table lists the balances available by Plan at March 31, 2008:

	1995 Plan	2001 Plan	2005 Plan	Combined
Number of shares authorized	4,500,000	500,000	2,850,000	7,850,000
Number of options granted since inception	(6,997,515)	(1,255,472)	(2,662,090)	(10,915,077)
Number of options cancelled since inception	2,970,908	766,737	243,665	3,981,310
Number of shares expired	(473,393)	—	—	(473,393)
Number of shares available for grant	—	11,265	431,575	442,840

The Company issued 416,872 stock options in the first quarter of 2008. The weighted average fair value of each option grant was estimated at $7.25 per share using the Black-Scholes option-pricing model using the following assumptions:

Expected dividend yield	—
Range of risk free interest rate	2.96% - 3.70%
Weighted-average volatility	88.2%
Range of volatility	78.0% - 90.2%
Range of expected option life (in years)	5.50 – 6.25

The Company has 5,264,842 option grants outstanding at March 31, 2008 with exercise prices ranging from $0.99 per share to $38.70 per share and a weighted average remaining contractual life of 7.05 years. The following table lists the outstanding and exercisable option grants as of March 31, 2008:

	Number of options	Weighted average exercise price	Weighted average remaining contractual term (years)	Aggregate intrinsic value (in thousands)
Outstanding	5,264,842	$ 10.98	7.05	$ 10,371
Exercisable	2,846,265	$ 10.23	5.64	$ 8,999

As of March 31, 2008, there was $18.9 million of total unrecognized compensation cost related to unvested share-based payments (including share options) granted under the Plans. That cost is expected to be recognized over a weighted-average period of 1.56 years.

Employee Stock Purchase Plan

The Company has an employee stock purchase plan. Under this plan, no shares were sold to employees during the first quarter of 2008. During the year ended December 31, 2007, 22,038 shares were sold to employees. As of March 31, 2008 there are approximately 271,097 shares available for issuance under this plan.

Under this plan, there are two plan periods: January 1 through June 30 (“Plan Period One”) and July 1 through December 31 (“Plan Period Two”). For Plan Period One in 2008, the fair value of approximately $44,500 was estimated using the Type B model provided by SFAS 123R, with a risk free interest rate of 3.3%, volatility of 62.6% and an expected option life of 0.5 years. This fair value is being amortized over the six month period ending June 30, 2008.

Non-employee Stock Options

The Company remeasured the fair value of 6,250 options as of March 31, 2008, which resulted in no impact to compensation expense in the first quarter of 2008. The fair value of the non-employee share options was estimated at $16,000 using the Black-Scholes option-pricing model, with a risk free interest rate ranging from 1.6% to 1.8%, volatility ranging from 56.7% to 68.8%, weighted volatility of 61.4% and an expected option life ranging from 0.79 to 4.04 years.

There were no non-employee share options vested or exercised during the quarter ended March 31, 2008 or 2007.

Note 8. Income Tax Expense

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

The Company's effective income tax rate was 28.5% and 39.4% for the quarters ended March 31, 2008 and 2007, respectively. Income tax expense includes federal, state and foreign income tax at statutory rates and the effects of various permanent differences. The decrease in the 2008 rate as compared to 2007 is primarily due to the Company's current estimate of the impact of orphan drug credit for maribavir.

On January 1, 2007, the Company adopted FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"). During the quarter ended March 31, 2008, we had no material changes to our non-current liability for uncertain tax positions.

Note 9. Comprehensive Income

The following table reconciles net income to comprehensive income for the three months ended March 31, 2008 and 2007:

(in thousands)	Three months ended March 31,	
	2008	2007
Net income	$17,450	$22,058
Other comprehensive:		
Unrealized gains on available for sale securities	1,295	132
Currency translation adjustments	(77)	—
Comprehensive income	$18,668	$22,190

The unrealized gains are reported net of federal and state income taxes.

Note 10. Earnings per share

(in thousands, except per share data)	Three months ended March 31,	
	2008	2007
Basic Earnings Per Share		
Net income	$17,450	$22,058
Common stock outstanding (weighted average)	69,926	69,769
Basic net income per share	$ 0.25	$ 0.32
Diluted Earnings Per Share		
Net income	$17,450	$22,058
Add interest expense on senior convertible notes, net of income tax	883	57
Diluted net income	$18,333	$22,115
Common stock outstanding (weighted average)	69,926	69,769
Add shares from senior convertible notes	13,248	883
Add "in-the-money" stock options	1,097	895
Common stock assuming conversion and stock option exercises	84,272	71,547
Diluted net income per share	$ 0.22	$ 0.31

The following common shares that are associated with stock options were excluded from the calculations as their effect would be anti-dilutive:

(in thousands)	Three months ended March 31,	
	2008	2007
Common Shares Excluded	2,278	573

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

Note 11. Fair Value Measurement

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements,” (SFAS 157), which is effective for fiscal years beginning after November 15, 2007 and for interim periods within those years. This statement defines fair value, establishes a framework for measuring fair value and expands the related disclosure requirements. This statement applies under other accounting pronouncements that require or permit fair value measurements. The statement indicates, among other things, that a fair value measurement assumes that the transaction to sell an asset or transfer a liability occurs in the principal market for the asset or liability or, in the absence of a principal market, the most advantageous market for the asset or liability. SFAS 157 defines fair value based upon an exit price model.

Relative to SFAS 157, the FASB issued FASB Staff Positions (FSP) 157-1 and 157-2. FSP 157-1 amends SFAS 157 to exclude SFAS No. 13, “Accounting for Leases,” (SFAS 13) and its related interpretive accounting pronouncements that address leasing transactions, while FSP 157-2 delays the effective date of the application of SFAS 157 to fiscal years beginning after November 15, 2008 for all nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a nonrecurring basis.

Valuation Hierarchy - SFAS 157 establishes a valuation hierarchy for disclosure of the inputs to valuation used to measure fair value. This hierarchy prioritizes the inputs into three broad levels as follows. Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities. Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument. Level 3 inputs are unobservable inputs based on our own assumptions used to measure assets and liabilities at fair value. A financial asset or liability’s classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

The following table provides the assets and liabilities carried at fair value measured on a recurring basis as of March 31, 2008:

		Fair Value Measurements at March 31, 2008 Using		
(in thousands of dollars)	Total Carrying Value at March 31, 2008	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Cash and cash equivalents	$ 324,211	$ 324,211	$ —	$ —
Short-term investments	274,794	274,794	—	—
Total	599,005	599,005		

Valuation Techniques - Cash and cash equivalents and short-term investments are measured at fair value using quoted market prices and are classified within Level 1 of the valuation hierarchy. There were no changes in valuation techniques due the quarter ended March 31, 2008.

ViroPharma Incorporated
Notes to the Unaudited Consolidated Financial Statements (continued)

Note 12. Subsequent Events

On April 14, 2008, the Company and Wyeth Pharmaceuticals, a division of Wyeth, jointly determined to discontinue the development of HCV-796 due to the previously announced safety issue that emerged in the ongoing Phase 2 trial in patients with hepatitis C. The Company also announced that we and Wyeth do not expect to continue to collaborate on future development of hepatitis C treatment candidates, however a decision to terminate the First Amended and Restated Collaboration and License Agreement dated June 26, 2003 has not been reached.

Note 13. Commitments and Contingencies

In March 2008, the Company entered into a lease, comprising 78,264 square feet of office and related space, for the Company's new headquarters located in Exton, Pennsylvania. The lease expires seven years and six months from the point in which the Company begins to occupy the space, which is expected in the fourth quarter of 2008.

The Company's future minimum lease payments under the Company's operating leases related to buildings and equipment for periods subsequent to March 31, 2008 are as follows (in thousands):

Year ending December 31,	Commitments
2008	$ 239
2009	1,151
2010	1,256
Thereafter	7,179
Total minimum payments	$ 9,825

The Company has severance agreements for certain employees and change of control agreements for executive officers and certain other employees. Under its severance agreements, certain employees may be provided separation benefits from the Company if they are involuntarily separated from employment. Under the Company's change of control agreements, certain employees are provided separation benefits if they are either terminated or resign for good reason from the Company within 12 months from a change of control.

Note 14. Supplemental Cash Flow Information

(in thousands)	Three months ended March 31,	
	2008	2007
Supplemental disclosure of non-cash transactions:		
Employee share-based compensation	$ 2,072	$ 1,588
Liability classified share-based compensation benefit	1	—
Unrealized gains on available for sale securities	1,295	132
Reversal of accrued deferred finance costs	151	—
Non-cash increase of intangible assets for Vancocin obligation to Lilly	2,078	360
Asset retirement obligation	976	—
Amortization of asset retirement obligation	14	—
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	$ 7,178	$ 7,299
Cash paid for interest	2,500	—
Cash received for stock option exercises	127	243
Cash received for employee stock purchase plan	61	5

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

We are a biopharmaceutical company dedicated to the development and commercialization of products that address serious infectious diseases, with a focus on products used by physician specialists or in hospital settings. We intend to grow through sales of our marketed product, Vancocin ® HCl capsules, through the continued development of our product pipeline and through potential acquisition or licensing of products or acquisition of companies. We have one marketed product and one product candidate in clinical development.

We market and sell Vancocin ® HCl capsules, the oral capsule formulation of vancomycin hydrochloride, in the U.S. and its territories. Vancocin is a potent antibiotic approved by the U.S. Food and Drug Administration, or FDA, to treat antibiotic-associated pseudomembranous colitis caused by *Clostridium difficile infection* (CDI), or *C. difficile* , and enterocolitis caused by *Staphylococcus aureus* , including methicillin-resistant strains. We are developing Camvia ™ (maribavir) for the prevention and treatment of cytomegalovirus, or CMV, disease, and non-toxigenic strains of C. *difficile* (NTCD) for the treatment and prevention of CDI. We have licensed the U.S. and Canadian rights for a third product development candidate, an intranasal formulation of pleconaril, to Schering-Plough for the treatment of picornavirus infections.

We intend to evaluate in-licensing or other opportunities to acquire products in development, or those that are currently on the market. We plan to seek products for diseases treated by physician specialists and in hospital settings to complement the markets that we hope our CMV and NTCD programs will serve or in which Vancocin is prescribed.

While we have been profitable from operations since 2005, prior to the 2004 acquisition of Vancocin, our first commercial product, we incurred historical losses. Historical losses resulted principally from costs incurred in research and development activities, write-off of acquired technology rights, general and administrative expenses, interest payments on our outstanding debt and sales and marketing expenses.

Executive Summary

Since the beginning of 2008, we experienced the following:

Business Activities

CMV:

- Continued recruitment into ongoing phase 3 studies of maribavir in patients undergoing allogeneic stem cell and solid organ liver transplant;
- Prelaunch activities for maribavir accelerated in preparation for planned 2009 initial NDA and MAA filing for maribavir in stem cell transplant patients;

CDI:

- Vancocin prescriptions continued to increase, with a 3.7% increase compared to the first quarter of 2007;
- Efforts continued to optimize manufacturing and scale up for non-toxigenic *C. difficile* (NTCD) program;

HCV (with our partner Wyeth):

- Announced in April that we have discontinued the development of HCV-796 due to the previously announced safety issue that emerged in the ongoing Phase 2 trial in patients with hepatitis C;

Financial Results

- Increased working capital by $25.1 million to $619.5 million, primarily as a result of operating cash flows and higher accounts receivable.;
- Increased net sales to $50.9 million, which was impacted by a price increase in February;

Liquidity

- Generated net cash from operating activities of $14.4 million;
- Increased cash and cash equivalents and short-term investments by $14.7 million, primarily driven by operating cash flows.

During 2008 and going forward, we expect to face a number of challenges, which include the following:

The commercial sale of approved pharmaceutical products is subject to risks and uncertainties. There can be no assurance that future Vancocin sales will meet or exceed the historical rate of sales for the product, for reasons that include, but are not limited to, generic and non-generic competition for Vancocin and/or changes in prescribing habits or disease incidence. Additionally, period over period fluctuations in net product sales are expected to occur as a result of wholesaler buying decisions.

We cannot assure you that generic competitors will not take advantage of the absence of patent protection for Vancocin to attempt to market a competing product. We are not able to predict the time period in which a generic drug may enter the market. On March 17, 2006, we learned that the OGD changed its approach regarding the conditions that must be met in order for a generic drug applicant to request a waiver of in-vivo bioequivalence testing for copies of Vancocin. We are opposing this attempt. However, in the event this change in approach remains in effect, the time period in which a generic competitor may enter the market would be reduced and multiple generics may enter the market, which would materially impact our operating results, cash flows and possibly asset valuations. There can be no assurance that the FDA will agree with the positions stated in our Vancocin related submissions or that our efforts to oppose the OGD's March 2006 recommendation to determine bioequivalence to Vancocin through in vitro dissolution testing will be successful. We cannot predict the timeframe in which the FDA will make a decision regarding either our citizen petition for Vancocin or the approval of generic versions of Vancocin. If we are unable to change the recommendation set forth by the OGD in March 2006, the threat of generic competition will be high.

We will face intense competition in acquiring additional products to expand further our product portfolio. Many of the companies and institutions that we will compete with in acquiring additional products to expand further our product portfolio have substantially greater capital resources, research and development staffs and facilities than we have, and substantially greater experience in conducting business development activities. We may need additional financing in order to acquire new products in connection with our plans as described in this report.

The outcome of our clinical development programs is subject to considerable uncertainties. We cannot be certain that we will be successful in developing and ultimately commercializing any of our product candidates, that the FDA or other regulatory authorities will not require additional or unanticipated studies or clinical trial outcomes before granting regulatory approval, or that we will be successful in gaining regulatory approval of any of our product candidates in the timeframes that we expect, or at all. For example, On April 14, 2008, the Company and Wyeth Pharmaceuticals, a division of Wyeth, jointly determined to discontinue the development of HCV-796 due to the previously announced safety issue that emerged in the ongoing Phase 2 trial in patients with hepatitis C. We also announced that the Company and Wyeth do not expect to continue to collaborate on future development of hepatitis C treatment candidates, however a decision to terminate the First Amended and Restated Collaboration and License Agreement dated June 26, 2003 has not been reached.

While we anticipate that cash flows from Vancocin, as well as our current cash, cash equivalents and short-term investments, should allow us to fund substantially all of our ongoing development and other operating costs, as well as the interest payable on the senior convertible notes, we may need additional financing in order to expand our product portfolio. We cannot assure you that planned clinical trials can be initiated, or that planned or ongoing clinical trials can be successfully concluded or concluded in accordance with our anticipated schedule and costs.

Our actual results could differ materially from those results expressed in, or implied by, our expectations and assumption described in this Quarterly Report on Form 10-Q. The risks described in this report, our Form 10-K for the year ended December 31, 2007 are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results. Please also see our discussion of the "Risk Factors" in Item 1A, which describe other important matters relating our business.

Results of Operations

Three-months ended March 31, 2008 and 2007

(in thousands, except per share data)	For the three months ended March 31,	
	2008	2007
Net product sales	$ 50,937	$ 49,029
Total revenues	$ 50,937	$ 49,029

Cost of sales (excluding amortization of product rights)	$ 1,918	$ 2,230
Operating income	$19,517	$32,921
Net income	$17,450	$22,058
Net income per share:		
Basic	$ 0.25	$ 0.32
Diluted	$ 0.22	$ 0.31

The $13.4 million decrease in operating income resulted from the $1.9 million increase in net sales, along with a $0.3 reduction in the cost of sales, offset by the increased costs to support our CMV and NTCD development programs as well as increased selling, general and administrative costs. The increase in net income for the three months ended March 31, 2008 resulted primarily from the factors discussed above along with a $2.7 million increase in interest income and a $7.4 million reduction in income tax expense.

Revenues

Revenues consisted of the following:

(in thousands)	For the three months ended March 31,	
	2008	2007
Net product sales	$ 50,937	$ 49,029
Total revenues	$ 50,937	$ 49,029

Revenue—Vancocin product sales

Our net product sales are solely related to Vancocin. We sell Vancocin only to wholesalers who then distribute the product to pharmacies, hospitals and long-term care facilities, among others. Our sales of Vancocin are influenced by wholesaler forecasts of prescription demand, wholesaler buying decisions related to their desired inventory levels, and, ultimately, end user prescriptions, all of which could be at different levels from period to period.

During the quarter ended March 31, 2008, net sales of Vancocin increased 3.9% compared to the same period in 2007 primarily due to the impact of a price increase in 2008, partially offset by a decrease in sales volume. Based upon data reported by IMS Health Incorporated, prescriptions during the quarter ended March 31, 2008 exceeded prescriptions in the 2007 period by 3.7%.

Approximately 94% of our sales are to three wholesalers. Vancocin product sales are influenced by prescriptions and wholesaler forecasts of prescription demand, which could be at different levels from period to period. We receive inventory data from one of our three largest wholesalers through our fee for service agreement. We do not independently verify this data. Based on this inventory data and our estimates, we believe that as of March 31, 2008, the wholesalers did not have excess channel inventory.

Cost of sales (excluding amortization of product rights)

Vancocin cost of sales includes the cost of materials and distribution costs and excludes amortization of product rights. The decrease of $0.3 million over the prior year is the result of a decrease in the number of units sold.

Since units are shipped based upon earliest expiration date, our cost of sales will be impacted by the cost associated with the specific units that are sold. Additionally, we may experience fluctuations in quarterly manufacturing yields and if this occurs, we would expect the cost of product sales of Vancocin to fluctuate from quarter to quarter.

Research and development expenses

For each of our research and development programs, we incur both direct and indirect expenses. Direct expenses include third party costs related to these programs such as contract research, consulting, cost sharing payments or receipts, and preclinical and development costs. Indirect expenses include personnel, facility, stock compensation and other overhead costs. Due to advancements in our maribavir clinical development program and NTCD preclinical program, we expect future costs to exceed current costs.

Research and development expenses were divided between our research and development programs in the following manner:

(in thousands)	For the three months ended March 31,	
	2008	2007
Direct – Core programs		
CMV	$ 9,208	$2,957
HCV	375	250
Vancocin	217	93
Non-toxigenic strains of *C. difficle* (NTCD)	1,002	19
Indirect		
Development	4,166	2,210
Total	$14,968	$5,529

Direct Expenses—Core Development Programs

Our direct expenses related to our CMV program increased significantly in the first quarter of 2008 as we advanced through our two ongoing Phase 3 clinical studies. Specifically, we continued recruitment and site initiations into ongoing phase 3 studies of maribavir in patents undergoing allogeneic stem cell transplant as we move towards our target of at least 613 patients at transplant centers in the U.S., Canada and several European Countries and our target of approximately 348 patients undergoing liver transplantation in the U.S. and Europe. Additionally, we began executing on our pre-launch plans for our clinical, regulatory and commercial activities for maribavir in the U.S. and Europe as we move towards our planned 2009 initial NDA and MAA filings for maribavir in stem cell transplant patients. We intend to file a supplemental NDA and MAA filings for maribavir in liver transplant patients when the data is available. During the first quarter of 2007 we continued recruitment into an ongoing phase 3 study of maribavir in patents undergoing allogeneic stem cell transplant and prepared for a second phase 3 study of maribavir in solid organ transplant patients.

Related to our HCV program, costs in the first quarter of 2008 primarily represent those paid to Wyeth in connection with our cost-sharing arrangement related to discovery efforts to identify potential back-ups/follow-on compounds to HCV-796. During the first quarter of 2007, costs included continued recruitment in the 500 mg BID arms of a phase 2 study of HCV-796 when dosed in combination with pegylated interferon and ribavirin. In April 2008, we announced that ViroPharma and Wyeth, have jointly discontinued the development of HCV-796 due to the previously announced safety issue that emerged in the ongoing Phase 2 trial in patients with hepatitis C. We also announced that ViroPharma and Wyeth do not expect to continue to collaborate on future development of hepatitis C treatment candidates.

The increase in costs of NTCD in the first quarter of 2008 over 2007 relate to increased research and development activities and the costs associated with manufacturing NTCD spores.

Related to our Vancocin program, costs in the first quarter of 2008 and 2007 related to additional research activities.

Anticipated fluctuations in future direct expenses are discussed under " **Liquidity** – ***Development Programs*** . "

Indirect Expenses

These costs primarily relate to the compensation of and overhead attributable to our development team, primarily due to increased personnel costs of $1.8 million resulting from additional hiring in the US and EU to support our clinical studies of maribavir and prepare for a regulatory submission and commercial expenses to support a potential future product launch.

Selling, general and administrative expenses

Selling, general and administrative expenses (SG&A) increased $5.9 million for the first quarter of 2008 as compared to the first quarter of 2007. The largest contributors to this increase were compensation costs, including share based compensation, as a result of increased headcount from the addition of our European operations and the Vancocin sales force ($2.7 million), medical education activities ($1.7 million) and marketing efforts ($1.1 million). Included in legal and consulting costs are expenses incurred related to our opposition to the attempt by the OGD regarding the conditions that must be met in order for a generic drug application to request a waiver of in-vivo bioequivalence testing for copies of Vancocin, which were $0.9 million and $0.8 million in the first quarter of 2008 and 2007, respectively. We anticipate that these additional legal and consulting costs will continue at the current level, or possibly higher, in future periods as we continue this opposition. During 2008, we anticipate to continue to increase spending in selling, general and administrative expenses, driven by increased compensation due to increased headcount, as well additional medical education and marketing expenses.

Intangible amortization and acquisition of technology rights

Intangible amortization is the result of the Vancocin product rights acquisition in the fourth quarter of 2004. Additionally, as described in our agreement with Lilly, to the extent that we incur an obligation to Lilly for additional payments on Vancocin sales, we have contingent consideration. We record the obligation as an adjustment to the carrying amount of the related intangible asset and a cumulative adjustment to the intangible amortization upon achievement of the related sales milestones. Contingent consideration and Lilly related additional payments are more fully described in Note 4 of the Unaudited Consolidated Financial Statements.

Intangible amortization for the quarters ended March 31, 2008 and 2007 were comparable at $1.7 million and $1.4 million, respectively. The first quarter of 2008 included approximately $288,000 for a cumulative adjustment, as compared to $35,000 for the first quarter of 2007.

In March 2006, as a result of OGD's change in approach relating to generic bioequivalence determinations, we reviewed the value of the intangible asset and concluded that there was no impairment of the carrying value of the intangible assets or change to the useful lives as estimated at the acquisition date. Additionally, on an ongoing periodic basis, we evaluate the useful life of these intangible assets and determine if any economic, governmental or regulatory event has modified their estimated useful lives. This evaluation did not result in a change in the life of the intangible assets during the quarter ended March 31, 2008. We will continue to monitor the actions of the OGD and consider the effects of our opposition efforts and the announcements by generic competitors or other adverse events for additional impairment indicators and we will reevaluate the expected cash flows and fair value of our Vancocin-related assets, as well as estimated useful lives, at such time.

Other Income (Expense)

Interest Income

Interest income for three months ended March 31, 2008 and 2007 was $6.3 million and $3.6 million. Interest income increased primarily due to increased short-term investments during the 2008 period and to a lesser extent, an increased rate of return.

Interest Expense

(in thousands)	For the three months ended March 31,	
	2008	2007
Interest expense on 2% senior convertible notes	$ 1,231	$ 79
Amortization of finance costs	188	13
Total interest expense	$ 1,419	$ 92

Interest expense and amortization of finance costs in 2008 and 2007 relates entirely to the senior convertible notes issued on March 26, 2007, as described in Note 6 to the Unaudited Consolidated Financial Statements.

Income Tax Expense

Our effective income tax rate was 28.5% and 39.4% for the quarters ended March 31, 2008 and 2007, respectively. Our income tax expense includes federal, state and foreign income taxes at statutory rates and the effects of various permanent differences. The decrease in the first quarter of 2008 as compared to the same period of 2007 is primarily due to our current estimate of the impact of the orphan drug credit for maribavir. We currently anticipate an effective tax rate in the range of approximately 27% to 31% for the year ended December 31, 2008, which includes an estimate related to orphan drug credit based upon estimates of qualified expenses and excludes the impact of discreet items and any potential changes in the valuation allowance. We continue to evaluate our qualified expenses and, to the extent that actual qualified expenses vary significantly from our estimates, our effective tax rate will be impacted.

Liquidity

We expect that our near term sources of revenue will arise from Vancocin product sales. However, we cannot predict what the actual sales of Vancocin will be in the future as the outcome of our effort to oppose the OGD's approach to bioequivalence determinations for generic copies of Vancocin is uncertain. In addition, there are no assurances that demand for Vancocin will continue at historical or current levels despite our additional promotional efforts.

Our ability to generate positive cash flow is also impacted by the timing of anticipated events in our CMV and NTCD programs, including the scope of the clinical trials required by regulatory authorities, results from clinical trials, the results of our product development efforts, and variations from our estimate of future direct and indirect expenses.

While we anticipate that cash flows from Vancocin, as well as our current cash, cash equivalents and short-term investments, should allow us to fund substantially all of our ongoing development and other operating costs, as well as the interest payable on the senior convertible notes, we may need additional financing in order to expand our product portfolio. At March 31, 2008, we had cash, cash equivalents and short-term investments of $599.0 million. At March 31, 2008, the annualized weighted average nominal interest rate on our short-term investments was 3.5% and the weighted average length to maturity was 1.6 months.

Overall Cash Flows

During the quarter ended March 31, 2008, we generated $14.4 million of net cash from operating activities, primarily from the cash contribution of Vancocin. Partially offsetting this cash contribution is the impact of higher accounts receivables, which is related to the timing of orders and the price increase, higher prepaid expenses and other current assets and decreased accrued expenses. We were provided with $130.0 million of cash from investing activities, as we transferred short-term investments to cash and cash equivalents. Our net cash provided by financing activities for the quarter ended March 31, 2008 was $0.1 million.

Operating Cash Inflows

We began to receive cash inflows from the sale of Vancocin in January 2005. We cannot reasonably estimate the period in which we will begin to receive material net cash inflows from our product candidates currently under development. Cash inflows from development-stage products are dependent on achievement of regulatory approvals. We may not receive revenues if a development stage product fails to obtain regulatory approvals. The most significant of our near-term operating development cash inflows are as described under " ***Development Programs*** ".

Operating Cash Outflows

The cash flows we have used in operations historically have been applied to research and development activities, marketing and business development efforts, general and administrative expenses, servicing our debt, and income tax payments. Bringing drugs from the preclinical research and development stage through phase 1, phase 2, and phase 3 clinical trials and FDA approval is a time consuming and expensive process. Because our product candidates are currently in the clinical stage of development, there are a variety of events that could occur during the development process that will dictate the course we must take with our drug development efforts and the cost of these efforts. As a result, we cannot reasonably estimate the costs that we will incur through the commercialization of any product candidate. However, due to advancements in our clinical trials with maribavir and our initiative to develop non-toxigenic strains of C. *difficile* , we expect future costs to exceed current costs. The most significant of our near-term operating development cash outflows are as described under " ***Development Programs*** ".

Development Programs

For each of our development programs, we incur both direct and indirect expenses. Direct expenses include third party costs related to these programs such as contract research, consulting, cost sharing payments or receipts, and preclinical and clinical development costs. Indirect expenses include personnel, facility and other overhead costs. Additionally, for some of our development programs, we have cash inflows and outflows upon achieving certain milestones.

Core Development Programs

CMV program —From the date we in-licensed maribavir through March 31, 2008, we paid $53.0 million of direct costs in connection with this program, including the acquisition fee of $3.5 million paid to GSK for the rights to maribavir in September 2003 and a $3.0 million milestone payment in February 2007.

During the remainder of 2008, we expect maribavir-related activities to include continued recruitment into both the ongoing phase 3 studies in patients undergoing allogeneic stem cell transplant and in patients who have received a liver transplant. We will also continue to conduct phase 1 clinical pharmacology studies to support the overall clinical development program. Based on the execution of phase 3 clinical development studies, we expect our expenses in 2008 for the CMV program to be substantially higher than in 2007. We are solely responsible for the cost of developing our CMV product candidate.

Should we achieve certain product development events, we are obligated to make certain milestone payments to GSK, the licensor of maribavir.

HCV program —From the date that we commenced predevelopment activities for compounds in this program that are currently active through March 31, 2008, we paid $4.1 million in direct expenses for the predevelopment and development activities relating to such compounds. These costs are net of contractual cost sharing arrangements between Wyeth and us. Wyeth pays a substantial portion of the collaboration's predevelopment and development expenses.

In April 2008 we, along with Wyeth, discontinued the development of HCV-796 due to the previously announced safety issue that emerged in the ongoing Phase 2 trial in patients with hepatitis C. Additionally, we announced that ViroPharma and Wyeth do not expect to continue to collaborate on future development of hepatitis C treatment candidates. During the remainder of 2008, we will continue to incur costs associated with patients in the phase 2 study currently receiving standard of care therapy.

Vancocin —We acquired Vancocin in November 2004 and through March 31, 2008, we have spent approximately $1.0 million in direct research and development costs related to Vancocin activities since acquisition.

NTCD —We acquired NTCD in February 2006 and have spent approximately $2.0 million in direct research and development costs. During the remainder of 2008, we expect our research and development activities on NTCD to increase significantly, therefore, we expect direct costs to increase materially above 2007 levels.

Direct Expenses—Non-Core Development Programs

Common Cold —From the date that we commenced predevelopment activities for the intranasal formulation of pleconaril through December 31, 2004, we incurred $1.9 million in direct expenses. We have not incurred any significant direct expenses in connection with this program since 2004, nor will we in the future, as Schering-Plough has assumed responsibility for all future development and commercialization of pleconaril.

In November 2004, we entered into a license agreement with Schering-Plough under which Schering-Plough has assumed responsibility for all future development and commercialization of pleconaril. Schering-Plough paid us an initial license fee of $10.0 million in December 2004 and purchased our existing inventory of bulk drug substance for an additional $6.0 million in January 2005. We will also be eligible to receive up to an additional $65.0 million in milestone payments upon achievement of certain targeted regulatory and commercial events, as well as royalties on Schering-Plough's sales of intranasal pleconaril in the licensed territories.

Business development activities

Through March 31, 2008, we paid an acquisition price of $116.0 million, paid $23.1 million related to additional purchase price consideration tied to product sales (see Note 4 of the Unaudited Consolidated Financial Statements) and incurred $2.0 million of fees and expenses in connection with the Vancocin acquisition.

In addition, we intend to seek to acquire additional products or product candidates. The costs associated with evaluating or acquiring any additional product or product candidate can vary substantially based upon market size of the product, the commercial effort required for the product, the product's current stage of development, and actual and potential generic and non-generic competition for the product, among other factors. Due to the variability of the cost of evaluating or acquiring business development candidates, it is not feasible to predict what our actual evaluation or acquisition costs would be, if any, however, the costs could be substantial.

Senior Convertible Notes

On March 26, 2007, the Company issued $250.0 million of 2% senior convertible notes due March 2017 (the "senior convertible notes") in a public offering. The $250.0 million includes an issuance pursuant to the underwriters' exercise of an overalloment in the amount of $25.0 million that was closed concurrently on March 26, 2007. Net proceeds from the issuance of the senior convertible notes were $241.8 million. The senior convertible notes are unsecured unsubordinated obligations and rank equally with any other unsecured and unsubordinated indebtedness. The senior convertible notes bear interest at a rate of 2% per annum, payable semi-annually in arrears on March 15 and September 15 of each year commencing on September 15, 2007. As of March 31, 2008, the Company has accrued $0.2 million in interest payable to holders of the senior convertible notes. Debt issuance costs of $8.2 million have been capitalized and are being amortized over the term of the senior convertible notes, with the balance to be amortized as of March 31, 2008 being $7.2 million.

The senior convertible notes are convertible into shares of the Company's common stock at an initial conversion price of $18.87 per share. The senior convertible notes may only be converted: (i) anytime after December 15, 2016; (ii) during the five business-day period after any five consecutive trading day period (the "measurement period") in which the price per note for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such day; (iii) during any calendar quarter (and only during such quarter) after the calendar quarter ending June 30, 2007, if the last reported sale price of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the applicable conversion price in effect on the last trading day of the immediately preceding calendar quarter; or (iv) upon the occurrence of specified corporate events. Upon conversion, holders of the senior convertible notes will receive shares of common stock, subject to ViroPharma's option to irrevocably elect to settle all future conversions in cash up to the principal amount of the senior convertible notes, and shares for any excess. We can irrevocably elect this option at any time on or prior to the 35th scheduled trading day prior to the maturity date of the senior convertible notes. The senior convertible notes may be required to be repaid on the occurrence of certain fundamental changes, as defined in the senior convertible notes. As of March 31, 2008, the fair value of the $250.0 million convertible senior notes outstanding was approximately $182.7 million, based on the level 2 valuation hierarchy under SFAS 157.

Concurrent with the issuance of the senior convertible notes, the Company entered into privately-negotiated transactions, comprised of purchased call options and warrants sold, to reduce the potential dilution of our common stock upon conversion of the senior convertible notes. The transactions, taken together, have the effect of increasing the initial conversion price to $24.92 per share. The net cost of the transactions was $23.3 million.

The call options allow ViroPharma to receive up to approximately 13.25 million shares of its common stock at $18.87 from the call option holders, equal to the number of shares of common stock that ViroPharma would issue to the holders of the senior convertible notes upon conversion. These call options will terminate upon the earlier of the maturity dates of the related senior convertible notes or the first day all of the related senior convertible notes are no longer outstanding due to conversion or otherwise. Concurrently, the Company sold warrants to the warrant holders to receive shares of its common stock at an exercise price of $24.92 per share. These warrants expire ratably over a 60-day trading period beginning on June 13, 2017 and will be net-share settled.

The purchased call options are expected to reduce the potential dilution upon conversion of the senior convertible notes in the event that the market value per share of ViroPharma common stock at the time of exercise is greater than $18.87, which corresponds to the initial conversion price of the senior convertible notes, but less than $24.92 (the warrant exercise price). The warrant exercise price is 75.0% higher than the price per share of $14.24 of the Company's stock on the pricing date. If the market price per share of ViroPharma common stock at the time of conversion of any senior convertible notes is above the strike price of the purchased call options ($18.87), the purchased call options will entitle the Company to receive from the counterparties in the aggregate the same number of shares of our common stock as the Company would be required to issue to the holder of the converted senior convertible notes. Additionally, if the market price of ViroPharma common stock at the time of exercise of the sold warrants exceeds the strike price of the sold warrants ($24.92), the Company will owe the counterparties an aggregate of approximately 13.25 million shares of ViroPharma common stock. If we have insufficient

shares of common stock available for settlement of the warrants, we may issue shares of a newly created series of preferred stock in lieu of our obligation to deliver common stock. Any such preferred stock would be convertible into 10% more shares of our common stock than the amount of common stock we would otherwise have been obligated to deliver under the warrants.

The purchased call options and sold warrants are separate transactions entered into by the Company with the counterparties, are not part of the terms of the senior convertible notes, and will not affect the holders' rights under the senior convertible notes. Holders of the senior convertible notes will not have any rights with respect to the purchased call options or the sold warrants. The purchased call options and sold warrants meet the definition of derivatives under SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities. These instruments have been determined to be indexed to the Company's own stock (in accordance with the guidance of EITF Issue No. 01-6, The Meaning of Indexed to a Company's Own Stock) and have been recorded in stockholders' equity in the Company's Consolidated Balance Sheet (as determined under EITF Issue No. 00-19, Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock). As long as the instruments are classified in stockholders' equity they are not subject to the mark to market provisions of SFAS No. 133. We also recorded a net deferred tax asset of $4.5 million in additional paid in capital for the effect of future tax benefits that are more likely than not to be utilized related to the tax basis of the convertible note in accordance with SFAS 109 and EITF No. 05-8, Income Tax Consequences of Issuing Convertible Debt with a Beneficial Conversion Feature.

Capital Resources

While we anticipate that revenues from Vancocin will continue to generate positive cash flow and should allow us to fund substantially all of our ongoing development and other operating costs, we may need additional financing in order to expand our product portfolio. Should we need financing, we would seek to access the public or private equity or debt markets, enter into additional arrangements with corporate collaborators to whom we may issue equity or debt securities or enter into other alternative financing arrangements that may become available to us.

Financing

If we raise additional capital by issuing equity securities, the terms and prices for these financings may be much more favorable to the new investors than the terms obtained by our existing stockholders. These financings also may significantly dilute the ownership of existing stockholders.

If we raise additional capital by accessing debt markets, the terms and pricing for these financings may be much more favorable to the new lenders than the terms obtained from our prior lenders. These financings also may require liens on certain of our assets that may limit our flexibility.

Additional equity or debt financing, however, may not be available on acceptable terms from any source as a result of, among other factors, our operating results, our inability to achieve regulatory approval of any of our product candidates, our inability to generate revenue through our existing collaborative agreements, and our inability to file, prosecute, defend and enforce patent claims and or other intellectual property rights. If sufficient additional financing is not available, we may need to delay, reduce or eliminate current development programs, or reduce or eliminate other aspects of our business.

Critical Accounting Policies

Our consolidated financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States of America. Preparing consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and contingent assets and liabilities. Actual results could differ from such estimates. These estimates and assumptions are affected by the application of our accounting policies. Critical policies and practices are both most important to the portrayal of a company's financial condition and results of operations, and require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effects of matters that are inherently uncertain.

Our summary of significant accounting policies is described in Note 2 to our Consolidated Financial Statements included in the 2007 Form 10-K. However, we consider the following policies and estimates to be the most critical in understanding the more complex judgments that are involved in preparing our consolidated financial statements and that could impact our results of operations, financial position, and cash flows:

- Product Sales—Product revenue is recorded upon delivery to the wholesaler, when title has passed, price is determined and collectibility is reasonably assured. At the end of each reporting period, as part of an analysis of returns, utilizing our revenue recognition policy (derived from the criteria of SEC Staff Accounting Bulletin No. 104, including Statement of Financial Accounting Standards No. 48, " *Revenue Recognition When Right of Return Exists"*) we analyze our estimated channel inventory and we would defer recognition of revenue on product that has been delivered if we believe that channel inventory at a period end is in excess of ordinary business needs and if we believe the value of potential returns is materially different than our returns accrual. Further, in connection with our analysis of returns, if we believe channel inventory levels are increasing without a reasonably correlating increase in prescription demand, we proactively delay the processing of wholesaler orders until these levels are reduced.

  We establish accruals for chargebacks and rebates, sales discounts and product returns. These accruals are primarily based upon the history of Vancocin, including both Lilly and our ownership periods. We also consider the volume and price of our products in the channel, trends in wholesaler inventory, conditions that might impact patient demand for our product (such as incidence of disease and the threat of generics) and other factors.

  In addition to internal information, such as unit sales, we use information from external resources, which we do not verify, to estimate the channel inventory. Our external resources include prescription data reported by IMS Health Incorporated and written and verbal information obtained from one of our three largest wholesaler customers with respect to their inventory levels.

  Chargebacks and rebates are the most subjective sales related accruals. While we currently have no contracts with private third party payors, such as HMO's, we do have contractual arrangements with governmental agencies, including Medicaid. We establish accruals for chargebacks and rebates related to these contracts in the period in which we record the sale as revenue. These accruals are based upon historical experience of government agencies' market share, governmental contractual prices, our current pricing and then-current laws, regulations and interpretations. We analyze the accrual at least quarterly and adjust the balance as needed. We believe that if our estimates of the rate of chargebacks and rebates as a percentage of annual gross sales were incorrect by 10%, our

operating income and accruals would be impacted by approximately $1.5 million in the period of correction, which we believe is immaterial.

Annually, as part of our process, we performed an analysis on the share of Vancocin sales that ultimately go to Medicaid recipients and result in a Medicaid rebate. As part of that analysis, we considered our actual Medicaid historical rebates processed, total units sold and fluctuations in channel inventory.

Product returns are minimal. Product return accruals are estimated based on Vancocin's history of damage and product expiration returns and are recorded in the period in which we record the sale of revenue. At each reporting period, we also compare our returns accrual balance to the estimated channel inventory to ensure the accrual balance is reasonable and within an acceptable range. For example, if the estimated channel inventory is at a high level, we could be required to adjust our accrual upward.

Discounts are related to payment terms and are fully accrued in the period in which we record the sale of revenue. Since our customers consistently take the payment discount, we do not believe that future periods will be materially impacted by a change in a previous discount accrual.

- Impairment of Long-lived Assets—We review our fixed and intangible assets for possible impairment whenever events occur or circumstances indicate that the carrying amount of an asset may not be recoverable. Assumptions and estimates used in the evaluation of impairment may affect the carrying value of long-lived assets, which could result in impairment charges in future periods. Such assumptions include, for example, projections of future cash flows and the timing and number of generic/competitive entries into the market, in determining the undiscounted cash flows, and if necessary, the fair value of the asset and whether an impairment exists. These assumptions are subjective and could result in a material impact on operating results in the period of impairment. While we reviewed our intangible assets in March 2006 in light of the actions taken by the OGD, we did not recognize any impairment charges. See Note 4 of the Unaudited Consolidated Financial Statements for further information. We will continue to monitor the actions of the OGD and consider the effects of our opposition actions and the announcements by generic competitors or other adverse events for additional impairment indicators and we will reevaluate the expected cash flows and fair value of our Vancocin-related assets at such time.

  On an ongoing periodic basis, we evaluate the useful life of intangible assets and determine if any economic, governmental or regulatory event has modified their estimated useful lives. While we reviewed the useful life of our intangible assets in March 2006 in light of the actions taken by the OGD, we did not change the useful life of our intangible assets during the quarter ended March 31, 2008. See Note 4 of the Unaudited Consolidated Financial Statements for further information.

- Short-term Investments—We review our short-term investments on a periodic basis for other-than-temporary impairments. This review considers credit worthiness and our intent and ability to hold debt securities until maturity and is subjective as it requires management to evaluate whether an event or change in circumstances has occurred in that period that may have a significant adverse effect on the fair value of the investment. As of March 31, 2008, no unrealized losses are other-than-temporary.

- Share-Based Employee Compensation—We adopted Statement of Financial Accounting Standards No. 123R, *Share-based Payment* , (SFAS 123R) effective January 1, 2006. The calculation of this expense includes judgment related to the period of time used in calculating the volatility of our common stock, the amount of forfeitures and an estimate of the exercising habits of our employees, which is also influenced by our Insider Trading Policy. Changes in the volatility of our common stock or the habits of our employees could result in variability in the fair value of awards granted.

- Income Taxes—Our annual effective tax rate is based on expected pre-tax earnings, existing statutory tax rates, limitations on the use of tax credits and net operating loss carryforwards, evaluation of qualified expenses related to the orphan drug credit and tax planning opportunities available in the jurisdictions in which we operate. Significant judgment is required in determining our annual effective tax rate and in evaluating our tax position.

  On a periodic basis, we evaluate the realizability of our deferred tax assets and liabilities and will adjust such amounts in light of changing facts and circumstances, including but not limited to future projections of taxable income, tax legislation, rulings by relevant tax authorities, tax planning strategies and the progress of ongoing tax audits. We recognize the benefit of tax positions that we have taken or expect to take on the income tax returns we

file if such tax position is more likely than not of being sustained. Settlement of filing positions that may be challenged by tax authorities could impact the income tax position in the year of resolution.

In assessing the realizability of deferred tax assets, we consider whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the period in which those temporary differences becomes deductible or the NOLs and credit carryforwards can be utilized. When considering the reversal of the valuation allowance, we consider the level of past and future taxable income, the utilization of the carryforwards and other factors. Revisions to the estimated net realizable value of the deferred tax asset could cause our provision for income taxes to vary significantly from period to period. Should we further reduce the valuation allowance of deferred tax assets, a current year tax benefit will be recognized and future periods would then include income taxes at a higher rate than the effective rate in the period that the adjustment is made.

As our business evolves, we may face additional issues that will require increased levels of management estimation and complex judgments.

Recently Issued Accounting Pronouncements

In December 2007, the Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards (SFAS) No. 141R, *Business Combinations*, which will significantly change the accounting for business combinations. SFAS 141R is effective for fiscal years beginning after December 15, 2008. The Company is currently evaluating the Statement.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements – An Amendment of ARB No. 51,* which establishes new accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS No. 160 is effective for the Company beginning January 1, 2009. While we are currently evaluating the impact of SFAS 160 on our financial statements upon adoption, we do not anticipate a material impact on operating results or financial position.

In August 2007, the Financial Accounting Standards Board ("FASB") issued for comment proposed FASB Staff Position ("FSP") No. APB 14-a, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)" ("FSP APB 14-a"). The proposed FSP would require the issuer of convertible debt instruments with cash settlement features to separately account for the liability and equity components of the instrument. The debt would be recognized at the present value of its cash flows discounted using the issuer's nonconvertible debt borrowing rate. The equity component would be recognized as the difference between the proceeds from the issuance of the note and the fair value of the liability. The proposed FSP would also require an accretion of the resultant debt discount over the expected life of the debt. The proposed transition guidance requires retrospective application to all periods presented, and does not grandfather existing instruments. In November 2007, the Board announced as a result of the comments received, it would postpone the effective date of APB 14-a. In April 2008, the FASB discussed the comments received and expects a final FSP to be issued in May 2008. The proposed FSP will be effective for financial statements for years beginning after December 15, 2008 and interim periods within those years. The Company is currently evaluating the Statement.

In November 2007, the FASB issued EITF 07-1 " *Accounting for Collaborative Arrangements Related to the Development and Commercialization of Intellectual Property* " which is focused on how the parties to a collaborative agreement should discolse costs incurred and revenue generated on sales to third parties, how sharing payments pursuant to a collaboration agreement should be presented in the income statement and certain related disclosure questions. EITF 07-1 is effective for fiscal years ended after December 15, 2008. While we are currently evaluating the impact of EITF 07-1 on our financial statements upon adoption, we do not anticipate a material impact on operating results or financial position.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

ITEM 3. Quantitative and Qualitative Disclosures About Market Risk

Our holdings of financial instruments are primarily comprised of a mix of U.S. corporate debt, government securities and commercial paper. All such instruments are classified as securities available for sale. Our debt security portfolio represents funds held temporarily pending use in our business and operations. We manage these funds accordingly. Our primary investment objective is the preservation of principal, while at the same time optimizing the generation of investment income. We seek reasonable assuredness of the safety of principal and market liquidity by investing in cash equivalents (such as Treasury bills and money market funds) and fixed income securities (such as U.S. government and agency securities, municipal securities, taxable municipals, and corporate notes) while at the same time seeking to achieve a favorable rate of return. Our market risk exposure consists principally of exposure to changes in interest rates. Our holdings are also exposed to the risks of changes in the credit quality of issuers. Historically, we have typically invested in financial instruments with maturities of less than one year. The carrying amount, which approximates fair value, and the annualized weighted average nominal interest rate of our investment portfolio at March 31, 2008, was approximately $274.8 million and 3.5%, respectively. The weighted average length to maturity was 1.6 months. A one percent change in the interest rate would have resulted in a $0.7 million impact to interest income for the quarter ended March 31, 2008.

At March 31, 2008, we had outstanding $250 million of our senior convertible notes. The senior convertible notes bear interest at a rate of 2% per annum, payable semi-annually in arrears on March 15 and September 15 of each year commencing on September 15, 2007. The senior convertible notes are convertible into shares of the Company's common stock at an initial conversion price of $18.87 per share. The senior convertible notes may only be converted: (i) anytime after December 15, 2016; (ii) during the five business-day period after any five consecutive trading day period (the "measurement period") in which the price per note for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such day; (iii) during any calendar quarter (and only during such quarter) after the calendar quarter ending June 30, 2007, if the last reported sale price of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the applicable conversion price in effect on the last trading day of the immediately preceding calendar quarter; or (iv) upon the occurrence of specified corporate events. Upon conversion, holders of the senior convertible notes will receive shares of common stock, subject to ViroPharma's option to irrevocably elect to settle all future conversions in cash up to the principal amount of the senior convertible notes, and shares for any excess. We can irrevocably elect this option at any time on or prior to the 35th scheduled trading day prior to the maturity date of the senior convertible notes. The senior convertible notes may be required to be repaid on the occurrence of certain fundamental changes, as defined in the senior convertible notes. As of March 31, 2008, the fair value of the $250.0 million convertible senior notes outstanding was approximately $182.7 million, based on the level 2 valuation hierarchy under SFAS 157.

In connection with the issuance of the senior convertible senior notes, we have entered into privately-negotiated transactions with two counterparties (the "counterparties"), comprised of purchased call options and warrants sold. These transactions are expected to generally reduce the potential equity dilution of our common stock upon conversion of the senior convertible notes. These transactions expose the Company to counterparty credit risk for nonperformance. The Company manages its exposure to counterparty credit risk through specific minimum credit standards, and diversification of counterparties.

Beginning in 2006, we also have been exposed to movements in foreign currency exchange rates, specifically the Euro, for certain immaterial expenses. We have used foreign currency forward exchange contracts based on forecasted transactions to reduce this exposure to the risk that the eventual net cash outflows, resulting from purchases from foreign testing sites, will be adversely affected by changes in exchange rates. The nominal amount of these forwards as of March 31, 2008 was $0.3 million and the associated fair value was approximately $80,000, which is credited to research and development expenses.

ITEM 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

An evaluation was performed under the supervision and with the participation of our management, including our Chief Executive Officer, or CEO, and our Chief Financial Officer, or CFO, of the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of March 31, 2008. Based on that evaluation, our management, including our CEO and CFO, concluded that as of March 31, 2008 our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission and that

such information is accumulated and communicated to the Company's management, including our CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

During the first quarter of 2008 there were no significant changes in our internal control over financial reporting identified in connection with the evaluation of such controls that occurred during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect our internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1a. Risk Factors

We are providing the following information regarding changes that have occurred to previously disclosed risk factors from our Annual Report on Form 10-K for the year ended December 31, 2007. In addition to the other information set forth below and elsewhere in this report, you should carefully consider the factors discussed under the heading " **Risk Factors** " in our Form 10-K for the year ended December 31, 2007. The risks described in our Quarterly Reports on Form 10-Q are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

Our long-term success depends upon our ability to develop, receive regulatory approval for and commercialize drug product candidates and if we are not successful, our ability to generate revenues from the commercialization and sale of products resulting from our product candidates will be limited.

All of our drug candidates will require governmental approvals prior to commercialization. We have not completed the development of or received regulatory approval to commercialize any of our existing product candidates. Our failure to develop, receive regulatory approvals for and commercialize our development stage product candidates successfully will prevent us from generating revenues from the sale of products resulting from our product candidates. Our product candidates are in the development stage and may not be shown to be safe or effective.

We initiated a phase 3 study in stem cell transplant patients for maribavir in September 2006 and a second phase 3 study in liver transplant patients in July 2007. While our phase 2 data for maribavir were positive, maribavir requires significant additional development efforts and regulatory approvals prior to any commercialization. The primary end point for our phase 3 studies with maribavir is different than the end point used in our phase 2 stem cell transplant study. Moreover, our phase 3 study in liver transplant patients is in a population that we have never studied. The results of ongoing and future studies of maribavir may be inconsistent with the results from previous studies and may not support further clinical development or regulatory approval. In addition, based upon discussions with the FDA and European regulatory agencies, we intend to file our initial NDA and MAA for maribavir based upon the phase 2 and phase 3 stem cell clinical trial results, but prior to the completion of the phase 3 solid organ clinical trial. By filing an NDA and MAA without a confirmatory phase 3 study, we are relying on the robustness of a single phase 3 study and the supportive data of the phase 2 study to support an approval. This filing strategy may increase the risk that the relevant regulatory authorities will not find that the results of the studies meet the requirement for approval.

We initiated our phase 2 program with Wyeth for HCV-796 in October 2006. In August 2007, we and Wyeth decided to discontinue dosing with HCV-796 in combination with pegylated interferon and ribavirin in our phase 2 study as 8% of patients showed elevated liver enzyme levels after 8 weeks or more of therapy with HCV-796 with pegylated interferon and ribavirin. In April 2008, we and Wyeth jointly determined to discontinue the development of HCV-796 due to the previously announced safety issue that emerged in the ongoing Phase 2 trial in patients with hepatitis C. We do not expect to continue to collaborate on future development of hepatitis C treatment candidates with Wyeth, however a decision to terminate the First Amended and Restated Collaboration and License Agreement dated June 26, 2003 has not been reached.

In February 2006, we entered into a licensing agreement for the rights to develop non-toxigenic strains of C. *difficile* (NTCD) for the treatment and prevention of CDI. We plan to initially focus our efforts on the opportunity to prevent recurrence of CDI following treatment with Vancocin ®. NTCD is in the preclinical phase which we will move into humans during 2008. This compound has never been studied and we can not predict the outcome of testing in humans. These results may not support further clinical development.

We cannot be certain that our efforts and the efforts of our partners in this regard will lead to commercially viable products. Negative, inconclusive or inconsistent clinical trial results could prevent regulatory approval, increase the cost and timing of regulatory approval, cause us to perform additional studies or to file for a narrower indication than planned. We do not know what the final cost to manufacture product candidates in commercial quantities will be, or the dose required to treat patients and, consequently, what the total cost of goods for a treatment regimen will be.

If we are unable to successfully develop our product candidates, we will not have a source of revenue other than Vancocin. Moreover, the failure of one or more of our product candidates in clinical development could harm our ability to raise additional capital. Furthermore, results from our clinical trials may not meet the level of statistical significance required by the FDA or other regulatory authorities for approval of a drug candidate.

The development of any of our product candidates is subject to many risks, including that:

- the product candidate is found to be ineffective or unsafe;
- the clinical test results for the product candidate delay or prevent regulatory approval;
- the FDA or other regulatory authorities forbid us to initiate or continue testing of the product candidates in human clinical trials;
- the product candidate cannot be developed into a commercially viable product;
- the product candidate is difficult and/or costly to manufacture;
- the product candidate later is discovered to cause adverse effects that prevent widespread use, require withdrawal from the market, or serve as the basis for product liability claims;
- third party competitors hold proprietary rights that preclude us from marketing the product candidate; and
- third party competitors market a more clinically effective, safer, or more cost-effective product.

Even if we believe that the clinical data sufficiently demonstrates the safety and efficacy of a product candidate, regulators may disagree with us, which could delay, limit or prevent the approval of such product candidate. For example, if we follow our current plans and file an NDA or other marketing petition for maribavir based upon the phase 2 and phase 3 stem cell clinical trial results, but prior to the completion of the phase 3 solid organ clinical trial, the regulatory agencies may view the data as insufficient or inconclusive, request additional data, delay any decision past the time frames anticipated by us, limit the approved indications, or deny the approval of maribavir. As a result, we may not obtain regulatory approval, or even if a product is approved, we may not obtain the labeling claims we believe are necessary or desirable for the promotion of the product. In addition, regulatory approval may take longer than we expect as a result of a number of factors, including failure to qualify for priority review of our application. All statutes and regulations governing the approval of our product candidates are subject to change in the future. These changes may increase the time or cost of regulatory approval, limit approval, or prevent it completely.

Even if we receive regulatory approval for our product candidates, or acquire the rights to additional already approved products, the later discovery of previously unknown problems with a product, manufacturer or facility may result in adverse consequences, including withdrawal of the product from the market. Approval of a product candidate may be conditioned upon certain limitations and restrictions as to the drug's use, or upon the conduct of further studies, and may be subject to continuous review.

The regulatory process is expensive, time consuming and uncertain and may prevent us from obtaining required approvals for the commercialization of our product candidates.

We have a product candidate for the prevention and treatment of CMV in clinical development and a product candidate, NTCD, in pre-clinical development for the treatment and prevention of CDI. Schering-Plough is conducting the clinical development of pleconaril. We must complete significant laboratory, animal and clinical testing on these product candidates before we submit marketing applications in the U.S. and abroad.

The rate of completion of clinical trials depends upon many factors, including the rates of initiation of clinical sites and enrollment of patients. For example, our enrollment of patients in our phase 2 clinical trial for maribavir was impacted by our ability to identify and successfully recruit a sufficient number of patients who have undergone allogeneic hematopoietic stem cell/bone marrow transplantation. Our phase 3 studies for maribavir will require substantially more clinical sites and patients than were required for the phase 2 studies, and many of these clinical sites and patients are expected to be in Europe. We do not have extensive experience in executing clinical trials in Europe. We also initiated a second phase 3 study of maribavir in liver transplant patients. We have never conducted clinical studies in this population and we have experienced enrollment at a rate which is lower than anticipated at the initiation of the study. If we are unable to initiate a sufficient number of clinical sites and accrue sufficient clinical patients who are eligible to participate in the trials during the appropriate period, we may need to delay our clinical trials and incur significant additional costs. In addition, the FDA, Independent Safety Monitoring Boards or Institutional Review Boards may require us to delay, restrict, or discontinue our clinical trials on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk such as the partial clinical hold we received with regard to HCV-796. We expect to submit an initial NDA and MAA filing in 2009 for maribavir based on data generated from our phase 2 and phase 3 stem cell transplant clinical trials. However, we may be unable to submit a NDA to the FDA or marketing petitions to other regulatory authorities such as the EMEA for our product candidates within the time frame we currently expect. Once an NDA or other form of petition for marketing authority is submitted, it must be approved

by the FDA or other marketing authority before we can commercialize the product described in the application. The cost of human clinical trials varies dramatically based on a number of factors, including:

- the number, order and timing of clinical indications pursued;
- the number of patients required for enrollment;
- the length of time required to enroll these patients;
- the costs and difficulty of obtaining clinical supplies of the product candidate; and
- the difficulty in obtaining sufficient patient populations and clinicians.

Even if we obtain positive preclinical or clinical trial results in initial studies, future clinical trial results may not be similarly positive. As a result, ongoing and contemplated clinical testing, if permitted by governmental authorities, may not demonstrate that a product candidate is safe and effective in the patient population and for the disease indications for which we believe it will be commercially advantageous to market the product. The failure of our clinical trials to demonstrate the safety and efficacy of our product candidate for the desired indications could delay the commercialization of the product.

In 2003, Congress enacted the Pediatric Research Equity Act requiring the development and submission of pediatric use data for new drug products. In Europe, a Pediatric Investigational Plan must be agreed before a MAA can be submitted. Our failure to obtain these data, or to obtain a deferral of, or exemption from, these requirements could adversely affect our chances of receiving regulatory approval, or could result in regulatory or legal enforcement actions.

Risks associated with our international business relationships could materially adversely affect our business.

We are engaged in clinical trials and have employees located in the European Union, are establishing manufacturing relationships, and are seeking approval for our drug candidate maribavir, outside the United States. In addition, we expect that if maribavir is approved for commercial sale, a significant portion of our commercial supply chain, including sourcing of raw materials and manufacturing, will be located outside of the United States. Consequently, we are, and will continue to be, subject to risks related to operating in foreign countries. Risks associated with conducting operations in foreign countries include:

- differing regulatory requirements for drug approvals in foreign countries;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or travelling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses or reduced revenues, and other obligations incident to doing business or operating a subsidiary in another country;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geo-political actions, including war and terrorism.

These and other risks associated with our international operations may materially adversely affect our ability to attain or maintain profitable operations

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ITEM 6. Exhibits

List of Exhibits:

10.1	Lease Agreement with 730 Stockton Drive Associates, L.P. dated March 14, 2008.
31.1	Certification by Chief Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification by Chief Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

†† Compensation plans and arrangements for executives and others.

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SIGNATURES

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

VIROPHARMA INCORPORATED

Date: April 28, 2008

By: /s/ Vincent J. Milano
Vincent J. Milano
President, Chief Executive Officer, Chief Financial Officer and Treasurer
(Principal Executive Officer)

By: /s/ Richard S. Morris
Richard S. Morris
Chief Accounting Officer and Controller
(Principal Accounting Officer)

Exhibit 10.1

LEASE FOR COMBINATION

OFFICE/WAREHOUSE

AT

EAGLEVIEW CORPORATE CENTER

730 STOCKTON DRIVE

LOT NO. 10

LANDLORD: 730 STOCKTON DRIVE ASSOCIATES, L.P.

TENANT: VIROPHARMA INCORPORATED

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EXHIBITS

A – Description of Leased Space
B – Work Letter
C – INTENTIONALLY OMITTED
D – Janitorial Specifications
E – Rules and Regulations
F – Permitted Title Exceptions
G – Plan Depicting Adjacent Land Building
H – Approved Lot 10 Land Development Plan

LEASE

LEASE is made this 14th day of March, 2008 between 730 STOCKTON DRIVE ASSOCIATES, L.P., a Pennsylvania limited partnership ("Landlord"), with its office at Eagleview Corporate Center, 707 Eagleview Boulevard, P.O. Box 562, Exton, Pennsylvania 19341, and VIROPHARMA INCORPORATED, a Pennsylvania corporation ("Tenant"), with its office at 397 Eagleview Boulevard, Exton, Pennsylvania 19341.

1. **LEASED SPACE AND PURPOSE** .

(a) Landlord hereby rents to Tenant all that certain space described below (collectively "Leased Space"), Lot No. 10, 730 Stockton Drive, within the "Center" known as Eagleview Corporate Center, Upper Uwchlan Township, Chester County, Pennsylvania, which shall include all space within the 78,264 square foot, single story building constructed by Landlord (the "Building") on the 8.628 +/- acre parcel of land shown on the site plan attached hereto as ***Exhibit "A"*** (the "Land"), and (b) the interior improvements to be constructed by Landlord in the Building, together with all fixtures, improvements, additions and other property installed therein as the same may be modified in accordance with the provisions of this Lease. The Leased Space includes all fixtures, improvements, additions and other property installed therein at the Commencement Date (hereafter defined), or at any time during the term of this Lease (other than Tenant's movable personal property and trade fixtures), together with the right to use, in common with others, the parking lot and all other public portions of the Center.

(b) The Leased Space shall be used and occupied as a general office space, in connection with Tenant's Business (hereafter defined), which may include the incidental handling of pharmaceutical products and chemicals used in such products and for no other purpose. For purposes hereof, Tenant's Business shall be deemed to be the development and commercialization of pharmaceutical products.

2. **TERM** .

(a) The term of this Lease and Tenant's obligation to pay rent hereunder shall commence upon a date ("Commencement Date") which is the earlier of.

(i) the date when the Leased Space is "ready for occupancy"; or

(ii) the date when Tenant shall take possession of the Leased Space other than to complete installation of Tenant's Work (as defined in the Work Letter).

(b) The Leased Space shall be deemed "ready for occupancy" when Landlord has "Substantially Completed" the Landlord's Work described in the Work Letter attached hereto as ***Exhibit "B"*** ("Work Letter"). "Substantial Completion" or "Substantially Completed" shall mean such completion as shall enable Tenant to reasonably and conveniently use and occupy the Leased Space for the conduct of Tenant's Business. Substantial Completion shall be deemed to

have been achieved even though minor or insubstantial details of construction, mechanical adjustment or decoration remain to be performed, the non-completion of which does not materially interfere with Tenant's use of the Leased Space, installation of finishing work or the conduct of Tenant's Business therein. In no event, however, shall Substantial Completion be deemed to have occurred prior to (A) the issuance of a permanent certificate of occupancy for the Leased Space by the municipality, and (B) the issuance of a certificate of substantial completion by Landlord's general contractor which is verified by Tenant's Consultant (as defined in the Work Letter); provided that any disagreement as to whether Substantial Completion has occurred shall be settled in the manner provided in the Work Letter. If the Commencement Date does not occur within twenty-two (22) weeks after issuance of approved construction documents and a building permit for Landlord's Work, as such period may be extended for Tenant Delays (the "Outside Delivery Date"), Tenant may elect to terminate this Lease by written notice delivered to Landlord within five (5) days following the Outside Delivery Date, in which event neither party shall have any further rights or obligations hereunder, except that the Security Deposit, the Reservation Fee and any other amounts paid by Tenant pursuant to this Lease shall be returned by Landlord to Tenant within thirty (30) days of such termination.

(c) Tenant shall execute and deliver to Landlord a declaration of the Commencement Date upon presentation by Landlord prior to taking occupancy. The term ("Term") of this Lease shall end seven (7) years six (6) months after the Commencement Date unless sooner terminated or renewed in accordance with this Lease; provided, however, that if the Commencement Date is not the first day of a calendar month, the Term shall extend to the last day of the calendar month which is seven (7) years six (6) months after the Commencement Date occurs. Such seven (7) year six (6) month period is sometimes referred to herein as "Initial Term."

3. **RENT** .

(a) Definitions.

(i) Tenant and Landlord acknowledge and agree that the rentable area of the Building and Leased Space will be 78,264 square feet and "Tenant's Proportionate Share" shall be 100%.

(ii) "Real Estate Taxes" shall mean all taxes and assessments levied, assessed or imposed at any time by any governmental authority upon or against the Building and the land upon which the Building is situate, and also any tax or assessment levied, assessed or imposed at any time by any governmental authority in connection with the receipt of income or rents from said Building or land to the extent that the same shall be in lieu of (and/or in lieu of an increase in) all or a portion of any of the aforesaid taxes or assessments upon or against the said Building and/or land. If, however, any assessment included within Real Estate Taxes is payable in installments extending beyond the term of this Lease, Tenant shall only be obligated to pay those installments coming due during the term of this Lease. "Real Estate Taxes" shall not include any penalty or interest as a result of Landlord's late payment. Landlord further agrees to make payment of Real Estate Taxes in a timely manner so as to take advantage of any applicable discount and to provide to Tenant copies of receipts for paid Real Estate Taxes not later than

thirty (30) days after the Real Estate Taxes are due. Failure of Landlord to provide such receipts to Tenant shall permit Tenant to suspend payment of Tenant's Proportionate Share of Real Estate Taxes until such receipts are furnished to Tenant.

At any time and from time to time during the term of this Lease, Tenant, at its expense, shall have the right to institute proceedings challenging the amount of Real Estate Taxes. Landlord agrees to reasonably cooperate with Tenant in connection therewith. Any refund awarded shall be reimbursed first to each party in proportion to the expenses incurred by such party in prosecuting such appeal, with any balance thereof next being refunded to Tenant in an amount equal to Tenant's Proportionate Share of (A) the balance of such award remaining after the foregoing cost reimbursements (B) multiplied by a fraction (1) the numerator of which shall be the number of days during the tax year for which the refund is awarded for which Tenant has paid Real Estate Taxes pursuant to this Lease and (2) the denominator of which is 365.

"Operating Expenses" shall mean that part of any and all expenses reasonably and actually incurred by Landlord in connection with its ownership, maintenance and operation of the Building, the land upon which the Building is situate, excluding Real Estate Taxes and interest or amortization payments on any mortgage, but including, without limitation, electricity (other than as billed directly to Tenant based on usage); insurance maintained on the Building in accordance herewith; all direct and indirect labor costs; a management fee not exceeding four percent (4%) of the aggregate Minimum Annual Rent and Real Estate Taxes and Operating Expenses ("Management Fee"); legal expenses; service contracts and supplies used in connection with the cleaning, operating, labor and maintenance of the Building; all repairs and decorating required to be performed by Landlord as provided for in this Lease (other than "Landlord's Work" as defined herein); common area maintenance and snow removal; building supplies, equipment, purchases of goods and services which are expensed, rather than capitalized under generally accepted accounting principles ("GAAP"); all charges for the common areas of the Building for electricity and all charges for the entire Building for water and sewer service, including any taxes on such utilities, removal of trash, rubbish, garbage and refuse; the cost of operating an identification sign or signs for the Building; replacing of paving, curbs, walkways, directional or other signs; drainage; maintenance and monitoring of fire sprinkling systems (if any); the Building's proportionate share of common expenses owed to the Eagleview Corporate Center Association or its successor or any other similar entity which owns and maintains the common areas of the Center (collectively, "Association"); and such other expenses as Landlord may deem necessary and proper in connection with the operation and maintenance of the Building, excluding any costs which under GAAP are capital expenditures; provided, however, that Operating Expenses shall also include the annual amortization (over the anticipated useful life established in accordance with GAAP) of a capital improvement falling within any of the following categories: (i) a labor saving device or improvement which is intended to reduce or eliminate any other component of Operating Expenses; (ii) an installation or improvement required by reason of any law, ordinance or regulation, which requirement did not exist on the date of this Lease and is generally applicable to similar buildings; (iii) an installation or improvement which directly enhances safety of tenants in the Building or Center generally. Landlord shall have the right to bill Tenant directly for any items of Operating Expenses which can be attributed directly to Tenant's use only.

Notwithstanding any provision to the contrary, Operating Expenses shall not include:

(A) any payments (such as salaries or fees) to the Landlord's executive personnel or in-house site managers except for the Management Fee;

(B) depreciation or interest, except to the extent permitted above in connection with capital improvements;

(C) mortgage or ground lease payments;

(D) taxes on the Landlord's business (such as income, excess profits, franchise, capital stock, estate, inheritance) except to the extent the same are in lieu of Real Estate Taxes or increases in Real Estate Taxes;

(E) leasing commissions, broker's fees or legal fees incurred in connection with leases of space in the Building;

(F) legal fees that do not directly benefit Tenant or the Building (provided that legal fees incurred in connection with leases of space in the Building or in enforcing tenant obligations shall not be deemed to benefit the Building);

(G) costs to correct original construction defects or defective repairs or replacements hereinafter provided by or at the direction of Landlord;

(H) costs of repairs covered by valid warranties;

(I) expenses paid directly by a tenant for any reason (such as excessive utility use, direct utility consumption or damage for which such tenant is responsible);

(J) costs for improving any tenant's space;

(K) any repair or other work necessitated by condemnation, fire or other insured casualty;

(L) any costs, fines and the like due to Landlord's violation of any law, governmental rule or authority;

(M) refinancing costs;

(N) costs for any conversion of the heating system to gas heat except to the extent such conversion is undertaken in an effort to reduce Operating Expenses and the cost thereof is treated in the same manner as a capital improvement;

(O) costs paid to Landlord or its affiliates other than the Management Fee which exceed those reasonably charged in arms length transactions with third parties in the general area of the Building; and

(P) services, benefits or both provided to some tenants but not to Tenant.

(b) Tenant shall pay Landlord the minimum annual rent ("Minimum Annual Rent") during the Initial Term in the amounts set forth below, which annual amount shall be paid in equal monthly installments as set forth below on the first day of each calendar month in advance. The first monthly installment of Minimum Annual Rent shall be due on the Commencement Date. If the Commencement Date is not the first day of a calendar month, rent from the Commencement Date to the first day of the following month apportioned at the Minimum Annual Rent rate (based on a 365-day year) shall be paid. All rent shall be payable, in advance, and without prior notice or demand, at the address of Landlord set forth in the heading of this Lease or at such other place, or to such other person, as Landlord may from time to time direct in written notice to Tenant. During the Initial Term, Minimum Annual Rent for each lease year (being 12 months from the Commencement Date or anniversary thereof) shall be as follows:

Lease Year	Rate Per Rentable Square Foot	Annual Rent	Monthly Installment
1 (first 6 months)	$ 9.5055	$ 743,938.45	$ 61,994.87
1 (second 6 months)	$ 15.10	$1,181,786.40	$ 98,482.20
2	$ 15.65	$1,224,831.60	$ 102,069.30
3	$ 16.20	$1,267,876.80	$ 105,656.40
4	$ 16.75	$1,310,922.00	$ 109,243.50
5	$ 17.30	$1,353,967.20	$ 112,830.60
6	$ 17.85	$1,397,012.40	$ 116,417.70
7	$ 18.30	$1,432,231.20	$ 119,352.60
8 (first 6 months only)	$ 18.75	$1,467,450.00	$ 122,287.50

In addition to the foregoing, Tenant shall pay all amounts when and as required in the Work Letter.

(c) In addition, Tenant shall pay to Landlord as Additional Rent in equal monthly installments one twelfth (1/12) of Tenant's Proportionate Share of annual Real Estate Taxes and Operating Expenses, at the time of payment of each monthly installment of Minimum Annual Rent, based upon the most recent costs of Operating Expenses and Real Estate Taxes available. For the period from the Commencement Date until the issuance of a statement pursuant to subparagraph 3(d) below, such monthly installment shall be equal to $38,479.80.

(d) Within ninety (90) days of the expiration of each calendar year Landlord shall furnish Tenant with a written statement of the actual Operating Expenses and Real Estate Taxes incurred for such year itemizing the expenses claimed by Landlord in reasonable detail. Within ten (10) days of the rendition of such statement, Tenant shall pay any amounts in excess of those collected pursuant to the payments on account of Real Estate Taxes and Operating Expenses pursuant to paragraph 3(c) hereof, and any overpayments shall be credited against the next installment(s) of rent due under this Lease or, at Tenant's option, refunded to Tenant. In the event the first and/or last years of the Term of this Lease shall not be full calendar years, then Tenant's obligation for Operating Expenses and Real Estate Taxes attributable to such years shall be pro rated. Tenant may, at its own cost and expense, after full payment of all sums due and owing, audit Landlord's books and records not more than once each year within sixty (60) days after Landlord's delivery of its annual statement of Operating Expenses, which books and records shall be maintained in accordance with GAAP. Notwithstanding the foregoing, if any said review of Landlord's books and records reveals that any item(s) were incorrectly included in Operating Expenses, Tenant shall have the right to inspect Landlord's books and records with respect to such items for each prior lease year and an adjustment, if any, shall be made in accordance herewith. If Tenant's audit determines that Landlord's total charges for Operating Expenses or Real Estate Taxes for a given lease year exceed by more than 5% the total amount properly chargeable to Tenant under this Lease for such year, Landlord, in addition to reimbursing Tenant such excess amount, shall pay Tenant an amount equal to the cost of the audit.

4. **ADDITIONAL RENT** .

Tenant shall pay to Landlord as "Additional Rent" (in addition to sums payable pursuant to paragraphs 3 (c) and 3(d)) the following:

(a) Expenses Incurred by Landlord as a Result of Tenant's Default . All sums which may become due by reason of Tenant's failure to comply with any of the terms, conditions and covenants of this Lease to be kept and observed by Tenant, and any and all damages, costs and expenses (including without limitation thereto reasonable attorney's fees) which Landlord may suffer or incur by reason of any default of Tenant and any damage to the Building or the real estate of which the Building is a part caused by any negligence or willful misconduct of Tenant or violation of Tenant's covenants in **Section 5(a)** below (subject, however, to the provisions of Section 17(e) below), together with interest to the date of payment (whether before or after entry of judgment and issuance of execution thereon) at a rate equal to five percent (5%) above the prime interest rate (or similar rate if the prime interest rate is no longer published) as published in The Wall Street Journal, in effect on the date during the period said payment is due ("Default Rate"), which shall continue to accrue interest at the Default Rate after entry of judgment and issuance of execution thereon until paid in full.

(b) Use and Occupancy Taxes . All use and occupancy taxes imposed by any governmental body allocable to the Leased Space.

(c) Utilities . Tenant shall pay all charges for gas and electric, as billed directly by the providers of the same to Tenant.

For purposes of this Lease, the term “Rent” or “rent” shall be deemed to refer to Minimum Annual Rent and Additional Rent.

5. **NEGATIVE COVENANTS OF TENANT: HAZARDOUS SUBSTANCES** .

(a) Tenant will not:

(i) damage the Leased Space or any other part of the Building;

(ii) bring into or permit to be kept in the Leased Space any dangerous, explosive or obnoxious substances except as may be used in Tenant’s Business which use Tenant shall undertake in compliance with all applicable laws regulating same;

(iii) conduct itself or permit its agents, servants, employees or invitees to conduct themselves in a manner that in Landlord’s judgment reasonably exercised is improper or unsafe except that the operation of, or activities related to, Tenant’s Business in a manner consistent with the use of the Leased Space permitted by this Lease shall not be deemed to violate this provision, provided same are undertaken in compliance with all applicable laws;

(iv) manufacture any commodity or prepare or dispense any food or beverages in the Leased Space, except for consumption in the Leased Space by Tenant, its employees or invitees;

(v) remove, attempt to remove or manifest any intention to remove Tenant’s goods or property from the Leased Space other than in the ordinary course of business;

(vi) do or suffer to be done, any act, matter or thing objectionable to Landlord’s fire insurance companies or Board of Underwriters whereby the fire insurance or any other insurance now in force or hereafter to be placed by Landlord on the Leased Space or the Building or Center shall become void or suspended or whereby the manner in which Tenant conducts Tenant’s Business causes the Leased Space, Building or Center to be rated as a more hazardous risk than at the Commencement Date. Tenant agrees to pay to Landlord as Additional Rent, any and all increases in premiums for insurance carried by Landlord on the Leased Space, or on the Building, caused in any way by the occupancy of Tenant.

(b) Tenant’s Responsibility Regarding Hazardous Substances .

(i) The following definitions shall apply herein:

(A) Hazardous Substances . The term “Hazardous Substances,” as used in this Lease, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB’s), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic

under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

(B) Tenant Responsible Parties . The term “Tenant Responsible Parties” as used in this Lease shall mean Tenant, its employees, agents, contractors and/or invitees.

(ii) Tenant’s Restrictions. Tenant shall not cause or permit to occur:

(A) Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the Leased Space or Center, arising from the use or occupancy of the Leased Space by any Tenant Responsible Party, including, but not limited to, soil and ground water conditions; or

(B) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under, or about the Leased Space or Center, except as may be used in Tenant’s Business in a manner consistent with the use of the Leased Space permitted by this Lease, which use, generation, release, manufacture, refining, production, processing, storage, or disposal Tenant shall undertake in compliance with all applicable Laws (defined below).

(iii) Environmental Clean-Up.

(A) Tenant shall, at Tenant’s own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances (“Laws”) by Tenant Responsible Parties.

(B) Tenant shall, at Tenant’s own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (“Authorities”) under the Laws as are applicable to use of Hazardous Substances by Tenant Responsible Parties.

(C) Should any Authority or any third party demand that a clean-up plan be prepared and that a clean-up be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the Term of this Lease at or from the Leased Space and which arises at any time from the use of Hazardous Substances by Tenant Responsible Parties, then Tenant shall, at Tenant’s own expense, prepare and submit the required plans and all related bonds and other financial assurances, and Tenant shall carry out all such clean-up plans.

(D) Tenant shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances by Tenant Responsible Parties that is requested by Landlord. If Tenant fails to fulfill any duty imposed under this subparagraph (iii) within a reasonable time, Landlord may do so; and in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems

necessary or appropriate to determine the applicability of the Laws to the Leased Space and use of Hazardous Substances by Tenant Responsible Parties, and for compliance therewith, and Tenant shall execute all documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages under any Law shall constitute a waiver of any of Tenant's obligations under this Subparagraph (iii).

(E) Tenant's obligations and liabilities under this Subparagraph (iii) shall survive the expiration of this Lease.

(iv) Tenant's Indemnity.

(A) Tenant shall indemnify, defend, and hold harmless Landlord, the manager of the Center, and their respective officers, directors, beneficiaries, shareholders, partners, agents and employees, from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including reasonable attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the Term of this Lease at or from the Leased Space and which arises at any time from use of Hazardous Substances by Tenant Responsible Parties, or from failure by Tenant Responsible Parties to provide all information, make all submissions, and take all steps required by all Authorities under the Laws with respect thereto.

(B) Tenant's obligations and liabilities under this Subparagraph (iv) shall survive the expiration of this Lease.

6. **LATE PAYMENT** .

If any payment required by Tenant under any of the terms hereof shall not be paid within five (5) days after written notice from Landlord that such payment is overdue, Tenant shall, upon demand, pay a late charge to Landlord equal to the greater of (a) Fifty ($50.00) Dollars or (b) $.05 for each dollar so due, and such late charge shall be deemed Additional Rent for purposes of this Lease; provided, however, that such late charge shall be due immediately without notice upon any failure to pay when due during any twelve (12) month period in which Landlord shall have given such written notice on two (2) prior occasions.

7. **CONSTRUCTION OF LEASED SPACE** .

(a) Landlord shall, without cost to Tenant except as provided in the Work Letter, complete "Landlord's Work" as defined in the Work Letter attached hereto. Landlord shall furnish the drawings and specifications to complete the Tenant Improvements and, in addition, shall complete the construction and other items of work in the Leased Space which are not within the scope of Landlord's Work. If, at Tenant's request, Landlord performs any items of work or furnishes any materials which Landlord is not required to perform or furnish hereunder, Tenant shall pay Landlord for such additional work and materials, at such reasonable rates as Landlord may charge. If the TI Plans as defined in the Work Letter, or a description thereof

which is reasonable to identify same, have not been attached hereto upon execution hereof, the TI Plans when completed in accordance with the Work Letter shall be initialed for identification by Landlord and Tenant and become part of this Lease when so initialed.

(b) Within thirty (30) days after the Commencement Date, Tenant shall give Landlord a written list ("Final Punch List") of all contended defects, if any, in Landlord's construction work and of all contended variances in Landlord's Work from the requirements hereof. Except for defects or deficiencies which are not then discoverable by Tenant, or which are covered by third-party warranties or Landlord's warranty set forth in the Work Letter (collectively, "Defects"), any and all variances not set forth in the Final Punch List shall be deemed to be waived by Tenant. Landlord shall correct all items on the Final Punch List that constitute valid defects or variances within sixty (60) days after Landlord's receipt of the Final Punch List, unless the nature of the defect or variance is such that a longer period of time is required to repair or correct the same, in which case Landlord shall exercise due diligence in correcting such defect or variance at the earliest possible date and with a minimum of interference with the operation of Tenant. If Landlord does not complete such work within the time specified above, Tenant shall have the right to complete such work at Landlord's expense. Any disagreement that may arise between Landlord and Tenant with respect to whether an item on the Final Punch List constitutes a valid defect or variance shall be conclusively resolved in the manner contemplated by the Work Letter.

(c) By occupying the Leased Space as Tenant, Tenant shall be deemed to have accepted the Leased Space and to have acknowledged that the Leased Space is in the condition required by this Lease, except as to any defects or variances set forth on the Final Punch List or Defects.

8. **TENANT'S ALTERATIONS** .

(a) Except as hereafter provided, Tenant shall make no alterations, additions or improvements ("Tenant Alterations") to the Leased Space without the consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant Alterations contemplated by Tenant, the location, plans and specifications for which shall be subject to Landlord's consent, not to be unreasonably withheld, delayed or conditioned, may include a generator and diesel tank on the Land and connections to the Building, a data line to the Building, and additional HVAC for a data room. The data line may require Tenant to excavate the lawn, parking area, driveway and/or roadway, which will be done in accordance with Landlord's reasonable requirements to minimize disturbance to other parties, and which shall require Tenant at its expense to restore any areas disturbed promptly following installation of the data line. At the time of Landlord's consent, Landlord shall designate whether Tenant shall be required to remove the proposed Tenant Alteration upon termination of this Lease, and the absence of such designation in Landlord's written consent shall be deemed Landlord's agreement that Tenant shall not be obligated to remove Tenant Alterations upon the termination of this Lease. Landlord also may impose such reasonable conditions as part of its consent as Landlord deems appropriate, taking into consideration the nature of the proposed Tenant Alteration, including, without limitation, requiring Tenant to furnish Landlord with security for the payment

of all costs to be incurred in connection with such work, insurance, and copies of the plans, specification and permits necessary for such work. Nothing herein, however, shall be construed to obligate Tenant to construct any Tenant Alteration for which Landlord has given its consent.

(b) Landlord's consent shall not be required for Tenant Alterations which (i) do not adversely impact the structural integrity of the Building or the systems serving the Building or their operation, (ii) are not visible from the Building exterior and (iii) qualify under the following:

(i) The Tenant Alteration's cost is $10,000 or less with respect to any Tenant Alteration project (or $20,000 or less in the aggregate with respect to Tenant Alteration projects undertaken over any twelve (12) consecutive month period);

Tenant Alterations described in this **subsection (b)** for which Landlord's consent is not required hereinafter are called "Permitted Tenant Alterations." Notwithstanding the foregoing, painting or carpeting of the interior of the Leased Space and like cosmetic improvements shall not be deemed Tenant Alterations regardless of the cost thereof. Tenant shall not be obligated to remove Permitted Tenant Alterations upon the termination of this Lease unless an Event of Default has occurred which is then continuing and Landlord so requires such removal.

(c) All Tenant Alterations shall be done at Tenant's expense by contractors approved by Landlord, which consent shall not be unreasonably withheld, delayed or conditioned and shall be deemed given unless Landlord notifies Tenant of its objections within ten (10) business days after delivery of Tenant's request for consent. With respect to Tenant Alterations other than the Permitted Tenant Alterations, no work shall be performed until the plans therefore have been approved by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned and shall be deemed approved unless Landlord notifies Tenant of objections to the proposed plans within ten (10) business days after delivery to Landlord of a complete set of the plans therefor. In connection with the review of plans submitted by Tenant, Landlord shall be reimbursed by Tenant for Landlord's cost in reviewing such plans at the rate of $85 per hour; subject to reasonable increase to reflect the then current hourly charge imposed for such review by Landlord for its tenants in the Center generally, and prior to undertaking any such review, Landlord shall provide a statement of the maximum review hours to be dedicated to such review. With respect to Permitted Tenant Alterations, Tenant shall provide Landlord with a copy of Tenant's application for a building permit therefor, if applicable (together with all attachments thereto), and no review fee shall be charged to Tenant by Landlord in connection therewith nor shall Landlord's approval of such application be required. Tenant shall provide copies of as-built plans and specifications for all Tenant Alterations to Landlord within a reasonable time of completion of the Tenant Alteration. All Tenant Alterations shall be done in a first class, workmanlike manner and shall comply with all insurance requirements then made available to Tenant and all applicable laws, ordinances, rules and regulations of governmental authorities having jurisdiction thereover, and, where applicable, with all reasonable requirements of Landlord imposed as a condition of such consent.

(d) If, as a condition of Landlord's consent, removal of a Tenant Alteration is required at termination of this Lease, Tenant shall promptly remove such Tenant Alterations and repair any damage occasioned by such removal. In default thereof, Landlord may effect said removal and repairs at Tenants expense. With respect to any Tenant Alterations which Tenant is not obligated to remove hereunder (including without limitation Permitted Tenant Alterations), such Tenant Alterations, if not removed by Tenant upon the termination of this Lease, shall be deemed abandoned by Tenant, and deemed a part of Landlord's property, notwithstanding any provision of **Section 16** to the contrary.

9. **MECHANIC'S LIENS** .

If Tenant performs or orders (other than through Landlord or Landlord's contractors) any construction or other work on or about the Leased Space for which a lien could be filed against the Leased Space or the Building, Tenant shall obtain from the contractor who performs such work a release of any liens which could be filed under the Mechanics' Lien Law of the Commonwealth of Pennsylvania for such work which has been completed and paid for by Tenant, at the time of payment, and obtain similar releases from all subcontractors, sub-subcontractors and material suppliers. Notwithstanding the foregoing, if any mechanics' or other lien shall be filed against the Leased Space or the Building purporting to be for labor or material furnished or to be furnished at the request of the Tenant other than through Landlord or Landlord's contractors, then Tenant shall at its expense cause such lien to be discharged of record by payment, bond or otherwise, within fifteen (15) days after Tenant receives notice of the filing thereof. If Tenant shall fail to cause such lien to be discharged by payment, bond or otherwise within such period, Landlord may cause such lien to be discharged by payment, bond or otherwise, without investigation as to the validity thereof or as to any offsets or defenses thereto, and Tenant shall, upon demand, reimburse Landlord for all amounts paid and costs incurred, including attorneys' fees, in having such lien discharged of record. If, however, Tenant notifies Landlord during such fifteen (15) day period that it disputes the validity of such lien and provides security reasonably acceptable to Landlord in an amount which is sufficient to discharge such lien in full, Landlord shall refrain from satisfying such lien for a period not to exceed one hundred twenty (120) days.

10. **CONDITION OF LEASED SPACE** .

Tenant acknowledges and agrees that, except as expressly set forth in this Lease, there have been no representations or warranties made by or on behalf of Landlord with respect to the Leased Space or the Building or with respect to the suitability of either for the conduct of Tenant's Business.

11. **BUILDING SERVICES** .

Landlord shall operate and maintain the Building and the Center in a manner comparable to other office buildings in Exton, PA. Landlord shall provide all heat, light, electricity, air conditioning and restroom facilities, elevator service and janitorial services (as shown on ***Exhibit "D"*** attached hereto), and as otherwise required by Tenant. It is understood

that this Lease is intended to be net of taxes, repairs, insurance and operating expenses. Tenant shall have access to the Leased Space on a 24 hour per day, 7 day per week basis and Landlord shall provide heat, light, electricity, air conditioning and restroom facilities during those hours, provided, however, Landlord shall not be obligated to provide maintenance services, including without limitation, repairs, and snow removal other than a reasonable time prior to and during normal business hours (8 AM to 6 PM, Monday through Friday), sufficient to allow Tenant's ordinary use of the Leased Space, during normal business hours. Where such services are required because of an emergency other than during normal business hours, Landlord shall use reasonable efforts to provide them other than during normal business hours as the emergency may require. Landlord shall provide normal janitorial services after normal business hours.

Unless otherwise agreed with Tenant in writing, Landlord agrees that all maintenance to the common areas external to the Building which the Association offers to perform or is obligated to perform for the benefit of lots in the Center shall be performed by the Association. Landlord shall use diligent efforts to enforce any such obligation of the Association. Except during such period of time as Landlord or its affiliates control the Association, Landlord shall not be liable in damages or otherwise for temporary delay or failure in furnishing any services or facilities to be provided by Landlord or the Association under this Lease or any other agreement between Tenant and Landlord (or its agents) or implied by law

Landlord shall maintain, repair and replace, when needed the foundation, roof and exterior walls, exterior of and the frames surrounding all windows, doors and plate glass, and maintain and make when required repairs to the Building and areas of the Center. In lieu of repairing items whose useful life has been exhausted or which have been damaged beyond repair, which damage was not caused by abuse by Tenant, its agent and invitees, in Landlord's judgment exercised in good faith, Landlord shall replace such items. Tenant shall give Landlord written notice of the need for the above repairs. Landlord shall cause such repair or replacement to be performed in a good and workmanlike manner and within a reasonable time after receipt of written notice from Tenant stating the need therefor. Subject to the provisions of **Section 17(e)** , the cost of any repairs or replacements, even if otherwise not to be part of Operating Expenses, caused by the negligence, misuse or misconduct of Tenant or its agents or invitees, shall be paid by Tenant.

12. **ASSIGNMENT AND SUBLETTING** .

(a) Tenant shall not, without the prior written consent of Landlord, assign or mortgage this Lease or any interest therein or sublet the Leased Space or any part thereof. For the purposes of this paragraph, the sale or assignment of a controlling interest in the Tenant corporation or a majority interest in the Tenant partnership as the case may be, shall be deemed an assignment, but the assignment to a parent, wholly-owned subsidiary of the Tenant or successor corporation shall be permitted, provided that such assignee assumes the obligations of Tenant and that such assignment shall not relieve Tenant of its obligations hereunder. For purposes herein, (A) a successor corporation is one into which Tenant is merged or consolidated,

or which acquired those of Tenant's assets or business located in the Leased Space as of the date of the assignment, and (B) a controlling interest shall mean the ownership of fifty percent or more of the beneficial interest in the person or entity in question, unless the corporation is publicly traded in which case such transfers of stock (whether or not a controlling interest) shall not be deemed to be an assignment. As to any other assignment or subleasing to be effective after the thirty-first (31 st) full month of the Term, Landlord agrees that it shall not unreasonably withhold its consent, provided the business of Tenant's assignee or subtenant is no more hazardous than that of Tenant, it being understood that Landlord shall not be obligated to consent at the time there is other comparable space available for lease at the Center which is owned by Landlord or an affiliate of Landlord, and that it shall not be unreasonable for Landlord to require, as a condition of such consent:

(b) That 50% of any money or other economic consideration received by Tenant as a result of such subletting or assignment and which is not properly allocable to any lease of Tenant's personal property in the Leased Space or sale of Tenant's assets from the business operated at the Leased Space or sale of Tenant's stock or other arms-length transaction, which exceeds, in the aggregate, the total sums which Tenant is obligated to pay Landlord under this Lease (pro rated to reflect obligations allocable to that portion of the Leased Space subject to the sublease or assignment) shall be payable to Landlord as Additional Rent under this Lease without affecting or reducing any other obligation of Tenant hereunder; and

(c) Unless otherwise agreed in Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rental and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rental by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignment or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Lease.

13. **ACCESS TO LEASED SPACE** .

Landlord, its employees and agents, shall have the right to enter the Leased Space at all reasonable times for the purpose of examining or inspecting the same, showing the same to prospective purchasers or tenants of the Building, or mortgagees, and making such alterations, repairs, improvements or additions to the Leased Space or to the Building as Landlord may deem necessary or desirable provided such alterations, repairs, improvements or additions do not adversely affect Tenant's Business or use of the Leased Space or, except with Tenant's consent, alter the Tenant Improvements performed in accordance with the Work Letter or approved Tenant's Alterations. Except in case of emergency in Landlord's reasonable judgment, any such entry shall be after reasonable notice to Tenant and in compliance with Tenant's practices from

time to time established with respect to areas where confidential information is located. If a representative of Tenant shall not be present to open and permit entry into the Leased Space at any time when such entry by Landlord is necessary in an emergency, Landlord may enter by means of a master key (or forcibly) without liability to Tenant and without such entry constituting an eviction of Tenant or termination of this Lease. All keys must be returned to Landlord at the expiration or termination of the Lease.

14. **REPAIRS** .

(a) Landlord shall repair, maintain and as necessary, replace, the roof, load bearing walls (other than paint and wall coverings), floors (other than carpeting, tile and similar floor coverings), foundations and other structural elements of the Building, and all plumbing and electrical fixtures and equipment and HVAC system components serving the Building; provided, however, that Landlord shall not be obligated for any of such repairs until the expiration of a reasonable period of time after written notice that such repair is needed. The cost of same shall be included in the Operating Expenses to the extent provided in **Section 3(a)(iii)** unless the necessity for any of the foregoing arises (a) from the gross negligence or willful and wanton misconduct of Landlord or its employees or, subject to **Section 3(a)(iii)(i)** hereof, by any other tenant of the Center or such tenant's agents, employees, licensees, or invitees, in which case such cost shall not be included as part of the Operating Expenses but shall be paid by Landlord (without prejudice to Landlord's right to recover same from the responsible party), or (b) negligence or willful and wanton misconduct of Tenant, its agents, employees, licensees or invitees, in which case such cost shall be paid by Tenant. Any such maintenance, replacements or repairs and any labor performed or materials furnished by or upon the direction of Landlord shall be performed in a good and workmanlike manner, using only materials of at least the same quality and integrity as that being repaired or replaced, and performed and furnished in compliance with all applicable laws, regulations, ordinances and requirements of all duly constituted authorities or governmental bodies having jurisdiction over the Building, and the requirements of any board of underwriters having jurisdiction thereof.

(b) Except as the Landlord is obligated for repairs as provided above or in **Section 11** , Tenant shall make, at its sole cost and expense, all repairs necessary to maintain the Leased Space and the fixtures therein in neat and orderly condition. If the Tenant refuses or neglects to make such repairs or fails to diligently prosecute the same to completion after written notice from Landlord of the need therefore and a reasonable time for cure, Landlord may make such repairs at the expense of Tenant and such expense shall be collectible as Additional Rent. Any such repairs and any labor performed or materials furnished in, on or about the Leased Space shall be performed and furnished by Tenant in compliance with all applicable laws, regulations, ordinances and requirements of duly constituted authorities or central bodies having jurisdiction over the Building, the requirements of any board of underwriters having jurisdiction thereof, as well as any reasonable regulations imposed by Landlord pertaining thereto. Without limitation of the foregoing, Landlord shall have the right to approve any and all contractors and suppliers to furnish materials and labor for such repairs, which consent shall not be unreasonably withheld, delayed or conditioned.

(c) If required solely as a result of Tenant's particular activities at the Leased Space (as opposed to general occupancy thereof by any tenant), Tenant also shall comply with, and make any repairs and installations required by any applicable law.

(d) Provided that Landlord shall exercise reasonable efforts to effectuate its repairs in a manner which will keep at a minimum Landlord's interference with Tenant's use and occupancy of the Leased Space, Landlord shall not be liable by reason of any injury to or interference with Tenant's Business arising from the making of any repairs, alterations, additions or improvements in or to the Leased Space, or the Building or Center or to any appurtenances or equipment therein.

15. **TERMINATION AND EXTENSION** .

(a) It is hereby mutually agreed that this Lease shall terminate at the end of the term if a renewal right has not been exercised or, if exercised, upon the end of any renewal term, without notice by either party.

(b) If Tenant shall hold over after the expiration of the Term hereof (as may be extended pursuant to **Section 45** below), and Landlord shall not give consent to such hold over by Tenant, such tenancy may be terminated as permitted by applicable state law, and until Tenant has vacated the Leased Space, it agrees to pay to Landlord rent at a monthly rental double the rate payable by Tenant at the expiration of the Term of this Lease.

16. **SURRENDER OF LEASED SPACE** .

At the end of the Term of this Lease, Tenant shall surrender the Leased Space to Landlord, in broom clean condition and in good order and repair except for ordinary wear and tear and damage for which Tenant is not obligated to make repairs under this Lease. Subject to **Sections 8 and 9** hereof and if an Event of Default has not occurred which is then continuing, Tenant shall have the right at the end of the Term hereof to remove any Tenant Alterations and any equipment, furniture, trade fixtures or other personal property placed in the Leased Space by Tenant, provided that Tenant promptly repairs any damage to the Leased Space caused by such removal. Tenant shall repair all damage to the Leased Space caused by such removal and restore the Leased Space to the condition in which they were prior to the installation of the items so removed, reasonable wear and tear and damage by casualty not caused by Tenant excepted. Tenant shall surrender the Leased Space to Landlord at the end of the term hereof, without notice of any kind, and Tenant waives all right to any such notice as may be provided under any laws now or hereafter in effect in Pennsylvania. If Tenant shall fail to remove any Tenant Alterations which it was required to remove pursuant to **Section 8** of this Lease or any of its equipment, furniture, trade fixtures or other personal property, Landlord may remove and store the same at the expense of Tenant or sell the same on behalf of Tenant at public or private sale in such manner as is commercially reasonable, with any proceeds thereof to be first applied to the costs and expenses, including attorney's fees, of the storage and sale and the payment of any amounts owed hereunder by Tenant.

17. **INDEMNIFICATION AND INSURANCE** .

(a) Tenant covenants and agrees that it shall, without notice or demand and at its own cost and expense, indemnify and save harmless Landlord against and from, and Landlord shall not be liable to Tenant for, any and all claims by or on behalf of any person arising in any manner whatsoever from, out of, or in connection with any accident, death, injury, or damage, loss or theft of property in or about the Leased Space (whether involving property belonging to Tenant or any other person) resulting from the negligence or willful misconduct of Tenant, its agents, employees, licensees or invitees, and from and against all costs, reasonable attorney fees, expenses and liabilities incurred in or as a result of any such claim or action or proceeding brought against Landlord by reason of any such claim. Tenant, upon notice from Landlord, covenants to resist or defend such action or proceeding by legal counsel reasonably satisfactory to Landlord. The indemnification obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Tenant, or any other person, under Workers or Workman's Compensation statutes, disability benefits statutes or other employee benefit laws.

(b) Tenant shall keep in force commercial general liability insurance with respect to the Leased Space, including contractual insurance with respect to the covenants and agreements above, with companies and in form reasonably acceptable to Landlord to afford protection of not less than Two Million ($2,000,000.00) Dollars with respect to personal injury or death and property damage, and naming Landlord as an additional insured and providing not less than thirty (30) days' notice of cancellation. Copies of such policies or a certificate of insurance evidencing same shall be delivered to Landlord.

(c) Landlord covenants and agrees that it shall, without notice or demand and at its own cost and expense, indemnify and save harmless Tenant against and from, and Tenant shall not be liable to Landlord for, any and all claims by or on behalf of any person arising in any manner whatsoever from, out of, or in connection with any accident, death, injury, or damage, loss or theft of property in or about the Leased Space (whether involving property belonging to Landlord or any other person) resulting from the gross negligence or wanton and willful misconduct of Landlord, its agents or employees, and from and against all costs, reasonable attorney fees, expenses and liabilities incurred in or as a result of any such claim or action or proceeding brought against Tenant by reason of any such claim. Landlord, upon notice from Tenant covenants to resist or defend such action or proceeding by legal counsel reasonably satisfactory to Tenant. The indemnification obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Landlord, or any other person, under Workers or Workman's Compensation statutes, disability benefits statutes or other employee benefit laws.

(d) Landlord shall keep in force commercial general liability insurance with respect to the Building, including contractual insurance with respect to the covenants and agreements above, with companies and in form reasonably acceptable to Tenant to afford protection of not less than Two Million ($2,000,000.00) Dollars with respect to personal injury

or death and property damage, and naming Tenant as an additional insured and providing not less than thirty (30) days' notice of cancellation. Copies of such policies or a certificate of insurance evidencing same shall be delivered to Tenant.

(e) All property insurance policies also shall contain a clause or endorsement denying the insurer any rights of subrogation against Landlord, in the case of Tenant's insurer, and Tenant, in the case of Landlord's insurer. As to any loss or damage covered by insurance containing a waiver of subrogation clause or similar endorsement, or to the property of a party arising from a peril normally covered by the ISO Causes of Loss-Special Form (CP 10 30) insurance policy, or its equivalent, with coverage extended for the perils of flood and earthquake, each party hereby releases the other, from any and all liability for such loss or damage to such party's property, even if such loss or damage shall be brought about by the fault or negligence of such other party, or the agents, employees, invitees or licensees of such other party.

18. **FIRE OR OTHER CASUALTY** .

(a) At all times during the Term of this Lease, Landlord shall maintain in full force and effect a property insurance policy on the Building against loss from perils covered by the ISO Causes of Loss-Special Form (CP 10 30), or its equivalent, with coverage extended for the perils of flood and earthquake, in an amount equal to full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage, and a waiver of subrogation endorsement in favor of Landlord. Such policy may include a commercially reasonable deductible. The premium for such insurance shall be included as an Operating Expense. Such coverage shall be issued by any reputable insurance company licensed in Pennsylvania, with at least a Best's rating of "A" or better. Landlord agrees to deliver a certificate evidencing such insurance coverage upon Tenant's request from time to time.

(b) If the Leased Space or the Building is partially damaged by fire or other casualty such that Tenant is able to conduct its business therein at a reduced but economically feasible level on a temporary basis, and insurance proceeds are available to Landlord, the damages shall be repaired by and at the expense of Landlord and the rent, until such repairs shall be made, shall be apportioned from the date of such fire or other casualty according to the part of the Leased Space which is usable by Tenant. Landlord agrees to repair such damage within a reasonable period of time after receipt from Tenant of written notice of such damage, except that Tenant agrees to repair and replace its own furniture, furnishings and equipment which were not provided as part of the Tenant Improvements. If Landlord is unable to complete reconstruction of the damaged premises within two hundred ten (210) days from the date of the casualty, Tenant shall have the right to terminate this Lease.

(c) If the Leased Space or Building is totally damaged or is rendered wholly untenantable by fire or other casualty, each party shall have the right to terminate the Lease by written notice to the other on or before thirty (30) days after such casualty occurred. If, however, Landlord consents in writing within thirty (30) days following such casualty to reconstruct the damaged premises to the condition which existed prior to such casualty and a reputable

contractor acceptable to Landlord and Tenant determines that such reconstruction can be substantially completed within two hundred ten (210) days from the date of such casualty, neither party shall have the right to terminate this Lease and Landlord shall undertake reconstruction of the damaged premises. If, however, Landlord is unable to complete reconstruction of the damaged premises within two hundred ten (210) days from the date of the casualty, Tenant shall have the right to terminate this Lease.

(d) Whenever Landlord shall be obligated hereunder to reconstruct damaged premises, Landlord agrees to undertake such reconstruction with reasonable diligence and, if Tenant shall remain in possession of any portion of the Leased Space, in such manner to as to minimize interference or disruption of Tenant's use of the Leased Space. Reconstruction shall be performed in a good and workmanlike manner, in accordance with standard construction practices and safety procedures, using only materials of at least equal quality and integrity as the materials damaged by the casualty, undertaken in such manner so as to restore the damaged premises to substantially the condition which existed prior to such casualty, and performed and furnished in compliance with all applicable laws, regulations, ordinances and requirements of all duly constituted authorities or governmental bodies having jurisdiction over the Building, and the requirements of any board of underwriters having jurisdiction thereof. For purposes of implementing the foregoing, the parties agree to substantially adhere to the practices established by the Work Letter attached hereto.

(e) Upon the termination of this Lease under the conditions hereinbefore provided, Tenant's liability for rent shall cease as of the day of the casualty. Tenant shall promptly vacate and surrender the Leased Space to Landlord in its "as is" condition, whereupon neither party shall have any further rights or obligations hereunder except that Landlord shall reimburse to Tenant (i) any portion of the Security Deposit not otherwise applied by Landlord in accordance with this Lease, and (ii) prepaid Rent paid by Tenant. Such reimbursement shall be made in full to Tenant not later than thirty (30) days following termination of this Lease, and if not so paid, such unpaid amounts shall accrue interest at the Default Rate specified in this Lease from the date of termination until paid in full. The limitations set forth in **Section 28** hereof shall not apply to Landlord's liability for payment of the foregoing amounts.

19. **CONDEMNATION** .

If the Leased Space or the Building or any material part of either shall be condemned or otherwise subject to an eminent domain proceeding, then and in that event, upon the transfer of title to the authority exercising such power, this Lease shall terminate, and all rent paid in advance shall be apportioned as of the date of such termination. Notwithstanding the foregoing, if only a part of the Leased Space shall be so taken and the part not so taken shall be sufficient in Tenant's reasonable judgment for the economic and feasible operation of Tenant's business, Tenant, at its election, may retain the part not so taken and there shall be a proportional reduction in the rent. All compensation awarded or paid upon such a total or partial taking of the Leased Space shall belong to and be the property of the Landlord. The foregoing shall not, however, be construed to preclude the Tenant from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, or depreciation to, damage to,

or cost of removal of, or for the value of stock, trade fixtures, furniture, and other personal property belonging to the Tenant, provided, however, that no such award or claim shall diminish or otherwise adversely affect the Landlord's award (subject to Tenant's interest therein as aforesaid).

20. **ESTOPPEL CERTIFICATES** .

At any time, and from time to time, upon the written request of Landlord or any "Mortgagee" (as defined in **Section 29** hereof), Tenant, within ten (10) business days of the date of such written request, agrees to execute and deliver to Landlord and/or such Mortgagee, a written statement: (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the Term of this Lease; (c) certifying that Tenant is in occupancy of the Leased Space, and that the Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed by Landlord have been satisfied and performed except as shall be stated; (e) certifying that Landlord is not in default under the Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord, or stating the defaults and/or defenses claimed by Tenant; (f) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid; (g) reciting the amount of security deposited with Landlord, if any; and (h) any other information which Landlord or the Mortgagee reasonably may require. The failure of Tenant to execute, acknowledge and deliver to Landlord and/or any Mortgagee a statement in accordance with the provisions herein within the period set forth herein shall constitute an acknowledgment by Tenant which may be relied upon by any person holding or intending to acquire any interest whatsoever in the Leased Space or the Building that this Lease has not been assigned, amended, changed or modified, is in full force and effect and that the Minimum Annual Rent, and Additional Rent have been duly and fully paid not beyond the respective due dates immediately preceding the date of the request for such statement and shall constitute as to any persons entitled to rely on such statements (other than Landlord) a waiver of any defaults by Landlord or defenses or offsets against the enforcement of this Lease by Landlord which may exist prior to the date of the written request.

21. **DEFAULT** .

The occurrence of any of the following shall constitute an "Event of Default" of this Lease by Tenant:

(a) A failure by Tenant to pay, when due, any installment of rent hereunder or any such other sum herein required to be paid by Tenant where such failure continues for ten (10) days after written notice thereof from Landlord; provided however said written notice shall not be required to be given by Landlord more than twice in any twelve (12) month period.

(b) A failure by Tenant to observe and perform any other terms or conditions of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that, if such default is of a nature that cannot be reasonably cured within such thirty (30) day period, no default shall exist so

long as Tenant has commenced cure within such thirty (30) day period and diligently pursues same to completion within ninety (90) days.

(c) The making by Tenant of any assignment for the benefit of creditors, an adjudication that Tenant is bankrupt, insolvent, or unable to pay its debts; the filing by or against Tenant of a petition in bankruptcy or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days after the filing thereof); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Leased Space or of Tenant's interest in this Lease (unless possession is restored to Tenant within thirty (30) days after such appointment); or the attachment, execution or levy against, or other judicial seizure of, substantially all of Tenant's assets located in the Leased Space or of Tenant's interest in this Lease (unless the same is discharged within thirty (30) days after issuance thereof).

22. **REMEDIES** .

Upon the occurrence of any Event of Default by Tenant:

(a) Landlord may perform for the account of Tenant any such act, the omission of which constituted an Event of Default by Tenant and immediately recover as Additional Rent any expenditures made and the amount of any obligations incurred in connection therewith, plus interest at the Default Rate from the date the obligations are incurred by Landlord until payment therefor to Landlord, whether before or after entry of judgment and issuance of execution thereon.

(b) Landlord may accelerate all Minimum Annual Rent and Additional Rent due for the balance of the Term of this Lease and declare the same to be immediately due and payable. In determining the amount of any future payments due Landlord relating to Operating Expenses and/or Real Estate Taxes, Landlord shall make such determination based upon the most recent estimates of Operating Expenses and/or Real Estate Taxes available.

(c) Landlord, at its option, may serve notice upon Tenant that this Lease and the then unexpired term thereof shall cease and expire and become absolutely void on the date specified in such notice, to be not less than five (5) days after the date of such notice without any right on the part of the Tenant to save the forfeiture by payment of any sum due or by the performance of any term or condition broken; and, thereupon and at the expiration of the time limit in such notice, this Lease and the Term hereof, as well as the right, title and interest of the Tenant hereunder, shall wholly cease and expire and become void in the same manner and with the same force and effect (except as to Tenant's liability) as if the date fixed in such notice were the date herein granted for expiration of the Term of this Lease. Thereupon, Tenant shall immediately quit and surrender to Landlord the Leased Space, and Landlord may enter into and repossess the Leased Space by summary proceedings, detainer, ejectment or otherwise and remove all occupants thereof and, at Landlord's option, any property thereon, without being liable to indictment, prosecution or damages therefor. No such expiration or termination of this Lease

shall relieve Tenant of its liability and obligations under the Lease, whether or not the Leased Space shall be relet.

(d) Landlord may, at any time after the occurrence of any Event of Default, re-enter and repossess the Leased Space and any part thereof and attempt in its own name, as agent for Tenant if this Lease not be terminated, or on its own behalf if this Lease be terminated, to relet all or any part of the Leased Space for and upon such terms and to such persons and for such period or periods as Landlord, in its sole discretion, shall determine, including a term beyond the termination of this Lease; and Landlord shall not be required to accept any tenant offered by Tenant or observe any instruction given by Tenant about such reletting. For the purpose of such reletting, Landlord may decorate or make repairs, changes, alterations or additions in or to the Leased Space to the extent deemed by Landlord desirable or convenient; and the cost of such decoration, repairs, changes, alterations or additions shall be charged to and be payable by Tenant as Additional Rent hereunder, as well as any reasonable brokerage and attorneys fees incurred by Landlord; and any sums collected by Landlord from any new tenant obtained shall be credited against the balance of the rent due hereunder as aforesaid. Tenant shall pay to Landlord monthly, on the days when the rent would have been payable under this Lease, the amount due hereunder less the amount obtained by Landlord from such new tenant.

(e) Landlord shall have the right of injunction, in the event of a breach or threatened breach by Tenant of any of the terms and conditions hereof, to restrain the same and the right to invoke any remedy allowed by law or in equity, whether or not other remedies, indemnities or reimbursements are herein provided. The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies; and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others.

(f) In the event of the occurrence of an Event of Default hereunder, Landlord shall have the right to change the locks on the Leased Space and exclude Tenant therefrom, and to discontinue all or part of the services and facilities provided to Tenant under this Lease or otherwise, which-action shall not be deemed an eviction. Such action may be taken, however, only upon five (5) days prior notice to Tenant, and Tenant hereby releases Landlord from any liability for any damages sustained by Tenant or its property as a result of the same.

(g) If Tenant has paid accelerated rent to Landlord and Landlord thereafter re-lets any portion of the Leased Space, any sums collected by Landlord from any new tenant obtained in excess of the cost of decoration, repairs, changes, alterations or additions, and any reasonable brokerage and attorneys fees incurred by Landlord in connection with such re-letting, to the extent the same exceed all other damages incurred by Landlord as a result of Tenant’s default, shall be paid to Tenant if, as and when received by Landlord from the replacement tenant, but in no event shall the amount to be paid to Tenant by Landlord exceed the amount of accelerated rent and other damages paid by Tenant to Landlord.

(h) Following an Event of Default, Landlord agrees not to unreasonably withhold, delay or condition (including, for example, the requirement of any back-rent payments by Tenant) its consent to any subtenants or assignees which Tenant may propose for all or any

portion of the Leased Space provided that Landlord's acceptance of any such subtenant or assignee shall not be deemed to cure Tenant's default nor otherwise relieve Tenant of its obligations hereunder, unless Landlord otherwise agrees in writing. Any rent paid as a result of any such assignment or sublease shall be applied in accordance with **subsection (g)** above.

23. **CONFESSION OF JUDGMENT FOR POSSESSION IN LIMITED CIRCUMSTANCE** .

If Tenant fails to vacate the Leased Premises upon termination of this Lease or an Event of Default under **Section 21(a)** shall have occurred, Landlord shall have the further remedy of confession of judgment for possession:

ANY PROTHONOTARY OR ATTORNEY OF ANY COURT OF RECORD MAY APPEAR FOR TENANT TO FILE AN AGREEMENT FOR ENTERING IN ANY COMPETENT COURT AN AMICABLE ACTION FOR JUDGMENT EJECTMENT AGAINST TENANT AND ALL PERSONS CLAIMING UNDER TENANT, AND A JUDGMENT FOR THE RECOVERY BY LANDLORD OF POSSESSION MAY ISSUE FORTHWITH WITHOUT ANY PRIOR WRIT OR PROCEEDINGS WHATSOEVER. IF FOR ANY REASON AFTER SUCH ACTION SHALL HAVE BEEN COMMENCED, IT SHALL BE CANCELED OR SUSPENDED AND POSSESSION OF THE LEASED SPACE REMAINS IN OR IS RESTORED TO TENANT, LANDLORD SHALL HAVE THE RIGHT UPON ANY SUBSEQUENT DEFAULT OR TERMINATION OF THIS LEASE OR ANY RENEWAL OR EXTENSION HEREOF, TO BRING ONE OR MORE AMICABLE ACTIONS IN EJECTMENT AS HEREINBEFORE SET FORTH TO RECOVER POSSESSION OF THE LEASED SPACE. IF IN ANY AMICABLE ACTION IN EJECTMENT, OR IN ASSUMPSIT FOR RENT OR CHARGES, LANDLORD SHALL CAUSE TO BE FILED IN SUCH ACTION AN AFFIDAVIT SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT AND IF A TRUE COPY OF THIS LEASE (AND THE TRUTH OF THE COPY STATED IN SUCH AFFIDAVIT SHALL BE SUFFICIENT PROOF) BE FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY LAW, RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING. TENANT EXPRESSLY RELEASES TO LANDLORD, AND TO ANY AND ALL ATTORNEYS WHO MAY APPEAR FOR TENANT, ALL ERRORS IN THE SAID PROCEEDINGS, AND ALL LIABILITY THEREFOR.

24. **WAIVER** .

The failure or delay on the part of either party to enforce or exercise at any time any of the terms and conditions of this Lease shall in no way be construed to be a waiver thereof, nor in any way to affect the validity of this Lease or any part hereof, or the right of such party to thereafter enforce each and every such term or condition. No waiver by either party of any breach of this

Lease shall be held to be a waiver of any other or subsequent breach. The receipt by Landlord of rent or the payment by Tenant of rent at a time when a default exists under this Lease shall not be construed as a waiver of such default. The receipt by Landlord of a lesser amount than the rent due shall not be construed to be other than a payment on account of the rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of the rent due or to pursue any other remedies provided in this Lease. No act or thing done by this Lease shall be deemed an acceptance or a surrender of the Leased Space, and no agreement to accept such a surrender shall be valid unless in writing and signed by the party against whom enforcement is sought.

25. **QUIET ENJOYMENT** .

If and so long as Tenant pays the rent reserved hereunder and observes and performs all the terms and conditions on Tenants part to be observed and performed hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Leased Space for the entire Term hereof, subject to all of the provisions of this Lease.

26. **FORCE MAJEURE** .

Time periods for performance of each party's obligations (including without limitation construction obligations) under any of the terms of this Lease shall be extended for periods of time during which performance is prevented due to circumstances beyond the performing party's control, including without limitation, embargoes, governmental regulations, act of God, war or other strife, shortages or unavailability of materials or equipment which are "special order items" described in the TI Plans or Change Orders, strikes, lockouts, adverse weather conditions, bankruptcy or breach of contract by a subcontractor (collectively, "Force Majeure"). Force Majeure events shall not, however, excuse any party's failure to perform a monetary obligation which has arisen.

27. **SUCCESSORS** .

The respective rights and obligations provided in this Lease shall bind and shall inure to the parties hereto, and their successors and permitted assigns.

28. **LANDLORD'S LIABILITY** .

Landlord's responsibility under this Lease shall be limited to its interest in the Leased Space and in the Building, and no members of Landlord's partnership shall be personally liable hereunder. Tenant agrees to look solely to Landlord's interest in the Leased Space and in the Building for the collection of any judgment, and, in entering any such judgment, the person entering the same shall request the prothonotary to mark the judgment index accordingly. If the Leased Space or the Building is transferred or conveyed, Landlord shall be relieved of all covenants and obligations under this Lease thereafter accruing, provided that notice of said transfer or conveyance is given to Tenant by Landlord.

29. **SUBORDINATION** .

Landlord represents that no "Mortgage" (hereafter defined) currently encumbers the Building, any part thereof, or the land on which it is situate. Upon delivery of a nondisturbance and attornment agreement which is reasonably satisfactory to Tenant, this Lease is, and all of Tenant's rights hereunder are and shall always be, subject and subordinate to any such mortgage, leases of Landlord's property (in sale-leaseback) pursuant to which Landlord has or shall retain the right of possession of the Leased Space (and/or the Building) or security instruments (collectively called "Mortgage") that now exist, or may hereafter be placed upon the Leased Space or the Building, or any part thereof and all advances made or to be made thereunder and extensions thereof, and if the holder of any such interest ("Mortgagee") forecloses or extinguishes Landlord's rights in the Building or Leased Space, Tenant shall attorn to and recognize any such holder as the successor Landlord under this Lease. The aforesaid provision shall be self-operative and no further instrument or document shall be necessary unless required by any such Mortgagee or purchaser. Notwithstanding anything to the contrary set forth above, any Mortgagee may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by execution of a written document subordinating such Mortgage to this Lease to the extent set forth therein, thereupon this Lease shall be deemed prior to such Mortgage. Should Landlord or any Mortgagee or purchaser desire confirmation of either such subordination or such attornment, as the case may be, Tenant upon written request, and from time to time, will execute and deliver without charge and in form reasonably satisfactory to Tenant, Landlord, to the Mortgagee or the purchaser all instruments and/or documents that may be required to acknowledge such subordination and/or agreement to attorn, in recordable form within ten (10) business days following a request therefor from Landlord. The foregoing subordination and attornment provisions are subject to the Mortgagee's agreement that such Mortgagee agrees to recognize this Lease and to allow Tenant to remain in possession of the Leased Space and exercise all of its rights under the Lease so long as Tenant does not suffer an Event of Default under this Lease and this Lease or Tenant's right of possession is not terminated in accordance with the terms of this Lease.

30. **RULES AND REGULATIONS** .

Tenant agrees to comply with the rules and regulations established by Landlord from time to time, which Landlord agrees will be applied uniformly to all tenants; provided, however, that none of such rules and regulation materially and adversely affect Tenant's rights hereunder or operation of Tenant's Business from the Leased Space, and Tenant is afforded a reasonable time from notice thereof to achieve compliance therewith. The existing rules and regulations are attached hereto as **Exhibit "E."**

31. **GOVERNING LAW** .

This Lease shall be governed by and construed in accordance with the laws of the state in which the Building is located.

32. **SEVERABILITY** .

If any provisions of this Lease shall prove to be invalid, void or illegal, it shall in no way affect any other provision hereof and the remaining provisions shall nevertheless remain in full force and effect.

33. **NOTICES** .

All notices and statements required or permitted under this Lease shall be in writing and delivered by either (a) United States Registered or Certified Mail, return receipt requested, postage prepaid, (b) Federal Express or other nationally recognized overnight courier service, fee prepaid, or (c) hand delivery against written receipt therefor, in each case addressed as follows:

As to Tenant prior to Commencement Date:	ViroPharma Incorporated 397 Eagleview Boulevard Exton, PA 19341 Attention: General Counsel
As to Tenant as of the Commencement Date:	ViroPharma Incorporated Eagleview Corporate Center 730 Stockton Drive Exton, PA 19341 Attention: General Counsel
As to Landlord:	730 Stockton Drive Associates, L.P. P.O. Box 562 707 Eagleview Boulevard Eagleview Corporate Center Exton, PA 19341 Attention: General Partner

Either party may at any time, in the manner set forth for giving notices to the other, designate a different address to which notices to it shall be sent. Notice given in accordance with this Section shall be deemed given and received as of the earlier of (i) actual receipt or (ii) first attempted delivery which is refused (as opposed to being returned for insufficient postage/fee, improper address or like cause).

34. **BROKERS** .

Tenant represents and warrants to Landlord that Tenant has not dealt with any broker, firm, company or person in connection with the negotiation for or the obtaining of this Lease, and each party shall indemnify, defend and hold harmless the other from and against any claim by any person claiming a commission or other form of compensation by virtue of having dealt with

such party with regard to this Lease, and any attorneys fees or other expenses incurred by the other party in connection therewith.

35. **SIGNS** .

Tenant shall not, without the prior written consent of Landlord, paint, place or erect any sign on the exterior doors or walls of the Leased Space or of the Building or Center. Subject to applicable zoning requirements and Landlord and Tenant's mutual agreement on sign graphics not to be unreasonably withheld, Tenant shall have the right to maintain signs on the Real Estate (hereafter defined in **Section 44(a)(i)**) as follows: (a) two monument signs of the size and at the current location as exist and face Stockton Drive, each of which monument signs have columns at each side which are approximately 19.5 inches wide and 63.5 inches high, which columns surround a monument approximately 97 inches wide by 51.5 inches high; and (b) a building entry sign a maximum of 36 inches wide by 22 inches high at the Building's main entry door. Landlord shall install the building address on the monument signs at its expense, and install the Tenant's name and/or logo on each of the monument signs at Tenant's expense, subject to a $1500.00 allowance which Landlord will provide Tenant for both signs toward the cost of installing the Tenant's name and/or logo. Landlord will supply the sign plate for the building entrance sign, but Tenant shall bear the cost of all graphics bearing Tenant's name and/or logo. Landlord shall be responsible to obtain approval from the Association with respect to such signage and, as declarant under the Covenants, hereby (i) approves the size of the signs described herein, and (ii) agrees not to unreasonably withhold its consent to the sign graphics on either sign as long as same is reasonably compatible with other business signage located within the Center. In addition, Landlord shall install at its expense vinyl lettered signs on any unused entry doors at the front of the Building indicating that such doors are not entrances to the Building.

36. **SECURITY DEPOSIT** .

(a) Upon the execution of this Lease, Tenant agrees to deposit with Landlord, the sum of $137,000.00 to be held by Landlord as security for the faithful performance of all the terms and conditions of this Lease ("Security Deposit"). The Security Deposit shall be paid directly to Landlord. Should the Tenant breach any of the terms and conditions of this Lease which continues beyond any applicable cure period and required notice, Landlord shall have the right, at any time, to apply the Security Deposit or any part thereof, for the purpose of curing any such default or for the purpose of reimbursing Landlord for any damage or costs occasioned by such default, but the right of Landlord to apply the Security Deposit shall not affect any other remedies available to Landlord under this Lease or under applicable law. If the Security Deposit, or any part thereof, is so applied by Landlord, Tenant shall, within ten (10) days after demand, deposit additional funds with Landlord to restore the Security Deposit, and failure to do so shall constitute an event of default under this Lease.

(b) If the Tenant shall have complied with all material terms and conditions of this Lease at the expiration of this Lease, the Security Deposit (without interest and amounts properly withdrawn by Landlord and not refunded by Tenant) shall be refunded to Tenant within thirty (30) days after the expiration or sooner termination of this Lease (including without limitation

permitted terminations hereunder and terminations due to Landlord's default which continues beyond applicable grace and cure periods following notice where applicable); provided, however, that Tenant first shall have vacated the Leased Space and surrendered possession thereof to the Landlord by delivery of keys, in accordance with the Lease provisions and shall have returned the Leased Space to Landlord in the condition required hereunder.

(c) Nothing herein contained shall require Landlord to hold the sums so deposited as a trust fund, nor establish any relationship other than that of debtor and creditor with respect to said funds so deposited.

(d) If Landlord shall assign or otherwise transfer its interest in this Lease, Landlord shall transfer the Security Deposit to the assignee or other transferee of such interest (with like obligation to transfer to any subsequent assignee or other transferee), and upon such transfer, Landlord shall be released and relieved from all liability and/or responsibility with respect to this Security Deposit and/or the return or application thereof.

37. **USE OF INFORMATION IN ADVERTISING** .

Landlord and any agent employed by Landlord shall be permitted to utilize the name of Tenant and any occupant or user of the Leased Space, and other general information about the Tenant and such occupant or user, and the terms of this Lease, in advertising and promotional material utilized by them.

38. **CAPTIONS** .

The title to paragraphs of this Lease are for convenience of reference only, and are not to be construed as defining, limiting or modifying the scope or intent of any of the terms and conditions of this Lease.

39. **ENTIRE AGREEMENT** .

This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the rental, use and occupancy of the Leased Space and Tenant's use of the Building and other matters set forth in this Lease. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect and the terms, covenants and conditions of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

40. **ACCESS TO THE LEASED SPACE AND COMMON AREAS** .

Tenant shall have access to the Leased Space and common areas of the Building 24 hours a day, 365 days per year.

41. **ATTORNEY FEES** .

The prevailing party in any litigation or arbitration to enforce any obligation under this Lease shall be entitled to have reimbursed by the other party all reasonable costs of collection and fees for legal counsel incurred as a result of enforcing or protecting any rights under this Lease.

42. **SELF-HELP** .

(a) If Landlord fails to fulfill its obligations under this Lease, Tenant shall notify Landlord of such non-performance. Except in the case where immediate response is required to avoid physical damage to the Leased Space or persons or Tenant's property therein, Landlord shall have thirty (30) days to cure such nonperformance. If Landlord fails to complete cure within such thirty (30) days after receipt of such notice from Tenant, Tenant shall have the right, but not the obligation, to carry out such activities on behalf of Landlord so as to cure such nonperformance. Landlord shall reimburse Tenant for all reasonable costs, fees and expenses incurred by Tenant in connection with performing such cure. Such reimbursement shall be made within fifteen (15) days after written demand by Tenant, which demand shall be accompanied by appropriate invoices or other materials to substantiate the amount for the requested reimbursement. If Landlord fails to pay Tenant the amount requested within said fifteen (15) day period, such unpaid amounts shall accrue interest at the Default Rate which shall continue to accrue on any judgment obtained by Tenant against Landlord for recovery of such unreimbursed amounts. Notwithstanding the foregoing rights, Tenant shall not be entitled to set-off such amounts against Rent due hereunder, and Tenant hereby expressly waives such right, unless and until Tenant shall have obtained a final judgment against Landlord with respect to Landlord's obligation under the Lease which Tenant alleges that Landlord failed to perform, and such right of set-off shall be applicable only to the amount of the judgment not paid within thirty (30) days and may be asserted by Tenant against installments of Rent thereafter coming due.

(b) Amounts due from Landlord to which the Default Rate has been applied shall continue to accrue interest at the Default Rate after entry of judgment and issuance of execution thereon until paid in full.

43. **MEMORANDUM OF LEASE** .

Tenant, at its expense, shall be entitled to record a memorandum of lease which Landlord shall execute and acknowledge. Concurrently with the execution of this Lease, Tenant and Landlord agree to execute such memorandum of lease along with a termination thereof, both of which shall be in form and substance sufficient to permit the recording of such instrument and otherwise reasonably acceptable to Landlord and Tenant. The termination of such memorandum of lease shall be held in escrow by Riley, Riper, Hollin & Colagreco, as escrow agent, until termination of this Lease, pursuant to a separate escrow agreement with respect to which the parties agree to negotiate in good faith promptly upon or following execution hereof. In the absence of such escrow agreement, the party designated as escrow agent shall hold such termination until the earlier of (a) receipt of a court order directing release of said termination or

(b) written instructions from Landlord and Tenant directing the release of said termination. Landlord shall cause its affiliates which own the Adjacent Land, Lot 11 and the Southwest Parcel (as defined in **Section 46** below) to execute and acknowledge the foregoing memorandum and termination with respect to the Adjacent Land and Southwest Parcel.

44. **LANDLORD REPRESENTATIONS AND WARRANTIES** .

(a) Landlord, to induce Tenant to enter into this Lease, represents, warrants and agrees, as of the date first set forth above and the Commencement Date, as follows, which representations and warranties shall survive until one (1) year after the Building and Leased Space are Substantially Completed:

(i) Title to the Property . To Landlord's Knowledge, Landlord owns the Land upon which the Building has been constructed and has good and marketable title of record thereto, free of any liens or encumbrance except for the Permitted Title Exceptions described on ***Exhibit "F"*** hereto. Landlord's ownership of the Land has never been challenged. No parties other than Landlord are required to execute or consent to this Lease.

(ii) No Third Party Rights . There are no options, licenses, leases, rights of first refusal, contracts for the sale of the Real Estate (including conditional sales agreements) or similar arrangements respecting the Real Estate other than as are to be entered with Tenant.

(iii) Condemnation . Landlord has not received any notice or other communication from any governmental unit or other body having the power of eminent domain indicating that any part of the Land or other portion of Eagleview Corporate Center has been, will or may be condemned.

(iv) Proceedings . No action, suit, or proceeding currently is pending against the Real Estate or, to Landlord's Knowledge, any other portion of Eagleview Corporate Center in any court or before any board, commission agency or other governmental instrumentality. Landlord has not received written notice of any such threatened action, suit, or proceeding.

(v) Assessments: Public Improvements . No assessments or notice of assessments for public improvements have been made against the Land prior to the date of this Lease which have not been paid, other than impact fees which will be paid by Landlord, and no work has been commenced on new public improvements authorized by ordinances enacted prior to the date hereof which will result in an assessment against the Land.

(vi) Zoning and Approvals . The Land is zoned planned commercial/industrial. All subdivision and land development approvals necessary for the creation of the Land as a separate lot with direct access to a public road (collectively "Approvals") have been obtained and are in full force and effect as of this date. Landlord is in full compliance with all Approvals and, to Landlord's Knowledge, no condition or state of facts

now exists which, with the giving of notice or expiration of applicable time period, could cause the invalidation, termination or revocation of any of the Approvals.

(vii) Flood Plain . To Landlord's Knowledge, no portion of the Land is located within a special flood hazard area as documented in the "Department of Housing and Urban Development, Federal Insurance Administration Special Flood Hazard Area Maps."

(viii) Environmental.

(A) Environmental Reports . Landlord has delivered to Tenant a true, correct and complete copy of the environmental report titled Environmental Site Assessment Eagleview Corporate Center by SMC Martin, which bears the reference number 9388-88100(2.0) and date of March 16, 1989 ("Environmental Report"). The Environmental Report covers the Land, and, to Landlord's Knowledge, no facts or circumstances have changed at the Land which would make any potion of the Environmental Report incorrect or misleading. In the event there is found, through a Phase 1 environmental site assessment being obtained by Tenant (the "New Phase 1 Report"), any adverse environmental condition which in Tenant's reasonable judgment will preclude its use of the Leased Space for Tenant's Business, or which will expose Tenant to liability for remediation of existing environmental hazards identified in the New Phase 1 Report, which liability Landlord will not assume in a manner satisfactory to Tenant, then Tenant may terminate this Lease by written notice delivered to Landlord not later than two (2) business days after receipt of the New Phase 1 Report.

(B) Compliance; Permits . To Landlord's Knowledge, as of the date of this Lease, the Land is in compliance with all applicable Federal, state and local laws, regulations, ordinances, rulings , and directives relating to protection or regulation of the environment ("Environmental Laws") and with any permit or governmental authorization which relate to the Environmental Laws.

(C) Underground Storage Tanks . To Landlord's Knowledge, no underground storage tanks are located on the Land nor have any underground storage tanks been removed from the Land.

(ix) Utilities . The following utilities currently service the Real Estate (or are available to service the Land with appropriate connections): water, sewer, gas, telephone, electricity and conduits for fiber optics and cable. All approvals required for any necessary connections have been obtained and remain in full force and effect. All such utilities are available currently at the Building and are available without any limitation or allocation imposed by the utility provider or applicable governmental authorities with the exception of sewer effluent limitations.

(x) Covenants . The Amended and Restated Declaration of Easements and Protective Covenants recorded in Deed Book 2074 at Page 240 as amended by a Supplement and Clarification recorded in Deed Book 2363, page 499, a First Amendment recorded in Deed Book 2596, page 550, a Second Amendment recorded in Deed Book 3590, page 1986, a Third

Amendment recorded in Deed Book 3672, page 579 and a Fourth Amendment recorded on Deed Book 4177, page 2306, a Fifth Amendment recorded in Record Book 4206 Page 1534, a Sixth Amendment recorded in Record Book 4365 Page 649, a Seventh Amendment recorded in Record Book 4744 Page 0278, and an Eighth Amendment recorded in Record Book 7006, page 2299 (collectively, "Declaration") constitutes all of the protective covenants or similar agreements which effect Eagleview Corporate Center. Landlord represents and covenants that no private agreements exist which materially and adversely affect Tenant's rights under this Lease or an owner's rights under the Declaration, including the ability to seek enforcement thereof, nor will Landlord hereafter enter into any such agreement.

(xi) Discovery of Facts . If, prior to the Commencement Date, Landlord acquires actual knowledge of any fact which would be required to be disclosed by Landlord to render its representations and warranties true, correct and complete, in all material respects, Landlord promptly shall disclose such fact to Tenant.

(b) For purposes of this **Section 44** , the term (and similar terms) "to Landlord's Knowledge" shall mean to the best knowledge of Landlord's President, Executive Vice President and Director of Commercial Marketing (including without limitation knowledge deemed to be charged to Landlord by virtue of items and facts disclosed in the reports of consultants in Landlord's possession wherever located) such statement or fact is true and correct and such persons possess no information which make such statement or fact incomplete or misleading.

45. **RENEWAL OPTION** .

(a) Tenant shall have the right and option to extend the term of this Lease for two (2) consecutive renewal terms, each of five (5) years duration. The first renewal term, if exercised, shall commence on the day immediately following the expiration of the Initial Term hereof, and the second renewal term, if exercised, shall commence on the date immediately following the expiration of the first renewal term. The option to extend, as well as the commencement of each renewal term, shall be conditioned on no uncured Events of Default by Tenant then existing.

(b) Tenant shall exercise each renewal option only by delivering written notice of same to Landlord not later than one (1) year prior to the expiration of the then current term. Tenant's failure to timely exercise an option shall be deemed a waiver of all rights under this Section, in which event this Lease shall terminate upon expiration or earlier termination of the then current term.

(c) Each renewal term, if exercised, shall be upon all of the terms and conditions of this Lease, except for provisions which, by their nature, are limited to the Initial Term and for the change in Minimum Annual Rent which (i) for the first renewal term, if exercised, shall be the greater of $17.30 per rentable square foot or the FMRV determined in accordance with **subsection (d)** below and (ii) for the second renewal term, if exercised, shall be

the greater of the rate per rentable square foot during the final year of the first renewal term, or the FMRV determined in accordance with **subsection (d)** below.

(d) Fair Rental Value Calculation . The FMRV shall mean the fair market rental rate per square foot of rentable area per year, calculated at the time of the determination of the FMRV and based on leases within Chester County for comparable space under comparable terms within comparable buildings at the time in question. Subject to the foregoing, the FMRV shall be determined as follows:

(i) Not later than three (3) months nor sooner than six (6) months prior to the commencement of a renewal term, Landlord shall notify Tenant in writing of Landlord's estimate of the FMRV. Within ten (10) business days following Landlord's notice of the FMRV, Tenant, by written notice to Landlord, either will accept Landlord's statement of the FMRV or notify Landlord of Tenant's estimate of the FMRV, if different from that set forth in Landlord's notice. In the absence of such timely notice by Tenant to Landlord, Tenant will be deemed to have accepted Landlord's statement of FMRV. If Tenant shall furnish a counter-estimate of the FMRV, Landlord, by written notice to Tenant within ten (10) business days after Landlord's receipt of Tenant's estimate, either may accept Tenant's estimate in writing or, without prejudice to any position, suggest alternative figures for the FMRV which are greater than Tenant's estimate thereof and less than Landlord's initial statement. In the absence of such timely notice by Landlord to Tenant, Landlord will be deemed to have accepted Tenant's statement of FMRV. If Landlord and Tenant shall not have an agreement as to the FMRV within thirty-five (35) days following Tenant's written notice to Landlord exercising a renewal right, FMRV shall be determined by appraisal as set forth in **subsection (ii)** below.

(ii) If FMRV is to be determined by appraisal, such determination shall be by an appraiser who is a member of the American Institute of Real Estate Appraisers or its successor organization holding the M.A.I. designation, and who is agreed upon by Landlord and Tenant. If Landlord and Tenant are unable to agree upon an appraiser within the time period specified in **subsection (i)** above, then, within five (5) business days thereafter, each shall appoint a M.A.I. appraiser and the FMRV shall be the FMRV determined by such appraisers or the average thereof if their respective appraisals differ by ten percent (10%) or less. If either party shall fail to appoint an appraiser within the time provided, the FMRV determined by the appraiser timely appointed shall be the FMRV. If the appraisals delivered by the appraisers appointed by Landlord and Tenant differ by more than ten percent (10%), the appraisers so appointed shall appoint a third M.A.I. appraiser and the FMRV shall be the average of the appraisal delivered by the third appraiser and whichever of the appraisals previously delivered by the appraisers appointed by Landlord and Tenant is closer to the appraisal of the third appraiser. If the two appraisers are unable to agree upon a third appraiser within ten (10) days from the date the later of their two appraisals is delivered, such appointment, on application by either Landlord or Tenant, will be made by the then President of the Real Estate Board for Chester County or, if such person is unwilling or unable to make such appointment, by the American Arbitration Association or its successor organization acting through its office in Philadelphia or by its office located closest to Philadelphia. Landlord and Tenant each shall pay the fees and expenses of the respective appraiser appointed by each of them and shall pay in equal shares the fees and

expenses of the appraiser mutually agreed upon by Landlord and Tenant, or as may be appointed by the first two appraisers, the then President of the Real Estate Board for Chester County or the American Arbitration Association or its successor, as applicable.

(iii) The determination of FMRV in accordance with this Section shall be conclusive and binding on Landlord and Tenant.

46. **EXPANSION OPTION FOR ADJACENT BUILDINGS**

(a) For the purpose of this Section, the term "Landlord" shall mean either Landlord or any affiliate of Landlord which owns property adjacent to the Building, such adjacent property being a lot consisting of approximately 9 acres, more or less at the end of Arrowhead Drive with frontage on the Pennsylvania Turnpike, ("Adjacent Land"), on which Adjacent Land Landlord expects to obtain development approval for a building of approximately 62,000 rentable square feet designated as "4" on the plan attached hereto as **Exhibit G** (the "Adjacent Land Building"), and the "Southwest Parcel" (as defined in subsection (b) below, as applicable. In addition, on Lot 11 Landlord has obtained development approval for two flex buildings, one of which is approved for 26,000 square feet designated as "2" on **Exhibit G** , and one of which is approved for 32,000 square feet designated as "3" on **Exhibit G** (collectively the "Lot 11 Buildings"), as such buildings are also depicted on the approved land development plan for Lot 10 attached hereto as **Exhibit H** . If Landlord desires to lease or sell all or a portion of the 32,000 square foot Lot 11 Building or the Adjacent Land Building (collectively the "ROFO Buildings"), Landlord shall notify Tenant of such decision in writing ("Availability Notice"), and within ten (10) business days thereafter, Tenant shall notify Landlord in writing whether it desires to negotiate a lease or purchase of one or both of the ROFO Buildings from Landlord. If Tenant so notifies Tenant that it desires to negotiate a lease or purchase of the ROFO Building so designated, Landlord shall provide to Tenant a non-binding, written lease or sale proposal, as applicable ("Landlord's Term Sheet"). Tenant shall, within ten (10) business days following receipt of Landlord's Term Sheet, advise Landlord whether it desires to enter into a lease or agreement of sale and purchase on the terms contained in the Landlord's Term Sheet. If (A)Tenant rejects or fails to respond to the Availability Notice or Landlord's Term Sheet within the applicable period specified above, or (B) Landlord and Tenant do not execute a lease or agreement of sale and purchase, as applicable, for the ROFO Building within thirty (30) days after Tenant's receipt of Landlord's Term Sheet, Landlord shall be entitled to lease or sell the ROFO Buildings, or any portion thereof, free and clear of any rights of Tenant under this Section. A condition to Tenant's exercise of its rights under this Section shall be that no outstanding notice of default exists under this Lease at each time of exercise.

(b) In addition, the land located to the west of Lot 11 designated as "Southwest Parcel" on **Exhibit G** ("Southwest Parcel") will support development of three buildings located thereon as depicted on **Exhibit G** , although Landlord has not yet obtained plan approvals for such buildings **.** At such time as the remaining square footage available to be leased or sold on the Southwest Parcel, whether in buildings constructed or available to be constructed,

is reduced to 80,000 square feet (collectively the “Minimum ROFR Availability”), and if at such time Tenant has not leased or purchased any portion of a ROFO Building, Tenant shall have a right of first refusal to lease any space within a building which contains or will contain the Minimum ROFR Availability (the “ROFR Space”) or purchase such building (a “ROFR Building”) in accordance with the following procedures.

(i) If Landlord desires to issue a proposal to sell or lease the ROFR Space or an ROFR Building on terms acceptable to Landlord, or Landlord has received a proposal for purchase or lease which Landlord desires to accept, Landlord shall notify Tenant of such decision in writing (“Offer Notice”) and shall offer to Tenant the opportunity to lease the ROFR Space or purchase the ROFR Building described in such Offer Notice on the same terms and conditions set forth in the Offer Notice. The Offer Notice shall be accompanied by a written lease or sale proposal from Landlord and shall otherwise include all relevant information as to the terms of such offer. Tenant shall have fifteen (15) business days after receipt of the Offer Notice to notify Landlord in writing that it will lease the ROFR Space or purchase the ROFR Building from Landlord.

(ii) If (A)Tenant rejects or fails to respond to the Offer Notice within the applicable period specified in subsection (i) above, or (B) Landlord and Tenant, despite reasonable, good faith efforts, do not execute a lease for the ROFR Space or agreement of sale and purchase for the ROFR Building, as applicable, within thirty (30) days after Tenant’s exercise of its rights hereunder, Landlord shall be entitled to lease the ROFR Lease or sell the ROFR Building pursuant to the applicable Offer Notice, upon substantially the same terms and conditions set forth in the Offer Notice; provided, however, that no such lease or sale shall be made on other terms materially less favorable to Landlord than the terms set forth in the Offer Notice. If Landlord has not so leased the ROFR Space or sold the ROFR Building, as applicable, on the terms specified in the Offer Notice (or on terms materially more favorable to Landlord) within nine (9) months from delivery of the Offer Notice with respect to a sale, and within six (6) months from delivery of the Offer Notice with respect to a lease, Landlord shall not thereafter offer to lease the ROFR Space or sell the ROFR Building, as applicable, to any party (including the offeror named in the Offer Notice) without again complying with the provisions of this Section 46(b). All terms of this Section 46 shall apply to such revised Offer Notice, including Tenant’s opportunity to respond to the revised Offer Notice within the applicable period specified above. If Landlord executes the lease or agreement of sale and purchase with a third party contemplated by the Offer Notice within the parameters permitted by this subsection, Tenant’s rights hereunder shall be null and void as to the ROFR Space so leased or the ROFR Building so sold, but, in the case of a lease of less than the entire ROFR Building, shall continue to apply to the balance of the ROFR Building not leased. Otherwise, Tenant’s rights hereunder shall expire with the termination of this Lease, as renewed.

(iii) Landlord covenants that it shall not develop, nor permit its affiliate to develop, the balance of the Center which it owns in any manner during the period that this subsection (b) remains in effect, which could result in the buildings available to be developed on the Southwest Parcel being less than 80,000 square feet.

(c) Condition to Exercise of Rights . A condition to Tenant's exercise of its rights under this Section shall be that no outstanding notice of a default by Tenant exists under this Lease at each time of exercise. The failure of such condition with respect to any one exercise of Tenant's rights shall not preclude Tenant's further exercise of its rights.

(d) Any provision in this Section 46 with respect to the right to purchase a ROFO Building or ROFR Building shall be inapplicable with respect to any portfolio sale of 500,000 square feet or more of Landlord's and its affiliates' buildings in the Center, but the terms and conditions of this Lease, including Tenant's rights under this Section 46, shall survive any portfolio sale.

47. **LANDLORD'S SUBORDINATION** .

Landlord agrees to execute a commercially reasonable subordination agreement pursuant to which Landlord agrees to subordinate any statutory or common law landlord's lien to a security interest in Tenant's personal property located in the Leased Space which is granted to a bank or other financial institution acquiring such security interest to secure a credit facility provided to Tenant required by Tenant to finance acquisition of Tenant's personal property or working capital.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed the day and year first above written, intending to be legally bound hereby.

[Signatures contained on the following page]

LANDLORD:

730 Stockton Drive Associates, L.P.

By: 730 Stockton Drive Associates, Inc., its general partner

By: /s/ Robert S. Hankin
Robert S. Hankin, President

TENANT:

VIROPHARMA INCORPORATED

By: /s/ Michel de Rosen
Name: Michel de Rosen
Title: President and Chief Executive Officer

Exhibit 31.1

CHIEF EXECUTIVE OFFICER'S
CERTIFICATION UNDER
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Vincent J. Milano, President, Chief Executive Officer, Chief Financial Officer and Treasurer of the registrant, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ViroPharma Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Vincent J. Milano
Vincent J. Milano
President, Chief Executive Officer, Chief Financial Officer and Treasurer

April 28, 2008

Exhibit 31.2

CHIEF FINANCIAL OFFICER'S
CERTIFICATION UNDER
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Vincent J. Milano, President, Chief Executive Officer, Chief Financial Officer and Treasurer of the registrant, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ViroPharma Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Vincent J. Milano
Vincent J. Milano
President, Chief Executive Officer, Chief Financial Officer and Treasurer

April 28, 2008

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of ViroPharma Incorporated (the "Company") on Form 10-Q for the period ending March 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Vincent J. Milano
Vincent J. Milano
President, Chief Executive Officer, Chief Financial Officer and Treasurer

April 28, 2008