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

Form 10-K

☒ **Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the fiscal year ended: December 31, 2008

or

☐ **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Commission file number: 000-51967

TRANSCEPT PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**33-0960223**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

1003 W. Cutting Blvd., Suite #110
Point Richmond, California 94804
(510) 215-3500
(Address, including zip code, and telephone number, including area code, of registrant's principal executive office)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of exchange on which registered
Common Stock, par value $0.001 per share	**NASDAQ Global Market**

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company ☐

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

The aggregate market value of the common stock of the registrant held by non-affiliates of the registrant on June 30, 2008, the last business day of the registrant's second fiscal quarter was: $43,014,117.

As of March 26, 2009 there were 13,113,954 shares of the registrant's common stock outstanding.

Documents incorporated by reference: Items 10, 11, 12, 13, and 14 of Part III incorporate information by reference from the Proxy Statement to be filed with the Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) to Form 10-K.

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Special Note Regarding Forward-Looking Statements

This report contains forward-looking statements that are based upon current expectations within the meaning of the Private Securities Litigation Reform Act of 1995. Transcept intends that such statements be protected by the safe harbor created thereby. Forward-looking statements involve risks and uncertainties and actual Transcept results and the timing of events may differ significantly from those results discussed in the forward-looking statements. Examples of such forward-looking statements include, but are not limited to, statements about or relating to:

- the timing of the U.S. Food and Drug Administration's, or FDA's, review of the new drug application, or NDA, for *Intermezzo®* and the potential receipt of correspondence from the FDA by the assigned July 30, 2009 Prescription Drug User Fee Act, or PDUFA, date;
- the potential for *Intermezzo®* to be the first sleep aid approved specifically for use for middle of the night awakenings;
- expectations regarding dosage forms of *Intermezzo®*;
- Transcept plans and timing for commercialization of *Intermezzo®* , including development of a potential sales and marketing organization, potential entry into marketing alliances to market *Intermezzo®*, and the targets of such sales and marketing efforts;
- the potential benefits of, and markets for, Transcept product candidates;
- Transcept plans for the manufacturing of *Intermezzo®*;
- potential competitors and competitive products;
- expectations with respect to the ability of Transcept to carry out plans to commercialize Intermezzo based on resources obtained from its recently completed merger;
- guidance with respect to expected cash, cash equivalents and marketable securities, research and development expenses, and general and administrative expenses;
- the ability of Transcept to satisfy liquidity requirements for at least the next twelve months;
- research and development efforts and programs for additional product candidates;
- efforts to in-license or otherwise obtain rights to develop additional product candidates;
- losses, costs, expenses, expenditures and cash flows;
- capital requirements and our needs for additional financing;
- future payments under lease obligations and equipment financing lines;
- patents and our and others' intellectual property; and
- expected future sources of revenue and capital.

Transcept undertakes no obligation to, and expressly disclaims any obligation to, revise or update the forward-looking statements made herein or the risk factors whether as a result of new information, future events or otherwise. Forward-looking statements involve risks and uncertainties, which are more fully discussed in the "Risk Factors" section and elsewhere in this Annual Report, including, but not limited to, those risks and uncertainties relating to:

- positive results in clinical trials may not be sufficient to obtain FDA regulatory approval of *Intermezzo®*;
- potential for delays in or the inability to complete commercial partnership relationships, including marketing alliances;

- difficulties or delays in building a sales organization;
- physician or patient reluctance to use *Intermezzo*®, if approved;
- changing standards of care and the introduction of products by competitors or alternative therapies for the treatment of indications we target;
- unexpected adverse side effects or inadequate therapeutic efficacy of Transcept product candidates that could slow or prevent product approval or approval for particular indications;
- inability to obtain additional financing, if necessary;
- the uncertainty of protection for Transcept intellectual property, through patents, trade secrets or otherwise;
- potential infringement of the intellectual property rights or trade secrets of third parties; and
- other difficulties or delays in development, testing, obtaining regulatory approval for, and undertaking production and marketing of Transcept product candidates.

Intermezzo®, Bimucoral®, Transcept Pharmaceuticals, Inc.™, and Asentar™ are registered and unregistered trademarks in the United States and other jurisdictions. Other trademarks and trade names referred to in this Annual Report on Form 10-K are the property of their respective owners.

PART I

Item 1. Business

Background and Merger of Novacea, Inc. and Transcept Pharmaceuticals, Inc.

Transcept Pharmaceuticals, Inc., or Transcept, was incorporated in Delaware in 2001 as Novacea, Inc., or Novacea. Prior to January 2008, Novacea had been principally engaged as a biopharmaceutical company focused on in-licensing, developing and commercializing novel therapies for the treatment of cancer. In November 2007, Novacea stopped all clinical trials for its lead product candidate, Asentar™. Asentar™ had been in a Phase 3 clinical trial for the treatment of androgen-independent prostate cancer that was terminated as a result of an imbalance of deaths between the treatment and control arms of the trial. In connection with a decision to further reduce spending and preserve capital resources, in 2008 Novacea also terminated early stage clinical trials for its second product candidate, AQ4N. After ending all of its clinical trials, Novacea began to explore potential strategic alternatives, established processes for identifying and evaluating those alternatives, and committed to a restructuring plan that reduced spending while maintaining the capabilities needed to conduct minor activities related to Asentar™ and AQ4N. By December 31, 2008 this plan reduced the Novacea workforce to nine employees, each of whom was primarily involved in financial and administrative roles.

On January 30, 2009, Novacea completed a business combination with Transcept Pharmaceuticals, Inc., or TPI, in accordance with the terms of the Agreement and Plan of Merger and Reorganization among Novacea, Pivot Acquisition, Inc., a wholly owned subsidiary of Novacea, or Pivot, and TPI, dated as of August 29, 2008, as amended on December 23, 2008 by the Amendment to Agreement and Plan of Merger and Reorganization and collectively referred to as the Merger Agreement, pursuant to which TPI merged with Pivot and became a wholly owned subsidiary of Novacea. In connection with the closing of the merger, Novacea conducted a 1-for-5 reverse stock split of its common stock, the name of Novacea was changed to "Transcept Pharmaceuticals, Inc.", and the name of TPI became Pivot Acquisition, Inc. Following the closing of the Merger, the business conducted by Transcept became primarily the business conducted by TPI immediately prior to the Merger.

Under the terms of the Merger Agreement, Novacea issued shares of common stock to the TPI stockholders at the rate of 0.14134 shares of common stock, on a post 1-for-5 reverse split basis, for each share of TPI common stock outstanding. Transcept also assumed all of the stock options and stock warrants of TPI outstanding as of January 30, 2009, with each share of common stock of TPI underlying such options and warrants being converted to 0.14134 shares of Transcept common stock. After consummation of the merger the former TPI stockholders, option holders and warrant holders owned approximately 61.24% of the Transcept common stock on a fully-diluted basis and the stockholders, option holders and warrant holders of Novacea prior to the Merger owned, as of the closing, approximately 38.76% of the Transcept common stock on a fully-diluted basis. Immediately following the completion of the Merger and the reverse stock split, Transcept had approximately 13.1 million shares of common stock outstanding.

The issuance of the shares of Transcept common stock to the former stockholders of TPI was registered with the Securities and Exchange Commission, or SEC, on a Registration Statement on Form S-4 (SEC File No. 333-153844).

Novacea securities listed on the NASDAQ Global Market, trading under the ticker symbol "NOVC," were suspended for trading as of the close of business on Friday, January 30, 2009 and trading of Transcept securities on the NASDAQ Global Market under the ticker symbol "TSPT" commenced on Monday, February 2, 2009.

In this Annual Report, "Transcept," "the Company," "we," "our" and "us" refers to the public company formerly known as Novacea and now known as Transcept Pharmaceuticals, Inc., and, as successor to the business of TPI, includes activities taking place with respect to the business of TPI prior to the merger of TPI and Novacea, as applicable.

Overview

Transcept is a specialty pharmaceutical company focused on the development and commercialization of proprietary products that address important therapeutic needs in the field of neuroscience. The lead Transcept product candidate, *Intermezzo*®, is a sublingual low dose formulation of zolpidem that has been developed for use as-needed for the treatment of insomnia when a middle of the night awakening is followed by difficulty returning to sleep.

According to IMS Health, an independent market research firm, the U.S. market for prescription products to treat insomnia was approximately $2.2 billion in 2003 and grew to approximately $3.9 billion for the 12 months ended December 31, 2008. Data from a recent major study from the Stanford Sleep Epidemiology Center indicates that middle of the night awakening is the most common form of insomnia in the United States and affects approximately one-third of the population at least three times each week. Despite the prevalence of middle of the night awakening, there is no sleep aid currently approved for use specifically in the middle of the night when patients awaken and have difficulty returning to sleep.

Transcept has completed all scheduled clinical trials on behalf of *Intermezzo*® and submitted a New Drug Application, or NDA, to the U.S. Food and Drug Administration, or FDA, on September 30, 2008, which was accepted for filing on December 15, 2008. The FDA has assigned the *Intermezzo*® NDA a July 30, 2009 PDUFA date, the statutorily determined target date for the FDA to have a response to the Transcept NDA submission. Transcept holds world-wide commercial and development rights to *Intermezzo*® and plans to commercialize the product in the United States with a specialty sales force initially focusing on psychiatrists and potentially to other physicians who are the highest prescribers of insomnia products. Transcept plans to market to other physician audiences through a primary care marketing alliance in the United States and with one or more marketing and development alliances in major international markets.

Transcept believes that *Intermezzo*® is positioned to be the first commercially available sleep aid specifically for use in the middle of the night when patients awaken and have difficulty returning to sleep. *Intermezzo*® has been uniquely designed for this indication and employs the following product features:

Known active agent. The active pharmaceutical ingredient in *Intermezzo*® is zolpidem tartrate, cited by IMS Health as the most commonly prescribed agent for the treatment of insomnia in the United States, with over one billion zolpidem tablets prescribed in 2008 in the United States. Approved as the active ingredient in Ambien® in 1992, zolpidem has a well established record of safety and efficacy.

Rapid bioavailability. Transcept believes that rapid bioavailability—the delivery of the active pharmaceutical ingredient into systemic circulation—is a key product feature for a sleep aid intended to be used in the middle of night. *Intermezzo*® is formulated as a sublingual tablet, or a dosage form that dissolves under the tongue, using Transcept proprietary technology to facilitate more rapid absorption as compared to swallowed zolpidem tablet formulations, such as Ambien®.

Low dose. Transcept expects *Intermezzo*® to be available in doses that are 65% and 72% lower than the comparable doses of Ambien® and Ambien CR®, respectively. In Phase 3 clinical studies, this low dose returned patients to sleep rapidly and allowed them to awaken about four hours after taking their medication in the middle of the night, without next day residual effects as compared to placebo. Transcept believes that *Intermezzo*® 1.75 and 3.5 mg doses are the lowest doses of zolpidem that have been reported to induce sleep in a manner statistically superior to placebo.

Transcept Strategy

The Transcept goal is to become a leading developer and marketer of pharmaceutical products that fill important therapeutic needs in the field of neuroscience. Transcept efforts to achieve this goal are driven by the following key strategies:

- *Obtain FDA approval for Intermezzo®*. Transcept has completed all scheduled clinical trials on behalf of *Intermezzo®* and submitted an NDA to the FDA on September 30, 2008, which was accepted for filing by the FDA on December 15, 2008. The FDA has assigned the *Intermezzo®* NDA a July 30, 2009 PDUFA date.
- *Maximize the market opportunity for Intermezzo® through marketing alliances*. Although Transcept has not yet entered into any marketing alliances, as part of its efforts to market *Intermezzo®* to the primary care physician audience, Transcept has an active effort underway to enter into such an alliance with an established pharmaceutical company currently marketing to the broader physician audience in the United States. Additionally, Transcept has an active effort underway to enter into one or more development and marketing alliances with established pharmaceutical companies in major international markets.
- *Successfully launch Intermezzo®*. Transcept plans to build a specialty sales and marketing infrastructure that will be capable of selling effectively to psychiatrists and potentially other high prescribing physicians. Transcept expects to build a sales team to reach up to 17,000 psychiatrists and potentially other high prescribing physicians. IMS Health reports that this audience, who represent an estimated 3.2% of U.S. prescribers of sleep aids, wrote approximately 30% of all insomnia prescriptions in the United States in the 12 months ended June 30, 2008.
- *Develop a product pipeline employing previously approved active agents in new applications for the treatments in the field of neuroscience.* Transcept has completed an open-label exploratory clinical study to examine the use of a range of low doses of risperidone and ondansetron for the treatment of obsessive-compulsive disorder, or OCD. Transcept believes the exploratory results were encouraging and is evaluating product development strategies to pursue this opportunity.
- *Identify and evaluate strategic product licensing opportunities*. Transcept is seeking additional development stage and marketed pharmaceutical product licensing opportunities in order to leverage the specialty marketing infrastructure that it plans to build in support of *Intermezzo®*.

The *Intermezzo®* Opportunity

Overview of the insomnia market

According to IMS Health, the U.S. market for prescription sleep aids was approximately $2.2 billion in 2003 and grew to approximately $3.9 billion for the 12 months ended December 31, 2008. According to the U.S. Department of Health and Human Services, between 50 and 70 million Americans report significant sleep problems.

Middle of the night awakening: the most common insomnia symptom

The 2003 National Sleep Foundation, or NSF, “Sleep in America” poll of the U.S. population between the ages of 55 and 84 described waking up during the night as the most prevalent insomnia symptom, affecting 33% of respondents. Based on the 2005 NSF poll data, Transcept estimates that middle of the night awakening is 50% more common than difficulty going to sleep at bedtime among the general population. The 2008 NSF poll found that 42% of respondents described being “awake a lot during the night.”

Based on a recently published study of nearly 9,000 individuals, the Stanford Sleep Epidemiology Research Center has estimated that about one-third of adults in the United States experience middle of the night awakenings at least three times each week. The study concluded that more than 90% of those subjects who

reported middle of the night awakenings reported that this insomnia symptom persisted for at least six months. In the Stanford study, fewer than 25% of this middle of the night awakening group reported difficulty going to sleep at bedtime.

The FDA has not previously approved any sleep aid specifically for use in the middle of the night when patients awaken and have difficulty returning to sleep. The most commonly prescribed sleep aids are formulated at doses that are sufficiently high to produce seven to eight hours of sleep. Such seven to eight hour products can be used at bedtime to prevent a middle of the night awakening, however, their prolonged duration of action makes them unsuitable for use in the middle of the night when an awakening occurs, as this may increase the risk of residual sedative effects the following morning.

Middle of the night awakenings typically do not occur every night, thus bedtime use of a high dose sleep aid to prevent an awakening requires that the patient either predict which night an awakening might occur, or take a seven to eight hour product every night. The result is that patients may use their sleep aid more often than necessary, and at a higher dose than necessary, as compared to a fast-acting, low dose sleep aid that would be used only on the nights and at the time when an awakening actually occurs.

***Intermezzo*®—potential to be the first sleep aid approved specifically for use in the middle of the night when patients awaken and have difficulty returning to sleep**

If approved, Transcept believes that *Intermezzo*® will be the first sleep aid approved specifically for use in the middle of the night when patients awaken and have difficulty returning to sleep. In clinical trials, the unique *Intermezzo*® characteristics of rapid bioavailability and low dose enabled patients to return to sleep quickly and awaken in four hours without the residual effects that have been reported when seven to eight hour zolpidem products were taken in the middle of the night.

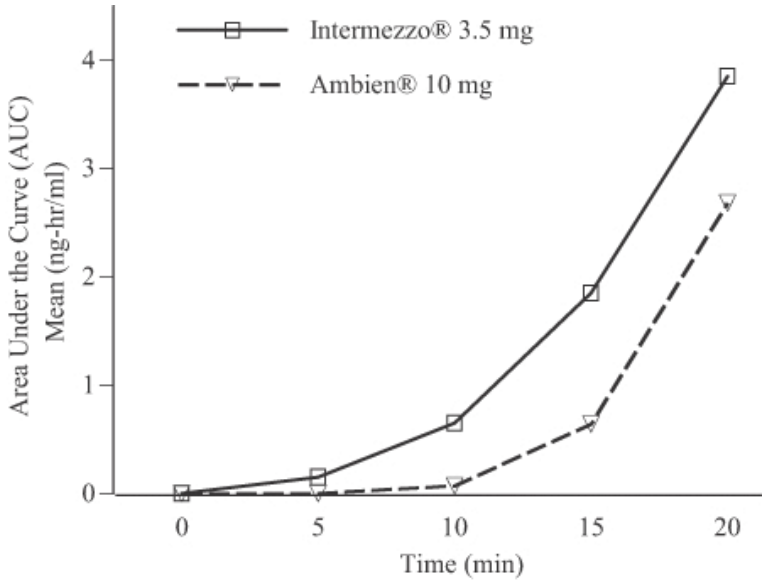
Intermezzo® is a sublingual tablet utilizing a proprietary formulation intended to enhance the absorption of the active sleep medication, zolpidem. Zolpidem is the most frequently prescribed sleep aid in the United States, with, according to IMS Health, over one billion tablets prescribed in 2008 in the United States. Transcept believes that *Intermezzo*® contains the lowest dose of zolpidem that has been reported to induce sleep in a manner statistically superior to placebo, and is expected to be available in doses that are 65% and 72% lower than the comparable doses of Ambien® and Ambien CR®, respectively.

***Intermezzo*®: *Bimucoral*® Technology**

Intermezzo® differs from previous formulations of zolpidem, both in dose and route of administration, and is designed to be the first sleep aid approved specifically for use in the middle of the night when patients awaken and have difficulty returning to sleep. The *Intermezzo*® sublingual dosage form is formulated to rapidly deliver zolpidem to allow patients to return to sleep quickly. In order to permit patients to take *Intermezzo*® in the middle of the night and yet awaken four hours later without hangover effects, *Intermezzo*® employs a significantly reduced zolpidem dose of 3.5 mg for adults under 65 and 1.75 mg for those patients over 65. Transcept believes they are the lowest doses of zolpidem reported to be effective in inducing sleep in a manner significantly superior to placebo.

Intermezzo® utilizes *Bimucoral*® technology, a bicarbonate-carbonate binary buffer system, or a chemical combination that modifies the pH of saliva, to convert water-soluble zolpidem tartrate into its fat-soluble free-base form, which is more readily absorbed through the tissues of the mouth. Transcept believes that this formulation facilitates rapid absorption, leading to measurable zolpidem blood levels within five minutes after administration of a 3.5 mg *Intermezzo*® tablet. Data from a comparative bioavailability study indicates that 10 to 20 minutes after dosing, as demonstrated by area under the curve, an accepted estimation of overall systemic exposure, zolpidem exposure as delivered by *Intermezzo*® is notably higher than that created by a swallowed 10 mg zolpidem tablet. This is despite the fact that the 10 mg swallowed formulation contains nearly three times the *Intermezzo*® 3.5 mg dose. Data from this study demonstrating enhanced bioavailability is illustrated below:

Bioavailability comparison study (n=33):
***Intermezzo*® 3.5 mg vs. Ambien® 10 mg (n=33)**



Intermezzo® Clinical Development Program

The *Intermezzo*® clinical development program consisted of a total of 12 studies. Four studies were early stage bioavailability trials and utilized prototype formulations. These were completed prior to the submission of the investigational new drug application, or IND, in April 2005. Eight additional studies were conducted, including two Phase 3 clinical trials that were included in the *Intermezzo*® NDA. Transcept believes that these studies include the data requested by FDA for the submission of an NDA for *Intermezzo*® for use as-needed for the treatment of insomnia when a middle of the night awakening is followed by difficulty returning to sleep.

The basis for clinical trial dose selection was initially provided by a pharmacokinetic and pharmacodynamic study which demonstrated rapid bioavailability and also indicated that sedation reached peak levels within 20 minutes after dosing, as measured with the Digit Symbol Substitution Test, or DSST, a standard objective test of cognitive function. Despite this rapid effect, sedation levels returned to baseline within about three hours, suggesting that patients might be able to awaken in the morning after a middle of the night use of *Intermezzo*® without residual sedative effects.

The clinical safety and efficacy of *Intermezzo*® is supported by two Phase 3 clinical studies. The first Phase 3 trial was a double-blind crossover study conducted in sleep laboratories in 82 patients. This study analyzed both the objective and subjective effects of *Intermezzo*® on middle of the night awakenings. Transcept believes this trial is among the largest crossover sleep laboratory studies reported. The second Phase 3 trial was a double-blind parallel group outpatient study in 294 patients which analyzed subjective outcomes when patients used *Intermezzo*® as needed at home at the time they awakened and had difficulty returning to sleep.

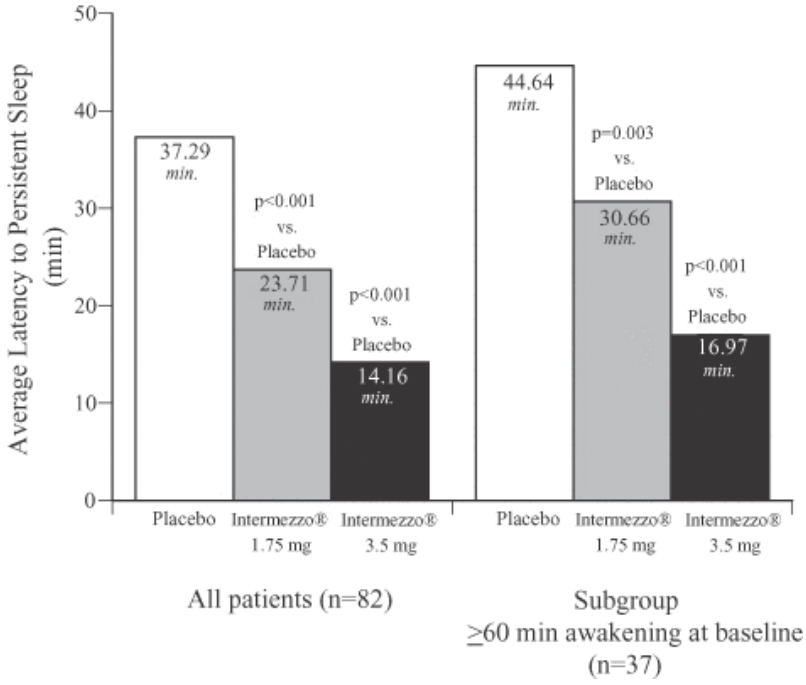
In both of these clinical trials, *Intermezzo*® met its primary clinical endpoint by enabling patients to return to sleep after a middle of the night awakening more rapidly than placebo. After going back to sleep, patients tended to remain asleep longer than those on placebo and awoke without evidence of residual effects as compared to placebo.

Pivotal Phase 3 sleep laboratory study

The Phase 3 sleep laboratory clinical trial was designed as an 82 patient randomized, double-blind, placebo controlled, three-way crossover study to evaluate the safety and efficacy of *Intermezzo*® 1.75 mg and 3.5 mg when taken for a scheduled middle of the night awakening in subjects with insomnia characterized by difficulty returning to sleep. Transcept believes that this is among the largest crossover sleep laboratory studies reported to date. The study was conducted in five U.S. clinical sites and each treatment period consisted of two consecutive nights of dosing followed by a 5 to 12 day washout period. The first period consisted of two baseline nights in the sleep laboratory, followed by randomized two night treatment periods using placebo and *Intermezzo*® 1.75 and 3.5 mg.

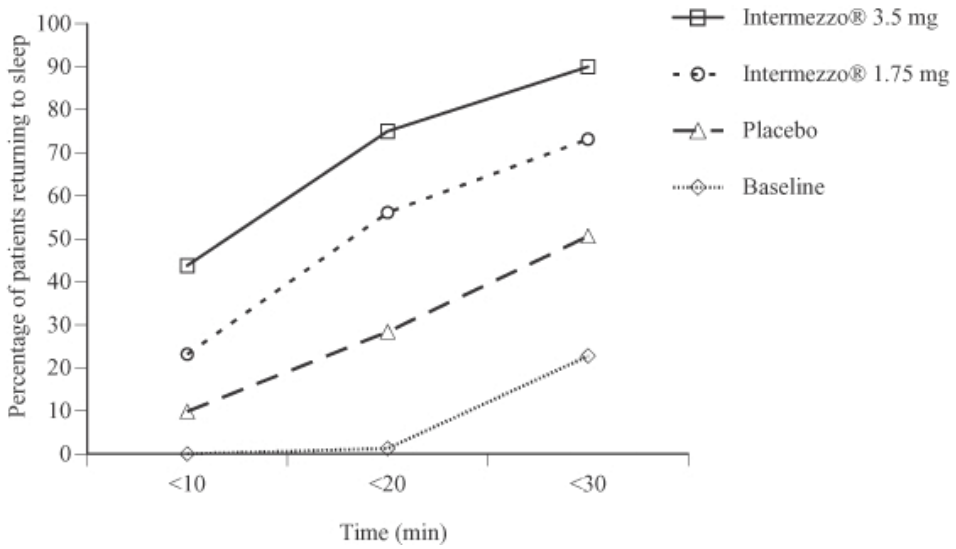
The figure below compares the time to sleep onset measured in the objective Phase 3 sleep laboratory study as produced by *Intermezzo*® 1.75 mg and 3.5 mg compared to placebo. The left hand bar graph compares sleep onset time in all patients in the study and demonstrates that 3.5 mg *Intermezzo*® returned patients to sleep in the middle of the night approximately 23 minutes faster than placebo. The right hand bar graph examines only those patients whose middle of the night awakenings were particularly prolonged, in that they experienced awakenings at the baseline observation lasting more than an hour. Despite the more prolonged middle of the night awakenings of this patient subset, the 3.5 mg *Intermezzo*® dose returned these patients to sleep approximately 28 minutes faster than placebo. All of these differences were statistically significant.

Phase 3 Sleep Laboratory Study (n=82)
Placebo vs. *Intermezzo*® 1.75 mg and 3.5 mg
Objective Latency to Persistent Sleep following a middle of the night awakening



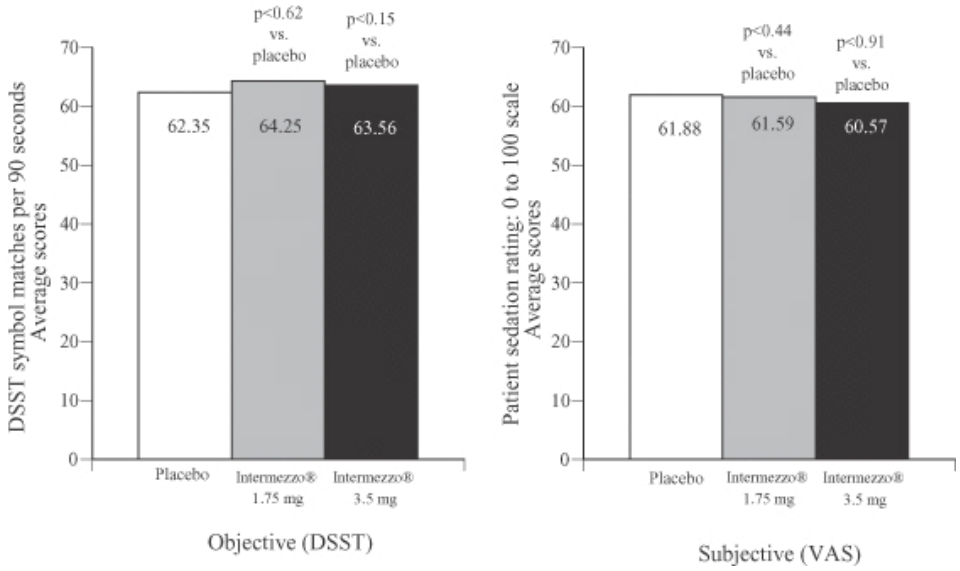
Patients in the Phase 3 sleep laboratory study, when treated with either the 1.75 mg or 3.5 mg *Intermezzo*® dose, were more likely to fall asleep within 10 to 20 minutes than when these same patients received placebo. On the baseline nights, with one exception, no patients had returned to sleep within 20 minutes. However, on the subsequent treatment nights when patients were given *Intermezzo*® 3.5 mg, 75% of the same patients returned to sleep at or before the 20 minute time point.

Phase 3 Sleep Laboratory Study (n=82)
Baseline and placebo vs. *Intermezzo*® 1.75 mg and 3.5 mg:
Proportion of patients asleep vs. time following a middle of the night awakening



In the sleep laboratory study, neither *Intermezzo*® dose produced residual hangover effects the morning after middle of the night dosing as compared to placebo. Residual hangover effects were measured objectively by the Digit Symbol Substitution Test, or DSST, a standard objective test of cognitive function, and using the Visual Analog Scale, or VAS, a subjective assessment of morning sleepiness and alertness.

Phase 3 Sleep Laboratory Study (n=82)
Residual effects of *Intermezzo*® 1.75 mg and 3.5 mg vs. placebo
DSST (objective) and VAS (subjective) scores

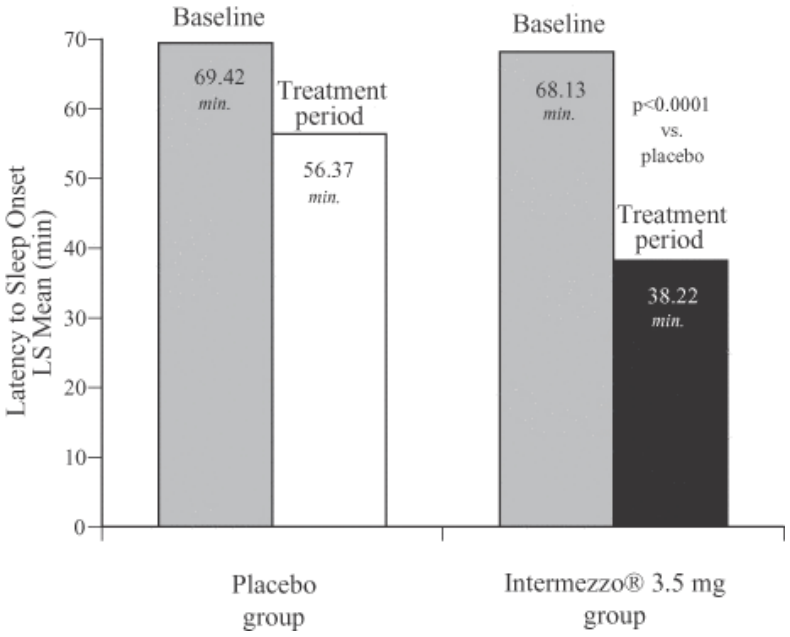


Pivotal Phase 3 outpatient study

The Phase 3 outpatient clinical trial was designed as a 294 patient randomized, double-blind, placebo controlled study to evaluate the safety and efficacy of *Intermezzo*® 3.5 mg for use as-needed for the treatment of insomnia when a middle of the night awakening is followed by difficulty returning to sleep. The study was conducted in 25 U.S. clinical sites and the study duration included a two week baseline period, followed by a 28 day double-blind treatment period.

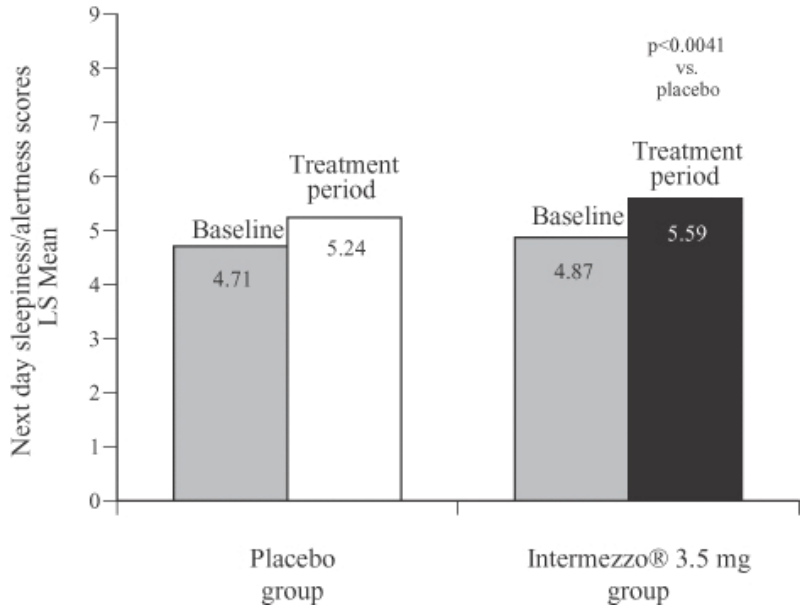
The Phase 3 outpatient study confirmed the positive results of the Phase 3 sleep laboratory study: *Intermezzo*® improved time to sleep onset after a middle of the night awakening by 18 minutes versus placebo, a difference that was statistically significant. The figure below compares the patient reported time to sleep onset of *Intermezzo*® 3.5 mg as compared to placebo and baseline.

Phase 3 Outpatient Study, Placebo vs. *Intermezzo*® 3.5 mg (n=294)
Latency to Sleep Onset (LSO^{MOTN}) 4 week average



Each morning during the Phase 3 outpatient study patients reported their level of sleepiness on a nine point scale. Patients taking *Intermezzo*® 3.5 mg. reported feeling less sleepy and more alert than patients taking placebo, a difference that was statistically significant.

Phase 3 Outpatient Study (n=294)
Next day sleepiness/alertness scores, 4 week average
(0 to 9 scale: 0 = sleepiness, 9 = awake and alert)



Commercialization

Transcept maintains the worldwide commercial rights to its product candidates and plans to combine its own U.S. specialty sales and marketing team with the efforts of one or more marketing partners to sell products in the United States and elsewhere in the world. In the United States, IMS Health estimates that prescriptions for sleep products are written by a concentrated group of high prescribing psychiatrists and primary care physicians who in 2007 generated approximately 30% of the $4.3 billion prescription sleep aid market; and a larger group of primary care and other physicians whose prescribing accounts for the balance of the market.

The proposed Transcept *Intermezzo*® launch strategy will contain the following key elements:

- As part of its efforts to expand prescriptions of *Intermezzo*® by primary care physicians, Transcept has an active effort underway to enter into a marketing alliance with an established pharmaceutical company currently marketing to the broader physician audience in the United States. Once such an alliance has been established, Transcept plans to maintain and expand the efforts of its field sales organization directed toward psychiatrists.
- During the early part of 2009, Transcept plans to build the marketing and sales management team, but intends to defer hiring of field sales representatives until after approval of the *Intermezzo*® NDA.
- Transcept plans to build a specialty sales and marketing infrastructure that will be capable of selling effectively to up to 17,000 psychiatrists and potentially other high prescribing physicians. IMS Health

reports that this audience, who represent an estimated 3.2% of U.S. prescribers of sleep aids, wrote approximately 30% of all insomnia prescriptions in the United States in the 12 months ended June 30, 2008.

- Given the initial Transcept focus on the physician prescriber audience, Transcept plans to defer significant *Intermezzo*® direct-to-consumer advertising until a primary care marketing alliance has been established, or until Transcept has established a presence in the market through its targeted selling efforts.
- Transcept has an active effort underway to enter into one or more alliances to develop, pursue regulatory approval of, and commercialize *Intermezzo*® outside of the United States.

Exploratory Clinical Development Programs

Transcept is seeking additional product opportunities that can be of importance in the field of neuroscience. In this regard, Transcept is evaluating drug product concepts for the treatment of OCD in patients who do not respond to conventional therapeutics alone. Atypical anti-psychotics have been shown to be useful in the treatment of OCD, and it is thought that drugs of this class, such as risperidone, currently marketed as Risperdal® by Johnson & Johnson, may be effective through their action as dopamine antagonists. The Transcept strategy is to augment the dopamine antagonist effects of risperidone and other similar agents, with the dopamine down-regulation produced by ondansetron, currently marketed as Zofran® by GlaxoSmithKline, to provide more effective treatments to control OCD in patients who are resistant to conventional therapies. Transcept has completed an open-label exploratory clinical study to examine the use of a range of low doses of risperidone and ondansetron in the treatment of this disorder. This study has yielded initial results that Transcept and its advisors believe to be encouraging and Transcept is currently evaluating product development strategies to pursue this opportunity.

In-Licensing

Transcept has an active in-licensing effort underway to identify and secure the rights to patents and development rights relating to the use of existing drugs in the field of neuroscience, and to identify and secure the rights to one or more approved products that can be effectively sold by the sales and marketing team Transcept is building. In this regard, in February 2008, Transcept submitted an application seeking the rights to patents filed by the National Institutes of Mental Health, a division of the National Institutes of Health, or NIH, relating to the use of intravenous and other dosage forms of scopolamine in the treatment of major depressive disorder. On August 4, 2008, NIH published in the U.S. Federal Register a "Prospective Grant of Exclusive License: The Development of Human Therapeutics for the Treatment of Depression," providing notice of NIH intent to grant Transcept an exclusive license in this regard. This notice was subject to a comment period, and during that time an appeal was made by a competing company also seeking rights to this opportunity.

In February 2009, the NIH sent a further notice granting both Transcept and the competing company a co-exclusive license. Transcept intends to appeal this decision and continues to seek exclusive rights to the NIH patent applications relating to dosage forms of scopolamine in the treatment of major depressive disorder. There can be no assurance that negotiations with the NIH will lead to a mutually satisfactory licensing agreement.

Competition

If *Intermezzo*® receives FDA marketing approval, it will compete against well-established products currently used in the treatment of insomnia, both branded and generic. Potentially competitive products include branded formulations of zolpidem, such as Ambien® and Ambien CR® marketed by Sanofi-Aventis, generic formulations of zolpidem, Lunesta®, marketed by Sepracor, Inc., Rozerem™, marketed by Takeda Pharmaceuticals Company Limited, Sonata® , marketed by King Pharmaceuticals, Inc. and generic forms of this product, and a number of other pharmaceutical agents, including antidepressants and antipsychotics, that are

prescribed off-label. None of the currently marketed sleep aids that have FDA approval are specifically approved for use in the middle of the night when patients awaken and have difficulty returning to sleep. However, many of these products can be used to prevent middle of the night awakenings by prophylactic use at bedtime.

The market for prescription sleep products has evolved significantly over the last 30 years. Until about 30 years ago, the market was dominated by barbiturate sedative-hypnotics such as Seconal® and Nembutal®. These were superseded by the benzodiazepine class of sedative-hypnotics including Dalmane®, Restoril™ and Halcion®. Zolpidem, which is a more selective GABAa agonist and a member of the non-benzodiazepine class of sleep aids, was introduced in the United States in 1993 under the Ambien® brand, and, according to IMS Health, rapidly achieved the dominant position in the prescription sleep aid market. The patent for Ambien expired in April 2007, and shortly thereafter the FDA approved generic manufacture of zolpidem by multiple pharmaceutical companies. The pricing of generically manufactured zolpidem is significantly lower than branded formulations of zolpidem and other non-generic sleep aids. Combined sales of generic zolpidem products accounted for approximately 42% of the U.S. prescription market for sleep aids. According to IMS Health, over one billion branded and generic zolpidem tablets were prescribed in the United States in 2008. An extended release version of zolpidem was launched successfully as Ambien CR® in 2005, and, according to IMS Health, held a 10.0% U.S. prescription market share in December 2008.

Other branded prescription sleep aids include Lunesta® (eszopiclone), marketed by Sepracor, Inc., which was approved in December 2004 by the FDA and launched in the first quarter of 2005, and Rozerem™ (ramelteon), which is marketed by Takeda Pharmaceuticals Company Limited. Rozerem™ is the only currently marketed prescription sleep aid of the melatonin agonist drug class, and was also introduced in 2005. According to IMS Health, in December 2008, Lunesta® held a 7.7% U.S. prescription market share and Rozerem™ held a 1.2% U.S. prescription market share.

There exist a number of other agents that are used to treat insomnia. These include Sonata®, a short-acting sleep aid marketed by King Pharmaceuticals, Inc., which lost patent protection in June 2008. Although not specifically approved or promoted for the treatment of middle of the night awakenings, some physicians prescribe Sonata® off-label for this purpose. There are also a number of other pharmaceutical agents including antidepressants and antipsychotics that are not approved for the treatment of insomnia but are frequently prescribed off-label owing to their ancillary sedative effects.

In addition to current products for the treatment of insomnia, a number of new prescription products may enter the insomnia market over the next several years. These may include the following:

- Zolpimist™, an orally administered mist containing zolpidem, for which NovaDel Pharma, Inc. received marketing approval from the FDA in December 2008, and Edluar™, a sublingual tablet containing zolpidem, for which Orexo received marketing approval in March 2009. Both Zolpimist™ and Edluar™ employ the same 5mg and 10mg zolpidem doses as generic Ambien® and are designed to be used in the same manner at bedtime to produce seven to eight hours of sleep. NovaDel Pharma, Inc. also recently announced that it commenced development of a low-dose version of Zolpimist™ for the treatment of middle-of-the-night awakenings with the intent to enter such product candidate into clinical trials.
- Silenor™, a low dose doxepin formulation intended for use at bedtime, for which Somaxon Pharmaceuticals, Inc. filed an NDA in April 2008.
- Indiplon, a compound in the GABAa agonist class not previously approved by the FDA, is being developed by Neurocrine Biosciences, Inc. for the treatment of sleep initiation insomnia and middle of the night dosing. The potential approval of indiplon pursuant to an NDA submitted by Neurocrine Biosciences, Inc. has been delayed and the regulatory future of this product is uncertain.
- Eplivanserin, a serotonin inhibitor for use in the treatment of insomnia, for which Sanofi-Aventis submitted an NDA in 2008.

- Almorexant, an orexin receptor agonist, is being co-developed by GlaxoSmithKline and Actelion for the treatment of insomnia, and commenced enrollment of Phase 3 clinical studies in the second quarter of 2008.
- VEC-162, a melatonin agonist similar to ramelteon being developed by Vanda Pharmaceuticals for the treatment of insomnia, is currently in Phase 3 clinical trials.

There are a variety of other drugs intended as sleep aids under earlier stages of development. With the exceptions of indiplon, and a possible new formulation of Zolpimist™, as noted above, Transcept believes that all of these product candidates are intended to act for an extended seven to eight hour time period and are not being developed for as-needed treatment of middle of the night awakenings at the time they occur.

Manufacturing

Transcept does not have or intend to develop internal clinical supply or commercial manufacturing capabilities for *Intermezzo*®, or other Transcept product candidates. Transcept has entered into an agreement with Patheon Inc., or Patheon, for the manufacture of the *Intermezzo*® tablet. Transcept has also entered into agreements with Plantex USA, Inc., or Plantex, as the sole source supplier of a special form of zolpidem tartrate, a specially manufactured form of the active pharmaceutical ingredient of *Intermezzo*®, and with SPI Pharma, Inc., or SPI, as a supplier of certain key excipients used in *Intermezzo*®, one of which is sourced solely through SPI. Transcept has agreements with Anderson Packaging Inc., or Anderson, and Sharp Corporation, or Sharp, for packaging of *Intermezzo*® and has entered into agreements with Mikart, Inc., or Mikart, to qualify them as a backup commercial supplier of finished product and as a backup commercial supplier of a key *Intermezzo*® excipient. All of these supply and manufacturing agreements contain customary commercial terms for pharmaceutical companies regarding forecasting, payment, pricing, ordering, current good manufacturing practices, or cGMP, compliance and quality. All such agreements provide for Transcept to pay for supplies within 30 days of being invoiced upon their shipment, and, except for the agreements with Mikart as described below, none of these agreements contain minimum purchase requirements. Other than the agreements with Sharp and Patheon, all agreements set forth four quarters of forecasting, with the first such quarter's forecast being a binding firm order. The agreements with Sharp and Patheon contain similar forecasting provisions, except that the Sharp agreement sets forth a 12-month rolling forecast, with the first three months of such forecast being a binding firm order, and the Patheon agreement sets forth 18-month, non-binding forecasting, but with a requirement that firm orders be separately placed three months prior to expected delivery. A further description of the termination provisions and certain other terms is set forth below.

Manufacturing Services Agreement with Patheon

In October 2006, Transcept entered into the Manufacturing Services Agreement with Patheon. Under the agreement, Transcept is required to obtain *Intermezzo*® tablets from Patheon, provided that Transcept retains the ability to qualify a secondary supplier for a portion of its supply requirements from that secondary supplier. The initial term of the Manufacturing Services Agreement expires in December 2014, but is automatically renewed for three year periods, subject to 24 month prior notice of an election not to renew. The agreement is terminable prior to the end of term by either party for breach or insolvency of the other party, and by Transcept on 30 days' notice in the event of regulatory prevention from, or six month notice for a determination by Transcept to cease, commercialization of *Intermezzo*®, or upon 24 months' prior notice for any business reason.

Supply Agreement with Plantex

In March 2006, Transcept entered into the Supply Agreement with Plantex. Under the agreement, Transcept is required to obtain specially manufactured zolpidem tartrate from Plantex, provided that Transcept retains the ability to qualify a secondary supplier for a portion of its supply requirements from that secondary supplier. The initial term of the Supply Agreement expires on the earlier to occur of five years from the launch of *Intermezzo*®

or ten years from the date of the agreement. The agreement is terminable prior to the end of the term by either party for breach or insolvency of the other party, and is terminable by Plantex upon 24 months' prior notice if Plantex discontinues production of a special form of zolpidem tartrate.

Agreements with SPI

In June 2006 and in July 2007, Transcept entered into a Supply and License Agreement and a Supply Agreement, respectively, with SPI, each for the manufacture of certain excipients used in the manufacture of *Intermezzo*®. Under the Supply Agreement, Transcept is required to obtain the excipient, referred to as buffered soda, that is covered by such agreement from SPI, provided that Transcept retains the ability to qualify a secondary supplier for a portion of its supply requirements from that secondary supplier. In addition, the Supply Agreement contains a license for patent rights with regard to buffered soda. Such license is described further in the section entitled "Transcept Business—Intellectual Property and Proprietary Technology."

The term of the Supply and License Agreement initially was set to expire five years from the date of such agreement, but was amended in March 2008 to extend the term to ten years from the original date of the agreement. This agreement is terminable prior to the end of the term by either party for breach or insolvency of the other party.

The initial term of the Supply Agreement expires on the earlier to occur of the 10th anniversary of commercial sale of *Intermezzo*® or the 13th anniversary of the date of the agreement. This agreement is terminable prior to the end of the term by either party for breach or insolvency of the other party, and is terminable by SPI on 90 days' notice if minimum purchase requirements are not met after 2010, or upon 12 months' notice with such termination not being effective until the third anniversary of certain qualifications of an alternate supplier.

Packaging and Supply Agreement with Anderson

In September 2006, Transcept entered into a Packaging and Supply Agreement with Anderson. The initial term of the Packaging and Supply Agreement expires on the fifth anniversary of the execution of the agreement, and thereafter automatically renews for one year periods unless one year prior notice is given by either party of an intent not to renew. This agreement is terminable prior to the end of the term by either party for breach or insolvency of the other party.

Packaging and Supply Agreement with Sharp

In June 2008, Transcept entered into a Packaging and Supply Agreement with Sharp. The initial term of the Packaging and Supply Agreement expires on the fifth anniversary of the approval by the FDA of the NDA for *Intermezzo*®, and is renewable for three year terms upon mutual agreement of Transcept and Sharp prior to 180 days before the end of the then current term. This agreement is terminable prior to the end of the term by either party for breach or insolvency of the other party.

Agreements with Mikart

In January 2008, Transcept entered into a Supply and Sublicense Agreement with Mikart. Pursuant to the terms of the Supply and Sublicense Agreement, Transcept granted to Mikart a non-exlusive sublicense in accordance with the terms of the Supply Agreement between Transcept and SPI described above to allow Mikart to act as a back-up supplier of buffered soda. Such agreement requires Transcept to purchase at least two batches of buffered soda (a total of approximately 420 kilograms) from Mikart within 24 months following the initial commercial sale of *Intermezzo*®, with the first such batch required to be purchased within 12 months of such date. The term of the Supply and Sublicense Agreement expires on the earlier to occur of the 10th anniversary of the first commercial sale of *Intermezzo*® or the 13th anniversary of the date of the agreement. This agreement may

be terminated prior to the end of the term by either party for breach by the other party, or by Transcept if certain preparation activities are not completed within a year of the date of the agreement. In addition, Transcept can terminate the agreement upon 45 days' prior notice to Mikart, and payment to Mikart of a termination fee, at any time after the second anniversary of the first commercial sale of *Intermezzo*®.

In August 2008, Transcept entered into a Manufacturing and Supply Agreement with Mikart for back-up supply of manufactured *Intermezzo*® tablets. Within the first 12 months after the FDA qualifies and approves Mikart as a supplier of *Intermezzo*® tablets, such agreement requires Transcept to purchase at least three batches of tablets from Mikart, with any individual batch either containing 1.75 mg of zolpidem (in which case a batch means 500,000 tablets) or 3.5 mg of zolpidem (in which case a batch means 1,500,000 tablets). Mikart and Transcept may also mutually agree on an alternate number of *Intermezzo*® tablets constituting a batch for purposes of such agreement. The term of the Manufacturing and Supply Agreement expires on the 10th anniversary of FDA qualification and approval of Mikart as a supplier of *Intermezzo*® tablets, but is automatically renewed for three year periods, subject to 18-month prior notice of an election not to renew. This agreement may be terminated prior to the end of the term by either party for breach by the other party, or by Transcept if the FDA does not qualify Mikart as a supplier of *Intermezzo*® tablets.

Manufacturers and suppliers of Transcept product candidates are subject to current cGMP requirements, U.S. Drug Enforcement Administration, or DEA, regulations and other rules and regulations prescribed by foreign regulatory authorities. Transcept depends on its third party suppliers and manufacturers for continued compliance with cGMP requirements and applicable foreign standards. Transcept has identified alternates for certain of the above-listed suppliers and plans to have such alternate suppliers qualified by the FDA and other regulatory authorities after potential approval of the *Intermezzo*® NDA.

Government Regulation

Prescription drug products are subject to extensive regulation by the FDA, including regulations that govern the testing, manufacturing, safety, efficacy, labeling, storage, record keeping, distribution, import, export, advertising and promotion of such products under the Federal Food Drug and Cosmetic Act, or FFDCA, and its implementing regulations, and by comparable agencies and laws in foreign countries. Failure to comply with applicable FDA or other regulatory requirements may result in a variety of administrative or judicially imposed sanctions, including FDA refusal to approve pending applications, suspension or termination of clinical trials, Warning Letters, civil or criminal penalties, recall or seizure of products, partial or total suspension of production or withdrawal of a product from the market.

FDA approval is required before any new unapproved drug, including a new use or new dosage form of a previously approved drug, can be marketed in the United States. All applications for FDA approval must contain, among other things, information relating to safety and effectiveness, pharmaceutical formulation, stability, manufacturing, processing, packaging and labeling.

New Drug Approval

A new drug approval by the FDA generally involves, among other things:

- completion of extensive preclinical laboratory and animal testing in compliance with FDA good laboratory practice, or GLP, regulations;
- submission to the FDA of an IND to conduct human clinical testing, which must become effective before human clinical trials may begin;
- performance of adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed drug product for each indication;

- satisfactory completion of an FDA pre-approval inspection of the facility or facilities at which the product is produced to assess compliance with FDA current Good Manufacturing Practice, or cGMP, regulations; and
- submission to and approval by the FDA of an NDA.

The preclinical and clinical testing and approval process requires substantial time, effort and financial resources, and Transcept cannot be certain that any approvals for its product candidates or any indications will be granted on a timely basis, if at all.

Preclinical tests include laboratory evaluation of product chemistry, formulation and stability, as well as studies to evaluate toxicity in animals. The results of preclinical tests, together with manufacturing information and analytical data, are submitted as part of an IND to the FDA. The IND automatically becomes effective 30 days after acceptance by the FDA, unless the FDA, within the 30 day time period, raises concerns or questions about the conduct of the clinical trial, including concerns that human research subjects will be exposed to unreasonable health risks. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. The submission of an IND may not result in FDA authorization to commence a clinical trial. Further, an independent institutional review board, or IRB, for each medical center proposing to conduct the clinical trial must review and approve the plan for any clinical trial before it commences at that center and it must monitor the study until completed. The FDA, the IRB, or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk. Clinical testing also must satisfy extensive Good Clinical Practice, or GCP, regulations, including regulations for obtaining informed consent by each patient.

For purposes of an NDA submission and approval, human clinical trials are typically conducted in the following four sequential phases, which may overlap:

- *Phase 1:* Studies are initially conducted in a limited population to test the product candidate for initial safety, dose tolerance, absorption, metabolism, distribution and excretion in healthy humans or, on occasion, in patients.
- *Phase 2:* Studies are generally conducted in a limited patient population to identify adverse effects and safety risks, to determine initial efficacy of the product for specific targeted indications and to determine dose tolerance and optimal dosage. Multiple Phase 2 clinical trials may be conducted by the sponsor to obtain additional information prior to beginning larger, more expensive and time consuming Phase 3 clinical trials. In some cases, a sponsor may decide to run what is referred to as a "Phase 2b" evaluation, which is a second, confirmatory Phase 2 trial that could, in limited situations, be accepted by the FDA and serve as one of the pivotal trials in the approval of a product candidate if the study is positive.
- *Phase 3:* These are commonly referred to as pivotal studies. When Phase 2 evaluations demonstrate that a dose range of the product is effective and has an acceptable safety profile, Phase 3 trials are undertaken in larger patient populations in the target indication to further evaluate dosage, to provide substantial evidence of clinical efficacy and to further test for safety in an expanded and diverse patient population, often at multiple, geographically-dispersed clinical trial sites.
- *Phase 4:* In many cases, the FDA incorporates into the approval of an NDA the sponsor's agreement to conduct additional clinical trials to further assess a drug's safety and effectiveness after NDA approval. Such post approval trials are typically referred to as Phase 4 studies.

Controlled clinical trials conducted for Transcept drug candidates must be included in a clinical trials registry database that is available and accessible to the public through the internet. Failure to properly participate in the clinical trial database registry could result in significant civil monetary penalties.

The submission of an NDA is no guarantee that the FDA will find it complete and accept it for filing. The FDA reviews all NDAs submitted before it accepts them for filing. It may refuse to file the application and

request additional information rather than accept the application for filing, in which case, the application must be resubmitted with the supplemental information. After the application is deemed filed by the FDA, agency staff of the FDA will review an NDA to determine, among other things, whether a product is safe and efficacious for its intended use.

In 1992, under the Prescription Drug User Fee Act, or PDUFA, the FDA agreed to specific goals for improving the drug review time and created a two-tiered system of review times—Standard Review and Priority Review. Standard Review is applied to a drug that offers at most, only minor improvement over existing marketed therapies. The 2007 amendments to PDUFA set a goal that a Standard Review of an NDA be accomplished within a ten-month timeframe. A Priority Review designation is given to drugs that offer major advances in treatment, or provide a treatment where no adequate therapy exists. The goal of the FDA for completing a Priority Review is six months. The FDA strives to, and usually does, meet these review goals, but is not legally required to do so in every case. Transcept believes that the review of the *Intermezzo*® NDA will be a Standard Review. The review process is often significantly extended by FDA requests for additional information or clarification. The FDA has substantial discretion in the approval process and may disagree with an applicant's interpretation of the data submitted in its NDA. As part of this review, the FDA may refer the application to an advisory committee for review, evaluation and recommendation as to whether the application should be approved. The FDA is not bound by the recommendation of an advisory committee, but it generally follows such recommendations. The FDA may deny approval of an NDA if the applicable regulatory criteria are not satisfied, or it may require additional clinical data or additional pivotal Phase 3 clinical trials. Even if such data are submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data from clinical trials may be subject to different interpretation, and the FDA may interpret data differently than Transcept. Under new legislation in 2007 that granted significant new powers to the FDA, many of which are aimed at improving the safety of drug products before and after approval, the FDA may determine that a risk evaluation and mitigation strategy, or REMS, is necessary to ensure that the benefits of a new product outweigh its risks. If required, a REMS may include various elements, such as publication of a medication guide, patient package insert, a communication plan to educate healthcare providers of the drug's risks, limitations on who may prescribe or dispense the drug, or other measures that the FDA deems necessary to assure the safe use of the drug.

Once the NDA is approved, the FDA may withdraw product approval if ongoing regulatory requirements are not met or if safety problems occur after the product reaches the market. In addition, the FDA may require testing, including Phase 4 studies, and surveillance programs to monitor the effect of approved products which have been commercialized, and the FDA has the power to prevent or limit further marketing of a product based on the results of these post-marketing programs. Drugs may be marketed only for the approved indications and in accordance with the provisions of the approved label. Further, if there are to be any material modifications to the drug, including changes in indications, labeling, or manufacturing processes or facilities, Transcept will likely be required to submit and obtain FDA approval of a new or supplemental NDA, which may require Transcept to develop additional data or conduct additional and extensive preclinical studies and clinical trials.

Section 505(b)(2) New Drug Applications

As an alternate path to FDA approval for modifications of products previously approved by the FDA, an applicant may submit an NDA under Section 505(b)(2) of the FFDCA. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Act. This statutory provision permits the filing of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference from the owner of the data. The Hatch-Waxman Act permits the applicant to rely upon the FDA findings of safety and effectiveness of a drug that has obtained FDA approval based on preclinical or clinical studies conducted by others. In addition to relying on FDA prior findings of safety and effectiveness for a referenced drug product, the FDA may require companies to perform additional preclinical or clinical studies to support approval of the modification to the referenced product. Transcept has submitted the initial NDA for

Intermezzo®, which was accepted for filing on December 15, 2008, under Section 505(b)(2), and relies on the extensive information that has been collected for immediate release zolpidem products, which contain the approved active drug agent that is incorporated in *Intermezzo*®. To the extent that a Section 505(b)(2) application relies on a prior FDA finding of safety and effectiveness of a previously-approved product, the applicant is required to certify to the FDA concerning any patents listed for the referenced product in the FDA publication called "Approved Drug Products with Therapeutic Equivalence Evaluations," otherwise known as the "Orange Book." Specifically, the applicant must certify in the application that:

- there is no patent information listed for the reference drug;
- the listed patent has expired for the reference drug;
- the listed patent for the reference drug has not expired, but will expire on a particular date and approval is sought after patent expiration; or
- the listed patent for the reference drug is invalid, unenforceable, or will not be infringed by the manufacture, use or sale of the product for which the 505(b)(2) NDA is submitted.

In the *Intemezzo*® NDA that was accepted for filing on December 15, 2008, Transcept has made appropriate certification based on the listed and unexpired patents, if any, for the referenced drug product. Currently, there are no unexpired patents for immediate release zolpidem products listed in the Orange Book.

In the event that one or more patents is listed in the Orange Book for the referenced product, including patents listed after Transcept submitted its NDA for *Intermezzo*®, Transcept may also be required to evaluate the applicability of these patents to *Intermezzo*® and submit additional patent certifications. A paragraph III certification, stating that a listed patent has not expired, but will expire on a particular date, may delay the approval of *Intermezzo*® until the expiration of the patent. A paragraph IV certification, stating that a listed patent is invalid, unenforceable, or not infringed by *Intermezzo*® may require Transcept to notify the patent owner and the holder of the NDA for the referenced product of the existence of the *Intermezzo*® NDA, and may result in patent litigation against Transcept and the entry of a 30-month stay of FDA ability to issue final approval to the *Intermezzo*® 505(b)(2) NDA.

If Transcept obtains FDA approval for *Intermezzo*® it could obtain three years of Hatch-Waxman marketing exclusivity. Under this form of exclusivity, the FDA would be precluded from approving a marketing application for a duplicate of *Intermezzo*®, a product candidate that the FDA views as having the same conditions of approval as *Intermezzo*® (for example, the same indication, the same route of delivery and/or other conditions of use), or a 505(b)(2) NDA submitted to FDA with *Intermezzo*® as the reference drug, for a period of three years from the date of *Intermezzo*® approval, although the FDA may accept and commence review of such applications. This form of exclusivity may not prevent the FDA from approving an NDA that relies only on its own data to support the change or innovation. Further, if another company obtains approval for a product candidate for the same conditions of approval that Transcept is studying for *Intermezzo*® before *Intermezzo*® received approval, the *Intermezzo*® approval could be blocked until the other company's three-year Hatch-Waxman marketing exclusivity expires.

Manufacturing cGMP Requirements

Transcept and its contract manufacturers are required to comply with applicable FDA manufacturing requirements contained in the FDA cGMP regulations. cGMP regulations require, among other things, quality control and quality assurance as well as the corresponding maintenance of records and documentation. The manufacturing facilities for active pharmaceutical ingredients, or APIs, and finished drug products must meet cGMP requirements to the satisfaction of the FDA, and pass a pre-approval inspection before Transcept can use them to manufacture its products. Transcept and its third-party manufacturers are also subject to periodic inspections of facilities by the FDA and other authorities, including inspection of the procedures and operations used in the testing and manufacture of Transcept products to assess continued compliance with applicable regulations.

The API used to manufacture some of our product candidates originates outside the United States. The FDA could increase its diligence with regard to foreign sourced materials and manufacturing processes which may result in increased costs of maintaining foreign manufacturing and could lengthen or delay the regulatory review process required to gain approval for our product candidates.

Failure to comply with statutory and regulatory requirements subjects a manufacturer to possible legal or regulatory action, including adverse publicity, Warning Letters, the seizure or recall of products, injunctions, consent decrees placing significant restrictions on or suspending manufacturing operations, and civil and criminal penalties. Adverse patient experiences with the product received by Transcept must be reported to the FDA and could result in the imposition of market restriction through labeling changes or in product removal. Product approvals may be withdrawn if compliance with regulatory requirements is not maintained or if problems concerning safety or efficacy of the product occur following approval.

Other Regulatory Requirements

With respect to post-market product advertising and promotion, the FDA imposes a number of complex regulations on entities that advertise and promote pharmaceuticals, which include, among others, standards for direct-to-consumer advertising, industry-sponsored scientific and educational activities, and promotional activities involving the internet, as well as a prohibition on off-label promotion. The FDA has very broad enforcement authority under the FFDCA, and failure to abide by these regulations can result in penalties, including the issuance of a Warning Letter directing entities to correct deviations from FDA standards, a requirement that future advertising and promotional materials be pre-cleared by the FDA, and state and federal civil and criminal investigations and prosecutions. Numerous other laws, not administered by the FDA, also apply to the promotion of pharmaceuticals, alleged violations of which may also result in state and federal civil and criminal investigation and prosecutions.

Transcept is also subject to various laws and regulations regarding laboratory practices, the experimental use of animals, and the use and disposal of hazardous or potentially hazardous substances in connection with Transcept activities. In each of these areas, as above, the FDA and other agencies have broad regulatory and enforcement powers, including the ability to levy fines and civil penalties, suspend or delay issuance of approvals, seize or recall products, and withdraw approvals, any one or more of which could have a material adverse effect on Transcept.

DEA Regulation

Zolpidem, the active pharmaceutical ingredient in *Intermezzo*®, is classified as a schedule IV controlled substance by the DEA. As a result, manufacturing of zolpidem is subject to regulation by the DEA. Controlled substances are those drugs that appear on one of five schedules promulgated and administered by the DEA under the Controlled Substances Act, or CSA. The CSA governs, among other things, the distribution, record keeping, handling, security, and disposal of controlled substances. Transcept, as well as third-party suppliers of Transcept who handle zolpidem, must be registered by the DEA in order to engage in these activities, and are subject to periodic and ongoing inspections by the DEA and similar state drug enforcement authorities to assess ongoing compliance with DEA regulations. Any failure by Transcept or its third party suppliers to comply with these regulations could lead to a variety of sanctions, including the revocation, or a denial of renewal, of DEA registration, injunctions, or civil or criminal penalties and loss of supply.

Third-Party Reimbursement and Pricing Controls

In the United States and elsewhere, sales of pharmaceutical products depend in significant part on the availability of coverage and reimbursement to providers and the consumer from third-party payors, such as government and private insurance plans. Third-party payors are increasingly challenging the prices charged for

medical products and services. Transcept products may not be considered cost effective, and coverage and reimbursement may not be available or sufficient to allow sales of Transcept products on a competitive and profitable basis.

In the United States, there have been, and Transcept expects that there will continue to be, a number of federal and state proposals to implement similar governmental pricing control. While Transcept cannot predict whether such legislative or regulatory proposals will be adopted, the adoption of such proposals could have a material adverse effect on the business, financial condition and profitability of Transcept.

Medicare

Two principal payors in the United States are Medicaid and Medicare. Transcept expects that in the United States many patients who are treated with *Intermezzo*® will be Medicare beneficiaries. The Centers for Medicare and Medicaid Services, or CMS, is the agency within the Department of Health and Human Services that administers both Medicare and Medicaid. CMS has the authority not to cover particular products or services if it determines that they are not "reasonable and necessary" for the treatment of Medicare beneficiaries. CMS may make a national coverage determination, or NCD, for a product, which establishes on a nationwide basis the indications that will be covered, and any restrictions or limitations. However, for most new drugs that are eligible for payment, CMS does not create an NCD, and Transcept does not plan to request one. Nevertheless, CMS or a third party may request an NCD independent of Transcept. If such request is made, Transcept can not assure investors that such NCD will contain favorable coverage terms.

If there is no NCD, the local Medicare contractors that are responsible for administering the program on a state or regional basis have the discretion to deny coverage and reimbursement for the drug or issue a local coverage determination, or LCD. These LCDs can include both coverage criteria for the drug and frequency limits for the administration of the drug. Overturning restrictive LCDs in the various regions can be a time-consuming and expensive process.

Effective January 1, 2006, Congress enacted a prescription drug benefit known as Medicare Part D. CMS contracts with numerous managed care plans and drug benefit plans to deliver the drug benefit. These plans develop formularies that determine which products are covered and at what co-pay level. If Medicare coverage for *Intermezzo*® is available, CMS will reimburse through Part D. While CMS evaluates Part D plans' proposed formularies for potentially discriminatory practices, the plans have considerable discretion in establishing formularies, establishing tiered co-pay structures and placing prior authorization and other restrictions on the utilization of specific products. Moreover, Part D plan sponsors are permitted and encouraged to negotiate rebates with manufacturers. Revenue for *Intermezzo*® will be substantially affected by its formulary status on Part D plans and the rebates that Part D plan sponsors are able to negotiate.

Medicaid

Medicaid is a federal and state entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources and who meet other eligibility requirements. Medicaid became law in 1965 and is jointly funded by the federal and state governments (including the District of Columbia and the territories) to assist states in furnishing medical assistance to eligible needy persons. Medicaid is the largest source of funding for medical and health-related services for the indigent population of the United States.

Transcept expects *Intermezzo*® to be eligible for reimbursement under Medicaid and, therefore, subject to rebates under the Medicaid Drug Rebate Program established by the Omnibus Budget Reconciliation Act of 1990. Under the Medicaid Drug Rebate Program, Transcept would pay a rebate to each participating state agency for each unit of product reimbursed by Medicaid. The basic amount of the rebate for each product is the greater of 15.1% of the Average Manufacturer Price (AMP) of that product, or the difference between AMP and the best price available from Transcept to any non-excluded customer. The rebate amount also includes an inflation

adjustment if AMP increases faster than a specified inflation index. The rebate amount is calculated quarterly based on Transcept reports of its current AMP and best price for each of its products to CMS. AMPs and best price may be recalculated after they are initially submitted based on the availability of additional data or because of additional analysis of prices that have been reported.

Several state Medicaid programs have implemented Preferred Drug Lists, or PDLs, and more states may adopt this practice. Products placed on a state Medicaid program's PDL are not subject to restrictions on their utilization by Medicaid patients, such as the need to obtain authorization prior to prescribing. If *Intermezzo*® is not included on Medicaid PDLs, use of it in the Medicaid program may be adversely affected. In some states that have adopted PDLs, Transcept may be required to provide substantial supplemental rebates to state Medicaid authorities in order for *Intermezzo*® to be included on the PDL.

Pharmaceutical manufacturers, as a condition of participation in the Medicaid Drug Rebate Programs, must enter into an agreement with the Secretary of the Department of Health and Human Services to participate in the 340B program, enacted by the PHS Act. Under the 340B programs pharmaceutical manufacturers are required to extend discounts based on the Medicaid rebate to a variety of health care entities referred to as covered entities. These covered entities include health care providers that receive health services grants from the PHS, as well as certain hospitals that serve a disproportionate share of Medicare and Medicaid beneficiaries.

Section 603 of the Veteran's Health Care Act of 1992 requires manufacturers of covered drugs to enter into a master agreement with the Secretary of the Department of Veteran Affairs, or VA, in order to have their drugs covered under Medicaid. The master agreement requires the manufacturer to make its products available for federal procurement by listing them on the Federal Supply Schedule. In addition, the master agreement requires the manufacturer to enter into a Pharmaceutical Pricing Agreement, or PPA, with the VA. Under the PPA, the manufacturer agrees to sell its drugs to the "Big Four" federal agencies—the VA, the Department of Defense, the PHS and the Coast Guard—at or below a Federal Ceiling Price, which is set at 76% of a calculation called the Non-Federal Average Manufacturer Price (non-FAMP), minus an additional discount.

Another source of reimbursement for drug products is state Pharmaceutical Assistance Programs, or SPAPs. Many of these programs were created by states to aid low-income elderly or persons with disabilities who do not qualify for Medicaid. Transcept would pay rebates to some SPAPs and, if they are considered qualified programs by CMS, the prices Transcept provided these entities would be excluded from the Medicaid best price of Transcept.

Private Insurance Reimbursement

Commercial insurers usually offer pharmacy benefits. If private insurers decide to cover *Intermezzo*®, they will reimburse for the drug in a variety of ways, depending on the insurance plan's policies, employer and benefit manager input and contracts with their physician network. Private insurers tend to adopt reimbursement methodologies for a product similar to those adopted by Medicare. Revenue for *Intermezzo*® may be materially and adversely affected if private payors make unfavorable reimbursement decisions or delay making favorable reimbursement decisions.

The continuing efforts of government and third-party payors to contain or reduce the costs of health care through various means may reduce potential revenues Transcept may receive from sales of *Intermezzo*®, if approved. These payers' efforts could decrease the price that Transcept receives for products it may sell, including *Intermezzo*®. In addition, third-party insurance coverage may not be available to patients for Transcept products at all, especially in light of the availability of low-cost generic zolpidem therapeutics, regardless of the fact that such products are not designed or indicated to treat middle of the night awakenings. Third-party payors could also impose conditions that must be met by patients prior to providing coverage for use of Transcept products. For instance, insurers may establish a "step-edit" system that requires a patient to utilize a lower price alternative product prior to becoming eligible to purchase a higher price product that may be better targeted to the

condition being treated. There can be no assurance that third-party payors will not similarly require a patient to first use generic zolpidem or other sleep aids prior to being eligible for insurance coverage of *Intermezzo*® use.

If government and third-party payors do not provide adequate coverage and reimbursement levels for Transcept products, or if price controls or step-edit systems are enacted, Transcept product revenues will suffer.

Intellectual Property and Proprietary Technology

The success of Transcept will depend in part on its ability to protect *Intermezzo*® and future products and product candidates by obtaining and maintaining a strong proprietary position both in the United States and in other countries. To develop and maintain its proprietary position, Transcept will rely on patent protection, regulatory protection, trade secrets, know-how, continuing technological innovations and licensing opportunities.

The active and many of the inactive ingredients in *Intermezzo*® have been known and used for many years and, therefore, are no longer subject to patent protection. Accordingly, pending patent applications of Transcept are directed to the particular formulations and methods of use of zolpidem, the API in *Intermezzo*®. There can be no assurance that these applications will result in patents being issued, and, even if issued, such patents may not prevent others from marketing formulations using the same active and inactive ingredients in similar but different formulations. Currently pending patent applications that cover *Intermezzo*® have claims that are directed to both formulation and methods of use and are summarized below:

- *Formulations of zolpidem.* Transcept has two pending U.S. patent applications and 13 corresponding foreign patent applications. Transcept has received one patent acceptance in South Africa directed to formulations of zolpidem.
- *Methods of use of zolpidem.* Transcept has seven pending U.S. patent applications and 12 foreign patent applications.
- *Buffered soda*. Transcept has one pending U.S. patent application and one pending international patent application, both of which are co-owned with SPI pursuant to the Supply Agreement between Transcept and SPI, covering the compositions containing buffered soda and their method of use, that Transcept refers to as Bimucoral® technology. Under the Supply Agreement, Transcept has a royalty-free, fully paid-up exclusive license with respect to these patent applications, with a right to grant sublicenses, for products incorporating both buffered soda and zolpidem. This license survives the termination of the Supply Agreement.

In addition to the applications directed to *Intermezzo*®, Transcept has filed patent applications for various other formulations and methods of use of drugs including sumatriptan, pilocarpine, ondansetron, and ondansetron in combination with atypical antipsychotic drugs. Transcept currently has no plans to pursue development of products relating to the sumatriptan, pilocarpine and ondansetron patents, but is evaluating opportunities relating to ondansetron in combination with atypical antipsychotic drugs. These applications are summarized below.

- One pending U.S. patent application relating to methods of use of sumatriptan
- One pending U.S. patent application relating to compositions and methods of use of pilocarpine
- Three pending U.S. patent applications and one international application relating to compositions and methods of use of ondansetron and ondansetron in combination with atypical antipsychotics

The patent positions of pharmaceutical companies like Transcept are generally uncertain and involve complex legal, scientific and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued. Consequently, Transcept does not know whether any of its patent applications will result in the issuance of patents or, if any patents are issued, whether they will provide significant proprietary protection or will be circumvented or challenged and found to be unenforceable or invalid. In limited instances, patent applications in the United States and certain other jurisdictions are maintained in

secrecy until patents issue, and since publication of discoveries in the scientific or patent literature often lags behind actual discoveries, Transcept cannot be certain of the priority of inventions covered by pending patent applications. Moreover, Transcept may have to participate in interference proceedings declared by the U.S. Patent and Trademark Office to determine priority of invention or in opposition proceedings in a foreign patent office, any of which could result in substantial cost to Transcept, even if the eventual outcome is favorable. There can be no assurance that a court of competent jurisdiction would hold the patents, if issued, valid. An adverse outcome could subject Transcept to significant liabilities to third parties, require disputed rights to be licensed from third parties or require Transcept to cease using such technology. To the extent Transcept determines it to be prudent, Transcept intends to bring litigation against third parties that Transcept believes are infringing its patents.

Transcept also relies on trade secret protection for its confidential and proprietary information. No assurance can be given that others will not independently develop substantially equivalent proprietary information and techniques or otherwise gain access to Transcept trade secrets or disclose such technology or that Transcept can meaningfully protect its trade secrets. However, Transcept believes that the substantial costs and resources required to develop technological innovations will help it protect Transcept products.

Transcept requires its employees, consultants and members of its scientific advisory board to execute confidentiality agreements upon the commencement of employment, consulting or collaborative relationships with Transcept. These agreements provide that all confidential information developed or made known during the course of the relationship with Transcept be kept confidential and not disclosed to third parties except in specific circumstances. In the case of employees, the agreements provide that all inventions resulting from work performed for Transcept, utilizing the property or relating to the business of Transcept and conceived or completed by the individual during employment shall be the exclusive property of Transcept to the extent permitted by applicable law. There can be no assurance, however, that these agreements will provide meaningful protection or adequate remedies for Transcept trade secrets in the event of unauthorized use or disclosure of such information.

Employees

As of January 30, 2009 Transcept had 33 employees, 6 of whom hold Ph.D., Pharm.D., or equivalent degrees. A total of 19 employees were engaged in research and development, 3 were in sales, marketing and business development, and 11 were in administration and finance. No Transcept employees are represented by a labor union or subject to a collective bargaining agreement. Transcept has not experienced any work stoppages and considers its relations with its employees to be good.

Available Information

Availability of Reports. Transcept is a reporting company under the Securities Exchange Act of 1934, as amended, and files reports, proxy statements and other information with the SEC. The public may read and copy any of our filings at the SEC's Public Reference Room at 100 F Street N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Because Transcept makes filings to the SEC electronically, you may access this information at the SEC's Internet site: www.sec.gov. This site contains reports, proxies and information statements and other information regarding issuers that file electronically with the SEC.

Web Site Access. Our Internet web site address is www.transcept.com. Transcept makes available, free of charge at the "Investor Relations" portion of this web site, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the 1934 Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Reports of beneficial ownership filed pursuant to Section 16(a) of the 1934 Act are also available on this web site. Information in, or that can be accessed through, this web site is not part of this annual report on Form 10-K.

Item 1A. Risk Factors

In evaluating the business of Transcept, you should carefully consider the following risks in addition to the other information in this report. Any of the following risks could materially and adversely affect Transcept business, results of operations, financial condition or your investment in Transcept securities, and many are beyond Transcept control. It is not possible to predict or identify all such factors and, therefore, you should not consider any of the above risks to be a complete statement of all the potential risks or uncertainties that Transcept faces.

In the following discussion, "Transcept" refers to the public company formerly known as Novacea, Inc. and now known as Transcept Pharmaceuticals, Inc., and (as successor to the business of the private company formerly known as Transcept Pharmaceuticals, Inc., or TPI, that is now the wholly owned subsidiary of Transcept following the merger of TPI and Novacea) also relates to activities taking place with respect to the business of TPI prior to the merger of TPI and Novacea. For further discussion of the merger of TPI and Novacea, see the section entitled "Business—Background and Merger of Novacea, Inc. and Transcept Pharmaceuticals, Inc."

Transcept has had a brief operating history that may make it difficult for you to evaluate the potential success of its business and has a history of incurring losses.

Transcept was founded in January 2001 under its former name Novacea, Inc., and in January 2009 underwent a merger with TPI, a private company founded in 2002 whose business is currently conducted by Transcept. Transcept, in continuing the business of TPI, remains a development stage company. Transcept operations to date have been limited to organizing and staffing, acquiring, developing and securing its technology and undertaking preclinical studies and clinical trials. Transcept has not yet demonstrated an ability to obtain regulatory approval and manufacture marketed products to U.S. Food and Drug Administration, or FDA, and other regulatory standards or to conduct sales and marketing activities. Consequently, any predictions you make about the future success or viability of Transcept may not be as accurate as they would be if Transcept had a longer operating history.

Furthermore, the business of Transcept that is being continued from TPI is not profitable and has incurred losses in each year since its inception. TPI net loss for the years ended December 31, 2008, 2007 and 2006 was $20.0 million, $20.4 million and 13.6 million, respectively. As of December 31, 2008, TPI had an accumulated deficit of $65.1 million. Transcept expects to continue to incur losses for the foreseeable future, and expects its accumulated deficit to increase as it continues its research, development and commercialization efforts with respect to *Intermezzo*® and other product candidates. If *Intermezzo*® or other Transcept product candidates do not gain or maintain regulatory approval or market acceptance, Transcept may never become profitable or may not be able to sustain profitability, even if achieved.

The success of Transcept depends substantially on its ability to obtain regulatory approval for its lead product candidate, Intermezzo®.

The success of Transcept depends substantially on obtaining regulatory approval for its most advanced product candidate, *Intermezzo*®, for use as needed for the treatment of insomnia when a middle of the night awakening is followed by difficulty returning to sleep, or middle of the night awakening. Regulatory approval to market pharmaceutical products in the United States requires the completion of extensive non-clinical and clinical evaluations of a product candidate, referred to as clinical trials, to demonstrate substantial evidence of safety and efficacy of the candidate, as well as development of manufacturing processes that demonstrate the ability to reliably and consistently produce the candidate under current Good Manufacturing Practice, or cGMP, regulations. Each of these elements requires pharmaceutical development companies to exercise certain judgments concerning applicable regulatory requirements and to predict what the regulatory authority will ultimately deem acceptable. There can be no assurance that the results of the clinical trials for *Intermezzo*® or its

manufacturing processes will satisfy the regulatory requirements for approval. A failure to meet these requirements would significantly delay or prevent approval of *Intermezzo*® and seriously harm the ability of Transcept to generate revenue.

The FDA required Transcept to complete at least two adequate and well-controlled Phase 3 clinical trials for the *Intermezzo*® indication before submission of a New Drug Application, or NDA. These trials were completed, and Transcept submitted the NDA for *Intermezzo*® on September 30, 2008, which was accepted for filing on December 15, 2008. Although Transcept analyses of the two Phase 3 studies of *Intermezzo*® indicated that their primary endpoints were met, the FDA may not agree with these analyses and may require that Transcept complete additional expensive and time consuming studies or perform other testing to support an approval. In addition, although the FDA agreed to accept pharmacokinetic data for approval of the 1.75 mg elderly dose, the FDA may change its position during the course of its NDA review.

The FDA has not approved a pharmaceutical product specifically to treat middle of the night awakening. There can be no assurance that the FDA will approve this new indication within the insomnia category, or that the FDA will not require additional clinical trials for one or both doses, or for special population subgroups, to support potential marketing approval for *Intermezzo*® in this new indication. While Transcept believes that the results of the clinical trials for *Intermezzo*® meet FDA guidance to support potential approval of *Intermezzo*®, the FDA may not agree or may reconsider its guidance, require more clinical trials or otherwise require additional data or studies to justify this new indication in the insomnia market for which approval of *Intermezzo*® is being sought. If Transcept does not obtain regulatory approval for *Intermezzo*® specifically to treat middle of the night awakening, the ability of Transcept to market *Intermezzo*® will be eliminated or substantially impaired, and the business of Transcept will suffer.

Transcept is seeking approval for *Intermezzo*® under Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, which permits applicants to rely in part on clinical and non-clinical data generated by third parties. Specifically, Transcept is relying in part on third party data with respect to zolpidem, which is the active ingredient in *Intermezzo*® and the previously approved insomnia products Ambien® and Ambien CR®. There can be no assurance that the FDA will not require Transcept to conduct additional non-clinical or clinical studies or otherwise obtain new supplementary data with respect to some or all of the data upon which Transcept intends to rely.

In addition, Transcept has limited experience in preparing, submitting and prosecuting regulatory filings, including NDAs and other applications necessary to gain regulatory approvals. If Transcept does not receive regulatory approval from the FDA, Transcept will not be able to commercialize *Intermezzo*® in the United States. Further, if the FDA delays approval as a result of requirements to conduct additional clinical studies, commercialization of *Intermezzo*® could be significantly delayed. Significant delay or the inability to commercialize *Intermezzo*® in the United States would significantly harm Transcept business and financial prospects.

If Transcept is unable to establish a sales, marketing and distribution infrastructure or enter into strategic alliances to perform these functions, it may not be successful in commercializing its product candidates.

In order to commercialize *Intermezzo*® or any other product candidates successfully, Transcept must acquire or internally develop a sales, marketing and distribution infrastructure and/or enter into strategic alliances to perform these services. Transcept intends to develop its own specialty sales force to initially target high prescribers of sleep medicines, but has no experience in building a sales and marketing organization. The development of sales, marketing and distribution infrastructure is difficult, time consuming and requires substantial financial and other resources. If Transcept cannot successfully develop the infrastructure to market and commercialize *Intermezzo*®, its ability to generate revenues may be harmed, and Transcept may be required to enter into strategic alliances to have such activities carried out on its behalf, which may not be on favorable terms. Factors that may hinder Transcept efforts to develop an internal sales, marketing and distribution infrastructure include:

- inability to recruit, retain and effectively manage adequate numbers of effective sales and marketing personnel;

- the inability of sales personnel to obtain access to or convince adequate numbers of physicians to prescribe Transcept products;
- the lack of complementary products to be offered by sales personnel, which may put Transcept at a competitive disadvantage relative to companies with more extensive product lines; and
- unforeseen delays, costs and expenses associated with creating a sales and marketing organization.

Transcept intends to enter into one or more strategic alliances to further address the U.S. market and to potentially address markets outside the United States. Transcept may not be able to enter into any such alliance on acceptable terms, if at all, and may face competition in its search for alliance partners. If Transcept is not able to collaborate with an alliance partner, its efforts to commercialize *Intermezzo®* may be less successful.

Transcept may require substantial additional funding and may be unable to raise capital when needed.

TPI had cash, cash equivalents and marketable securities of $11.7 million at December 31, 2008. Transcept estimated in connection with its recently completed merger that the combined cash, cash equivalents and marketable securities of TPI and Novacea on January 30, 2009 was estimated to be approximately $92 million. Subsequent to the close of the merger in the first quarter of 2009, Transcept paid financial advisory fees incurred in connection with the merger of $2.0 million and retired in full all remaining debt of TPI owed to Hercules Technology Growth Capital for $2.7 million. For the year ended December 31, 2008, TPI used cash of $20.1 million in operating activities. Transcept expects its negative cash flows from operations to continue for the foreseeable future and beyond potential regulatory approval and product launch of *Intermezzo®*. Transcept expects that negative cash flows from operations will increase relative to its historic use of cash as a result of additional administrative, accounting, and legal costs associated with being a public company. In addition, Transcept expects to incur substantial expenses relating to the potential commercial launch of *Intermezzo®*. If management's assumptions concerning the timing of potential product approval and launch prove incorrect as a result of FDA or other regulatory approval delays or other factors, the cash, cash equivalents and marketable securities of Transcept may prove insufficient to fund Transcept operations through the commercial launch of *Intermezzo®*.

Transcept expects to deploy a substantial majority of the available cash toward the development of sales and marketing programs for *Intermezzo®*. As a result, the development and potential regulatory approval of additional Transcept product candidates is likely to require additional funding which may not be available at and as of the time needed on commercially reasonable terms, if at all.

If *Intermezzo®* does not gain regulatory approval or does not achieve market acceptance, Transcept will not generate any revenue. Transcept cannot assure you that it will ever be profitable even if it commercializes *Intermezzo®*. If Transcept fails to achieve and maintain profitability, or if it is unable to fund its continuing losses, investors could lose all or part of their investment.

Intermezzo® and other Transcept product candidates may not achieve market acceptance even if Transcept obtains regulatory approvals.

Even if Transcept receives regulatory approvals for the commercial sale of *Intermezzo®* or other product candidates, the commercial success of these product candidates will depend upon, among other things, acceptance by physicians and patients. Market acceptance of, and demand for, any product that Transcept develops and commercializes will depend on many factors, including:

- the ability to provide acceptable evidence of safety and efficacy of *Intermezzo®*, or future products for their respective indications;
- the ability to obtain adequate pricing and sufficient insurance coverage and reimbursement;
- the availability, relative cost and relative efficacy and safety of alternative and competing treatments;

- the effectiveness of Transcept or its alliance partner's sales, marketing and distribution strategies; and
- the ability to produce commercial quantities sufficient to meet demand.

If *Intermezzo*® or other Transcept product candidates fail to gain market acceptance, Transcept may be unable to earn sufficient revenue to continue its business.

Transcept will face substantial competition from large companies with established products.

Transcept is seeking approval of *Intermezzo*® for use as needed for the treatment of insomnia when a middle of the night awakening is followed by difficulty returning to sleep, an indication that Transcept believes represents an opportunity in the broader insomnia therapeutic market. The insomnia market is large, deeply commercialized and characterized by intense competition among large, established pharmaceutical companies with well funded and staffed sales and marketing organizations and far greater name recognition than Transcept.

If *Intermezzo*® receives marketing approval, it will compete in this large market against well-established branded products with significant advertising support, as well as with generic competitors selling zolpidem and other sleep aids at a fraction of the price at which Transcept will most likely seek to sell *Intermezzo*®.

Transcept believes that *Intermezzo*® , if approved, will be the first sleep aid approved by the FDA specifically for use in the middle of the night when patients awaken and have difficulty returning to sleep. However, currently marketed seven to eight hour therapeutics can also treat this condition when used to deliver a prophylactic dose at the beginning of the night. The most directly competitive currently-marketed products in the United States are Ambien® and Ambien CR®, marketed by Sanofi-Aventis, and the multiple generic manufacturers of zolpidem. Zolpidem, in both its branded and generic forms, is the most widely-prescribed drug in the United States for treatment of insomnia. Additionally, Lunesta®, marketed by Sepracor, Inc., can similarly treat middle of the night awakenings by providing a prophylactic dose at bed-time in order to avoid a middle of the night awakening, and short duration products such as Sonata, marketed by King Pharmaceuticals, Inc., have been used off-label for the as-needed treatment of middle of the night awakenings. Other drugs, such as the antidepressant generic trazadone, are also widely prescribed off-label for the treatment of insomnia.

Other companies may develop products to compete with Intermezzo®.

Transcept is aware of several products currently in development which may compete with *Intermezzo*®. Neurocrine Biosciences received an approvable letter, pending additional clinical and pre-clinical studies, from the FDA for its product candidate, indiplon, proposed to be used for sleep initiation and middle of the night dosing. There are many other companies working to develop new products and other therapies to treat insomnia, including but not limited to Orexo AB, NovaDel Pharma, Inc., Sanofi-Aventis, Eli Lilly and Company, GlaxoSmithKline in conjunction with Actelion Ltd., and Somaxon Pharmaceuticals, Inc. Several of these compounds are already marketed for other indications, and some, including Zolpimist™, an orally administered spray for which NovaDel Pharma, Inc. received marketing approval from the FDA in December 2008, and Edluar™, a sublingual tablet for which Orexo received marketing approval from the FDA in March 2009, use zolpidem as the active pharmaceutical ingredient and are formulated for the purported absorption of zolpidem across the tissues of the mouth. NovaDel Pharma, Inc. also recently announced that it commenced development of a low-dose version of Zolpimist™ for the treatment of middle-of-the-night awakenings with the intent to enter such product candidate into clinical trials. Furthermore, new developments, including the development of other drug technologies and methods of treating conditions, occur in the biopharmaceutical industry at a rapid pace. Any of these developments may negatively affect the commercial prospects of *Intermezzo*®.

Many potential competitors, either alone or together with their partners, have substantially greater financial resources, research and development programs, clinical trial and regulatory experience, expertise in prosecution of intellectual property rights, and manufacturing, distribution and sales and marketing capabilities than Transcept. As a result of these factors, these competitors may:

- develop product candidates and market products that are less expensive, safer, more effective than current product candidates and contemplated future products of Transcept;

- commercialize competing products before Transcept can launch *Intermezzo*® or other product candidates;
- initiate or withstand substantial price competition more successfully than Transcept can;
- have greater success in recruiting skilled scientific workers from the limited pool of available talent;
- more effectively negotiate third-party licenses and strategic alliances; and
- take advantage of acquisition or other opportunities more readily than Transcept.

Governmental and third-party payors may impose restrictions or reimbursement or pricing controls that could limit product revenues.

The continuing efforts of government and third-party payors to contain or reduce the costs of health care through various means may reduce potential revenues Transcept may receive from sales of *Intermezzo*®, if approved. In particular, third-party insurance coverage may not be available to patients for *Intermezzo*® or other Transcept products, especially in light of the availability of low-cost generic zolpidem therapeutics, regardless of the fact that such products are not specifically designed or indicated to specifically treat middle of the night awakening. Government and third-party payors could also impose price controls and other conditions that must be met by patients prior to providing coverage for use of Transcept products. For example, insurers may establish a "step-edit" system that requires a patient to utilize a lower price alternative product prior to becoming eligible for reimbursement of a higher price product. If government and third-party payors do not provide adequate coverage and reimbursement levels for Transcept products, or if price controls, prior authorization or step-edit systems are enacted, Transcept product revenues will suffer.

Negative publicity and documented side effects concerning products used to treat patients in the insomnia market may harm the ability of Transcept to commercialize Intermezzo® or other product candidates.

Products containing zolpidem, the active ingredient in *Intermezzo*®, are widely marketed. Zolpidem use has been implicated with negative effects, such as sleepwalking and amnesia, and has the potential to cause physical or psychological dependence. Furthermore, zolpidem is classified as a Schedule IV substance under the Comprehensive Drug Abuse and Prevention Control Act of 1970, and is subject to certain packaging, prescription and purchase volume limitations. There can be no assurance that additional negative publicity or increased governmental controls on the use of zolpidem or other compounds used in products for the insomnia market would not inhibit or prevent Transcept from commercializing *Intermezzo*® or other product candidates. Furthermore, negative publicity concerning zolpidem and other hypnotic pharmaceuticals could cause the FDA to make approval of new products for the insomnia market more difficult, by requiring additional or different non-clinical or clinical studies or taking other actions, out of safety or other concerns, or could lead to reduced consumer usage of sleep aids, including both zolpidem products and *Intermezzo*®.

If Transcept enters into strategic alliances to market Intermezzo® or for other purposes it will be dependent upon the efforts of its alliance partners.

Although Transcept believes that it has sufficient resources to carry out its plans to commercialize *Intermezzo*® to psychiatrists and high-prescribing physicians on its own, Transcept intends to enter into one or more strategic alliances to commercialize *Intermezzo*®, if approved, and may decide to enter into additional strategic alliances for the development of other product candidates. Any strategic alliance Transcept enters into may contain unfavorable terms, for example, with respect to product candidates covered, control over decisions and responsibilities, termination rights, payment, and other significant terms. The ability of Transcept to receive any significant revenue from its product candidates covered by a strategic alliance will be dependent on the efforts of the alliance partner and may result in lower levels of income to Transcept than if Transcept marketed or developed its product candidates entirely on its own. The alliance partner may not fulfill its obligations or carry out marketing activities for Transcept product candidates as diligently as Transcept would like. Transcept could

also become involved in disputes with its partner, which could lead to delays in or termination of commercialization programs and time-consuming and expensive litigation or arbitration. If an alliance partner terminates or breaches its agreement, or otherwise fails to complete its obligations in a timely manner, the chances of successfully developing or marketing Transcept product candidates would be materially and adversely affected.

Additionally, depending upon the alliance partner that Transcept chooses, other companies that might otherwise be interested in developing or marketing products with Transcept could be less inclined to do so because of the relationship of Transcept with the alliance partner. If the ability of Transcept to work with present or future alliance partners is adversely affected as a result of a collaboration agreement, Transcept business prospects may be limited and the financial condition of Transcept may be impaired. There can be no assurance that Transcept will be able to enter into such a strategic alliance, or that if Transcept does, it is on a time frame and on economic terms that are favorable to Transcept.

Even if Transcept product candidates receive regulatory approval, they will be subject to ongoing regulatory requirements and may face regulatory or enforcement action.

Any product candidate for which Transcept receives regulatory approval, together with related third-party manufacturing facilities and processes, post-approval clinical data, and advertising and promotional activities for the product, will be subject to significant review, oversight and ongoing and changing regulation by the FDA and other regulatory agencies. Failure to comply with regulatory requirements may subject Transcept to administrative and judicially-imposed sanctions. These may include warning letters, adverse publicity, civil and criminal penalties, injunctions, product seizures or detention, product recalls, total or partial suspension of production, and refusal to approve pending product marketing applications.

Even if Transcept receives regulatory approval to market a particular product candidate, the approval could be conditioned on Transcept conducting additional costly post-approval studies or could limit the indicated uses included in Transcept labeling. Moreover, the product may later cause adverse effects that limit or prevent its widespread use, force Transcept to withdraw it from the market or impede or delay the ability to obtain regulatory approvals in additional countries.

The FDA has also requested that all manufacturers of sedative-hypnotic pharmaceutical products modify their product labeling to include strong language concerning potential risks. These risks include severe allergic reactions and complex sleep-related behaviors, which may include sleep-driving. The FDA also recommended that pharmaceutical manufacturers conduct clinical studies to investigate the frequency with which sleep-driving and other complex behaviors occur in association with individual drug products. Transcept has not conducted such studies, and it is unclear how and to what extent, if any, these requests and recommendations will affect *Intermezzo*® or other Transcept product candidates.

If the manufacturers upon whom Transcept relies fail to produce in the volumes and quality that Transcept requires on a timely basis, or to comply with stringent regulations applicable to pharmaceutical manufacturers, Transcept may face delays in the development and commercialization of, or be unable to meet demand for, its products, if any, and may lose potential revenues.

Transcept does not manufacture *Intermezzo*®, and it does not plan to develop the capacity to do so. Transcept has a primary manufacturing and supply agreement with Patheon, Inc. to manufacture commercial supply of *Intermezzo*®. Transcept also has agreements with Mikart, Inc. to qualify it as a backup commercial supplier of finished product, as well as a backup commercial manufacturer of a key excipient used in the manufacture of *Intermezzo*®, Anderson Packaging, Inc. as a primary packager of *Intermezzo*®, and Sharp Corporation to supply sample packaging. Transcept relies upon SPI Pharma, Inc. as a supplier for certain key excipients contained within *Intermezzo*®, for one of such excipients as the sole source, and upon Plantex USA, Inc. as its sole source for a special form of zolpidem tartrate. These agreements have set terms of duration, some of which automatically renew for successive one or three year periods. The first to expire among these

agreements, the Packaging and Supply Agreement with Anderson Packaging, Inc., has a term that ends in September of 2011, although such agreement automatically renews for one year periods thereafter. A further description of the terms of these agreements is set forth in the section entitled "Transcept Business—Manufacturing."

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, particularly in scaling up initial production. These problems include difficulties with production costs and yields, quality control, including stability of the product candidate and quality assurance testing, shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. Transcept third-party manufacturers and key suppliers may not perform as agreed or may terminate their agreements. Additionally, Transcept third-party manufacturers and key suppliers may experience manufacturing difficulties due to resource constraints or as a result of labor disputes, unstable political environments at foreign facilities or financial difficulties. For example, a supplier with a manufacturing facility in Israel may face geopolitical risk that could prevent it from providing supplies from such facility. If these manufacturers or key suppliers were to encounter any of these difficulties, or otherwise fail to comply with their contractual obligations, the ability of Transcept to launch *Intermezzo*® or any other product candidate, if approved, would be jeopardized.

In addition, all manufacturers and suppliers of pharmaceutical products must comply with current good manufacturing practice, or cGMP, requirements enforced by the FDA through its facilities inspection program. The FDA is likely to conduct inspections of Transcept third-party manufacturer and key supplier facilities as part of its review of any Transcept NDAs. If Transcept third-party manufacturers and key suppliers are not in compliance with cGMP requirements, it may result in a delay of approval, particularly if these sites are supplying single source ingredients required for the manufacture of *Intermezzo*®. These cGMP requirements include quality control, quality assurance and the maintenance of records and documentation. Furthermore, regulatory qualifications of manufacturing facilities are applied on the basis of the specific facility being used to produce supplies. As a result, if a manufacturer for Transcept shifts production from one facility to another, the new facility must go through a complete regulatory qualification process and be approved by regulatory authorities prior to being used for commercial supply. Transcept manufacturers may be unable to comply with these cGMP requirements and with other FDA, state and foreign regulatory requirements. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of any quantities supplied is compromised due to a Transcept third-party manufacturer or key supplier failure to adhere to applicable laws or for other reasons, Transcept may not be able to obtain regulatory approval for or successfully commercialize its products.

Transcept does not have alternate manufacturers qualified at this time with respect to the commercial supply of *Intermezzo*®, nor does it have alternate manufacturers identified or qualified with respect to the commercial supply of several of the key ingredients and packaging materials used in *Intermezzo*®. If Transcept needs to change to other manufacturers, prior approval by the FDA and comparable foreign regulators will be required. In addition, Transcept would likely have to incur significant costs and expend significant efforts to educate the new manufacturer with respect to, or to help the new manufacturer independently develop, the processes necessary for production. Manufacturing and supply switching costs in the pharmaceutical industry can be very high, and switching manufacturers or key suppliers can frequently take 12 to 18 months to complete, although in certain circumstances such a switch may be significantly delayed or prevented by regulatory and other factors.

Any of these factors could cause Transcept to delay or suspend regulatory submissions, required regulatory approvals or commercialization of *Intermezzo*® or any other product candidate that Transcept develops, entail higher costs or result in Transcept being unable to effectively commercialize its products, if any are approved. Furthermore, if Transcept manufacturers fail to deliver the required commercial quantities of raw materials, including active pharmaceutical ingredient, key excipients or finished product on a timely basis and at commercially reasonable prices, Transcept would be unable to meet demand for its products and it would lose potential revenues.

Transcept clinical trials may fail to demonstrate adequately the safety and efficacy of its product candidates, which could prevent or delay regulatory approval and commercialization.

Before obtaining regulatory approvals for the commercial sale of Transcept product candidates, Transcept must demonstrate through lengthy, complex and expensive preclinical testing and clinical trials that the product candidate is both safe and effective for use in each target indication. The results obtained in completed clinical trials and non-clinical studies may not be predictive of results from ongoing or future trials.

Transcept trial results may be negatively affected by factors that had not been fully anticipated prior to commencement of the trial. Such trials may fail to demonstrate efficacy in the treatment of the intended disorder. Although Transcept designs its clinical trial protocols to address known factors that may negatively affect results, there can be no assurance that protocol designs will be adequate or that factors that Transcept may or may not be aware of or anticipate will not have a negative effect on the results of its clinical trials. Once a study has commenced, Transcept may voluntarily suspend or terminate the study if at any time it believes that there is an unacceptable safety risk to patients. Clinical trials in other indications or in different or progressively larger patient populations could reveal more frequent, more severe or additional side effects that were not seen in earlier studies. These side effects could interrupt, delay or halt clinical trials of Transcept product candidates and could result in the FDA or other regulatory authorities stopping further development of or denying approval of Transcept product candidates. Based on results at any stage of clinical trials, Transcept may decide to repeat or redesign a trial, modify its regulatory strategy or even discontinue development of one or more of its product candidates.

If Transcept product candidates are not shown to be both safe and effective in clinical trials, the resulting delays in developing other compounds and conducting associated non-clinical testing and clinical trials, as well as the potential need for additional financing, would have a material adverse effect on Transcept business, financial condition and results of operations.

Transcept relies on third parties to conduct its non-clinical and clinical trials. If these third parties do not perform as contractually required or otherwise expected, Transcept may not be able to obtain regulatory approval for its product candidates.

Transcept does not currently conduct non-clinical and clinical trials on its own, and instead relies on third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories, to assist it with its non-clinical and clinical trials. Transcept is also required to comply with regulations and standards, commonly referred to as Good Clinical Practice, for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the trial participants are adequately protected. If these third parties did not successfully carry out their duties with regard to *Intermezzo*® development, or fail to successfully carry out their duties to Transcept as it relates to meeting future regulatory obligations or expected deadlines, if the third parties need to be replaced, or if the quality or accuracy of the data they obtained during the development of *Intermezzo*® or in the future is compromised due to the failure to adhere to Transcept clinical protocols or regulatory requirements or for other reasons, Transcept non-clinical development activities or clinical trials may be extended, delayed, suspended or terminated, and Transcept may not be able to obtain regulatory approval for its product candidates, including *Intermezzo*®.

Delays in the commencement or completion of clinical testing could result in increased costs to Transcept and delay its ability to generate revenues.

Transcept does not know whether future clinical trials will begin on time or be completed on schedule, if at all. The commencement and completion of clinical trials can be disrupted for a variety of reasons, including difficulties in:

- addressing issues raised by the FDA regarding safety, design, scope and objectives of clinical studies;
- recruiting and enrolling patients to participate in a clinical trial;

- obtaining regulatory approval to commence a clinical trial;
- reaching agreement on acceptable terms with prospective clinical research organizations and trial sites;
- manufacturing sufficient quantities of a product candidate; and
- obtaining institutional review board approval to conduct a clinical trial at a prospective site.

A clinical trial may also be suspended or terminated by Transcept or the FDA or other regulatory authorities due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or in accordance with Transcept clinical protocols;
- inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;
- unforeseen safety issues; or
- inadequate patient enrollment or lack of adequate funding to continue the clinical trial.

In addition, changes in regulatory requirements and guidance may occur and Transcept may need to amend clinical trial protocols to reflect these changes, which could impact the cost, timing or successful completion of a clinical trial. If Transcept experiences delays in the commencement or completion of its clinical trials, the commercial prospects for its product candidates and its ability to generate product revenues will be harmed. Many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also lead to the denial of regulatory approval of a product candidate.

Transcept may face potential product liability exposure, and if successful claims are brought against it, Transcept may incur substantial liability for a product candidate and may have to limit such candidate's commercialization.

The use of Transcept product candidates (including those pursued by Novacea prior to the merger of Novacea and TPI) in clinical trials and the sale of any products for which Transcept obtains marketing approval exposes it to the risk of product liability claims. Product liability claims might be brought against Transcept by consumers, health care providers, pharmaceutical companies or others selling Transcept products. If Transcept cannot successfully defend itself against these claims, it will incur substantial liabilities. Transcept is also obligated under certain circumstances to indemnify suppliers and others with whom it has contractual relationships for product liability claims such entities might incur with respect to Transcept products and product candidates. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for Transcept products;
- impairment of the business reputation of Transcept;
- withdrawal of clinical trial participants;
- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- loss of revenues; and
- the inability to commercialize Transcept product candidates.

Although Transcept currently has product liability insurance coverage for its clinical trials with limits that it believes are customary and adequate to provide it with coverage for foreseeable risks associated with Transcept development efforts, this insurance coverage may not reimburse it or may be insufficient to reimburse it for the actual expenses or losses Transcept may suffer. Moreover, insurance coverage is becoming increasingly

expensive and, in the future, Transcept may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect it against losses due to liability. Transcept intends to expand its insurance coverage to include the sale of commercial products if it obtains marketing approval for *Intermezzo*®, but it may be unable to obtain such product liability insurance on commercially reasonable terms.

Transcept depends on key personnel and if Transcept is not able to retain them, its business will suffer.

Transcept is highly dependent on the principal members of its management and scientific staff, including but not limited to Glenn A. Oclassen, its President and Chief Executive Officer, and Nikhilesh N. Singh, its Chief Scientific Officer. The competition for skilled personnel among biopharmaceutical companies in the San Francisco Bay Area is intense and the employment services of Transcept scientific, management and other executive officers are terminable at-will. If Transcept loses one or more of these key employees, its ability to implement and execute its business strategy successfully could be seriously harmed. Replacing key employees may be difficult and may take an extended period of time because of the limited number of individuals in the biopharmaceutical industry with the breadth of skills and experience required to develop, gain regulatory approval of and commercialize products successfully. Transcept does not carry key man life insurance on any of its key personnel other than Nikhilesh N. Singh.

If Transcept does not raise additional capital, it may be forced to delay, reduce or eliminate its development programs and commercialization efforts.

The future capital requirements of Transcept will depend on, and could increase significantly as a result of, many factors, including:

- the costs and timing of regulatory approval;
- the need to conduct additional clinical trials;
- the costs of establishing or contracting for sales and marketing capabilities;
- the rate of progress and cost of Transcept clinical trials and other development activities;
- the extent to which Transcept acquires or in-licenses new products, technologies or businesses;
- the effect of competing technological and market developments; and
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights.

Transcept may need to seek additional funding through strategic alliances or through public or private sales of its equity securities. In addition, Transcept may obtain equipment leases and may pursue opportunities to obtain debt financing in the future. There can be no assurance, however, that strategic alliances, additional equity or debt financing will be available on reasonable terms, if at all. If adequate funds are not available, Transcept may be required to delay, reduce the scope of, or eliminate one or more of its then existing or planned development, commercialization or expansion activities.

Raising additional funds by issuing securities or through licensing arrangements may cause dilution to existing stockholders, restrict Transcept operations or require Transcept to relinquish proprietary rights.

To the extent that Transcept raises additional capital by issuing equity securities, the existing Transcept stockholders' ownership will be diluted. Any debt financing Transcept enters into may involve covenants that restrict its operations. These restrictive covenants may include limitations on additional borrowing and specific restrictions on the use of Transcept assets, as well as prohibitions on the ability of Transcept to create liens, pay dividends, redeem its stock or make investments. In addition, if Transcept raises additional funds through licensing arrangements, it may be necessary to relinquish potentially valuable rights to potential products or proprietary technologies, or grant licenses on terms that are not favorable to Transcept.

The commercial success, if any, of Intermezzo® depends, in part, on the rights Transcept is seeking through certain patent applications.

The potential commercial success of *Intermezzo®* depends on patents that may issue in connection with two families of patent applications that Transcept has pending with the U.S. Patent and Trademark Office, or USPTO, each family covering, respectively, certain formulations and/or methods of use of zolpidem. In addition, Transcept has pending certain foreign equivalent patent applications with respect to formulations and manufacture of zolpidem for use in treatment of middle of the night awakening, as well as applications covering combinations and methods of use of ondansetron in conjunction with atypical antipsychotic drugs. There can be no assurance that the pending patent applications of Transcept, those applications Transcept may file in the future, or those applications Transcept may license from third parties, will result in patents being issued in a timely manner, or at all. Even if patents issue, the claims in such patents may not issue in a form that will be advantageous to Transcept, may not encompass *Intermezzo®* or other Transcept product candidates and their unique features, and may not provide Transcept with proprietary protection or competitive advantages. For instance, competitors may be able to engineer around the Transcept formulation patent applications with alternate formulations that deliver therapeutic effects similar to potential products covered by the Transcept zolpidem formulation patent applications. Other drug companies may also be able to develop generic versions of Transcept products if Transcept is unable to maintain its proprietary rights. For example generic drug makers may attempt to introduce generic low dose zolpidem products similar to Transcept products immediately after the expiration of Hatch-Waxman marketing exclusivity and prior to the expiration of patents that may be issued relating to *Intermezzo®*. Furthermore, among other limitations, the method of use patent applications that have been filed to encompass *Intermezzo®* are limited in scope to certain uses of zolpidem, so potential competitors could develop similar products using active pharmaceutical ingredients other than zolpidem. Any patents Transcept has obtained or does obtain may be challenged by re-examination, opposition, or other administrative proceeding, or may be challenged in litigation, and such challenges could result in a determination that the patent is invalid.

The active, and many of the inactive, ingredients in *Intermezzo®*, including generically manufactured zolpidem, have been known and used for many years and, therefore, are no longer subject to patent protection. Accordingly, certain of the Transcept pending patent applications are directed to the particular formulations of these ingredients in Transcept products, and their use. Although Transcept believes its formulations and their use are patentable and provide a competitive advantage, even if such patents are issued, such patents may not prevent others from marketing formulations using the same active and inactive ingredients in similar but different formulations. Moreover, if Transcept patents were successfully challenged and ruled to be invalid, Transcept would be exposed to a greater risk of direct competition.

Failure to obtain effective patent protection for *Intermezzo®* and other Transcept product candidates would allow for products to be marketed by competitors that would undermine Transcept sales, marketing and collaboration efforts, and reduce or eliminate Transcept revenues. In addition, both the patent application process and the process of managing patent disputes can be time consuming and expensive.

If Transcept is unable to maintain and enforce its proprietary rights, Transcept may not be able to compete effectively or operate profitably.

The commercial success of Transcept will depend, in part, on obtaining and maintaining patent protection, trade secret protection and regulatory protection of its proprietary technology and information as well as successfully defending against third-party challenges to its proprietary technology and information. Transcept will be able to protect its proprietary technology and information from use by third parties only to the extent that it has valid and enforceable patents, trade secrets or regulatory protection to cover them and it has exclusive rights to utilize them.

The commercial success of Transcept will continue to depend in part on the patent rights it owns, the patent rights it has licensed, the patent rights of its suppliers and the patent rights Transcept plans to obtain related to future products it may market. The success of Transcept also depends on its and its licensors' and suppliers'

ability to maintain these patent rights against third-party challenges to their validity, scope or enforceability. Further, Transcept does not fully control the patent prosecution of the patents and patent applications it has licensed. There is a risk that licensors to Transcept will not devote the same resources or attention to the prosecution of the licensed patent applications as Transcept would if it controlled the prosecution of the patent applications, and the resulting patent protection, if any, may not be as strong or comprehensive as if Transcept had prosecuted the applications itself. The patent positions of biopharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in such companies' patents has emerged to date in the United States. The patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States or other countries may diminish the value of Transcept intellectual property. Accordingly, Transcept cannot predict the breadth of claims that may be allowed or enforced in its patents or in third-party patents. For example:

- Transcept or its licensors might not have been the first to make the inventions covered by pending patent applications and issued patents;
- Transcept or its licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any Transcept technologies;
- it is possible that none of the pending Transcept patent applications or any pending patent applications of Transcept licensors will result in issued patents;
- Transcept patents, if issued, and the issued patents of Transcept licensors may not provide a basis for commercially viable products, or may not provide Transcept with any competitive advantages, or may be challenged and invalidated by third parties;
- Transcept may not develop additional proprietary technologies or product candidates that are patentable; or
- the patents of others may have an adverse effect on the business of Transcept.

Transcept also relies on trade secrets to protect its technology, especially where it does not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. While Transcept seeks to protect confidential information, in part, by confidentiality agreements with its employees, consultants, contractors, or scientific and other advisors, they may unintentionally or willfully disclose Transcept information to competitors. If Transcept was to enforce a claim that a third party had illegally obtained and was using Transcept trade secrets, it would be expensive and time consuming, and the outcome would be unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets.

If Transcept is not able to defend the patent or trade secret protection position of its technologies and product candidates, then Transcept will not be able to exclude competitors from developing or marketing competing products, and Transcept may not generate enough revenue from product sales, if any, to justify the cost of development of Transcept product candidates and to achieve or maintain profitability.

If Transcept is sued for infringing intellectual property rights of other parties, such litigation will be costly and time consuming, and an unfavorable outcome would have a significant adverse effect on the business of Transcept.

Although Transcept believes that it would have valid defenses to allegations that its current product candidates, production methods and other activities infringe the valid and enforceable intellectual property rights of any third parties of which it is aware, Transcept cannot be certain that a third party will not challenge its position in the future. Other parties may own patent rights that might be infringed by Transcept products or other activities. There has been, and Transcept believes that there will continue to be, significant litigation and

demands for licenses in the life sciences industry regarding patent and other intellectual property rights. Competitors or other patent holders may assert that Transcept products and the methods Transcept employs are covered by their patents. These parties could bring claims against Transcept that would cause it to incur substantial expenses and, if successful against Transcept, could cause it to pay substantial damages or possibly prevent it from commercializing its product candidates. Further, if a patent infringement suit were brought against Transcept, Transcept could be forced to stop or delay research, development, manufacturing or sales of the product or product candidate that is the subject of the suit.

As a result of patent infringement claims, or in order to avoid potential claims, Transcept may choose to seek, or be required to seek, a license from the third party and would most likely be required to pay license fees or royalties or both. These licenses may not be available on acceptable terms, or at all. Even if Transcept was able to obtain a license, the rights may be non-exclusive, which would give competitors access to the same intellectual property. Ultimately, Transcept could be prevented from commercializing a product, or be forced to cease some aspect of its business operations if, as a result of actual or threatened patent infringement claims, Transcept or its collaborators are unable to enter into licenses on acceptable terms. This could harm the business of Transcept significantly.

Transcept may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights.

In the event a competitor infringes upon a Transcept patent or other intellectual property right, litigation to enforce Transcept intellectual property rights or to defend Transcept patents against challenge, even if successful, could be expensive and time consuming and could require significant time and attention from Transcept management. Transcept may not have sufficient resources to enforce Transcept intellectual property rights or to defend Transcept patents against challenges from others.

The pharmaceutical industry is characterized by extensive litigation and administrative proceedings over patent and other intellectual property rights. Transcept could therefore become subject to litigation that could be costly, result in the diversion of Transcept management's time and efforts, and require Transcept to pay damages. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. Transcept competitors may assert that they own U.S. or foreign patents containing claims that cover Transcept products, components of Transcept products, or the methods Transcept employs in making or using Transcept products. In addition, Transcept may become a party to an interference proceeding declared by the USPTO to determine the priority of inventions. Because patent applications can take many years to issue, and in many instances, at least 18 months to publish, there may be applications now pending of which Transcept is unaware, which may later result in issued patents that contain claims that cover Transcept products. There could also be existing patents, of which Transcept is unaware, that contain claims that cover one or more components of its products. As the number of participants in Transcept's industry increases, the possibility of patent infringement claims against us also increases.

Any interference proceeding, litigation, or other assertion of claims against Transcept may cause Transcept to incur substantial costs, could place a significant strain on Transcept financial resources, divert the attention of Transcept management from Transcept core business and harm Transcept's reputation. If the relevant patents were upheld as valid and enforceable and Transcept was found to infringe, it could be required to pay substantial damages and/or royalties and could be prevented from selling Transcept products unless Transcept could obtain a license or were able to redesign its products to avoid infringement. Any such license may not be available on reasonable terms, if at all. If Transcept fails to obtain any required licenses or make any necessary changes to Transcept products or technologies, it may be unable to make, use, sell, or otherwise commercialize one or more of its products. In addition, if Transcept is found to willfully infringe, it could be required to pay treble damages, among other penalties.

If Transcept fails to comply with its obligations in the agreements under which it licenses rights to products or technology from third parties, Transcept could lose license rights that are important to its business.

Transcept is a party to a number of agreements that include technology licenses that are important to its business and expects to enter into additional licenses in the future. For example, Transcept holds licenses from SPI Pharmaceuticals, Inc. relating to key excipients used in the manufacture of *Intermezzo*®. If Transcept fails to comply with these agreements, the licensor may have the right to terminate the license, in which event Transcept would not be able to market products covered by the license, including *Intermezzo*®.

Transcept may be subject to damages resulting from claims that Transcept or its employees have wrongfully used or disclosed alleged trade secrets of former employers.

Many Transcept employees were previously employed at universities or other biotechnology or pharmaceutical companies, including competitors or potential competitors. Although no claims against Transcept are currently pending, Transcept may be subject to claims that these employees or Transcept itself have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of former employers. Litigation may be necessary to defend against these claims. If Transcept fails in defending such claims, in addition to paying monetary damages, it may lose valuable intellectual property rights or personnel. A loss of key research personnel or their work product could hamper or prevent the ability of Transcept to commercialize certain potential products, which could severely harm its business. Even if Transcept is successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

If Transcept agreements with employees, consultants, advisors and corporate partners fail to protect its intellectual property, proprietary information or trade secrets, it could have a significant adverse effect on Transcept.

Transcept has taken steps to protect its intellectual property and proprietary technology, by entering into confidentiality agreements and intellectual property assignment agreements with its employees, consultants, advisors and corporate partners. However, such agreements may not be enforceable or may not provide meaningful protection for Transcept trade secrets or other proprietary information in the event of unauthorized use or disclosure or other breaches of the agreements, and Transcept may not be able to prevent such unauthorized disclosure. Monitoring unauthorized disclosure is difficult, and Transcept does not know whether the steps it has taken to prevent such disclosure are, or will be, adequate. Furthermore, the laws of some foreign countries may not protect Transcept intellectual property rights to the same extent as do the laws of the United States.

The stock price of Transcept is expected to be volatile.

The market price of Transcept common stock could be subject to significant fluctuations. Market prices for securities of early-stage pharmaceutical, biotechnology and other life sciences companies have historically been particularly volatile. Some of the factors that may cause the market price of Transcept common stock to fluctuate include:

- the ability of Transcept to obtain regulatory approvals for *Intermezzo*® or other product candidates, and delays or failures to obtain such approvals;
- failure of any product candidates, if approved, to achieve commercial success;
- issues in manufacturing approved products, if any, or product candidates;
- the results of current and any future clinical trials of Transcept product candidates;
- the entry into, or termination of, key agreements, including key commercial partner agreements;
- the initiation of, material developments in, or conclusion of litigation to enforce or defend Transcept intellectual property rights or defend against the intellectual property rights of others;

- announcements by commercial partners or competitors of new commercial products, clinical progress or the lack thereof, significant contracts, commercial relationships or capital commitments;
- adverse publicity relating to the insomnia market, including with respect to other products and potential products in such market;
- the introduction of technological innovations or new therapies that compete with potential products of Transcept;
- the loss of key employees;
- changes in estimates or recommendations by securities analysts, if any, who cover Transcept common stock;
- future sales of Transcept common stock;
- general and industry-specific economic conditions that may affect Transcept research and development expenditures;
- changes in the structure of health care payment systems; and
- period-to-period fluctuations in financial results.

Moreover, the stock markets in general have experienced substantial volatility that has often been unrelated to the operating performance of individual companies. These broad market fluctuations may also adversely affect the trading price of Transcept common stock.

In the past, following periods of volatility in the market price of a company's securities, stockholders have often instituted class action securities litigation against those companies. Such litigation, if instituted, could result in substantial costs and diversion of management attention and resources, which could significantly harm the profitability and reputation of Transcept.

Anti-takeover provisions in charter documents and under Delaware law could make an acquisition of Transcept more difficult and may prevent attempts by stockholders to replace or remove management.

Provisions in certificate of incorporation and bylaws of Transcept may delay or prevent an acquisition or a change in management. These provisions include a classified board of directors, a prohibition on actions by written consent of stockholders and the ability of the board of directors to issue preferred stock without stockholder approval. In addition, because Transcept is incorporated in Delaware, it is governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits stockholders owning in excess of 15% of outstanding voting stock from merging or combining with Transcept. Although Transcept believes these provisions collectively will provide for an opportunity to receive higher bids by requiring potential acquirors to negotiate with the Transcept board of directors, they would apply even if the offer may be considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by stockholders to replace or remove then current management by making it more difficult for stockholders to replace members of the board of directors, which is responsible for appointing the members of management.

Transcept has never paid dividends on its capital stock, and does not anticipate that it will pay any cash dividends in the foreseeable future.

Transcept has not paid cash dividends on any of its classes of capital stock to date, and the current expectation of Transcept is that it will retain its future earnings to fund the development and growth of its business. As a result, capital appreciation, if any, of Transcept common stock will be the sole source of gain, if any, for the foreseeable future.

Future sales of shares by existing stockholders could cause the stock price of Transcept to decline.

If existing stockholders sell, or indicate an intention to sell, substantial amounts of common stock in the public market after the lock-up and other legal restrictions on resale entered into by securityholders of Transcept

in connection with the merger of Novacea and TPI lapse, the trading price of the common stock of Transcept could decline. Based on shares outstanding as of January 30, 2009, Transcept had a total of approximately 13.1 million shares of common stock outstanding. Of these shares, only approximately 4.6 million shares of common stock were not subject to lock-up agreements.

The lock-up agreements entered into in connection with the merger of TPI and Novacea provide that 50% of the shares subject to the lock-up agreements will be released from such restrictions three months from the January 30, 2009 closing date, and the remainder of the shares subject to such restrictions will be released six months from such closing date. After the last period of the lock-up agreements expire, based on shares outstanding as of January 30, 2009, up to an additional approximately 8.5 million shares of common stock will cease to be subject to lock-up agreements, approximately 8.1 million of which will be held by Transcept directors, executive officers and other affiliates and will be subject to volume limitations under Rule 144 under the Securities Act and various vesting agreements. In addition, 1,631,454 shares of common stock that are subject to outstanding options of Transcept as of January 30, 2009 will become eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements, the lock-up agreements and Rules 144 and 701 under the Securities Act. If these additional shares are sold, or if it is perceived that they will be sold, in the public market, the trading price of Transcept common stock could decline.

If the ownership of Transcept common stock is highly concentrated, it may prevent stockholders from influencing significant corporate decisions and may result in conflicts of interest that could cause the stock price of Transcept to decline.

Executive officers, directors of Transcept and their affiliates beneficially own or control approximately 64% of the outstanding shares of Transcept common stock as of January 30, 2009. Accordingly, these executive officers, directors and their affiliates, acting as a group, will have substantial influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of the assets of Transcept or any other significant corporate transactions. These stockholders may also delay or prevent a change of control of Transcept, even if such a change of control would benefit the other stockholders. The significant concentration of stock ownership may adversely affect the trading price of Transcept common stock due to investors' perception that conflicts of interest may exist or arise.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

As of completion of the merger between Novacea and TPI on January 30, 2009, the operational headquarters of Transcept was located in Pt. Richmond, California, where Transcept leases approximately 26,900 square feet of space under two separate leases, the first of which for approximately 14,600 square feet of space expires in May 2013, and the second of which for approximately 12,300 square feet of space also expires in May 2013. Of the 26,900 square feet of space in Pt. Richmond, California, approximately 3,000 square feet is product development laboratory space and the remainder is general office space. Transcept also leases approximately 25,288 square feet of general office space in South San Francisco, California, the location of the headquarters of Novacea prior to the completion of the merger between Novacea and TPI, under a lease that expires in October 2012. Transcept believes that its current facilities are suitable and adequate for its current needs.

Item 3. Legal Proceedings

From time to time, we may be involved in litigation relating to claims arising out of our operations. Transcept is not currently involved in any material legal proceedings.

Item 4. Submission of Matters to a Vote of Security Holders

None.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Transcept common stock is traded on the NASDAQ Global Market under the symbol "TSPT". Prior to the completion of the merger of Novacea and TPI, the ticker symbol used for Novacea common stock on the NASDAQ Global Market was "NOVC". The following table sets forth, for the period indicated, the high and low sales prices per share of Novacea common stock, for each quarterly period for the last two years, as reported on the NASDAQ Global Market.

	Sales Price	
	High	Low
Year Ended December 31, 2007		
First Quarter	$38.90	$28.00
Second Quarter	$86.25	$32.85
Third Quarter	$55.45	$36.50
Fourth Quarter	$44.80	$11.05
Year Ended December 31, 2008		
First Quarter	$16.40	$11.00
Second Quarter	$17.00	$11.05
Third Quarter	$13.50	$ 7.20
Fourth Quarter	$ 8.70	$ 4.46

On January 30, 2009, Novacea completed a business combination with TPI. Novacea securities listed on the NASDAQ Global Market, trading under the ticker symbol "NOVC," were suspended for trading as of the close of business on Friday, January 30, 2009 and trading of Transcept securities on the NASDAQ Global Market under the ticker symbol "TSPT" commenced on Monday, February 2, 2009.

The closing price of Transcept common shares as reported by the NASDAQ Stock Market on March 26, 2009 was $3.08 per share. As of March 26, 2009 there were approximately 147 holders of record of our common stock.

Dividend Policy

No dividends have been declared or paid on Transcept common stock. Transcept does not anticipate that it will pay any cash dividends on its common stock in the foreseeable future.

Issuer Purchases of Equity Securities

There were no repurchases of Novacea common stock during the fourth quarter of fiscal 2008.

Securities Authorized For Issuance Under Equity Compensation Plans

Information relating to compensation plans under which equity securities are authorized for issuance is set forth under Item 12—"Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" of this Annual Report on Form 10-K.

Performance Graph

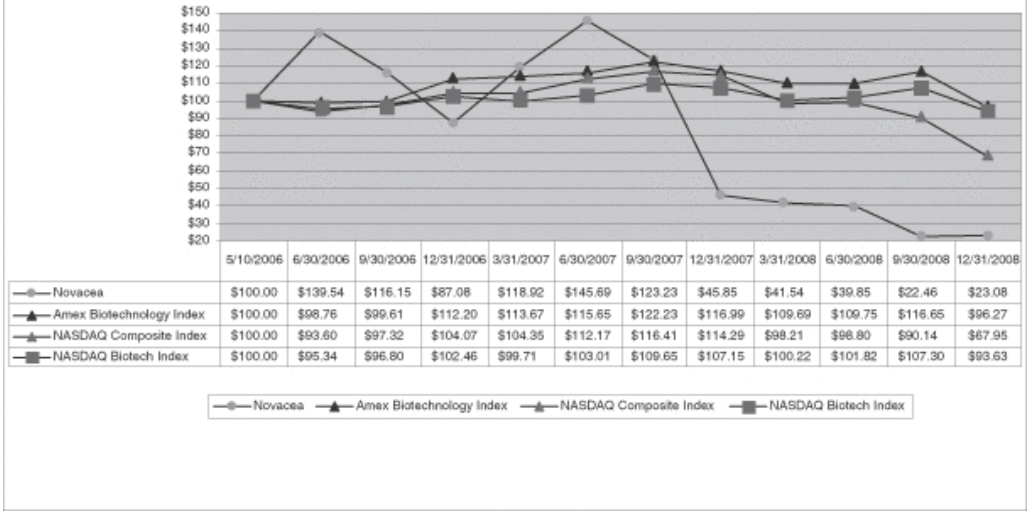
The following graph and table compare:

- the performance of an investment in Novacea common stock over the period of May 10, 2006 through December 31, 2008, beginning with an investment at the closing market price on May 10, 2006, the

end of the first day Novacea common stock traded on the NASDAQ Global Market following the Novacea initial public offering, and thereafter, based on the closing price of Novacea common stock on the NASDAQ Global Market; with

- an investment in the Amex Biotechnology Index, an investment in the NASDAQ Composite Index and an investment in the NASDAQ Biotech Index, in each case, beginning with an investment at the closing price on May 10, 2006 and thereafter, based on the closing price of the index.

The graph and table assume $100 was invested on the starting date at the price indicated above and that dividends, if any, were reinvested on the date of payment without payment of any commissions. The performance shown in the graph and table represents past performance and should not be considered an indication of future performance.



	5/10/2006	6/30/2006	9/30/2006	12/31/2006	3/31/2007	6/30/2007	9/30/2007	12/31/2007	3/31/2008	6/30/2008	9/30/2008	12/31/2008
Novacea	$100.00	$139.54	$116.15	$87.08	$118.92	$145.69	$123.23	$45.85	$41.54	$39.85	$22.46	$23.08
Amex Biotechnology Index	$100.00	$98.76	$99.61	$112.20	$113.67	$115.65	$122.23	$116.99	$109.69	$109.75	$116.65	$96.27
NASDAQ Composite Index	$100.00	$93.60	$97.32	$104.07	$104.35	$112.17	$116.41	$114.29	$98.21	$98.80	$90.14	$67.95
NASDAQ Biotech Index	$100.00	$95.34	$96.80	$102.46	$99.71	$103.01	$109.65	$107.15	$100.22	$101.82	$107.30	$93.63

The information provided above under the heading “Performance Graph” is not “soliciting material” and shall not be considered “filed” with the SEC or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

Item 6. Selected Financial Data

Because the business combination of Novacea and TPI was not completed until January 30, 2009, the selected financial data set forth below presents information from the financial statements of Novacea and does not address the financial condition or results of operations of TPI. For additional financial information on TPI, please see the financial statements filed with the Transcept Current Report on Form 8-K/A submitted to the SEC on the date of this Annual Report on Form 10-K.

The following selected financial data has been derived from our audited financial statements. The information below is not necessarily indicative of the results of future operations and should be read in conjunction with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and Item 1A, "Risk Factors," of this Form 10-K, and the financial statements and related notes thereto included in Item 8 of this Form 10-K, in order to fully understand factors that may affect the comparability of the information presented below. All per share amounts reflect a 1-for-3.5 reverse stock split effective May 2006 and a 1-for-5 reverse stock split effective January 2009.

	For the year ended December 31,				
	2008	2007	2006	2005	2004
	(in thousands, except per share data)				
Statements of operations data					
Collaboration revenue	$ 60,621	$ 16,683	$ 371	$ 56	$ 1,120
Operating expenses:					
Research and development	11,681	36,055	21,809	17,808	14,687
General and administrative	16,896	17,279	11,306	7,112	5,212
Total operating expenses	28,577	53,334	33,115	24,920	19,899
Income (loss) from operations	32,044	(36,651)	(32,744)	(24,864)	(18,779)
Interest and other income, net	2,778	4,120	3,116	1,059	827
Net income (loss)	$ 34,822	$ (32,531)	$ (29,628)	$ (23,805)	$ (17,952)
Net income (loss) per share:					
Basic	$ 6.74	$ (6.73)	$ (9.88)	$ (85.02)	$ (82.73)
Diluted	$ 6.72	$ (6.73)	$ (9.88)	$ (85.02)	$ (82.73)
Shares used in computing net income (loss) per share:					
Basic	5,163	4,832	2,998	280	217
Diluted	5,184	4,832	2,998	280	217

	As of December 31,				
	2008	2007	2006	2005	2004
	(in thousands)				
Balance sheet data					
Cash, cash equivalents and marketable securities	$ 85,101	$ 94,607	$ 64,579	$ 50,522	$ 46,641
Accounts receivable	—	11,522*	—	—	—
Working capital	83,328	88,613	59,438	47,047	44,909
Total assets	86,813	109,820	66,064	52,264	48,030
Convertible preferred stock	—	—	—	108,024	82,944
Common stock and additional paid-in capital	172,825	169,718	152,451	3,507	460
Deferred stock-based employee compensation	(75)	(270)	(1,268)	(2,162)	—
Accumulated deficit	(89,086)	(123,908)	(91,377)	(61,749)	(37,944)
Total stockholders' equity (net capital deficiency)	84,032	45,748	59,824	(60,442)	(37,613)

(*) Represents amounts receivable from Schering under a terminated exclusive worldwide License, Development and Commercialization Agreement, or the Collaboration Agreement.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains certain statements that are not strictly historical and are "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995 and involve a high degree of risk and uncertainty. Actual results may differ materially from those projected in the forward-looking statements due to other risks and uncertainties. All forward-looking statements included in this section are based on information available to Transcept Pharmaceuticals, Inc., or Transcept, as of the date hereof, and Transcept assumes no obligation to update any such forward-looking statement, except as required by law.

Merger of Novacea, Inc. with Transcept Pharmaceuticals, Inc.

Description of the Merger

On January 30, 2009, Novacea, Inc, or Novacea, whose financial statements as of and for the year ended December 31, 2008 are included in this Annual Report on Form 10-K as required by SEC rules, completed its merger with Transcept Pharmaceuticals, Inc., a private specialty pharmaceutical company focused on the development and commercialization of proprietary products that address important therapeutic needs in neuroscience. Transcept Pharmaceuticals, Inc. is referred to as TPI when referencing the private company prior to the merger. The public company after the merger is referred to as Transcept.

As a result of the merger, which was implemented pursuant to an Agreement and Plan of Merger and Reorganization dated as of August 29, 2008, as amended on December 23, 2008, TPI became a wholly-owned subsidiary of Novacea. As merger consideration, Novacea issued to the former TPI stockholders shares of Novacea common stock, and assumed outstanding options and warrants to acquire TPI capital stock, such that immediately after the merger, the former securityholders of TPI represented approximately 61% of the fully diluted capitalization of Novacea. Novacea was renamed Transcept Pharmaceuticals, Inc. Beginning February 2, 2009, the Novacea shares began trading on the NASDAQ Global Market under the Transcept name and symbol, "TSPT".

Impact of the Merger on Our Business

Following the merger, the business of Transcept as the newly named public company became the business of TPI. Transcept does not intend to continue the business or operations of Novacea and, in particular, will not devote resources to further clinical development or commercialization of the former product candidates of Novacea. Each of the executive officers of Novacea resigned in connection with the merger, and the former executive officers of TPI became the executive officers of Transcept as a public company. Following the merger, the Transcept board of directors consists of a total of ten members, six of whom were designated by TPI and four of whom were designated by Novacea.

Accounting Implications of the Reverse Merger; Future Financial Statements as TPI/Transcept

Under generally accepted accounting principles in the United States, the merger is treated as a "reverse merger" under the purchase method of accounting. For accounting purposes, TPI is considered to have acquired Novacea, and for purposes of future filings with the SEC, beginning with the Quarterly Report on Form 10-Q for the quarter ending March 31, 2009, the historical financial statements for annual and quarterly periods ending on or prior to December 31, 2008 will be the historical financial statements of TPI. However, because the merger was not completed as of December 31, 2008, the financial statements of Novacea are required to be provided in this Annual Report on Form 10-K, and this section discusses the operating results and financial condition of Novacea as of and for the required periods ended December 31, 2008.

For more information about the operating results and financial condition of Transcept, you should review the Transcept Current Report on Form 8-K/A, filed with the SEC on the same date as this Annual Report on

Form 10-K, which contains the audited financial statements of TPI as of December 31, 2008 and 2007 and for the three years in the period ended December 31, 2008 and for the period from inception (January 8, 2002) to December 31, 2008. In addition, for more information about the merger and Transcept, please review the Registration Statement on Form S-4 filed with the SEC in connection with the merger as declared effective by the SEC on December 29, 2008 (SEC File No. 333-153844).

Overview of Novacea Business

Prior to the termination of its clinical trials, the reduction in its workforce and in its operating plan, and its focus on evaluating strategic alternatives, all as described in the registration statement relating to the merger with TPI, Novacea was an operating biopharmaceutical company focused on in-licensing, developing and commercializing novel therapies for the treatment of cancer. Novacea had two clinical-stage oncology product candidates, Asentar™ and AQ4N. In late 2007 and early 2008, Novacea stopped all of its development activities related to these oncology product candidates. In January 2009, Novacea terminated its licenses to Asentar™ and AQ4N, and returned the rights to the product candidates to the licensors.

The following chronology illustrates the events leading up to the discontinuation of the clinical trials of Novacea, the reduction in its workforce and in its operating plan, and its focus on evaluating strategic alternatives:

- In May 2007, Novacea signed an exclusive worldwide License, Development and Commercialization Agreement with Schering Corporation, a wholly-owned subsidiary of Schering-Plough Corporation, or Schering, for the development and commercialization of Asentar™, or the Collaboration Agreement, in androgen-independent prostate cancer, or AIPC, earlier stages of prostate cancer, and in other types of cancers, including pancreatic cancer.
- In September 2007, the lead product candidate of Novacea, Asentar™ , had been in the ASCENT-2 Phase 3 clinical trial for the treatment of AIPC, and had been in a Phase 2 clinical trial for the treatment of advanced pancreatic cancer.
- In November 2007, Novacea and Schering ended the ASCENT-2 Phase 3 clinical trial of Asentar™ due to an unexplained imbalance of deaths between the treatment and control arms of the trial. At that time, Novacea also suspended enrollment in its Phase 2 clinical trial of Asentar™ for the treatment of advanced pancreatic cancer and in other trials involving the use of Asentar™. Additionally, the United States Food and Drug Administration, or FDA, placed a hold on the existing Investigational New Drug application, or IND, for Asentar™.
- In January 2008, Novacea curtailed clinical development activities for AQ4N in order to preserve capital resources in light of the changes in its business prospects related to Asentar™.
- On April 4, 2008, Schering delivered written notice to Novacea of its termination of the Collaboration Agreement.
- In May 2008, Novacea made a determination to limit its additional development activities on Asentar™, which were directed toward the following: winding-down and finalizing the analysis of the ASCENT-2 Phase 3 clinical trial; preparing a complete response to the FDA regarding releasing the clinical hold on the IND for Asentar™; and meeting with the ASCENT-2 clinical trial investigators during the American Society of Oncology meeting in June 2008. Additionally, the AQ4N development efforts of Novacea were focused on completing the necessary activities on the Phase 1b portion of the Phase 1b/2a GBM trial with AQ4N, which had completed enrollment, while placing the Phase 2a portion of the trial on hold prior to patient enrollment.
- Also, in May 2008, Novacea adopted a restructuring plan with the intention of reducing its spending while maintaining the capabilities needed to conduct the activities noted above related to Asentar™ and AQ4N, to maintain limited operations and to evaluate potential strategic alternatives. The plan reduced the Novacea workforce down to nine employees as of December 31, 2008, who were primarily involved in financial or administrative roles.

- In August 2008, Novacea reached an agreement with Schering that Schering would make a payment of $5.7 million, representing reimbursement for the research and development efforts of Novacea on Asentar™ of $4.3 million for the first quarter of 2008 and of $1.4 million for the second quarter of 2008. Novacea received the $5.7 million payment in September 2008, and is no longer entitled to receive any future reimbursement from Schering under the Collaboration Agreement for the remaining activities of Novacea on Asentar™. Novacea no longer recognized any related reimbursement revenue under the Collaboration Agreement.
- In September 2008, Novacea received notice from the FDA that the agency had released the clinical hold on Asentar™. As part of their guidance, the FDA required that any future clinical studies conducted with Asentar™ must include in the consent form an unambiguous statement that the ASCENT-2 trial showed reduced survival for patients with AIPC given Asentar™ in combination with weekly Taxotere® chemotherapy, as compared to AIPC patients receiving Taxotere administered every three weeks without Asentar™. Also, any future consent form must not make reference to any survival benefits observed in earlier clinical trials involving Asentar™ for the treatment of AIPC patients. As indicated above, Transcept does not intend to further develop Asentar™.

Research and Development Expenses. During the period when Novacea was developing its product candidates, its research and development expenses consisted primarily of costs for personnel, including salaries and benefits; regulatory activities; pre-clinical studies; clinical trials; materials and supplies; and allocations of other research and development-related costs.

General and Administrative Expenses. The general and administrative expenses of Novacea consisted primarily of salaries and related costs for its personnel in executive, business development, marketing, human resources, external communications, finance and other administrative functions, as well as consulting costs, including market research and business consulting. Other costs included professional fees for legal and accounting services, insurance and facility costs.

Results of Operations

Presented below are Novacea results of operations for the year ended December 31, 2008 compared to the year ended December 31, 2007, and for the year ended December 31, 2007 compared to the year ended December 31, 2006.

The following table reflects year over year changes in selected line items from the Novacea statements of operations (in thousands, except percentages).

	Years ended December 31,						
	2008	2007	Change Year Over Year		2006	Change Year Over Year	
Collaboration Revenue	$60,621	$16,683	$ 43,938	263%	$ 371	$16,312	4397%
Research and Development Expenses	11,681	36,055	(24,374)	-68%	21,809	14,246	65%
General and Administrative Expenses	16,896	17,279	(383)	-2%	11,306	5,973	53%
Interest and Other Income, Net	2,778	4,120	(1,342)	-33%	3,116	1,004	32%

Collaboration Revenue

In July 2007, Novacea received non-refundable upfront payments from Schering totaling $60 million, including $35 million as reimbursement for past research and development expenses and a license fee of $25 million. Through the termination date of the Collaboration Agreement on April 4, 2008, Novacea had recognized revenues from the upfront payments ratably over an estimated six-year development period starting on June 26, 2007 and ending on June 30, 2013. Novacea believed that this period for revenue recognition represented substantially the entire period for which it would have significant participatory obligations for Asentar™. As a result of the termination of the Collaboration Agreement with Schering on April 4, 2008, Novacea recognized as

revenue during the second quarter of 2008 the previously deferred revenue balance of $52.4 million related to the upfront payments. The deferred revenue balance related to the upfront payments from Schering was zero as of December 31, 2008.

Revenue from reimbursement for the research and development efforts on Asentar™ was recognized as the related costs were incurred. In August 2008, Novacea and Schering agreed that the final payment of $5.7 million, representing reimbursement for the Novacea research and development efforts on Asentar™ of $4.3 million for the first quarter of 2008 and of $1.4 million for the second quarter of 2008, would cover all development costs and wind-down costs under the Collaboration Agreement and Novacea would not be entitled to any additional monies from Schering in connection with the Collaboration Agreement. Additionally, with the termination of the Collaboration Agreement, Novacea is no longer eligible to receive from Schering any pre-commercial milestone payments or royalties on worldwide sales of Asentar™. The $5.7 million payment was received in September 2008. All payments received from Schering are non-refundable.

Collaboration revenue was $60.6 million for the year ended December 31, 2008, $16.7 million for the year ended December 31, 2007, and $0.4 million for the year ended December 31, 2006. There was a $43.9 million increase in collaboration revenue from 2007 to 2008, primarily due to the recognition of the deferred revenue from Schering described above. Revenue for 2007 was due to $11.5 million in reimbursement for Novacea research and development efforts on Asentar™ and $5.2 million related to the amortization of upfront payments under the Collaboration Agreement with Schering. Revenue for 2006 was attributable to development milestones achieved in 2006 under two agreements with Aventis Pharmaceuticals, Inc. related to Asentar™ clinical studies.

Research and Development Expenses

The following table summarizes Novacea research and development expenses:

	Years ended December 31,		
	2008	2007	2006
Research and development expenses			
Asentar™	$ 7,752	$25,371	$12,920
AQ4N	1,292	5,796	1,990
Other projects	2,426	3,743	3,294
Vinorelbine oral	—	—	3,201
Stock-based compensation	211	1,145	404
Total research and development expenses	$11,681	$36,055	$21,809

Year Ended December 31, 2008 Compared with Year Ended December 31, 2007

Research and development expenses for the year ended December 31, 2008 were $11.7 million compared to $36.1 million for the year ended December 31, 2007. This represents a decrease in research and development expenses of $24.4 million, or 68%, between 2008 and 2007.

Research and development expenses associated with Asentar™ were $7.8 million for the year ended December 31, 2008, compared to $25.4 million for the year ended December 31, 2007. The $17.6 million, or 69%, decrease between 2008 and 2007 was due primarily to the lower level of clinical development activities in the ASCENT-2 Phase 3 clinical trial of AIPC, which began in the first quarter of 2006 and was terminated in November 2007. The reduction in development activity was partially offset by restructuring charges of $0.7 million in 2008. The activities for Asentar™ in 2008 were focused primarily on winding-down and finalizing the analysis of the ASCENT-2 Phase 3 clinical trial and preparing a complete response to the FDA regarding releasing the clinical hold on the IND application for Asentar™. In September 2008, Novacea received notice from the FDA that the agency had released the clinical hold on Asentar™. In January 2009, Novacea returned the product rights to Asentar™ to its licensors.

In the past, certain research and development expenses for Asentar™ had been subject to reimbursement from Schering under the Collaboration Agreement, which was terminated by Schering in April 2008. The expenses were recorded as research and development expenses and the reimbursement of such costs were recorded as revenue as costs were incurred by Novacea. For periods subsequent to the second quarter of 2008, Novacea was not entitled to receive any additional reimbursement from Schering under the Collaboration Agreement for remaining activities by Novacea on Asentar™ and Novacea no longer recognized any related reimbursement revenue.

Research and development expenses associated with AQ4N were $1.3 million for the year ended December 31, 2008, compared to $5.8 million for the year ended December 31, 2007. The $4.5 million, or 78%, decrease between 2008 and 2007 resulted primarily from reduced development activities and product manufacturing expenses for AQ4N. The reduction in development activity was partially offset by restructuring charges of $0.3 million in 2008. In October 2007, Novacea initiated a Phase 2 clinical trial of AQ4N for the treatment of acute lymphoblastic leukemia, or ALL. However, this trial was discontinued in January 2008 in connection with the decision to scale back clinical development activities for AQ4N in order to preserve capital resources. In May 2008, Novacea decided that its future AQ4N development efforts would focus on completing the necessary activities on the Phase 1b portion of the Phase 1b/2a GBM trial, which had completed enrollment, while placing the Phase 2a portion of the trial on hold prior to patient enrollment. In January 2009, Novacea returned the product rights to AQ4N to its licensor.

Other research and development expenses were $2.4 million for the year ended December 31, 2008, compared to $3.7 million for the year ended December 31, 2007. The $1.3 million, or 35%, decrease between 2008 and 2007 resulted primarily from cost savings associated with reduced internal and related external activities associated with the general research and development efforts of Novacea partially offset by a $0.2 million restructuring charge and $0.1 million in accelerated depreciation of property and equipment.

Stock-based compensation expense included in research and development expenses was $0.2 million for the year ended December 31, 2008, compared to $1.1 million for the year ended December 31, 2007. The decrease in stock-based compensation resulted primarily from reduced headcount during 2008.

Year Ended December 31, 2007 Compared with Year Ended December 31, 2006

Research and development expenses for the year ended December 31, 2007 were $36.1 million compared to $21.8 million for the year ended December 31, 2006, an increase of $14.3 million, or 65%.

Research and development expenses associated with Asentar™ were $25.4 million for the year ended December 31, 2007 compared to $12.9 million for the year ended December 31, 2006. The $12.5 million increase was due in part to a sublicensing fee of $3.8 million paid to Oregon Health & Science University and a sublicensing fee of $1.3 million paid to the University of Pittsburgh, equal to 15% and 5%, respectively, of the $25 million license fee received from Schering under the Collaboration Agreement, the clinical development activities in the ASCENT-2 Phase 3 clinical trial for Asentar™, which began in the first quarter of 2006 and was terminated in November 2007, combined with the costs of preparing for a Phase 2 clinical trial in advanced pancreatic cancer initiated in September 2007, and placed on hold in November 2007 related to the termination of the ASCENT-2 Phase 3 clinical trial.

Research and development expenses associated with AQ4N were $5.8 million for the year ended December 31, 2007 compared to $2.0 million for the year ended December 31, 2006. The $3.8 million increase was due primarily to a $1.4 million upfront payment made under a novation and license agreement with BTG International Limited, or BTG, entered into in 2007, the clinical development activities and product manufacturing expenses for AQ4N, then in a Phase 1b/2a clinical trial that began in the fourth quarter of 2006, in combination with radiation and chemotherapy, for the treatment of glioblastoma multiforme, and the costs of preparing for the planned initiation of additional AQ4N clinical trials in leukemia and lymphoma. In October

2007, Novacea initiated a Phase 2 clinical trial of AQ4N for the treatment of acute lymphoblastic leukemia, or ALL, however, this trial was discontinued in January 2008 in connection with the Novacea decision to scale back clinical development activities for AQ4N in order to preserve capital resources.

Other research and development expenses were approximately $3.7 million for the year ended December 31, 2007 compared to $3.3 million for the year ended December 31, 2006. This $0.4 million increase resulted primarily from costs associated with higher internal and related external activities associated with advancing the Novacea general research and development efforts.

Research and development expenses associated with vinorelbine oral for the year ended December 31, 2007 were nil compared to $3.2 million for the year ended December 31, 2006. Vinorelbine oral research and development expenses in 2006 primarily reflect development activities on the product candidate and the expenses associated with the Novacea achievement of a development milestone in the first quarter of 2006. During the fourth quarter of 2006, Novacea exercised its right to terminate its existing agreements related to vinorelbine oral and to return to the licensor all product rights in the United States and Canada.

Research and development expenses associated with stock-based compensation were $1.1 million for the year ended December 31, 2007 compared to $0.4 million for the year ended December 31, 2006. The increase in stock-based compensation resulted primarily from additional stock options and restricted stock units granted to Novacea employees during 2007.

General and Administrative Expenses

General and administrative expenses for the year ended December 31, 2008 were $16.9 million, compared to $17.3 million for the year ended December 31, 2007. The decrease of $0.4 million, or 2%, between 2008 and 2007 in general and administrative expenses was mainly due to a $1.4 million decrease in marketing-related expenses, a $1.0 million decrease in compensation and benefits, a $0.8 million decrease in stock-based compensation, a $0.6 million decrease in recruiting expense, and a $0.2 million decrease in employee travel expenses, partially offset by a $2.0 million increase in legal and consulting expenses primarily related to evaluating strategic alternatives and the merger with TPI, a $1.1 million increase in depreciation and amortization expense, including accelerated depreciation, and a $0.5 million increase in restructuring-related expense.

General and administrative expenses for the year ended December 31, 2007 were $17.3 million compared to $11.3 million for the year ended December 31, 2006. The $6.0 million, or 53%, increase in general and administrative expenses was mainly due to a $2.1 million increase in stock-based compensation, resulting primarily from additional stock options and restricted stock units granted to Novacea employees during 2007, a $1.6 million increase in consulting, legal and audit fees, including legal and other fees related to entering the Collaboration Agreement with Schering, a $1.0 million increase in compensation and benefits, a $0.5 million increase in facilities-related costs, and a $0.4 million increase in recruiting expenses. These increases in expenses were due partially to higher administrative and corporate support of the Novacea research and development activities for its ASCENT-2 Phase 3 clinical trial and additional clinical and other development activities for Asentar™ and AQ4N.

Interest and Other Income, Net

Interest and other income, net, was $2.8 million for the year ended December 31, 2008, compared to $4.1 million for the year ended December 31, 2007. The decrease of $1.3 million, or 32%, between 2008 and 2007 resulted from lower investment yields offset by higher average investment balances.

Interest and other income, net, for the year ended December 31, 2007 was $4.1 million compared to $3.1 million for the year ended December 31, 2006. The 2007 increase of $1.0 million, or 32%, resulted primarily from higher investment balances resulting from the availability of the net proceeds from the Collaboration agreement with Schering completed in the second quarter of 2007 and higher investment yields.

Income Taxes

Novacea uses the liability method for accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Currently, there is no provision for income taxes as Novacea has an accumulated deficit to date.

As of December 31, 2008, Novacea had net operating loss carry-forwards for federal income tax purposes of approximately $78.3 million and research credits of approximately $2.2 million, which will expire beginning in the year 2021. Novacea also had state net operating loss carry-forwards of approximately $78.1 million, which expire beginning in 2014. Additionally, Novacea had state research credits of approximately $2.1 million, which have no expiration date. Certain amounts included in these carry-forwards will be recorded to equity, rather than a benefit to income tax expense, when they reduce cash taxes payable.

Novacea did not record a benefit from its net operating loss carry-forwards because it believed that it was uncertain that Novacea would have sufficient income from future operations to realize the carry-forwards prior to their expiration. Accordingly, Novacea established a full valuation allowance against the deferred tax asset arising from the carry-forwards.

Utilization of the net operating loss carry-forwards and credits may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. Such limitations may also result from the change in ownership resulting from the Company's merger with TPI. The annual limitation may result in the expiration of net operating loss carry-forwards and credits before utilization.

Liquidity and Capital Resources

Novacea Liquidity and Capital Resources as of December 31, 2008

At December 31, 2008, Novacea had cash, cash equivalents and marketable securities of $85.1 million, held in accounts managed by third party financial institutions, which consisted of invested cash and cash in its operating account. The interest-bearing investments include money market funds, commercial paper, U.S. corporate debt and U.S. government sponsored enterprise issues. Through December 31, 2008, Novacea had not experienced material realized losses nor has Novacea lacked access to its cash, cash equivalents and marketable securities. However, Transcept can provide no assurances that the realizable value of its investments or access to its cash, cash equivalents and marketable securities will not be impacted negatively by adverse conditions in the financial markets.

The following table summarizes net cash provided by (used in) the Novacea operating, investing and financing activities:

	Years ended December 31,		
	2008	2007	2006
		(in thousands)	
Net cash provided by (used in) operating activities	$(10,925)	$ 15,598	$(26,611)
Net cash provided by (used in) investing activities	1,035	(18,497)	(34,929)
Net cash provided by financing activities	$ 112	$ 13,190	$ 39,930

Net Cash Provided by (Used in) Operating Activities

Net cash used in operating activities for the year ended December 31, 2008 of $10.9 million was primarily attributable to operating activities and those activities related to evaluating strategic alternatives and the merger with TPI and payments of accounts payable and accrued liabilities, offset partially by research and development reimbursement payments from Schering. Net cash provided by operating activities of $15.6 million for the year ended December 31, 2007 was primarily attributable to the $60.0 million in upfront payments received from

Schering under the Collaboration Agreement that were recorded as deferred revenue and an increase in accounts payable and accrued liabilities resulting principally from increased research and development activities, offset partially by the Novacea net loss and an increase in accounts receivable of $11.5 million due from Schering under the Collaboration Agreement. Net cash used in operating activities for the year ended December 31 2006, was $26.6 million, primarily attributable to the Novacea net loss, partially offset by an increase in accrued liabilities resulting principally from increased research and development activities.

Net Cash Provided by (Used in) Investing Activities

Net cash provided by investing activities for the year ended December 31, 2008 of $1.0 million was due primarily to net maturities of short-term investments. Net cash used in investing activities of $18.5 million for the year ended December 31, 2007 was primarily due to net purchases of short-term investments, and purchases of property and equipment. Net cash used in investing activities was $34.9 million for the year ended December 31, 2006, due primarily to net purchases of short-term investments.

Net Cash Provided by Financing Activities

Net cash provided by financing activities for the year ended December 31, 2008 of $0.1 million was due primarily to proceeds from the issuance of Novacea common stock from the exercise of outstanding stock options. Net cash provided by financing activities for the year ended December 31, 2007 of $13.2 million was due primarily to proceeds from the Novacea sale to Schering of 298,173 shares of its common stock for an aggregate purchase price of $12.0 million under a Common Stock Purchase Agreement, pursuant to the terms of the Collaboration Agreement, and the issuance of Novacea common stock from the exercise of outstanding stock options. Net cash provided by financing activities for the year ended December 31, 2006 of $39.9 million was primarily related to net proceeds from the sale of common stock in the Novacea initial public offering, the sale of convertible preferred stock and the issuance of Novacea common stock from the exercise of outstanding stock options.

Liquidity and Capital Resource Effects of the Merger with Transcept

On the same date as this Annual Report on Form 10-K, Transcept filed with the SEC a Current Report on Form 8-K/A that included, in addition to historical audited financial statements of TPI, an unaudited pro forma condensed combined balance sheet of Novacea and TPI as of December 31, 2008 indicating pro forma combined cash, cash equivalents and marketable securities of Transcept totaling approximately $97 million. As indicated below, after completion of the merger between Novacea and TPI, Novacea and Transcept subsequently used cash resources of approximately $4.7 million to pay transaction costs and to repay outstanding indebtedness.

Based on currently available information, Transcept believes that the additional cash resources made available through the merger with Novacea will enable it to carry out plans to commercialize its lead product candidate, *Intermezzo*®, subject to FDA approval.

Transcept expects full year 2009 research and development expenses to remain consistent with the 2008 TPI research and development expense levels until such time as Transcept initiates development of pipeline product candidates or any post-approval clinical development activities for *Intermezzo*®.

Full year 2009 general and administrative expenses are expected to increase as compared to 2008 as Transcept increases its administrative infrastructure to comply with the requirements of being a publicly traded company and prepares for the potential commercialization of *Intermezzo*®, if approved by the FDA. The timing and amount of such increase as it relates to commercialization expenses will be largely dependent upon the Transcept ability to obtain FDA approval of the NDA for *Intermezzo*® and efforts to secure a primary care marketing partner in the United States, as well as the terms and timing of such an event. Transcept can make no assurances that its activities to identify and secure such a relationship will result in a completed collaboration.

Based on the foregoing assumptions concerning the timing of product approvals, if any, and levels of expense, Transcept currently expects the combined cash, cash equivalents, and marketable securities balances of Novacea and TPI to be sufficient to satisfy Transcept liquidity requirements for at least the next twelve months. These assumptions are subject to substantial risks and uncertainties, however, relating, among other factors, to the likelihood and timing of product approvals, costs associated with the commercial launch of *Intermezzo*®, the timing and terms of any marketing or other collaboration agreements, and clinical development of other product candidates. To the extent the current Transcept projections prove inaccurate, Transcept could require additional financing sooner than it currently anticipates. There can be no assurances that financing will be available when or as needed or on commercially reasonable terms. As indicated below, global financial and economic conditions have deteriorated substantially within the last year, and obtaining financing on reasonable terms has become increasingly difficult, particularly for smaller biotechnology companies.

Merger Related Uses of Cash

Shortly after the January 30, 2009 close of the merger, Transcept repaid in full its outstanding credit obligations to Hercules Technology Growth Capital in the approximate amount of $2.7 million and also paid financial advisory fees of approximately $2.0 million.

In May 2008, Novacea adopted retention bonus and severance payment arrangements, pursuant to which Novacea agreed to make retention and severance payments to those non-executive employees who remain employed by Novacea, in accordance with the terms and conditions of retention bonus and severance payment arrangements, to assist Novacea with final wind-down activities related to the clinical programs, to maintain operations, and to evaluate potential strategic alternatives. The payment of retention bonuses and severance was contingent upon the completion of a defined transaction by Novacea, such as the merger with TPI on January 30, 2009, and was subject to continued employment through the date of the merger, or upon earlier termination by Novacea of the non-executive employee. Certain non-executive employees who were terminated during 2008 received retention bonuses and severance payments of $1.0 million in total on their termination dates. On January 30, 2009, Novacea made retention bonus and severance payments to non-executive employees that totaled $0.6 million.

Executive officers who remained with Novacea following the workforce reduction in accordance with the terms and conditions of retention bonus arrangements would also be eligible to receive retention payments. The payment of the retention bonuses was contingent upon the completion of a defined transaction by Novacea, such as the merger with TPI completed on January 30, 2009, and was subject to the employee's continued employment through that date, or upon earlier termination by Novacea of the executive officer. Two executive officers who were terminated as of October 1, 2008 received retention payments of $0.3 million in total on their termination date. On January 30, 2009, Novacea made retention bonus payments to two executive officers that totaled $0.4 million upon termination of the executives' employment. Additionally, in accordance with the terms of the severance payment arrangements, severance payments totaling approximately $1.8 million will be made to four Novacea executive officers in 2009 related to the completion of the merger with TPI and the related termination of their employment.

Potential Impact of Global Market and Economic Conditions on Transcept Liquidity

In the United States and around the world, recent market and economic conditions have been unprecedented and challenging, with tighter credit conditions and slower growth through 2008. During 2008 and into 2009, continued concerns about the systemic impact of the availability and cost of credit, energy costs, geopolitical issues, the U.S. mortgage market, a declining real estate market in the U.S. and added concerns fueled by the federal government interventions in the U.S. financial and credit markets have contributed to instability in both U.S. and international capital and credit markets and diminished expectations for the U.S. and global economy. These conditions, combined with volatile oil prices, declining business and consumer confidence and increased unemployment have contributed to volatility of unprecedented levels and an economic slowdown.

As a result of these market conditions, the cost and availability of capital and credit has been and may continue to be adversely affected by illiquid credit markets and wider credit spreads. If volatile and adverse market conditions continue, they may limit the ability of Transcept to timely borrow or access the capital and credit markets to meet liquidity needs, resulting in an adverse effect on the financial condition and results of operations of Transcept. In addition, the biotechnology industry has fluctuated significantly in the past and has experienced significant downturns in connection with, or in anticipation of, deterioration in general economic conditions, and Transcept cannot accurately predict the severity or duration of any downturn.

Off-Balance Sheet Arrangements

As of December 31, 2008, Novacea had no off-balance sheet arrangements, as defined under Regulation S-K Item 303(a)(4).

Contingencies

There are no legal proceedings or other matters as of December 31, 2008 that are expected to have a material adverse effect on the financial position of either Novacea or TPI, or the results of operations or cash flows of either Novacea or TPI.

On April 1, 2008, a former officer of Novacea filed a complaint in San Mateo County Superior Court against Novacea alleging three separate breaches of contract and/or failure to take certain actions with respect to Novacea securities held by the former officer. Effective on or about December 12, 2008, Novacea and the former officer of Novacea that filed the complaint executed a settlement agreement and general release settling all claims of the former officer. Novacea subsequently paid the former officer $950,000 in December 2008 in connection with the settlement.

Contractual Obligations and Commitments

The combined Transcept contractual obligations and commitments (including those of both Novacea and TPI) as of December 31, 2008 include potential purchase commitments and future minimum lease payments under operating leases, as shown in the following table:

Total Contractual Obligations
(in thousands)

		Payments due by period			
Contractual Obligations	Total	Less than one year	1 to 3 years	3 to 5 years	More than 5 years
Operating leases(1)	$4,082	$ 991	$2,960	$131	$ —
Purchase commitments(2)	525	175	350	—	—
Loan payable(3)	3,775	3,581	171	23	—
Total contractual obligations	$8,382	$ 4,747	$3,481	$154	$ —

(1) Includes obligations under an operating lease for the current corporate facilities of Transcept, as well as obligations under an operating lease for the former Novacea corporate facilities. In February 2006, TPI signed an operating lease for its corporate offices that include approximately 11,600 square feet of office and laboratory space in Pt. Richmond, California. The lease term is for seven years, commencing on June 1, 2006. In June 2007, TPI amended this operating lease to add approximately 3,000 square feet of additional office space. The lease terms of this amendment coincide with the original lease agreement, with a separate commencement date of September 12, 2007. Both of these leases provide for periodic rent increases based upon previously negotiated or consumer price indexed adjustments.

In June 2007, Novacea entered into an operating lease for its corporate facilities, located in South San Francisco, California. The Novacea lease for the corporate facilities is non-cancelable and has a five year term. The lease provides for periodic rent increases based upon previously negotiated or consumer price indexed adjustments.

(2) Pursuant to the terms of the TPI agreement with Plantex USA Inc., under the purchase order dated August 8, 2008, Transcept is obligated to purchase $175,000 worth of zolpidem tartrate by April 2009 and $350,000 worth of zolpidem tartrate during 2010.

(3) Loan payable represents the Transcept outstanding debt under a Loan and Security Agreement entered into during 2006. This loan was repaid in full in February 2009 in connection with the completion of the merger of TPI and Novacea.

In January 2009, Novacea terminated its licenses to Asentar™ and AQ4N, and returned the rights to the product candidates to the licensors. Under the termination provisions of one of the licenses, Novacea was obligated to make a payment of approximately $0.3 million in January 2009. This amount was included in Novacea accounts payable as of December 31, 2008 and not included in the table above.

Recently Issued Accounting Pronouncements

Statement of Financial Accounting Standards No. 141 (Revised 2007), Business Combinations (SFAS No. 141R). In December 2007 Financial Accounting Standards Board, or FASB, issued Statement of Financial Accounting Standards, or SFAS No. 141R, *Business Combinations*, or SFAS No. 141R. SFAS No. 141R establishes principles and requirements for recognizing and measuring assets acquired, liabilities assumed and any noncontrolling interest in the acquiree in a business combination. SFAS No. 141R also provides guidance for recognizing and measuring goodwill acquired in a business combination, including capitalizing at the acquisition date the fair value of acquired in-process research and development, and requires the acquirer to disclose information it needs to evaluate and understand the financial effect of the business combination. SFAS No. 141R is effective for business combinations for which the acquisition date is on or after December 15, 2008; therefore, the merger of Novacea and TPI, which was completed on January 30, 2009, will be accounted for in accordance with SFAS No. 141R.

Critical Accounting Policies

This discussion and analysis of the financial condition and results of operations of Novacea is based on its financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as revenue and expenses during the reporting periods. Novacea evaluated its estimates and judgments on an ongoing basis. Novacea based its estimates on historical experience and on various other factors that it believed were reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Therefore, actual results could differ materially from those estimates under different assumptions or conditions.

Fair Value Measurements. Effective January 1, 2008, Novacea adopted SFAS No. 157, Fair Value Measurements, or SFAS No. 157, on a prospective basis for financial assets and liabilities, which required that Novacea determine the fair value of financial assets and liabilities using the fair value hierarchy established in SFAS No. 157. In February 2008, FASB issued FASB Staff Position No. FAS 157-2, *Effective Date of FASB Statement No. 157*, which provides a one year deferral of the effective date of SFAS No. 157 for non-financial assets and non-financial liabilities, except those that are recognized or disclosed in the financial statements at fair value at least annually.

SFAS No. 157 defines “fair value” as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, or an exit price. Where

available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available, valuation models are applied. These valuation techniques involve some level of management estimation and judgment, the degree of which is dependent on several factors, including the instruments' complexity.

Beginning January 1, 2008, assets and liabilities recorded at fair value are categorized based upon the level of judgment associated with inputs used to measure their value. SFAS No. 157 defines a three-level valuation hierarchy for disclosure of fair value measurements as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Where quoted prices are available in an active market, securities are classified as Level 1 of the valuation hierarchy. Level 1 securities include highly liquid money market funds. If quoted market prices are not available for the specific security, then Novacea estimates fair value by using pricing models, quoted prices of securities with similar characteristics or discounted cash flows. Level 2 instruments include commercial paper, U.S. corporate debt, and U.S. government sponsored enterprise issues.

During the year ended December 31, 2008, there were no significant changes to the valuation models used for purposes of determining the fair value of Level 2 assets, and there were no assets characterized as Level 3.

Revenue Recognition. Novacea applied the revenue recognition criteria outlined in Staff Accounting Bulletin No. 104, Revenue Recognition in Financial Statements, and Emerging Issues Task Force Issue No. 00-21, Revenue Arrangements with Multiple Deliverables.

Revenue arrangements with multiple components are divided into separate units of accounting if certain criteria are met, including whether the delivered component has stand-alone value to the customer, and whether there is objective and reliable evidence of the fair value of the undelivered items. Consideration received is allocated among the separate units of accounting based on their respective fair values. Applicable revenue recognition criteria are then applied to each of the units.

Revenue is recognized when the four basic criteria of revenue recognition are met:

- persuasive evidence of an arrangement exists;
- transfer of technology has been completed or services have been rendered;
- the fee is fixed or determinable; and
- collectability is reasonably assured.

For each source of revenue, Novacea complied with the above revenue recognition criteria in the following manner:

- Non-refundable upfront reimbursement for past research and development, or R&D, expenses and license fees received with separable stand-alone values are recognized when the technology is transferred, provided that the technology transfer is not dependent upon continued efforts by Novacea with respect to the agreement. If the delivered technology does not have stand-alone value, or if

objective and reliable evidence of the fair value of the undelivered products or services does not exist, the amount of revenue allocable to the delivered technology is deferred and amortized ratably over the related estimated period over which the remaining products or services are provided.

- Revenue from reimbursement for Novacea R&D efforts and commercialization-related services is recognized as the related costs are incurred. Such reimbursement is based upon direct costs incurred by Novacea and negotiated rates for full time equivalent employees that are intended to approximate Novacea anticipated costs. Differences between actual reimbursement and estimated reimbursement are reconciled and adjusted in the period which they become known, typically the following quarter. The Novacea costs associated with these R&D efforts are included in research and development expenses.
- Payments received that are related to substantive, performance-based "at-risk" milestones are recognized as revenue upon achievement of the milestone or event specified in the underlying contracts, which represents the culmination of the earnings process. Amounts received in advance, if any, are recorded as deferred revenue until the milestone is reached.

*Research and Development Cost***.** Research and development expenditures are charged to operations as incurred, pursuant to SFAS No. 2, *Accounting for Research and Development Costs*. The costs to acquire technologies to be used in research and development, but which have not reached technological feasibility and have no alternative future use are expensed when incurred. Payments to licensors that relate to the achievement of pre-approval development milestones are recorded as research and development expense when incurred. Research and development costs for activities conducted through third parties with whom Novacea contracts are expensed as the costs are incurred. To the extent Novacea makes a payment to a third party vendor representing a refundable deposit, such payment is recorded as a prepaid expense. These third party vendors may include contract research organizations, third-party manufacturers of drug material and clinical supplies and other vendors.

Prior to ending all of its clinical trials and exploring potential strategic alternatives, investigator costs related to patient enrollment were accrued as patients entered the trials. Novacea monitored patient enrollment levels and related activities to the extent possible through internal reviews and correspondence and discussions with external vendors in order to estimate its incurred expenses. Due to the possibility of incomplete or inaccurate information, Novacea may underestimate or overestimate activity levels and related expenses associated with any of its clinical trials at a given point in time. In such an event, Novacea would record adjustments to research and development expenses in future periods when the actual activity level becomes known. In the past, Novacea has not had to make any material adjustments to research and development expenses due to deviations between the estimates used in determining its accruals for clinical trial expenses and the actual clinical trial expenses incurred. Additionally, Novacea does not expect material adjustments to research and development expenses to result from changes in the nature and level of clinical trial activity and related expenses that are currently subject to estimation.

Stock-Based Compensation. On January 1, 2006, Novacea adopted the fair value recognition provisions of SFAS No. 123R, *Share-Based Payment—An Amendment of FASB Statements No. 123 and 95*, or SFAS No. 123R. Novacea adopted SFAS No. 123R using the prospective transition method. Under the prospective transition method, beginning January 1, 2006, compensation cost recognized includes:

- compensation cost for all stock-based payment awards granted prior to, but not yet vested as of December 31, 2005, based on the intrinsic value in accordance with the provisions of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*; and
- compensation cost for all stock-based payment awards granted or modified subsequent to December 31, 2005, based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R.

Novacea uses the Black-Scholes option pricing model to determine the fair value of stock options. The determination of the fair value of stock-based payment awards on the date of grant using an option-pricing model is affected by the Novacea stock price as well as assumptions regarding a number of complex and subjective variables. These variables include expected Novacea stock price volatility over the term of the awards, actual and projected employee stock option exercise behaviors, risk-free interest rates and expected dividends.

Novacea estimates the expected term of options using the "simplified" method, as illustrated in Staff Accounting Bulletin No. 107. As Novacea has been operating as a public company for a period of time that is shorter than its estimated expected option term, it is unable to use actual price volatility data. Therefore, Novacea estimates the volatility of its common stock based on volatility of similar entities. Novacea bases the risk-free interest rate that it uses in the option pricing model on U.S. Treasury zero-coupon issues with remaining terms similar to the expected term on the options. Novacea does not anticipate paying any cash dividends in the foreseeable future and therefore uses an expected dividend yield of zero in the option pricing model. Novacea is required to estimate forfeitures at the time of grant and revise those estimates in subsequent periods if actual forfeitures differ from those estimates. Novacea uses historical data to estimate pre-vesting option forfeitures and record stock-based compensation expense only for those awards that are expected to vest. All stock-based payment awards are amortized on a straight-line basis over the requisite service periods of the awards, which are generally the vesting periods.

Calculating stock-based compensation expense requires the input of highly subjective assumptions, which represent the best estimates of Novacea and involve inherent uncertainties and the application of management judgment. Estimates of stock-based compensation expenses are significant to the Novacea financial statements, but these expenses are based on the Black-Scholes option valuation model and do not result in the payment of cash by Novacea.

See Note 1 to the Novacea Financial Statements included in this Annual Report on Form 10-K for further information regarding Novacea's stock-based compensation.

Income Taxes

Novacea uses the liability method for accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Currently, there is no provision for income taxes as Novacea has an accumulated deficit to date.

As of December 31, 2008, Novacea had net operating loss carry-forwards for federal income tax purposes of approximately $78.3 million and research credits of approximately $2.2 million, which will expire beginning in the year 2021. Novacea also had state net operating loss carry-forwards of approximately $78.1 million, which expire beginning in 2014. Novacea also had state research credits of approximately $2.1 million, which have no expiration date. Certain amounts included in these carry-forwards will be recorded to equity, rather than a benefit to income tax expense, when they reduce cash taxes payable.

Novacea did not record a benefit from its net operating loss carry forwards because it believed that it was uncertain that Novacea would have sufficient income from future operations to realize the carry-forwards prior to their expiration. Accordingly, Novacea established a valuation allowance against the deferred tax asset arising from the carry-forwards.

Utilization of the net operating loss carry-forwards and credits may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. Such limitations may also result from the change in ownership resulting from the Company's merger with TPI. The annual limitation may result in the expiration of net operating loss carry-forwards and credits before utilization.

Item 7A. Quantitative and qualitative disclosures about market risk

Concentration of credit risk for Transcept consists principally of cash, cash equivalents, and marketable securities. Transcept's exposure to market risk is limited primarily to interest income sensitivity, which is affected by changes in the general level of United States interest rates, particularly because the majority of Transcept investments are in short-term debt securities.

The Transcept investment policy restricts investments to high-quality investments and limits the amounts invested with any one issuer. The goals of the Transcept investment policy are as follows: preservation of capital; fulfillment of liquidity needs; and fiduciary control of cash and investments. Some of the securities in which Transcept invests may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. For example, if Transcept holds a security that was issued with an interest rate fixed at the then-prevailing rate and the prevailing interest rate later rises, the principal amount of the Transcept investment will probably decline. To minimize this risk, in accordance with its investment policy, Transcept maintains its portfolio of cash equivalents, short-term marketable securities and restricted cash in a variety of securities, including commercial paper, money market funds, government and non-government debt securities and certificates of deposit. The risk associated with fluctuating interest rates is limited to the Transcept investment portfolio. As of December 31, 2008, all of the investments of Novacea and TPI were in money market accounts, certificates of deposit or investment grade corporate debt. Due to the short-term nature of these investments, a 10% movement in market interest rates would not have a material impact on the total fair market value of the combined TPI and Novacea portfolio as of December 31, 2008.

Item 8. Financial Statements and Supplementary Data

Index to Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Transcept Pharmaceuticals, Inc.

We have audited the accompanying balance sheets of Novacea, Inc. as of December 31, 2008 and 2007 and the related statements of operations, convertible preferred stock and stockholders' equity (net capital deficiency), and cash flows for each of the three years in the period ended December 31, 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Novacea, Inc. at December 31, 2008 and 2007, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

Palo Alto, California
March 26, 2009

Novacea, Inc.

Balance Sheets
(in thousands, except for share and per share amounts)

	December 31, 2008	December 31, 2007
Assets		
Current assets:		
Cash and cash equivalents	$ 14,942	$ 24,720
Marketable securities	70,159	69,887
Interest receivable	481	659
Accounts receivable	—	11,522
Prepaid expenses and other current assets	457	991
Total current assets	86,039	107,779
Property and equipment, net	—	1,098
Other assets	774	943
Total assets	$ 86,813	$ 109,820
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 1,118	$ 4,199
Accrued compensation	906	2,086
Deferred revenue	—	9,968
Other accrued liabilities	687	2,913
Total current liabilities	2,711	19,166
Non-current deferred revenue	—	44,870
Other long-term liabilities	70	36
Total liabilities	2,781	64,072
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Common stock, $0.001 par value—100,000,000 shares authorized; 5,183,261 and 5,078,970 shares issued and outstanding as of December 31, 2008 and December 31, 2007, respectively	5	5
Additional paid-in-capital	172,820	169,713
Deferred stock-based employee compensation	(75)	(270)
Accumulated other comprehensive income	368	208
Accumulated deficit	(89,086)	(123,908)
Total stockholders' equity	84,032	45,748
Total liabilities and stockholders' equity	$ 86,813	$ 109,820

See accompanying notes.

Novacea, Inc.

Statements of Operations
(in thousands, except per share amounts)

	Years ended December 31,		
	2008	2007	2006
Collaboration revenue	$60,621	$ 16,683	$ 371
Operating expenses:			
Research and development	11,681	36,055	21,809
General and administrative	16,896	17,279	11,306
Total operating expenses	28,577	53,334	33,115
Income (loss) from operations	32,044	(36,651)	(32,744)
Interest and other income, net	2,778	4,120	3,116
Net income (loss)	$34,822	$(32,531)	$(29,628)
Net income (loss) per share:			
Basic	$ 6.74	$ (6.73)	$ (9.88)
Diluted	$ 6.72	$ (6.73)	$ (9.88)
Shares used in computing net income (loss) per share:			
Basic	5,163	4,832	2,998
Diluted	5,184	4,832	2,998

See accompanying notes.

Novacea, Inc.

Statement of Convertible Preferred Stock and Stockholders' Equity (Net Capital Deficiency)
(in thousands, except per share amounts)

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Deferred Stock-Based Employee Compensation	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
	Shares	Amount	Shares	Amount					
Balance at December 31, 2005	2,841	$ 108,024	299	$ —	$ 3,507	$ (2,162)	$ (38)	$ (61,749)	$ (60,442)
Issuance of 44,519 shares of common stock for cash upon exercise of stock options at prices ranging from $2.63 to $26.25 per share	—	—	45	—	410	—	—	—	410
Impact of repurchase rights related to common shares issued pursuant to early exercise of stock options, net of vesting of prior years' amounts	—	—	27	—	137	—	—	—	137
Issuance of 7,201 shares of Series C2 convertible preferred stock to investors at $43.75 per share for cash in January 2006, net of issuance costs of $44	7	306	—	—	—	—	—	—	—
Issuance of 1,381,500 shares of common stock for cash at a price of $32.50 per share in May 2006, net of issuance costs of $6	—	—	1,382	2	39,212	—	—	—	39,214
Issuance of 2,847,914 shares of common stock upon conversion of 9,967,721 shares of convertible preferred stock in May 2006	(2,848)	(108,330)	2,848	3	108,327	—	—	—	108,330
Stock-based compensation for options granted to employees	—	—	—	—	702	—	—	—	702
Amortization of deferred stock-based compensation related to employee stock options	—	—	—	—	—	567	—	—	567
Deferred compensation related to cancellation of employee stock options	—	—	—	—	(327)	327	—	—	—
Stock compensation associated with stock options granted to non-employees	—	—	—	—	80	—	—	—	80
Stock compensation related to modification of stock options granted to employee	—	—	—	—	398	—	—	—	398
Comprehensive loss:									
Net loss	—	—	—	—	—	—	—	(29,628)	(29,628)
Unrealized gain on cash equivalents and short-term investments	—	—	—	—	—	—	56	—	56
Comprehensive loss									(29,572)
Balance at December 31, 2006 (carried forward)	—	$ —	4,601	$ 5	$152,446	$ (1,268)	$ 18	$ (91,377)	$ 59,824

(continued)

See accompanying notes.

Novacea, Inc.

Statement of Convertible Preferred Stock and Stockholders' Equity (Net Capital Deficiency)—(Continued)
(in thousands, except per share amounts)

	Convertible Preferred Stock		Common Stock						
	Shares	Amount	Shares	Amount	Additional Paid-in Capital	Deferred Stock-Based Employee Compensation	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
Balance at December 31, 2006 (brought forward)	—	$ —	4,601	$ 5	$152,446	$ (1,268)	$ 18	$ (91,377)	$ 59,824
Issuance of 150,026 shares of common stock for cash upon exercise of stock options at prices ranging from $2.63 to $32.50 per share	—	—	128	—	1,190	—	—	—	1,190
Impact of repurchase rights related to common shares issued pursuant to early exercise of stock options, net of vesting of prior years' amounts	—	—	43	—	159	—	—	—	159
Issuance of 298,174 shares of common stock for cash upon sale of stock to Schering at $40.25 per share	—	—	298	—	12,000	—	—	—	12,000
Issuance of 9,377 shares of common stock as part of the 2006 401-K matching valued at price of $30.50 per share on March 12, 2007	—	—	9	—	286	—	—	—	286
Stock-based compensation for options granted to employees	—	—	—	—	2,746	—	—	—	2,746
Stock-based compensation for restricted stock units granted to employees	—	—	—	—	1,415	—	—	—	1,415
Amortization of deferred stock-based compensation related to employee stock options	—	—	—	—	—	365	—	—	365
Deferred compensation related to cancellation of employee stock options	—	—	—	—	(633)	633	—	—	—
Stock compensation associated with stock options granted to non-employees	—	—	—	—	1	—	—	—	1
Stock compensation related to modification of stock options granted to employee	—	—	—	—	103	—	—	—	103
Comprehensive loss:									
Net loss	—	—	—	—	—	—	—	(32,531)	(32,531)
Unrealized gain on cash equivalents and short-term investments	—	—	—	—	—	—	190	—	190
Comprehensive loss									(32,341)
Balance at December 31, 2007 (carried forward)	—	$ —	5,079	$ 5	$169,713	$ (270)	$ 208	$(123,908)	$ 45,748

(continued)

See accompanying notes.

Novacea, Inc.

Statement of Convertible Preferred Stock and Stockholders' Equity (Net Capital Deficiency)—(Continued)
(in thousands, except per share amounts)

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Deferred Stock-Based Employee Compensation	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
	Shares	Amount	Shares	Amount					
Balance at December 31, 2007 (brought forward)	—	$ —	5,079	$ 5	$169,713	$ (270)	$ 208	$(123,908)	$ 45,748
Issuance of 49,113 shares of common stock for cash upon exercise of stock options at prices ranging from $2.63 to $15.15 per share	—	—	49	—	316	—	—	—	316
Impact of repurchase rights related to common shares issued pursuant to early exercise of stock options, net of vesting of prior years' amounts	—	—	2	—	23	—	—	—	23
Issuance of 19,617 shares of common stock as part of 2007 401-K matching valued at price of $14.40 per share on January 3, 2008	—	—	20	—	282	—	—	—	282
Issuance of 33,014 shares of common stock per vesting of restricted stock units at a price of $0 per share, net of employee income tax withholdings	—	—	33	—	(204)	—	—	—	(204)
Stock-based compensation for options granted to employees	—	—	—	—	1,728	—	—	—	1,728
Stock-based compensation for restricted stock units granted to employees.	—	—	—	—	711	—	—	—	711
Amortization of deferred stock-based compensation related to employee stock options	—	—	—	—	—	105	—	—	105
Reversal of deferred compensation related to cancellation of employee stock options	—	—	—	—	(90)	90	—	—	—
Stock compensation associated with stock options granted to non-employees	—	—	—	—	22	—	—	—	22
Stock compensation related to modification of stock options granted to employees	—	—	—	—	319	—	—	—	319
Comprehensive income:									
Net income	—	—	—	—	—	—	—	34,822	34,822
Unrealized gain on cash equivalents and short-term investments	—	—	—	—	—	—	160	—	160
Comprehensive income									34,982
Balance at December 31, 2008	—	$ —	5,183	$ 5	$172,820	$ (75)	$ 368	$ (89,086)	$ 84,032

See accompanying notes.

Novacea, Inc.

Statements of Cash Flows
(in thousands)

	Years ended December 31,		
	2008	2007	2006
Operating activities			
Net income (loss)	$ 34,822	$ (32,531)	$(29,628)
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:			
Depreciation and amortization	1,119	151	126
Loss on disposal of fixed assets	3	—	—
Amortization of deferred stock-based employee compensation for employee stock options granted prior to January 1, 2006	105	365	567
Stock-based employee compensation expense for employee stock options and restricted stock units granted subsequent to January 1, 2006	2,439	4,161	702
Stock-based compensation related to modification of employee stock options	319	103	398
Non-cash stock compensation related to non-employees	22	1	80
Non-cash (credit) expense related to settlement of the Company's liability under 401(k) Plan	(10)	21	—
Accretion of discount on marketable securities	(1,172)	(2,149)	(701)
Changes in operating assets and liabilities:			
Account receivable	11,522	(11,522)	—
Other current assets	712	(551)	108
Other assets	169	(707)	42
Accounts payable and accrued liabilities	(6,137)	3,418	1,695
Deferred revenue	(54,838)	54,838	—
Net cash provided by (used in) operating activities	(10,925)	15,598	(26,611)
Investing activities			
Purchases of property and equipment	(24)	(1,099)	(19)
Purchases of marketable securities	(135,568)	(126,220)	(96,455)
Maturities of marketable securities	136,627	108,822	61,545
Net cash provided by (used in) investing activities	1,035	(18,497)	(34,929)
Financing activities			
Net proceeds from issuances of convertible preferred stock	—	—	306
Proceeds from issuances of common stock, net of repurchases of $2, $177, and $3 in 2008, 2007, and 2006, respectively	112	13,190	39,624
Net cash provided by financing activities	112	13,190	39,930
Net increase (decrease) in cash and cash equivalents	(9,778)	10,291	(21,610)
Cash and cash equivalents at beginning of period	24,720	14,429	36,039
Cash and cash equivalents at end of period	$ 14,942	$ 24,720	$ 14,429

See accompanying notes.

Novacea, Inc.

Notes to Financial Statements

1. Organization and Summary of Significant Accounting Policies

Prior to the termination of its clinical trials, the reduction in its workforce and in its operating plan, and its focus on evaluating strategic alternatives, Novacea, Inc. (the "Company") was an operating biopharmaceutical company focused on in-licensing, developing and commercializing novel therapies for the treatment of cancer. Novacea had two clinical-stage oncology product candidates, Asentar™ and AQ4N. In late 2007 and early 2008, Novacea stopped all of its development activities related to these oncology product candidates. In January 2009, Novacea terminated its licenses to Asentar™ and AQ4N, and returned the rights to the product candidates to the licensors.

On August 29, 2008, Novacea, Pivot Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Novacea, or Merger Sub, and Transcept Pharmaceuticals, Inc., a then private Delaware corporation, or TPI, entered into an Agreement and Plan of Merger and Reorganization, which was amended on December 23, 2008, and which is referred to as the Merger Agreement. On January 30, 2009, Novacea completed its business combination with TPI in accordance with the terms of the Merger Agreement, pursuant to which TPI became a wholly-owned subsidiary of Novacea, which is referred to as the Merger. Also on January 30, 2009, in connection with the Merger, Novacea effected a 1-for-5 reverse stock split of its common stock, and the name of Novacea was changed to "Transcept Pharmaceuticals, Inc." The Merger, reverse stock split and the name change of Novacea were approved by the stockholders of Novacea at a special meeting of Novacea stockholders held on January 27, 2009. In the following discussion, "Transcept" refers to the public company, formerly known as Novacea and now known as Transcept Pharmaceuticals, Inc.

Under the terms of the Merger Agreement, Novacea issued shares of common stock to the TPI stockholders at the rate of 0.14134 shares of common stock, after giving effect to the 1-for-5 reverse stock split, for each share of TPI common stock outstanding on January 30, 2009. Additionally, each share of common stock underlying TPI options and warrants as of January 30, 2009 was converted to 0.14134 shares of Transcept common stock. After consummation of the Merger, former TPI stockholders, option holders and warrant holders as of January 30, 2009 owned approximately 61% of Transcept common stock on a fully-diluted basis. The stockholders, option holders and warrant holders of Novacea prior to the merger owned approximately 39% of the Transcept common stock on a fully-diluted basis following the Merger. Under generally accepted accounting principles in the United States, the Merger is treated as a "reverse merger" under the purchase method of accounting. For accounting purposes, TPI is considered to have acquired Novacea.

Novacea securities listed on the NASDAQ Global Market, trading under the ticker symbol "NOVC," were suspended for trading as of the close of business on January 30, 2009 and trading of Transcept securities on the NASDAQ Global Market under the ticker symbol "TSPT" commenced on February 2, 2009.

Reverse Stock Split

In March 2006, the Company's board of directors approved a 1-for-3.5 reverse stock split of the Company's common and convertible preferred stock, which was approved by the Company's stockholders in April 2006. Such reverse stock split was effective on May 3, 2006. In December 2008, the Company's board of directors approved a 1-for-5 reverse stock split of the Company's common stock which was approved by the Company's stockholders on January 27, 2009. Such reverse stock split was effective on January 30, 2009. All share and per share amounts contained in the accompanying financial statements and notes were retroactively adjusted to reflect the reverse stock splits.

Initial Public Offering

On May 15, 2006, the Company completed its initial public offering, or IPO, of 1,250,000 shares of its common stock at the public offering price of $32.50 per share and on June 9, 2006, the underwriters of the Company's initial public offering purchased an additional 131,500 shares of the Company's common stock pursuant to their over-allotment option at the public offering price of $32.50 per share. Net proceeds from the initial public offering and the subsequent exercise of the underwriters' over-allotment option to purchase additional shares of the Company's common stock were approximately $39.2 million, after deducting underwriting discounts and commissions and other offering expenses. In connection with the closing of the initial public offering, all of the Company's shares of convertible preferred stock outstanding at the time of the offering were automatically converted into 2,847,914 shares of common stock.

Significant Accounting Policies

Use of Estimates and Reclassifications

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ materially from these estimates. Certain reclassifications of prior year amounts have been made in the statements of cash flows to conform to current year presentation. Specifically, accretion of discount on marketable securities has been disclosed as an adjustment to reconcile net income (loss) to net cash provided by (used in) operating activities in the Company's statements of cash flows in order to conform to current year presentation.

Cash Equivalents and Marketable Securities

The Company considers all highly liquid securities with maturities of three months or less from the date of purchase to be cash equivalents.

Management determines the appropriate classification of securities at the time of purchase in accordance with Statement of Financial Accounting Standards No. 115, *Accounting for Certain Investments in Debt and Equity Securities* and reevaluates such determination at each balance sheet date. The Company has classified its entire investment portfolio as available-for-sale. Management views its investment portfolio as available for use in current operations and, accordingly, has reflected all such investments as current assets although the stated maturity of individual investments may be one year or more beyond the balance sheet date. Available-for-sale securities are carried at fair value based on quoted market prices, with unrealized gains and losses reported in "Accumulated other comprehensive income (loss)" as a separate component of stockholders' equity. The cost of securities in this category is adjusted for amortization of premiums and accretion of discounts from the date of purchase to maturity. Such amortization is included in "Interest and other income, net."

Realized gains and losses and declines in value, if any, judged to be other than temporary on available-for-sale securities are reported in interest and other income, net. When securities are sold, any associated unrealized gain or loss recorded as a separate component of stockholders' equity is reclassified on a specific-identification basis and recorded in earnings for the period. Realized gains and losses on available-for-sale securities for the periods presented were not significant.

Concentration of Credit Risk

Financial instruments that are potentially subject to concentration of credit risk consist primarily of cash, cash equivalents, and marketable securities. The Company's investment policy restricts investments to high-quality investments and limits the amounts invested with any one issuer, industry, or geographic area. The goals of the investment policy are as follows: preservation of capital; fulfillment of liquidity needs; above-market returns versus industry averages; and fiduciary control of cash and investments. The Company's exposure to

market risk is limited primarily to interest income sensitivity, which is affected by changes in the general level of United States interest rates, particularly because the majority of the Company's investments are in short-term debt securities.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation, and depreciated using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are stated at cost, less accumulated amortization, and amortized using the straight-line method over the lesser of the estimated useful lives of the assets or the lease term of five years.

In connection with exploration of potential strategic alternatives, and the merger agreement described in Note 1, on July 1, 2008, the Company reviewed the estimated useful lives of all its property and equipment. The estimated remaining life of property and equipment, including leasehold improvements, which previously ranged from three to five years, was changed to six months. The change in the estimated useful life resulted in a $0.8 million increase in depreciation expense during the year ended December 31, 2008, at which date property and equipment was fully amortized.

Revenue Recognition

The Company applies the revenue recognition criteria outlined in Staff Accounting Bulletin No. 104, *Revenue Recognition in Financial Statements*, and Emerging Issues Task Force Issue No. 00-21, *Revenue Arrangements with Multiple Deliverables*.

Revenue arrangements with multiple components are divided into separate units of accounting if certain criteria are met, including whether the delivered component has stand-alone value to the customer, and whether there is objective and reliable evidence of the fair value of the undelivered items. Consideration received is allocated among the separate units of accounting based on their respective fair values. Applicable revenue recognition criteria are then applied to each of the units.

Revenue is recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence of an arrangement exists; (2) transfer of technology has been completed or services have been rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured.

For each source of revenue, the Company complies with the above revenue recognition criteria in the following manner:

- Non-refundable upfront reimbursement for past research and development (R&D) expenses and license fees received with separable stand-alone values are recognized when the technology is transferred, provided that the technology transfer is not dependent upon continued efforts by the Company with respect to the agreement. If the delivered technology does not have stand-alone value, or if objective and reliable evidence of the fair value of the undelivered products or services does not exist, the amount of revenue allocable to the delivered technology is deferred and amortized ratably over the related involvement period in which the remaining products or services are provided.
- Revenue from reimbursement for the Company's R&D efforts and commercialization-related services is recognized as the related costs are incurred. Such reimbursement is based upon direct costs incurred by the Company and negotiated rates for full time equivalent employees that are intended to approximate the Company's anticipated costs. Differences, if any, between actual reimbursement and estimated reimbursement are reconciled and adjusted in the period which they become known, typically the following quarter. The Company's costs associated with these R&D efforts are included in research and development expenses.

- Payments received that are related to substantive, performance-based "at-risk" milestones are recognized as revenue upon achievement of the milestone or event specified in the underlying contracts, which represents the culmination of the earnings process. Amounts received in advance, if any, are recorded as deferred revenue until the milestone is reached.

Fair Value Measurements

Effective January 1, 2008, the Company adopted Statement of Financial Accounting Standards (SFAS) No. 157, *Fair Value Measurements* on a prospective basis for financial assets and liabilities, which requires that the Company determine the fair value of financial assets and liabilities using the fair value hierarchy established in SFAS No. 157. In February 2008, the FASB issued FASB Staff Position No. FAS 157-2, *Effective Date of FASB Statement No. 157*, which provides a one year deferral of the effective date of SFAS No. 157 for non-financial assets and non-financial liabilities, except those that are recognized or disclosed in the financial statements at fair value at least annually. The adoption of SFAS No. 157 did not have a material impact on the Company's results of operations and financial condition. See Note 4 for information and related disclosures regarding the Company's fair value measurements.

Comprehensive Income (Loss)

Comprehensive income (loss) is composed of net income (loss) and unrealized gains/losses on cash equivalents and marketable securities.

Stock-Based Compensation

Through December 31, 2005, the Company followed the intrinsic-value method of accounting as prescribed by the Accounting Principles Board ("APB") Opinion No. 25. Under APB Opinion No. 25, compensation expense for employee stock options is based on the excess, if any, on the date of grant of the fair value of the Company's common stock and the option exercise price. In December 2004, the Financial Accounting Standards Boards ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123R, *Share-Based Payment*, which replaces SFAS No. 123, *Accounting for Stock-Based Compensation*. SFAS No. 123R requires companies to recognize an expense for share-based payment arrangements, including stock options and employee stock purchase plans, as of the beginning of the first fiscal year that starts after June 15, 2005. On January 1, 2006, the Company adopted SFAS No. 123R using the prospective transition method. Under the prospective transition method, beginning January 1, 2006, employee stock-based compensation cost recognized includes: (a) compensation cost for all stock-based payment awards granted prior to, but not yet vested as of December 31, 2005, based on the intrinsic value of those awards in accordance with the provisions of APB No. 25, and (b) compensation cost for all stock-based payment awards granted or modified subsequent to December 31, 2005, based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R.

SFAS No. 123R prohibits the recognition of a deferred tax asset for an excess tax benefit that has not yet been realized. As a result, the Company will only recognize a benefit from stock-based compensation in additional paid-in-capital if an incremental tax benefit is realized after all other tax attributes currently available to the Company have been utilized. In addition, the Company has elected to account for the indirect benefits of stock-based compensation on the research tax credit through the statements of operations rather than through additional paid-in-capital.

The Company accounts for stock issued to non-employees in accordance with the provisions of Emerging Issues Task Force ("EITF") Consensus on Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*, using a fair value approach. The compensation costs associated with these arrangements are subject to re-measurement over the vesting terms as earned.

Research and Development Costs

Research and development ("R&D") expenditures are charged to operations as incurred, pursuant to SFAS No. 2, *Accounting for Research and Development Costs*.

Major components of R&D expenses consist of personnel costs, including salaries and benefits, clinical trials, materials and supplies, and allocations of R&D-related costs, as well as fees paid to other entities that conduct certain research and development activities on behalf of the Company. Payments made to other entities are under agreements that are generally cancelable by the Company.

Prior to ending all of its clinical trials and exploring potential strategic alternatives, the Company's R&D activities could be separated into two primary categories: clinical development and drug product development. Clinical development costs consisted primarily of Phase 1, 2 and 3 clinical trials. Drug product development costs consisted of product formulation and chemical analysis.

Clinical trial costs are a significant component of R&D expenses. The Company managed its clinical trials through independent medical investigators at their sites and hospitals. The Company accrued costs for clinical trials based on estimates from its monitoring of the levels of patient enrollment and other activities at the investigator sites.

The costs to acquire technologies to be used in research and development, but which have not reached technological feasibility and have no alternative future use, were expensed when incurred. Payments to licensors that relate to the achievement of pre-approval development milestones were recorded as R&D expense when incurred.

Income Taxes

The Company uses the liability method for accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Currently, there is no provision for income taxes as the Company has an accumulated deficit to date.

As discussed in Note 10, for income tax purposes, in 2007 the Company recognized the entire $60 million of nonrefundable upfront payments received from Schering, $54.8 million of which was recorded as deferred revenue at December 31, 2007 and recognized as revenue for financial reporting purposes during the first half of 2008. For 2007, the Company utilized its net operating loss carry-forwards to offset all regular taxable income resulting from the nonrefundable upfront payments and was not subject to federal alternative minimum tax because of an exception available to it under the Internal Revenue Code.

Recently Issued Accounting Pronouncements

In December 2007, the FASB issued SFAS No. 141 (Revised 2007), *Business Combinations* (SFAS No. 141R). SFAS No. 141R establishes principles and requirements for recognizing and measuring assets acquired, liabilities assumed and any noncontrolling interest in the acquiree in a business combination. SFAS No. 141R also provides guidance for recognizing and measuring goodwill acquired in a business combination, including capitalizing at the acquisition date the fair value of acquired in-process research and development, and requires the acquirer to disclose information it needs to evaluate and understand the financial effect of the business combination. SFAS 141R is effective for business combinations for which the acquisition date is on or after December 15, 2008; therefore, the Merger with TPI will be accounted for in accordance with SFAS No. 141R as it was completed on January 30, 2009.

2. Net Income (Loss) Per Share

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted average number of vested shares outstanding during the period. Diluted net income (loss) per share is computed by giving effect to all potential dilutive common securities, including options, common stock subject to repurchase, warrants and convertible preferred stock.

The following table presents the calculation of basic and diluted net income (loss) per share (in thousands, except per share amounts):

	Years ended December 31,		
	2008	2007	2006
Numerator:			
Net income (loss)	$34,822	$(32,531)	$(29,628)
Denominator:			
Weighted-average common shares outstanding	5,166	4,842	3,069
Less: Weighted-average unvested common shares subject to repurchase	(3)	(10)	(71)
Denominator for basic net income (loss) per share	5,163	4,832	2,998
Dilutive effect of:			
Restricted stock units and options to purchase common stock	21	—	—
Denominator for diluted net income (loss) per share	5,184	4,832	2,998
Basic net income (loss) per share	$ 6.74	$ (6.73)	$ (9.88)
Diluted net income (loss) per share	$ 6.72	$ (6.73)	$ (9.88)

The following outstanding options, unvested restricted stock units, common stock subject to repurchase and convertible preferred stock were excluded from the computation of diluted net income (loss) per share for the periods presented because including them would have had an anti-dilutive effect (in thousands):

	Years ended December 31,		
	2008	2007	2006
Options to purchase common stock	480	682	463
Unvested restricted stock units	39	99	—
Common stock subject to repurchase (weighted average basis)	3	10	71
Convertible preferred stock (as converted basis, until completion of the Company's IPO in May 2006)	—	—	2,848

3. Cash, Cash Equivalents and Marketable Securities

The following is a summary of the fair value of cash and cash equivalents and available-for-sale securities (in thousands):

	December 31, 2008			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Cash	$ 13	$ —	$ —	$ 13
Government and municipal obligations	42,621	275	(8)	42,888
Coporate debt securities	31,166	111	(10)	31,267
Money market funds	10,933	—	—	10,933
Total	$84,733	$ 386	$ (18)	$85,101
Reported as:				
Cash and cash equivalents	$14,942	$ —	$ —	$14,942
Marketable securities	69,791	386	(18)	70,159
Total	$84,733	$ 386	$ (18)	$85,101

	December 31, 2007			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Cash	$ 1,051	$ —	$ —	$ 1,051
Government and municipal obligations	—	—	—	—
Coporate debt securities	77,639	215	(7)	77,847
Money market funds	15,709	—	—	15,709
Total	$94,399	$ 215	$ (7)	$94,607
Reported as:				
Cash and cash equivalents	$24,720	$ —	$ —	$24,720
Marketable securities	69,679	215	(7)	69,887
Total	$94,399	$ 215	$ (7)	$94,607

At December 31, 2008, all available-for-sale securities mature within one year of the balance sheet date. The average maturity of available-for-sale securities was approximately four months.

As of December 31, 2008, there were no available-for-sale securities that were in a continuous unrealized loss position for more than twelve months. The Company does not expect current credit market conditions to materially impact the fair value of its investment portfolio.

4. Fair Value

SFAS 157 defines “fair value” as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, or an exit price. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available, valuation models are applied. These valuation techniques involve some level of management estimation and judgment, the degree of which is dependent on several factors, including the instruments’ complexity.

Beginning January 1, 2008, financial assets and liabilities recorded at fair value are categorized based upon the level of judgment associated with inputs used to measure their value. SFAS 157 defines a three-level valuation hierarchy for disclosure of fair value measurements as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities.

- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Where quoted prices are available in an active market, securities are classified as Level 1 of the valuation hierarchy. Level 1 securities include highly liquid money market funds. If quoted market prices are not available for the specific security, then we estimate fair value by using pricing models, quoted prices of securities with similar characteristics or discounted cash flows. Level 2 instruments include commercial paper, U.S. corporate debt, and U.S. government sponsored enterprise issues.

In accordance with SFAS 157, the following table represents the Company's fair value hierarchy for its financial assets (cash equivalents and marketable securities) measured at fair value on a recurring basis as of December 31, 2008 (in thousands):

		Fair Value Measurements at Reporting Date Using		
Description	December 31, 2008	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds	$ 10,933	$ 10,933	$ —	$ —
Commercial paper	26,339	—	26,339	—
U.S. corporate debt	4,928	—	4,928	—
U.S. government sponsored enterprise issues	42,888	—	42,888	—
	$ 85,088	$ 10,933	$ 74,155	$ —

During the year ended December 31, 2008, there were no significant changes to the valuation models used for purposes of determining the fair value of Level 2 assets, and there were no assets characterized as Level 3.

5. Property and Equipment, Net

Property and equipment consisted of the following (in thousands):

	December 31,	
	2008	2007
Computer equipment and software	$ 760	$ 782
Furniture and fixtures	759	736
Leasehold improvements	113	113
	1,632	1,631
Less accumulated depreciation and amortization	(1,632)	(533)
Property and equipment, net	$ —	$1,098

6. Commitments and Contingencies

Operating Lease. In June 2007, the Company entered into an operating lease for new corporate facilities located in South San Francisco, California. The lease for the new corporate facilities is non-cancelable and has a five-year term with a total obligation of $3.6 million. The Company moved into the new corporate facilities in October 2007. The Company may extend the lease term for an additional five year period following expiration of the original five-year term. The lease provides for periodic rent increases based upon previously negotiated or consumer price indexed adjustments, or in the case of an extension, market adjusted rates. Rent expense is recognized on a straight line basis over the term of the lease. As of December 31, 2008, the Company maintained a security deposit of $0.8 million required under conditions of the lease, which was recorded as a noncurrent asset on the Company's balance sheet.

Aggregate future minimum lease payments under the operating lease are as follows (in thousands):

Year Ending December 31,	
2009	$ 707
2010	728
2011	750
2012	640
	$2,825

Rent expense, net of sublease income, was approximately $719,000, $774,000 and $474,000 for the years ended December 31, 2008, 2007 and 2006, respectively.

Legal Proceedings. From time to time, the Company may be involved in a number of judicial, regulatory and arbitration matters arising in connection with its business, including initiated and settled litigation involving one of its former officers as described below. Currently, the Company is not a party to any litigation, and is not aware of any pending or threatened litigation against it that the Company believes would adversely affect its business, operating results or financial condition. The Company may in the future become involved in additional legal proceedings in the ordinary course of its business, including litigation that could be material to the Company's business.

In accordance with SFAS No. 5, *Accounting for Contingencies*, the Company reviews the need for any loss contingency reserves and establishes reserves when, in the opinion of management, it is probable that such litigation would result in a liability, and the amount of loss, if any, can be reasonably estimated. Generally, with respect to matters the Company is involved in, in view of the inherent difficulty of predicting the outcome of these matters, particularly in cases in which claimants seek substantial or indeterminate damages, it is not possible to determine whether a liability has been incurred or to reasonably estimate the ultimate or minimum amount of that liability until the case is close to resolution, in which case no reserve is established until that time.

On April 1, 2008, a former officer of the Company filed a complaint in San Mateo County Superior Court against the Company alleging three separate breaches of contract and/or failure to take certain actions with respect to Company securities held by the former officer. Effective on or about December 12, 2008, the Company and the former officer of Novacea that filed the complaint executed a settlement agreement and general release settling all claims of the former officer. The Company subsequently paid the former officer $950,000 in December 2008 in connection with the settlement.

7. Collaboration Agreements

Schering Corporation. In May 2007, the Company signed an exclusive worldwide License, Development and Commercialization Agreement with Schering Corporation, a wholly-owned subsidiary of Schering-Plough

Corporation ("Schering"), for the development and commercialization of Asentar™ (the "Collaboration Agreement") in androgen-independent prostate cancer, or AIPC, earlier stages of prostate cancer, and other types of cancers, including pancreatic cancer.

The Collaboration Agreement became effective on June 26, 2007, and in July 2007, the Company received upfront payments from Schering totaling $60 million, of which $35 million was reimbursement for past research and development expenses and $25 million was a license fee. Additionally, in July 2007, pursuant to the terms of the Collaboration Agreement, the Company sold to Schering 298,173 shares of its common stock for cash at $40.25 per share, for an aggregate purchase price of $12.0 million under a Common Stock Purchase Agreement.

In November 2007, the Company and Schering terminated the ASCENT-2 Phase 3 clinical trial of Asentar™ for treatment of AIPC due to an unexplained imbalance of deaths between the treatment and control arms of the trial. At that time, the Company also suspended enrollment in its Phase 2 clinical trial of Asentar™ for the treatment of advanced pancreatic cancer and in each of the other ongoing investigator-sponsored trials involving the use of Asentar™.

On April 4, 2008, Schering delivered written notice (the "Termination Letter") of Schering's termination of the Collaboration Agreement as of that date. Schering elected to terminate the Collaboration Agreement based on Schering's determination, related to the termination of the ASCENT-2 Phase 3 clinical trial, that there had been a technical failure related to Asentar™.

According to the Termination Letter, the termination was effective immediately upon the Company's receipt of the Termination Letter. Upon termination of the Collaboration Agreement, the licenses and other rights granted by the Company to Schering pursuant to the Collaboration Agreement terminated and Schering became responsible for conducting an orderly wind-down of all ongoing development activities with respect to Asentar™ and making all payments due to the Company and any other third parties with respect to Asentar™, as per the terms of the Collaboration Agreement. In August 2008, the Company and Schering agreed that Schering would make a payment of $5.7 million, representing reimbursement for the Company's research and development efforts on Asentar™ of $4.3 million for the first quarter of 2008 and of $1.4 million for the second quarter of 2008. Following receipt of the $5.7 million payment in September 2008, the Company is no longer entitled to receive any future reimbursement from Schering under the Collaboration Agreement for its remaining activities on Asentar™.

During 2008, the Company recorded revenue under the agreement with Schering of $60.5 million, which was comprised of $54.8 million recognized in connection with the upfront payment ($2.4 million during the three months ended March 31, 2008 prior to the termination of the agreement and $52.4 million during the three months ended June 30, 2008 as a result of the termination) and $5.7 million as reimbursement for the Company's research and development efforts on Asentar™. Revenue from reimbursement for the Company's R&D efforts on Asentar™ was recognized as the related costs were incurred. All payments received from Schering are non-refundable.

Oregon Health & Science University. In June 2001, the Company entered into an exclusive, worldwide license with Oregon Health & Science University ("OHSU") to utilize specific technology under patent rights and know-how related to the use of calcitriol and its analogs. In January 2009, Novacea terminated its OHSU license related to Asentar™, and returned the rights to the product candidate to the licensor. As a result, the Company does not expect to pay any future amounts pursuant to this agreement.

University of Pittsburgh. In July 2002, Novacea acquired an exclusive, worldwide license from the University of Pittsburgh of the Commonwealth System of Higher Education, or University of Pittsburgh, to utilize specific technology under certain patent rights and know-how related to the use of calcitriol, and its derivatives and analogs, with certain chemotherapies. In January 2009, Novacea terminated its University of Pittsburgh license related to Asentar™, and returned the rights to the product candidate to the licensor. As a result, the Company does not expect to pay any future amounts pursuant to this agreement.

KuDOS Pharmaceuticals Limited. In April 2007, the Company terminated the December 2003 license agreement under which it licensed KuDOS' North American rights to AQ4N and entered into a worldwide license agreement directly with the primary licensor to KuDOS, BTG International Limited. Also in April 2007, the Company entered into an assignment of KuDOS' ownership of rights, title and interests in patents and know-how related to AQ4N. In January 2009, Novacea terminated its license with BTG International Limited related to AQ4N, and returned the rights to the product candidate to the licensor. As a result, the Company does not expect to pay any future amounts pursuant to this agreement.

BTG International Limited. In April 2007, the Company entered into a novation and license agreement with BTG International Limited, or BTG, the primary licensor to KuDOS regarding AQ4N. The Company acquired the worldwide exclusive rights to patents and know-how for the development, manufacture and use of AQ4N for the diagnosis, treatment and prevention of human diseases. In May 2007, the Company paid BTG £700,000, or approximately $1.4 million, as an up-front payment, which was recorded as a research and development expense. Under the terms and conditions of the agreement, the Company was obligated to pay BTG approximately £50,000 (approximately $0.1 million) per year beginning in 2008 until the Company receives regulatory approval for AQ4N. As of December 31, 2008, the only payments that the Company has made to BTG are the upfront payment of $1.4 million in May 2007 and the 2008 annual license fee of $0.1 million in January 2008. In January 2009, Novacea terminated its license with BTG related to AQ4N, and returned the rights to the product candidate to the licensor. Under the termination provisions of the BTG license, Novacea was obligated and made a payment of approximately $0.3 million in January 2009. The Company does not expect to pay any other future amounts pursuant to this agreement.

8. Convertible Preferred Stock and Stockholders' Equity

Convertible Preferred Stock

On January 13, 2006, the Company sold 7,201 shares of Series C convertible preferred stock to a number of existing holders of its preferred stock at a price of $43.75 per share, for net proceeds of approximately $0.3 million.

Immediately prior to the completion of the Company's initial public offering of 1,250,000 shares of its common stock, which occurred on May 15, 2006, all of the shares of convertible preferred stock outstanding converted into 2,847,914 shares of common stock.

Stock Option Plans

2006 Incentive Award Plan

In March 2006, the Company's board of directors adopted the 2006 Incentive Award Plan (the "2006 Plan"), which was approved by the Company's stockholders in April 2006. The 2006 Plan is intended to serve as the successor equity incentive program to the Amended 2001 Stock Option Plan (the "2001 Plan"). The 2006 Plan became effective upon the completion of the Company's initial public offering, at which time options could no longer be granted under the 2001 Plan, and the 2006 Plan will terminate on the earlier of (i) ten years after its approval by the Company's stockholders or (ii) when the Company's compensation committee, with the approval of the Company's board of directors, terminates the 2006 Plan. The 2006 Plan provides for the granting of incentive stock options, non-qualified stock options, restricted stock, performance share awards, performance stock units, dividend equivalents, restricted stock units, stock payments, deferred stock, performance-based awards and stock appreciation rights. In the years ended December 31, 2008, 2007 and 2006, the Company granted both non-qualified and incentive stock options under the 2006 Plan. The employee stock options generally vest over four years, are exercisable over a period not to exceed the contractual term of ten years from the date the stock options are issued and are granted at prices equal to the fair value of the Company's common stock on the grant date. Stock option and restricted stock units exercises are settled with newly issued common stock from the 2006 Plan's previously authorized and available pool of shares. A total of 2,500,000 shares of

common stock have been authorized for issuance pursuant to the 2006 Plan, plus the number of shares of the Company's common stock available for issuance under the 2001 Plan that are not subject to outstanding options, as of the effective date of the 2006 Plan. In addition, the number of shares of common stock reserved for issuance under the 2006 Plan will increase automatically on the first day of each fiscal year, beginning in 2007, by a number of shares equal to the least of: (i) 4.5% of shares of the Company's common stock outstanding on a fully diluted basis on such date; (ii) 2,000,000 shares; or (iii) a smaller number determined by the Company's board of directors. This provision resulted in an additional 258,344 and 264,187 of the Company's common stock becoming available for issuance on January 1, 2009 and January 1, 2008, respectively under the 2006 Plan.

The Company's 2006 Plan provides for grants of restricted stock units to employees as part of the Company's long-term incentive compensation program. During the years ended December 31, 2008 and 2007, the Company's board of directors approved grants totaling 14,000 and 131,400 restricted stock units, respectively, to its employees, including executive officers. Restricted stock units have no exercise price, are valued using the closing market price on the date of grant and vest as determined by the board of directors, typically in annual tranches over a two- or three-year period at different rates. Restricted stock units granted under the 2006 Plan expire no more than ten years after the date of grant. At December 31, 2008, 38,639 restricted stock units remain unvested and outstanding.

At December 31, 2008 and 2007, a total of 1,085,558 and 821,370 shares of common stock, respectively, had been authorized for issuance under the 2006 Plan.

2001 Stock Option Plan

In 2001, the Company's board of directors and stockholders adopted the 2001 Plan. This plan provided for the granting of incentive and non-statutory stock options to employees, officers, directors, and non-employees of the Company. Incentive stock options may be granted with exercise prices of not less than fair value, and non-statutory stock options may be granted with an exercise price of not less than 85% of the fair value of the common stock on the date of grant. Stock options granted to a stockholder owning more than 10% of voting stock of the Company must have an exercise price of not less than 110% of the fair value of the common stock on the date of grant. In the years ended December 31, 2006 and 2005, the Company granted both non-qualified and incentive stock options under the 2001 Plan. The employee stock options generally vest over four years, are exercisable over a period not to exceed the contractual term of ten years from the date the stock options are issued and are granted at prices equal to the fair value of our common stock on the grant date. Stock option exercises were settled with newly issued common stock from the 2001 and 2006 Plans' previously authorized and available pool of shares. At December 31, 2008, there are no shares available for future grant under this plan.

2006 401(k) Plan

The Company maintains a 401(k) Plan that is a defined contribution plan intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended. All employees who are 21 years of age or older and have been employed by the Company for at least 1 month are eligible to participate. The Company's 401(k) Plan is a discretionary contribution plan, whereby participants may voluntarily make pre-tax contributions to the 401(k) plan of up to a maximum statutory limit. The 401(k) plan provides for discretionary matching contributions in the form of shares of common stock or cash. Under the 401(k) Plan, each employee is fully vested in his or her deferred salary contributions. For the plan years ended December 31, 2008, 2007 and 2006, the Company's board approved a 50% matching contribution on pretax deferrals made by each participant. For the years ended December 31, 2008, 2007 and 2006, the Company recorded compensation expense of $40,000, $0.3 million and $0.3 million, respectively, for the Company's 50% common stock matching contribution.

Stock-based Compensation

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123R, *Share-Based Payment—An Amendment of FASB Statements No. 123 and 95*. This revised standard addresses the accounting for stock-based payment transactions in which a company receives employee services in exchange for either equity instruments of the company or liabilities that are based on the fair value of the company's equity instruments or that may be settled by the compensation transactions using the intrinsic-value method in accordance with Accounting Principles Board Opinion ("APB") No. 25, *Accounting for Stock Issued to Employees*. Instead, companies are required to account for such transactions using a fair-value method and recognize the expense in the statements of operations.

The components of the stock-based compensation for employees and non-employees recognized in the Company's statements of operations are as follows (in thousands):

	Years ended December 31,		
	2008	2007	2006
Research and development	$ 211	$1,145	$ 404
General and administrative	2,674	3,485	1,343
Total stock based compensation	$2,885	$4,630	$1,747

Employee Stock-Based Awards Granted Prior to January 1, 2006

Compensation costs for employee stock options granted prior to January 1, 2006, the date the Company adopted SFAS No. 123R, were accounted for using the intrinsic-value method of accounting as prescribed by APB No. 25, as permitted by SFAS No. 123, *Accounting for Stock-Based Compensation,* and as amended by SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure*. Under APB No. 25, compensation expense for employee stock options is based on the excess, if any, of the fair value of the Company's common stock over the option exercise price on the measurement date, which is typically the date of grant.

The Company determined in 2005 that, for accounting purposes, the estimated fair value of the Company's common stock was greater than the exercise price for certain options granted to employees during 2005. The Company recorded deferred stock-based employee compensation of $2.6 million for these options as a component of stockholders' equity, which is being amortized as a non-cash expense, as adjusted by unvested options cancelled as a result of employee terminations, over the vesting period of the applicable option, which is generally four years, on a straight line basis. As such, for the year ended December 31, 2008, the Company recorded amortization expense of $105,000 and reversed $90,000 of deferred stock-based compensation related to unvested options cancelled as a result of employee terminations. The Company expects to amortize the remaining $75,000 deferred compensation to expense during 2009.

Employee Stock-Based Awards Granted On or Subsequent to January 1, 2006

Compensation cost for employee stock-based awards granted on or after January 1, 2006, the date the Company adopted SFAS No. 123R, is based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R and is recognized over the vesting period of the applicable award on a straight-line basis. During the years ended December 31, 2008 and 2007, the Company issued employee stock-based awards in the form of stock options and restricted stock units. During the year ended December 31, 2006, the Company issued employee stock-based awards in the form of stock options.

The estimated grant date fair values of the employee stock options were calculated using the Black-Scholes valuation model, based on the following assumptions:

	Years ended December 31,		
	2008	2007	2006
Stock Option Plans			
Weighted-average expected term	6.1 years	6.1 years	6.1 years
Expected volatility	67.1%	70.7%	72.4%
Risk-free interest rate	2.9%	4.0%	4.8%
Dividend yield	0.0%	0.0%	0.0%

Weighted-Average Expected Term. Under the Company's Stock Option plans, the expected term of options granted is determined using the "shortcut" method, as illustrated in the Securities and Exchange Commission's Staff Accounting Bulletin ("SAB") No. 107. Under this approach, the expected term is presumed to be the average of the vesting term and the contractual term of the option.

Volatility. Since the Company is a reasonably new public entity with limited historical data regarding the volatility of its common stock, the expected volatility used for 2008 and 2007 is based on volatility of similar entities, referred to as "guideline" companies. In evaluating similarity, the Company considered factors such as industry, stage of life cycle and size.

Risk-Free Interest Rate. The risk-free rate that the Company uses in the Black-Scholes option valuation model is based on U.S. Treasury zero-coupon issues with remaining terms similar to the expected term on the options or purchase rights.

Dividend Yield. The Company has never declared or paid any cash dividends and does not plan to pay cash dividends in the foreseeable future, and, therefore, used an expected dividend yield of zero in the valuation model.

Forfeitures. SFAS No. 123R also requires the Company to estimate forfeitures at the time of grant, and revise those estimates in subsequent periods if actual forfeitures differ from those estimates. The Company uses historical data to estimate pre-vesting option forfeitures and records stock-based compensation expense only for those awards that are expected to vest. All share-based payment awards are amortized on a straight-line basis over the requisite service periods of the awards, which are generally the vesting periods. If the Company's actual forfeiture rate is materially different from this estimate, stock-based compensation expense could be significantly different from what the Company has recorded in the current period.

As of December 31, 2008, there was $0.9 million of total unrecognized compensation costs, net of estimated forfeitures, related to non-vested employee stock option awards granted after January 1, 2006, which is expected to be recognized over a weighted average period of two years. As of December 31, 2008, there was $0.7 million of total unrecognized compensation, net of estimated forfeitures, related to non-vested restricted stock units granted to employees after January 1, 2006, which is expected to be recognized over a weighted average period of two years.

Stock Option and Restricted Stock Unit Activity

The following table summarizes option and restricted stock unit activity under the Company's plans including stock options granted to non-employees:

	Shares Available for Grant	Options Outstanding	Option Weighted-Average Exercise Price per Share
		(in thousands, except per share amounts)	
Balance at December 31, 2005	65	352	7.80
Additional shares authorized	500	—	—
Options granted	(186)	186	31.90
Options exercised	—	(44)	9.15
Options canceled	31	(31)	12.25
Balance at December 31, 2006	410	463	17.11
Additional shares authorized	230	—	—
Options granted	(587)	587	23.76
Restricted stock units granted	(131)	—	—
Options exercised	—	(150)	7.93
Options canceled or forfeited	218	(218)	32.70
Restricted stock units cancelled	20	—	—
Balance at December 31, 2007	160	682	19.96
Additional shares authorized	264	—	—
Options granted	(101)	101	14.01
Restricted stock units granted	(14)	—	—
Options exercised	—	(49)	6.43
Options canceled	216	(216)	21.25
Restricted stock units cancelled	39	—	—
Balance at December 31, 2008	564	518	19.63

The total intrinsic value of stock options exercised during the years ended December 31, 2008, 2007 and 2006 was $253,000, $348,000, and $367,000, respectively. The amount of cash received from exercise of stock options during the years ended December 31, 2008, 2007 and 2006 was $316,000, $1,189,000, and $410,000, respectively. At December 31, 2008, the aggregate intrinsic value of the stock options outstanding was $38,000. The weighted-average grant-date fair value of stock options granted during the years ended December 31, 2008, 2007 and 2006 was $0.9 million, $9.5 million and $4.0 million, respectively.

Restricted stock units and stock options granted to certain executive officers of the Company contained an accelerated vesting feature, which was reached upon effective date of the Collaboration Agreement with Schering in June 2007 and resulted in additional stock based compensation of $0.6 million recorded in the year ended December 31, 2007. The accelerated vesting feature of restricted stock units and stock options was also reached upon termination of certain executive officers of the Company in connection with its 2008 restructuring activities described in Note 9 and resulted in additional stock based compensation of $0.5 million recorded in the year ended December 31, 2008.

At December 31, 2008, 311,000 of the outstanding options to purchase shares of common stock of the Company were exercisable at a weighted average price per share of $22.15. The options outstanding as of December 31, 2008 are summarized in the following table:

Range of Exercise prices	Number of Options Outstanding		Number of Options Vested	Weighted-Average Remaining Contractual Life
	(in thousands)			*(in years)*
$ 6.48–$ 9.63	44		44	5.40
$14.00–$15.15	292		102	8.99
$26.25–$29.50	53		43	7.90
$30.85–$32.50	125		120	7.63
$34.10–$39.50	4		2	8.21
	518		311	

Options granted under the Amended 2001 Stock Option Plan may be exercised prior to vesting, with the underlying shares subject to the Company's right of repurchase, which lapses over the vesting term. In accordance with SFAS No. 123R, the shares purchased by employees pursuant to the early exercise of stock options are not deemed to be issued until those shares vest. Therefore, cash received in exchange for exercised and unvested shares related to stock options granted after that date is recorded as a liability for early exercise of stock options on the accompanying balance sheets, and will be transferred into common stock and additional paid-in capital as the shares vest. In addition to the options outstanding as reflected in the above tables, at December 31, 2008 and December 31, 2007, there were 1,447 and 4,181 shares of common stock subject to repurchase at prices ranging from of $6.48 to $9.63 per share under option grants made after March 21, 2002, for which the Company recorded $14,000 and $39,000, respectively, as liabilities. Such shares will be reflected as shares outstanding when the shares vest.

Modification of Employee Stock-Based Awards

On December 13, 2006, the Company entered into a General Release and Separation Agreement (the "Separation Agreement") with its former Chief Executive Officer, which agreement was effective December 20, 2006. In the year ended December 31, 2006, the Company recorded compensation cost of $0.9 million for payments and benefits received by the former Chief Executive Officer pursuant to his Separation Agreement, equal to (i) several cash payments in the total amount of $0.5 million paid over the year ended December 31, 2007, and (ii) stock-based compensation cost of $0.4 million resulting from the acceleration of vesting terms associated with options outstanding to purchase 16,025 shares of common stock. The former Chief Executive Officer exercised his vested stock options before December 31, 2007.

During the year ended December 31, 2008, in connection with its restructuring activities described in Note 9, the Company modified stock option awards of certain of its executive officers. The modification resulted in additional expense of $0.3 million recorded in year ended December 31, 2008. The Company accounted for the modifications of stock option awards in 2006 and 2008 in accordance with SFAS 123R.

9. Restructuring

On May 8, 2008, the Company committed to a restructuring plan to reduce its spending while maintaining the capabilities needed to conduct wind-down and other activities related to its product candidates, Asentar™ and AQ4N, to maintain the operations of the Company, and to evaluate potential strategic alternatives. The plan reduced the Company's workforce by approximately 27 people, to nine remaining employees as of December 31, 2008. Certain employees subject to the workforce reduction plan in 2008 were eligible for one-time retention bonus and severance pay of $1.3 million in total upon signing a separation and release agreement with the Company, all of which was expensed and paid in 2008.

On May 12, 2008, the Company adopted retention bonus and severance payment arrangements, pursuant to which it agreed to make retention and severance payments to those non-executive employees who remain employed by the Company following the workforce reduction, in accordance with the terms and conditions of retention bonus and severance payment arrangements, to assist the Company with final wind-down activities related to the clinical programs, to maintain operations and to evaluate potential strategic alternatives. The payment of the retention bonus and severance was contingent upon the completion of a defined transaction by the Company, such as the Merger with TPI completed on January 30, 2009, and was subject to continued employment through that date, or upon earlier termination by the Company of the non-executive employee. Certain non-executive employees who were terminated during 2008 received retention bonuses and severance payments of $1.0 million in total on their termination dates, which was expensed in 2008. Upon completion of the merger with TPI on January 30, 2009, the Company paid retention bonuses and severance payments to non-executive employees totaling $0.6 million. The expense for these retention bonuses and severance payments will be recorded upon completion of the merger in January 2009.

Executive officers who remained with the Company following the workforce reduction in accordance with the terms and conditions of the retention bonus arrangements were also eligible to receive retention payments. The payment of retention bonuses was contingent upon the completion of a defined transaction by the Company, such as the Merger with TPI completed on January 30, 2009, and was subject to the employee's continued employment through that date, or upon earlier termination by the Company of the executive officer. Two executive officers who were terminated as of October 1, 2008 received retention payments of $0.3 million in total on their termination date, which was expensed in 2008. Upon completion of the merger with TPI on January 30, 2009, the Company paid retention payments to two executive officers totaling $0.4 million. Additionally, in accordance with the terms of severance payment arrangements, severance payments of approximately $1.8 million will be made to four Novacea executive officers in 2009 related to completion of the Merger with TPI and their termination of employment. The expense for these retention and severance payments will be recorded as a non-restructuring expense upon completion of the merger in January 2009.

Further, in the three months ended June 30, 2008, the Company recorded a charge of $0.1 million related to the write-off of the carrying value of its license agreement with the University of Pittsburgh. The University of Pittsburgh License Agreement is specific to the use of Asentar™ in combination with certain chemotherapies. The Company did not anticipate any future use of such license. In the three months ended September 30, 2008 the Company recorded a charge of $0.1 million related to the write-off of the carrying value of its license agreement with BTG. In the three months ended December 31, 2008, the Company recorded an additional charge of $0.2 million related to the termination of its license agreement with BTG. The BTG license is specific to development, manufacture, and commercialization of AQ4N. The Company does not anticipate any future use of such license.

The Company records restructuring activities in accordance with SFAS 146, "*Accounting for Costs Associated with Exit or Disposal Activities*." The following tables summarize the charges recorded during the year ended December 31, 2008 related to the restructuring plan by type of activity (no such charges were recorded in the comparable prior year periods):

Year ended December 31, 2008	Separation costs	Asset impairments	Total
Research & development	$ 0.8	$ 0.4	$1.2
General & administrative	0.5	—	0.5
	$ 1.3	$ 0.4	$1.7

Since the inception of its restructuring plan through December 31, 2008, the Company has incurred $1.7 million of the estimated $2.7 million of charges expected to be incurred. The charges incurred through December 31, 2008 include $1.3 million of separation costs and $0.4 million of asset impairments.

	Separation costs	Asset impairments	Total
Restructuring reserves as of January 1, 2008	$ —	$ —	$ —
Expense	$ 1.3	$ 0.4	$ 1.7
Payments	$ (1.3)	$ (0.1)	$(1.4)
Restructuring reserves as of December 31, 2008	$ —	$ 0.3	$ 0.3

10. Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets are as follows (in thousands):

	December 31,	
	2008	2007
Deferred tax assets:		
Federal and state net operating losses	$ 29,649	$ 33,057
Deferred revenues	—	12,741
Research credits	2,653	2,596
Stock-based compensation	1,412	1,553
Other	1,247	523
Total deferred tax assets	34,961	50,470
Valuation allowance	(34,961)	(50,470)
Net deferred tax assets	$ —	$ —

Realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The valuation allowance decreased by $15.5 million and increased by $13.1 million for the years ended December 31, 2008 and 2007, respectively.

As of December 31, 2008, the Company had net operating loss carry-forwards for federal income tax purposes of approximately $78.3 million and research credits of approximately $2.2 million, which will expire beginning in the year 2021. The Company also had state net operating loss carry-forwards of approximately $78.1 million, which expire beginning in 2014. The Company also had state research credits of approximately $2.1 million, which have no expiration date. Certain amounts included in these carry-forwards will be recorded to equity, rather than a benefit to income tax expense, when they reduce cash taxes payable.

Utilization of the net operating loss carry-forwards and credits may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. Such limitations may also result form the change in ownership resulting from the Company's merger with TPI. The annual limitation may result in the expiration of net operating loss carry-forwards and credits before utilization.

The Company adopted FASB Interpretation 48, Accounting for Uncertainty in Income Taxes (FIN 48), on January 1, 2007. As of the date of adoption, the Company recorded a $1.2 million reduction to deferred tax assets and the associated valuation allowance for unrecognized tax benefits. If the unrecognized tax benefits were

recognized, there would be no impact on the effective tax rate. The Company's policy is to record interest and penalties in tax expense in the statements of operations. The Company does not expect any material changes to the unrecognized tax benefit during 2009.

The following table summarizes the activity related to the Company's unrecognized tax benefits (in thousands):

	2008	2007
Balance as of January 1	$1,335	$1,250
Decreases related to current year tax positions	(38)	—
Increases related to current year tax positions	15	85
Balance as of December 31	$1,312	$1,335

The Company files U.S. and state income tax returns with varying statutes of limitations. The tax years from inception in 2001 forward remain open to examination due to the carryover of unused net operating losses and tax credits.

As discussed in Note 7 to the financial statements, the Company received non-refundable upfront payments from Schering totaling $60 million in July 2007. For financial reporting purposes, $5.2 million was recognized as revenue during 2007 and $54.8 million was recorded as deferred revenue at December 31, 2007, and subsequently recognized as revenue during the first half of 2008. For income tax purposes, the Company elected the "full inclusion" method of income tax accounting for recognition of all its non-refundable upfront payments, as provided by the Internal Revenue Code and Revenue Procedure 2004-34, thereby recognizing the entire $60 million as taxable income for the year ended December 31, 2007. Further, for 2007 the Company utilized its net operating loss carry-forwards to offset all regular taxable income and was not subject to federal alternative minimum tax because of an exception available to it under the Internal Revenue Code, given its status as a "small corporation" for that year.

11. Supplemental Financial Information

Quarterly Results of Operations (Unaudited)

The following table presents the Novacea unaudited statements of operations data for each of the eight quarters in the period ended December 31, 2008. The information has been presented on the same basis as the audited financial statements and all necessary adjustments, consisting only of normal recurring adjustments, have been included in the amounts below to present fairly the unaudited quarterly results when read in conjunction with the audited financial statements and related notes. All per share amounts reflect a 1-for-5 reverse stock split effective January 2009. The operating results for any quarter should not be relied upon as necessarily indicative of results for any future period.

Unaudited Quarterly Results of Operations
(in thousands, except per share amounts)

	Three Months Ended							
	Dec 31, 2008	Sept 30, 2008	June 30, 2008	March 31, 2008	Dec 31, 2007	Sept 30, 2007	June 30, 2007	March 31, 2007
Collaboration revenue	$ —	$ 93	$53,739	$ 6,789	$ 7,981	$ 8,566	$ 136	$ —
Operating expenses:								
Research and development	118	1,932	4,124	5,507	7,507	9,552	11,444	7,552
General and administrative	4,634	5,612	3,210	3,440	4,386	3,634	5,384	3,875
Total operating expenses	4,752	7,544	7,334	8,947	11,893	13,186	16,828	11,427
Income (loss) from operations	(4,752)	(7,451)	46,405	(2,158)	(3,912)	(4,620)	(16,692)	(11,427)
Interest and other income, net	503	570	707	998	1,284	1,383	665	788
Net income (loss)	$(4,249)	$(6,881)	$47,112	$ (1,160)	$ (2,628)	$ (3,237)	$(16,027)	$(10,639)
Net income (loss) per share:								
Basic	$ (0.82)	$ (1.33)	$ 9.13	$ (0.23)	$ (0.52)	$ (0.65)	$ (3.44)	$ (2.30)
Diluted	$ (0.82)	$ (1.33)	$ 9.08	$ (0.23)	$ (0.52)	$ (0.65)	$ (3.44)	$ (2.30)
Shares used in computing net income (loss) per share:								
Basic	5,183	5,174	5,160	5,136	5,052	4,985	4,661	4,619
Diluted	5,183	5,174	5,190	5,136	5,052	4,985	4,661	4,619

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A(T). Controls and Procedures

(a) Evaluation of disclosure controls and procedures

Our management evaluated, with the participation and under the supervision of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded, that our disclosure controls and procedures are effective to ensure that information we are required to disclose in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission, or SEC, rules and forms, and that such information is accumulated and communicated to management as appropriate to allow timely decisions regarding required disclosures.

(b) Internal control over financial reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. We maintain a system of internal control that is designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Management assessed our internal control over financial reporting as of December 31, 2008, the end of our last fiscal year. Management based its assessment on criteria established in "Internal Control—Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Management's assessment included evaluation of such elements as the design and operating effectiveness of key financial reporting controls, process documentation, accounting policies and our overall control environment.

Based on our assessment, management has concluded that our internal control over financial reporting was effective as of December 31, 2008 to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles.

There have not been any changes in our internal controls over financial reporting (as such item is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our fiscal quarter ended December 31, 2008 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

This annual report does not include an attestation report of the company's independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's independent registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.

The information contained under this caption "Internal control over financial reporting" shall not be deemed to be filed with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that we specifically incorporate it by reference into such filing.

(c) Limitations on the Effectiveness of Controls

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the controls are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, our controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our control system are met.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Except as set forth below, the information required by this Item 10 is incorporated herein by reference to our Proxy Statement to be filed with the Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) to Form 10-K.

Section 16(a) Beneficial Ownership Reporting Compliance

The information regarding our Section 16 beneficial ownership reporting compliance is incorporated by reference from our definitive Proxy Statement described above, where it appears under the heading "Section 16(a) Beneficial Ownership Reporting Compliance."

Code of Business Conduct and Ethics

Our board of directors has adopted a code of business conduct and ethics. The code of business conduct applies to all of our employees, officers and directors. The full texts of our codes of business conduct and ethics are posted on our website at http://www.transcept.com under the Investor Relations section. We intend to disclose future amendments to our codes of business conduct and ethics, or certain waivers of such provisions, at the same location on our website identified above and also in public filings. The inclusion of our website address in this report does not include or incorporate by reference the information on our website into this report.

Item 11. Executive Compensation

The information required by this Item 11 is incorporated by reference to our Proxy Statement to be filed with the Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) to Form 10-K.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Except as set forth below, the information required by this Item 12 is incorporated by reference to our Proxy Statement to be filed with the Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) to Form 10-K.

The following table provides certain information with respect to all of our equity compensation plans in effect as of December 31, 2008.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans(1)
Equity compensation plans approved by stockholders	556,277(2)	$ 19.63(3)	564,094
Equity compensation plans not approved by stockholders	—	—	—
Total	556,277	$ 19.63	564,094

(1) The number of authorized shares under the 2006 Stock Plan automatically increases on January 1 of each year by a number of shares equal to the lesser of (i) 2,000,000 shares, (ii) 4.5% of the outstanding shares on

the last day of the immediately preceding fiscal year, or (iii) an amount determined by the Board of Directors.

(2) Includes 517,650 shares relating to outstanding options and 38,627 shares relating to outstanding restricted stock unit awards.

(3) Represents the weighted average exercise price of outstanding options. Restricted stock unit awards are excluded, as they do not have an exercise price.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this Item 13 is incorporated by reference to our Proxy Statement to be filed with the Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) to Form 10-K.

Item 14. Principal Accountant Fees and Services

The information required by this Item 14 is incorporated by reference to our Proxy Statement to be filed with the Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) to Form 10-K.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a)(1) Financial Statements

See Index to Financial Statements under Item 8 on page 61.

(a)(2) Financial Statement Schedules

Financial statement schedules are omitted because they are not applicable or are not required or the information required to be set forth therein is included in the Financial Statements or notes thereto.

(a)(3) Exhibits

The exhibits listed in the Exhibit Index below are filed or incorporated by reference as part of this report.

Exhibit Index

Exhibit No.	Description of Exhibit
2.1(1)	Agreement and Plan of Merger and Reorganization, dated as of August 29, 2008, by and among Novacea, Pivot Acquisition, Inc. and TPI.
2.2(1)	Amendment to Agreement and Plan of Merger and Reorganization, dated as of December 23, 2008, by and among Novacea, Pivot Acquisition, Inc. and TPI
3.1(2)	Amended and Restated Certificate of Incorporation of Transcept Pharmaceuticals, Inc.
3.2(2)	Bylaws of Transcept Pharmaceuticals, Inc., as amended.
4.1(3)	Specimen Common Stock certificate of Transcept Pharmaceuticals, Inc.
4.2(3)	Form of Preferred Stock Purchase Warrant issued to certain TPI investors as of March 21, 2005.
4.3(3)	Preferred Stock Purchase Warrant issued by TPI to Hercules Technology Growth Capital, Inc., dated as of April 13, 2006.
4.4(4)	2005 Amended and Restated Investor Rights Agreement, dated as of December 21, 2005, by and between Novacea and purchasers of Novacea Series A, Series B and Series C Preferred Stock.
10.1(4)	Novacea 2001 Stock Option Plan and forms of agreements relating thereto.
10.2(5)	Novacea 2006 Equity Incentive Plan, as amended, and forms of agreements relating thereto.
10.3(3)	TPI Amended and Restated 2002 Stock Option Plan and forms of agreements relating thereto.
10.4(6)	Form of Indemnification Agreement made by and between Novacea and each of its directors and executive officers.
10.5(4)	Agreement, dated as of August 4, 2003, by and between Novacea and Aventis Pharmaceuticals Inc.
10.6(7)	Office Lease, by and between Kashiwa Fudosan America, Inc. and Novacea, dated as of May 15, 2007.

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10.7(3)	Lease, by and between TPI and Point Richmond R&D Associates, L.P., dated as of February 22, 2006.
10.8(3)	First Amendment to Lease, by and between TPI and Point Richmond R&D Associates, L.P., dated as of June 27, 2007.
10.9(3)†	Supply Agreement, by and between TPI and Plantex USA, Inc., dated as of March 31, 2006.
10.10(3)†	Letter Agreement, by and between TPI and Plantex USA, Inc., dated as of August 6, 2008.
10.11(3)†	Packaging and Supply Agreement, by and between TPI and Anderson Packaging, Inc., dated as of September 14, 2006.
10.12(3)†	Amendment to Packaging and Supply Agreement, by and between TPI and Anderson Packaging, Inc., dated as of September 14, 2006.
10.13(3)†	Manufacturing Services Agreement, by and between TPI and Patheon Pharmaceuticals, Inc., dated as of October 6, 2006.
10.14(3)†	Amendment #1 to Manufacturing Services Agreement, by and between TPI and Patheon Pharmaceuticals, Inc., dated as of January 1, 2008.
10.15(3)†	Supply and Sublicense Agreement, by and between TPI and Mikart, Inc., dated as of January 22, 2008.
10.16(3)†	Manufacturing and Supply Agreement, by and between TPI and Mikart, Inc., dated as of August 21, 2008.
10.17(3)†	Packaging and Supply Agreement, by and between TPI and Sharp Corporation, dated as of June 16, 2008.
10.18(3)†	Supply and License Agreement, by and between TPI and SPI Pharma, Inc., dated as of June 27, 2006.
10.19(3)†	Amendment #1 to Supply and License Agreement, by and between TPI and SPI Pharma, Inc., dated as of March 14, 2008.
10.20(3)†	Supply Agreement, by and among TPI and SPI Pharma, Inc., dated as of July 23, 2007.
10.21(3)	Offer Letter dated June 4, 2008, by and between TPI and Susan L. Koppy, including Side Letter dated August 20, 2008.
10.22(3)	Offer Letter dated April 15, 2008, by and between TPI and Terrence Moore, including Side Letter dated August 20, 2008 and Side Letter dated December 23, 2008.
10.23(8)	Executive Severance Benefits Agreement by and between Edward F. Schnipper, M.D. and Novacea.
10.24(8)	Offer Letter by and between Edward F. Schnipper, M.D. and Novacea.
10.25(9)	Executive Severance Benefits Agreement by and between Edward C. Albini and Novacea.
10.26(10)	Amendment to Executive Severance Benefits Agreement by and between Edward C. Albini and Novacea.
10.27(9)	Executive Severance Benefits Agreement by and between Amar Singh and Novacea.
10.28(10)	Amendment to Executive Severance Benefits Agreement by and between Amar Singh and Novacea.
10.29(5)	Amended and Restated Director Compensation Policy.
10.30(12)	Amended and Restated Chief Executive Officer Agreement by and between John Walker and Novacea, dated as of September 19, 2007.

Exhibit No.	Description of Exhibit
10.31(13)†	License, Development and Commercialization Agreement, dated May 29, 2007, by and between Schering Corporation and Novacea.
10.32	Second Amendment to Lease, by and between Transcept and Point Richmond R&D Associates, L.P., dated as of February 20, 2009.
10.33	Lease, by and between Transcept and Point Richmond R&D Associates II, LLC, dated as of February 20, 2009.
10.34	Offer Letter dated March 4, 2009, by and between Transcept Pharmaceuticals, Inc., and Joseph Kennedy.
10.35	Change of Control and Severance Benefits Agreement by and between Transcept Pharmaceuticals, Inc., and Joseph Kennedy dated March 4, 2009.
23.1	Consent of Independent Registered Public Accounting Firm.
31.1	Certification of the Company's Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Company's Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the Company's Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(1) Incorporated by reference from the Registration Statement on Form S-4, Securities and Exchange Commission file number 333-153844, as declared effective on December 29, 2008.
(2) Incorporated by reference from the Current Report on Form 8-K filed with the Securities and Exchange Commission on February 5, 2009.
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(13) Incorporated by reference to the Current Report on Form 8-K filed on June 1, 2007.
† Confidential treatment has been granted as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

(b) Exhibits

See Exhibits listed under Item 15(a)(3) above.

(c) Financial Statement Schedules

Financial statement schedules are omitted because they are not applicable or are not required or the information required to be set forth therein is included in the Financial Statements or notes thereto.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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, in the City of Point Richmond, State of California, on the 30th day of March, 2009.

Transcept Pharmaceuticals, Inc.

By: /s/ GLENN A. OCLASSEN
Glenn A. Oclassen
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Glenn A. Oclassen and Thomas P. Soloway his true and lawful attorney-in-fact and agent, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this annual report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated opposite his/her name.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ GLENN A. OCLASSEN **Glenn A. Oclassen**	President, Chief Executive Officer, and Director *(Principal Executive Officer)*	March 30, 2009
/s/ THOMAS P. SOLOWAY **Thomas P. Soloway**	Senior Vice President, Operations and Chief Financial Officer *(Principal Financial Officer)*	March 30, 2009
/s/ MARILYN E. WORTZMAN **Marilyn E. Wortzman**	Vice President, Finance *(Principal Accounting Officer)*	March 30, 2009
/s/ CHRISTOPHER B. EHRLICH **Christopher B. Ehrlich**	Director	March 30, 2009
/s/ THOMAS D. KILEY **Thomas D. Kiley**	Director	March 30, 2009
/s/ KATHLEEN D. LAPORTE **Kathleen D. LaPorte**	Director	March 30, 2009
/s/ JAKE R. NUNN **Jake R. Nunn**	Director	March 30, 2009

Table of Contents

Signature	Title	Date
/s/ G. KIRK RAAB **G. Kirk Raab**	Chairman of the Board of Directors	March 30, 2009
/s/ FREDERICK J. RUEGSEGGER **Frederick J. Ruegsegger**	Director	March 30, 2009
/s/ CAMILLE D. SAMUELS **Camille D. Samuels**	Director	March 30, 2009
/s/ DANIEL K. TURNER III **Daniel K. Turner III**	Director	March 30, 2009
/s/ JOHN P. WALKER **John P. Walker**	Director	March 30, 2009

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† Confidential treatment has been granted as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

Exhibit 10.32

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (the "**Second Amendment**") is made and entered into as of February 9, 2009, by and between POINT RICHMOND R&D ASSOCIATES, a California limited partnership ("**Landlord**"), and TRANSCEPT PHARMACEUTICALS, INC., a Delaware corporation ("**Tenant**") with reference to the following facts:

A. Landlord and Tenant are parties to that certain lease dated as of February 22, 2006, (the "**Original Lease**"), as amended by that certain First Amendment to Lease dated as of June 27, 2007 (the "**First Amendment**") (the Original Lease as amended by the First Amendment, the "**Lease**"). Pursuant to the Lease, Landlord has leased to Tenant Suites 110 and 130 containing approximately 14,638 rentable square feet (the "**Premises**") on the ground floor of the building located at 1003 West Cutting Boulevard, Richmond, California (the "**Building**").

B. Point Richmond R&D Associates II, LLC, a California limited liability company ("**PRA II**"), as landlord, and Tenant, as tenant, are parties to that certain Lease dated as of February 9, 2009 (the "**PRII Lease**"), pursuant to which Tenant leases from PRA II, an affiliate of Landlord, the premises commonly known as Suite E (the "**PRII Premises**") located in the building commonly known as 501 Canal Boulevard, Point Richmond, California.

C. Landlord and Tenant now desire to modify and amend Section 2 of the Addendum to the Original Lease as more particularly set forth below.

NOW, THEREFORE, in consideration of the above recitals which by this reference are incorporated herein, the mutual covenants and conditions contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Scope of Second Amendment and Defined Terms. Except as expressly provided in this Second Amendment, the Lease shall remain in full force and effect. Capitalized terms used in this Second Amendment not otherwise defined herein shall have the respective meanings ascribed to them in the Lease.

2. Modification to Lease. Section 2 of the Addendum to the Original Lease is hereby deleted in its entirety and replaced with the following:

(a) If during the initial Term of this Lease, Tenant is not then in Default under this Lease or the PRII Lease, and has a demonstrable business need to expand into space consisting of at least 5,000 rentable square feet of area more than the aggregate of the Rentable Area of the Premises and the rentable area of the PRII Premises (the "Aggregate Premises"), Tenant shall have the option (the "Expansion Option") to provide Landlord at least six (6) months' notice ("Expansion Notice") of the date when Tenant requires such larger space and shall specify the amount of space (the "Expansion Space") that Tenant desires. Tenant shall have no right to provide an Expansion Notice if Tenant is not in occupancy of all of the Aggregate Premises, any part of the Aggregate Premises is sublet, or if this Lease or the PRII Lease has been assigned (other than pursuant to a

Permitted Transfer). Landlord agrees to use reasonable efforts to locate the Expansion Space in the Project or in a building owned by an affiliate of Landlord in the Richmond, Emeryville or West Berkeley area of comparable quality to the Building (e.g. Emery Station, Emery Station North, 501 Canal Boulevard and 503 Canal Boulevard) to accommodate Tenant's needs.

(b) If Landlord and Tenant have not, within six (6) months of the Expansion Notice, agreed upon Expansion Space reasonably acceptable to Tenant, Tenant shall have the right to terminate this Lease by providing Landlord one hundred eighty (180) days prior notice specifying the unequivocal termination of this Lease, and provided further that Tenant provide such termination notice within thirty (30) days of the expiration of such six (6) month period.

(c) If Landlord locates proposed Expansion Space within six (6) months' of the Expansion Notice, Landlord shall notify Tenant ("Landlord's Notice") of the location of such space and shall provide Tenant with reasonable assurances that such proposed Expansion Space can be improved in the manner and time required by this Section. Tenant shall thereafter have ten (10) business days within which to notify Landlord whether Tenant approves such proposed Expansion Space, in Tenant's reasonable discretion. If Tenant fails to respond within such ten (10) business day period, Tenant shall be deemed to have disapproved such proposed Expansion Space. If Tenant approves any such proposed Expansion Space, then Landlord and Tenant shall enter an amendment of this Lease as provided in subparagraph (e) below. Notwithstanding the foregoing, (x) the Monthly Base Rent rate payable with respect to a portion of the Expansion Space consisting of 26,895 rentable square feet (the aggregate rentable area of the Premises and the PRII Premises, referred to herein as the "Base Space") shall be equal to (i) the Monthly Base Rent payable hereunder with respect to 14,638 rentable square feet of the Base Space, plus (ii) the Monthly Base Rent payable under the PRII Lease with respect to 12,257 rentable square feet of the Base Space, and (y) the Monthly Base Rent rate payable with respect to the balance of the Expansion Space ("Balance Space") shall be the "current fair market rate" (i.e., the rate that a willing, comparable, new (i.e., non-renewal), non-equity tenant would pay, and that a willing landlord of comparable space in the local market of the Balance Space would accept at arms' length), determined in the manner set forth in subparagraph (d) below. If the balance of the Term of this Lease is less than thirty six (36) months following the commencement date for the Expansion Space, the Term of this Lease shall be automatically extended to ensure the balance of the Term is thirty six (36) months following such commencement date. If such an automatic extension of the Term is required pursuant to the terms of the immediately preceding sentence, the Monthly Base Rent shall automatically increase by three percent (3%) effective as of the date immediately following the

initial Expiration Date of this Lease, and shall increase by three percent (3%) every twelve (12) months. Landlord and Tenant acknowledge and agree that the Base Space shall include the same proportion of laboratory and office space and the same ratio of offices to cubicles as the Aggregate Premises and Landlord shall, at Landlord's sole cost and expense, provide Tenant a "turn-key" buildout with respect to the Base Space reasonably comparable to the original Aggregate Premises leased by Tenant hereunder and pursuant to the PRII Lease. Monthly Base Rent and all additional Rent payable for the Expansion Space shall be payable in monthly installments in accordance with the terms and conditions of this Lease, provided that Tenant's Share shall be appropriately adjusted. Landlord shall provide Tenant with a tenant improvement allowance consistent with the determination of the fair market rent for the Balance Space. Subject to Landlord's reasonable approval of Tenant's financial condition, Landlord shall reasonably cooperate with Tenant to provide additional tenant improvement allowance which additional allowance would be amortized over the remaining term and repaid through an increase of Base Rent payable for the Expansion Space. The term for the Expansion Space shall commence on the later of (x) the date provided in Landlord's Notice (but no earlier than the date specified in Tenant's Expansion Notice) or (y) unless waived by Tenant in writing, the date by which all of the following have occurred: (i) Landlord shall have Substantially Completed the design, construction and installation of tenant improvements in the Expansion Space as hereinafter provided; (ii) Landlord has delivered possession of the Expansion Space to Tenant; and (iii) Landlord has obtained approval of occupancy of the Expansion Space from the applicable governmental authorities. Landlord and Tenant acknowledge that the commencement date for the term for the Expansion Space shall be memorialized by amendment pursuant to subparagraph (e) below.

(d) If Tenant properly exercises the Expansion Option, the initial Monthly Base Rent applicable to the Balance Space shall be determined in the following manner. Landlord shall advise Tenant in writing of Landlord's good faith, reasonable determination of the fair market rent (i.e., the rate that a willing, comparable, new (i.e., non-renewal), non-equity tenant would pay, and that a willing landlord of comparable space in the local market of the Balance Space would accept at arms' length) for the Balance Space ("Landlord's Fair Market Proposal") no less than forty five (45) days prior to the commencement of the term for the Expansion Space. Tenant's failure to disapprove in writing Landlord's Fair Market Proposal within five (5) days shall be deemed to be a disapproval of Landlord's Fair Market Proposal. In the event Tenant disapproves in writing (or is deemed to have disapproved) Landlord's Fair Market Proposal, Landlord and Tenant shall attempt in good faith to agree upon the fair market rent within fifteen (15) days of Tenant's notice of or deemed disapproval. If after such fifteen (15) day period, Landlord and Tenant have not agreed in writing as to the fair market rent, the parties shall determine the fair market rent in accordance with the procedure set forth below.

(1) Within five (5) days after the expiration of such fifteen (15) day period, Tenant shall notify Landlord of the name and address of the broker appointed to represent Tenant ("Tenant's Broker"). Tenant's Broker shall be licensed in the State of California, engaged in the brokerage business in the San Francisco-East Bay commercial real estate market for at least the immediately preceding five (5) years, and familiar with the real estate market in the Richmond, Berkeley and Emeryville area. Within ten (10) days of the appointment of Tenant's Broker, Tenant shall advise Landlord in writing of Tenant's Broker's good faith, reasonable determination of the fair market rent for the Balance Space as of the commencement of the term for the Expansion Space ("Tenant's Broker's Fair Market Proposal"). Landlord shall have ten (10) days after receipt of Tenant's Broker's Fair Market Proposal within which to approve or disapprove Tenant's Broker's Fair Market Proposal. In the event Landlord disapproves in writing Tenant's Broker's Fair Market Proposal, Landlord and Tenant shall attempt in good faith to agree upon the fair market rent within ten (10) days of Landlord's notice of disapproval. If after such ten (10) day period, Landlord and Tenant have not agreed in writing as to the fair market rent, the parties shall determine the fair market rent in accordance with the procedure set forth below.

(2) If Landlord and Tenant are unable to agree upon the fair market rent within such ten (10) day period, Landlord and Tenant shall, within five (5) days thereafter, appoint a second broker meeting the qualifications set forth above with the added qualification that such second broker shall not have previously acted for either Landlord or Tenant. Within ten (10) days following the appointment of the second broker, the second broker shall deliver his or her written determination of the fair market rent to Landlord and Tenant. If the second broker's determination of fair market rent falls between Landlord's Fair Market Proposal and Tenant's Broker's Fair Market Proposal, the second broker's determination shall be deemed to be the fair market rent for purposes of determining the initial Monthly Base Rent for the Balance Space. If the second broker's determination falls outside of Landlord's Fair Market Proposal and Tenant's Broker's Fair Market Proposal, whichever of Landlord's Fair Market Proposal and Tenant's Broker's Fair Market Proposal most closely reflects the fair market rent as determined by the second broker shall be deemed to be the fair market rent for purposes of determining the initial Monthly Base Rent for the Balance Space, and such determination shall be binding on both Landlord and Tenant. Tenant shall pay all costs,

commissions and fees of Tenant's Broker in connection with such determination of the fair market rent. The costs and fees of the second broker shall be paid one-half by Landlord and one-half by Tenant.

(3) If the amount of the fair market rent has not been determined in accordance with this Section as of the commencement of the term for the Expansion Space, then Tenant shall pay the Monthly Base Rent for the Balance Space at the same rent per square foot as then provided for the Aggregate Premises under this Lease and the PRII Lease, as the case may be, until the amount of the fair market rent is determined. When such determination is made, Tenant shall pay any deficiency to Landlord, and Landlord shall pay any excess to Tenant, upon demand.

(e) Upon commencement of the term for the Expansion Space, the Expansion Space shall be considered the Premises, subject to all the terms and conditions of this Lease, except as provided herein. If Tenant is entitled to and properly exercises the Expansion Option, Landlord shall prepare a draft amendment (the "Expansion Amendment") for Tenant's approval to reflect the commencement date of the term for the Expansion Space, the expiration date of the term of the Lease (if applicable), and the changes in Monthly Base Rent, Rentable Square Footage of the Premises, Tenant's Share, an improvement allowance and other appropriate terms. Tenant shall use reasonable efforts to execute and return the Expansion Amendment to Landlord within fifteen (15) days after receipt. In the event the approved Expansion Space is located in a building owned by Landlord's affiliate, Landlord and Tenant shall in good faith execute the appropriate documents as may reasonably be required to carry out the terms and intent of this Section. Landlord or Landlord's affiliate shall reimburse Tenant's reasonable relocation costs.

(f) Tenant's Expansion Option is subject and subordinate to (i) the renewal or extension rights of any other tenants, and (ii) the expansion rights (whether such rights are designated as a right of first offer, right of first refusal, expansion option or otherwise) of any other tenants.

3. Termination of PRII Lease. In the event the PRII Lease terminates prior to the termination or expiration of the Term of the Lease for any reason other than resulting from a "Default" of Tenant under the PRII Lease (as the term is defined therein), the terms and conditions governing the Expansion Option shall immediately revert back to the original language set forth in Section 2 of the Addendum to the Original Lease.

4. Brokers. Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Second Amendment other than Cushman & Wakefield, who will be paid a commission by Landlord in connection with the PRII Lease but not in connection with this Second Amendment. Tenant agrees to indemnify and hold Landlord, its trustees, members,

principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents and the respective principals and members of any such agents harmless from any and all claims of any other brokers claiming to have represented Tenant in connection with this Second Amendment. Landlord hereby represents to Tenant that Landlord has dealt with no broker in connection with this Second Amendment. Landlord agrees to indemnify and hold Tenant, its trustees, members, principals, beneficiaries, partners, officers, directors, employees and agents and the respective principals and members of any such agents harmless from any and all claims of any brokers, claiming to have represented Landlord in connection with this Second Amendment.

5. Waiver. No failure or delay by either party to insist upon the strict performance of any term, condition or covenant of this Second Amendment or to exercise any right, power or remedy of this Second Amendment or the Lease shall constitute a waiver of the same or any other term of this Second Amendment or the Lease or preclude such party from enforcing or exercising the same or any such other term, conditions, covenant, right, power or remedy at any later time.

6. Tenant's Representation and Acknowledgment. Tenant hereby acknowledges that, to Tenant's current actual knowledge as of the date hereof, Landlord has performed all of its obligations to date with respect to the Premises, and Landlord is not in default under any of the terms of the Lease.

7. California Law. This Second Amendment shall be construed and governed by the laws of the State of California.

8. Authority. This Second Amendment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Each party warrants that each individual signing below on such party's behalf is authorized to do so by such party and to bind such party to the terms of this Second Amendment.

9. Attorneys' Fees and Costs. In the event of any action or proceeding at law or in equity between the parties to enforce any of the provisions of this Second Amendment, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees (including, but not limited to, all costs and expenses incurred in connection with any and all appeals) incurred by the prevailing party, and these costs, expenses and attorneys' fees may be included in and as part of the judgment.

10. Entire Agreement; No Amendment. This Second Amendment, together with the Lease, constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Second Amendment, and shall supersede all prior written and oral agreements concerning the subject matter. This Second Amendment may not be amended, modified nor otherwise changed in any respect, whatsoever, except by a writing duly executed by the authorized representatives of the parties. Except as amended by this Second Amendment, the Lease remains unchanged, and, as amended by this Second Amendment, the Lease is in full force and effect.

11. Severability. If any provision of this Second Amendment or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Second Amendment shall not be affected and shall be enforced to the furthest extent permitted by law.

12. Counterparts; PDF. This Second Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Second Amendment may be executed in so-called "pdf" format and each party has the right to rely upon a pdf counterpart of this Second Amendment signed by the other party to the same extent as if such party had received an original counterpart.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Second Amendment as of the day and year first above written.

TENANT:

TRANSCEPT PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ Glenn Oclassen
Glenn Oclassen, CEO

LANDLORD:

POINT RICHMOND R&D ASSOCIATES,
a California limited partnership

By: /s/ Richard K. Robbins
Richard K. Robbins
Managing General Partner

Exhibit 10.33

LEASE

BETWEEN

POINT RICHMOND R&D ASSOCIATES II, LLC,
a California limited liability company (LANDLORD)

AND

TRANSCEPT PHARMACEUTICALS, INC.,
a Delaware corporation (TENANT)

POINT RICHMOND II

Point Richmond, California

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LEASE

ARTICLE 1

BASIC LEASE PROVISIONS

1.1 BASIC LEASE PROVISIONS

In the event of any conflict between these Basic Lease Provisions and any other Lease provision, such other Lease provision shall control.

(1) BUILDING AND ADDRESS:

POINT RICHMOND R&D ASSOCIATES II, LLC
501 Canal Boulevard
Point Richmond, California

(2) LANDLORD AND ADDRESS:

POINT RICHMOND R&D ASSOCIATES II, LLC
1120 Nye Street, Suite 400
San Rafael, California 94901

Notices to Landlord shall be addressed:

POINT RICHMOND R&D ASSOCIATES II, LLC
c/o Wareham Development Corporation
1120 Nye Street, Suite 400
San Rafael, California 94901

With a copy to:

Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, California 94111
Attention: David H. Kremer

(3) TENANT AND CURRENT ADDRESS:

(a) Name:	Transcept Pharmaceuticals, Inc.
(b) State of incorporation:	Delaware

Notices to Tenant shall be addressed:

Transcept Pharmaceuticals, Inc.
1003 West Cutting Boulevard
Richmond, California 94804
Attn: Glenn Oclassen, CEO

(4) DATE OF LEASE: as of February 9, 2008

(5) LEASE TERM: Approximately fifty-two (52) months, subject to the Extension Option set forth in Section 2.5 and the Acceleration Option set forth in Section 2.6

(6) COMMENCEMENT DATE: The later of (i) February 15, 2009, and (ii) the date by which all of the following have occurred: (a) the Landlord Work (defined in the Workletter attached hereto as Exhibit B) is Substantially Complete in accordance with this Lease and the Workletter; and (b) Landlord has delivered possession of the Premises to Tenant.

(7) EXPIRATION DATE: May 31, 2013

(8) MONTHLY BASE RENT:

MONTHS OF TERM	MONTHLY	MONTHLY RATE/SF OF RENTABLE AREA
Months 1*- 6	$ 7,800	$ 1.30**
Months 7 - 12	$ 11,700	$ 1.30***
Months 13 - 24	$16,412.12	$ 1.339
Months 25 - 36	$16,904.49	$ 1.379
Months 37 - 48	$17,411.62	$ 1.420
Months 49 - Expiration Date	$17,933.97	$ 1.463

* "Month 1" will include any partial calendar month following the Commencement Date if the Commencement Date is other than the first (1st) day of a calendar month, and in the event Month 1 includes any partial calendar month, then on or before the Commencement Date, Tenant shall pay the prorated amount of Monthly Base Rent for such partial calendar month pursuant to Article 3 in addition to the Monthly Base Rent for the first full calendar month of the Term.

** During Months 1 - 6, the Monthly Base Rent shall be determined by multiplying the monthly rate per square foot of rentable area by 6,000, notwithstanding the actual Rentable Area of the Premises.

*** During Months 7 - 12, the Monthly Base Rent shall be determined by multiplying the monthly rate per square foot of rentable area by 9,000, notwithstanding the actual Rentable Area of the Premises.

(9) RENTABLE AREA OF THE PREMISES: 12,257 square feet

(10) SECURITY DEPOSIT: $17,934.00, subject to Article 5

(11) PREMISES SUITE NUMBER: Suite E

(12) TENANT'S USE OF PREMISES: General office

(13) PARKING: Up to 37 unreserved parking spaces on surface lots, and five (5) visitor parking spaces reserved exclusively for Tenant near the main entrance to the Building as shown on Exhibit D

(14) BROKERS: Cushman & Wakefield
1111 Broadway, Suite 1600
Oakland, CA 94607

Cornish & Carey
5980 Horton Street, Suite 100
Emeryville, California 94608

1.2 ENUMERATION OF EXHIBITS, RIDER AND ADDENDUM

The Exhibits set forth below and attached to this Lease are incorporated in this Lease by this reference:

EXHIBIT A	Plan of Premises
EXHIBIT B	Workletter
EXHIBIT C	Rules and Regulations
EXHIBIT D	Visitor Spaces

1.3 DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

AFFILIATE: Any corporation or other business entity that is owned or controlled by, owns or controls, or is under common ownership or control with Tenant or with Landlord.

BUILDING: The building located at the address specified in Section 1.1(1).

COMMENCEMENT DATE: The date specified in Section 1.1(6).

COMMON AREAS: All areas of the Project made available by Landlord from time to time for the general common use or benefit of the tenants of the Building, and their employees and invitees, or the public, as such areas currently exist and as they may be changed from time to time.

DECORATION: Tenant Alterations which do not require a building permit and which do not involve any of the structural elements of the Building, or any of the Building's systems, including its electrical, mechanical, plumbing, security, heating, ventilating, air-conditioning, communication, and fire and life safety systems.

DEFAULT RATE: Two (2) percentage points above the rate then most recently announced by Bank of America, N.A., at its San Francisco main office as its corporate or commercial base lending reference rate, from time to time announced, but in no event higher than the maximum rate permitted by Law.

ENVIRONMENTAL LAWS: All Laws governing the use, storage, disposal or generation of any Hazardous Material, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the Resource Conservation and Recovery Act of 1976, as amended.

EXPIRATION DATE: The date specified in Section 1.1(7).

FORCE MAJEURE: Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of Landlord or Tenant (excluding either such party's financial inability), including water shortages, energy shortages or governmental preemption in connection with an act of God, a national emergency, or by reason of Law, or by reason of the conditions of supply and demand which have been or are affected by act of God, war or other emergency. Any prevention, delay, or stoppage due to any Force Majeure event shall excuse the performance of the party affected for a period of time equal to any such prevention, delay, or stoppage.

HAZARDOUS MATERIAL: Such substances, material and wastes which are or become regulated under any Environmental Law; or which are classified as hazardous or toxic under any Environmental Law; and explosives and firearms, radioactive material, asbestos, polychlorinated biphenyls, and petroleum products.

INDEMNITEES: Collectively, Landlord, any Mortgagee or ground lessor of the Property, the property manager and the leasing manager for the Property and their respective partners, members, directors, officers, agents and employees.

LAND: The parcel(s) of real estate on which the Building and Project are located.

LANDLORD WORK: The construction or installation of improvements to the Premises and the Project to be furnished by Landlord, as specifically described in the Workletter or exhibits attached hereto.

LAWS OR LAW: All laws, ordinances, rules, regulations, other requirements, orders, rulings or decisions adopted or made by any governmental body, agency, department or judicial authority having jurisdiction over the Property, the Premises or Tenant's activities at the Premises and any covenants, conditions or restrictions of record which affect the Property.

LEASE: This instrument and all exhibits and riders attached hereto, as may be amended from time to time.

MONTHLY BASE RENT: The monthly base rent specified in Section 1.1(8).

MORTGAGEE: Any holder of a mortgage, deed of trust or other security instrument encumbering the Property.

NATIONAL HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and other holidays recognized by Landlord and the janitorial and other unions servicing the Building in accordance with their contracts.

OPERATING EXPENSES: All costs, expenses and disbursements of every kind and nature, which Landlord shall pay in connection with the ownership, management, operation, maintenance, replacement and repair of the Building and the Project (including, without limitation, property management fees, costs and expenses, and the amortized portion of any capital expenditure or improvement, together with interest thereon, and the costs of changing utility service providers). In no event shall the annual property management fees for the Building exceed an amount equal to four and one-half percent (4.5%) of gross receipts. Operating Expenses shall not include:

(i) costs of alterations of the premises of tenants of the Project, except where such costs are necessitated by the acts or omissions of Tenant or its employees, servants, agents, contractors, customers, or invitees,

(ii) costs of capital improvements to the Project (except for amortized portion calculated on a straight-line basis calculated over the useful life of the capital expenditure or improvement as reasonably determined by Landlord of capital improvements installed for the purpose of reducing or controlling Operating Expenses or complying with applicable Laws, but only to the extent that the actual annual cost savings realized do not redound primarily to the benefit of any particular Building tenant),

(iii) depreciation charges or expenses reserves,

(iv) interest and principal payments on loans (except for loans for capital improvements which Landlord is allowed to include in Operating Expenses as provided above),

(v) ground rental payments,

(vi) real estate brokerage and leasing commissions,

(vii) advertising and marketing expenses,

(viii) costs of Landlord reimbursed by insurance proceeds,

(ix) expenses incurred in negotiating leases of tenants in the Project, enforcing lease obligations of tenants in the Project, or providing additional services to particular tenants in the Project,

(x) Landlord's general corporate overhead,

(xi) costs occasioned by the wrongful act, wrongful omission or violation of any Law by Landlord or its agents, employees or contractors,

(xii) costs to correct any construction defect in the Premises or the Building or to comply with any Law applicable to the Premises or the Project as of the Commencement Date,

(xiii) costs relating to the presence of any Hazardous Material at or in the Building or Project prior to the Commencement Date (except to the extent caused by the release of the Hazardous Material by Tenant or Tenant's agents, employees, contractors or invitees), and provided that with respect to the presence of any Hazardous Material at or in the Building or Project on or after the Commencement Date, except to the extent caused by the release of the Hazardous Material by Tenant or Tenant's agents, employees, contractors or invitees, Tenant's Share of such costs shall not exceed $10,000 in any given calendar year; and

(xiv) compensation for any officer of Landlord or for any management employee not stationed at the Project on a full-time basis or any compensation retained by Landlord or its Affiliates for the management or administration of the Project in excess of the property management fees applicable to the Project.

Notwithstanding anything contained herein to the contrary, in the event any facilities, services, or utilities used in connection with the Building are provided from another building in the Project or another building owned or operated by Landlord or a Landlord Affiliate, or vice versa, the costs incurred by Landlord in connection therewith shall be allocated to Operating Expenses by Landlord on a reasonably equitable basis.

PREMISES: The space located in the Building at the Suite Number listed in Section 1.1(11) and depicted on Exhibit A attached hereto.

PROJECT or PROPERTY: The Project consists of the Building, the building located at 503 Canal Boulevard, associated surface parking as designated by Landlord from time to time, landscaping and improvements, together with the Land, any associated interests in real property, and the personal property, fixtures, machinery, equipment, systems and apparatus owned by Landlord located in and used in conjunction with any of the foregoing. The Project may also be referred to as the Property.

REAL PROPERTY: The Property excluding any personal property.

RENT: Collectively, Monthly Base Rent, Rent Adjustments and Rent Adjustment Deposits, and all other charges, payments, late fees or other amounts required to be paid by Tenant to Landlord under this Lease.

RENT ADJUSTMENT: Any amounts owed by Tenant for payment of Operating Expenses or Taxes. The Rent Adjustments shall be determined and paid as provided in Article Four.

RENT ADJUSTMENT DEPOSIT: An amount equal to Landlord's estimate of the Rent Adjustment attributable to each month of the applicable calendar year (or portion thereof). On or before the beginning of each calendar year during the Term or with Landlord's Statement

(defined in Article Four), Landlord may estimate and notify Tenant in writing of its estimate of the amount of Operating Expenses and Taxes payable by Tenant for such year or applicable portion. Prior to the first determination by Landlord of the amount of Operating Expenses and Taxes for the first calendar year of the Term, Landlord may estimate such amounts in the foregoing calculation. The last estimate by Landlord shall remain in effect as the applicable Rent Adjustment Deposit unless and until Landlord notifies Tenant in writing of a change, which notice may be given by Landlord from time to time during any calendar year of the Term.

RENTABLE AREA OF THE PREMISES: The amount of square footage set forth in Section 1.1(9).

RENTABLE AREA OF THE PROJECT: The amount of square footage which represents the sum of the rentable area of all space intended for occupancy in the Project, as determined by Landlord from time to time; and Landlord shall notify Tenant of any adjustments in such rentable area and any corresponding change in Tenant's Share.

SECURITY DEPOSIT: The funds specified in Section 1.1(10), deposited by Tenant with Landlord as security for Tenant's performance of its obligations under this Lease.

SUBSTANTIALLY COMPLETE or SUBSTANTIAL COMPLETION: The completion of the Landlord Work or any work required under this Lease, as the case may be, in accordance with applicable Laws and any plans and specifications for such work (i.e., the Workletter) approved by the other party, except for minor insubstantial details of construction, decoration or mechanical adjustments which remain to be done.

TAXES: All federal, state and local governmental taxes, assessments and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control or operation of the Property or any of its components (including any personal property used in connection therewith), which may also include any rental or similar taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed for any period of such year, whether or not such Taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees, costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year. If a special assessment payable in installments is levied against any part of the Property, Taxes for any year shall include only the installment of such assessment and any interest payable during such year as if such assessment were payable over the longest possible term. Taxes shall not include any franchise, capital stock, federal or state inheritance, general or net income, or gift or estate taxes, except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes. Taxes shall also exclude any tax or assessment imposed on land or improvements other than the Property.

TENANT ADDITIONS: Collectively, Landlord Work and Tenant Alterations.

TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Building systems serving the Premises (excluding any Landlord Work); and any supplementary air-conditioning systems installed by Landlord or by Tenant at Landlord's request pursuant to Section 6.1(b).

TENANT DELAY: Any event or occurrence that delays the completion of any improvement work required hereunder (including the Landlord Work) which is caused by the following, but only to the extent that Substantial Completion of such work is actually delayed solely as a result thereof:

(1) special work, changes, alterations or additions requested or made by Tenant in the design or finish in any part of the Premises after Tenant's initial approval;

(2) Tenant's delay in submitting plans, supplying information, approving plans, specifications or estimates, giving authorizations or otherwise beyond the times provided in this Lease;

(3) failure to pay the costs for any work as Landlord undertakes to complete, to the extent Tenant is responsible for the costs of such work pursuant to this Lease;

(4) the performance or completion by Tenant or any person engaged by Tenant of any work in or about the Premises; or

(5) failure to perform or comply with any obligation or condition binding upon Tenant pursuant to this Lease.

TENANT WORK: None.

TENANT'S SHARE: The percentage that represents the ratio of the Rentable Area of the Premises to the Rentable Area of the Building/Project, as determined by Landlord from time to time. Tenant's Share of the Building as of the Commencement Date is stipulated to be 15.01%. Tenant's Share of the Project as of the Commencement Date is stipulated to be 9.6%.

TERM: The term of this Lease commencing on the Commencement Date and expiring on the Expiration Date.

TERMINATION DATE: The Expiration Date or such earlier date as this Lease terminates or Tenant's right to possession of the Premises terminates.

WORKLETTER: The Agreement describing the Landlord Work set forth on Exhibit B attached hereto.

ARTICLE 2

PREMISES, TERM, FAILURE TO GIVE POSSESSION, PARKING, EXTENSION OPTION, ACCELERATION OPTION, AVAILABLE SPACE, AND EXPANSION

2.1 LEASE OF PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term and upon the terms, covenants and conditions provided in this Lease. In the event Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, Tenant shall be subject to all of the terms, covenants and conditions of this Lease (except with respect to the payment of Rent) as of the date of such possession.

2.2 TERM

(a) The Commencement Date shall be the date specified in Section 1.1(6) of the Basic Lease Provisions, and the Expiration Date shall be the date specified in Section 1.1(7) of the Basic Lease Provisions.

(b) Subject to the terms and conditions of this Lease including, without limitation, Article 9, and provided Landlord has received the Security Deposit, the first installment of Monthly Base Rent, and all evidence of insurance reasonably required by Landlord, Tenant shall be allowed access into the Premises from and after the full execution and delivery of this Lease, at Tenant's sole risk, solely for the purpose of (i) installing furniture, equipment and telecommunications and data cabling in the Premises and (ii) storing documents and equipment in the Premises. Landlord may withdraw such permission to enter the Premises prior to the Commencement Date at any time that Landlord reasonably determines that such entry by Tenant is causing a dangerous situation for Landlord, Tenant or their respective contractors or employees. Such early entry shall be subject to all the terms and provisions of this Lease, except that Tenant shall have no obligation to pay Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits or other charges during such early access period unless Tenant commences business operations in the Premises during such early access period.

2.3 CONDITION OF PREMISES

Tenant shall notify Landlord in writing within sixty (60) days after the Substantial Completion of the Landlord Work of any defects in the Premises claimed by Tenant or in the materials or workmanship furnished by Landlord in completing the Landlord Work. Except for defects stated in such notice, Tenant shall be conclusively deemed to have accepted the Premises "AS IS" in the condition existing on the date Tenant first takes possession. Landlord shall proceed diligently to correct the defects stated in such notice unless Landlord disputes the existence of any such defects. In the event of any dispute as to the existence of any such defects, the decision of Landlord's architect shall be final and binding on the parties. No agreement of Landlord to alter, remodel, decorate, clean or improve the Premises or the Real Property and no representation regarding the condition of the Premises or the Real Property has been made by or

on behalf of Landlord to Tenant, except as may be specifically stated in this Lease or the Workletter. As of the Commencement Date, Landlord warrants and represents that, to Landlord's actual knowledge (i) the Premises, Building and the Project will comply with all applicable Laws, (ii) the Premises will be in good and clean operating condition and repair, (iii) the electrical, mechanical, HVAC, plumbing, sewer, elevator and other systems serving the Premises and Building will be in good operating condition and repair, and (iv) the roof of the Building will be in good condition and water tight. Notwithstanding the foregoing, Landlord, upon the receipt of evidence reasonably satisfactory to Landlord, shall reimburse the costs and expenses (in an amount not to exceed $15,000) (the "Cabling Allowance") incurred by Tenant to connect Tenant's network serving the Premises with Tenant's network serving the space that Tenant leases from Landlord's Affiliate, located at 1003 West Cutting Boulevard, Richmond, California. Landlord hereby authorizes Tenant to perform all work reasonably required by Tenant (including, without limitation, during the early access period set forth in Section 2.2(b) above, subject to the terms and conditions therein) to connect Tenant's networks and grants Tenant reasonable rights to access and use the existing conduit serving the Premises and the PRI Premises (as hereinafter defined) for such purpose.

2.4 PARKING

During the Term, Tenant may use the number of spaces specified in Section 1.1(13) for parking free of charge, without regard to parking rates charged or discounts provided to any other occupants of the Building or Project. The locations and type of parking shall be designated by Landlord or Landlord's parking operator from time to time. Tenant acknowledges and agrees that the parking spaces serving the Project may include valet parking (at no additional cost to Tenant) and a mixture of spaces for compact vehicles as well as full-size passenger automobiles, and that Tenant shall not use parking spaces for vehicles larger than the striped size of the parking spaces. As of the date of this Lease, the parking spaces serving the Project do not include valet parking. All vehicles utilizing Tenant's parking privileges shall prominently display identification stickers or other markers, and/or have passes or keycards for ingress and egress, as may be required and provided by Landlord or its parking operator from time to time. Tenant shall comply with any and all reasonable parking rules and regulations from time to time established by Landlord or Landlord's parking operator, including a requirement that Tenant pay to Landlord or Landlord's parking operator a charge for loss and replacement of passes, keycards, identification stickers or markers, and for any and all loss or other damage caused by persons or vehicles related to use of Tenant's parking privileges. Tenant shall not allow any vehicles using Tenant's parking privileges to be parked, loaded or unloaded except in accordance with this Section, including in the areas and in the manner designated by Landlord or its parking operator for such activities. If any vehicle is using the parking or loading areas contrary to any provision of this Section, Landlord or its parking operator shall have the right, in addition to all other rights and remedies of Landlord under this Lease, to remove or tow away the vehicle on not less than forty-eight (48) hours' after posting a notice on such vehicle, and the cost thereof shall be paid to Landlord within ten (10) days after notice from Landlord to Tenant. Notwithstanding the foregoing, Landlord agrees to stripe, label and install pole signage for five (5) non-handicapped parking spaces near the main Building lobby immediately outside the Building's front door as spaces shown on Exhibit D attached hereto ("Visitor Spaces") exclusively for "Transcept Visitors". Landlord shall use reasonable efforts to enforce Tenant's exclusive use of the Visitor Spaces.

2.5 EXTENSION OPTION

(a) Landlord hereby grants Tenant an option to extend the Term ("Extension Option") for one (1) additional period of five (5) years ("Option Term"), commencing immediately after the expiration of the Term. The Extension Option shall be upon the terms and conditions contained in this Lease, except that the initial Monthly Base Rent for the Premises during the Option Term shall be equal to 95% of the "fair market rent" for the Premises as of the commencement of the Option Term (i.e., the rate that a willing, comparable, new (i.e., non-renewal), non-equity tenant would pay, and that a willing landlord of comparable office space in Point Richmond, California would accept at arms' length), determined in the manner set forth in subparagraph 2.5(b) below. Notwithstanding anything to the contrary contained herein, in no event shall the Monthly Base Rent payable (on a per square foot basis) by Tenant during the Option Term be less than the Monthly Base Rent payable (on a per square foot basis) by Tenant as of the last month of the initial Term. The fair market rent shall not take into account any Tenant Additions paid for by Tenant without reimbursement from Landlord. Tenant's election to exercise the Extension Option ("Tenant's Extension Notice") must be given to Landlord in writing not less than nine (9) months prior to the scheduled Expiration Date. Notwithstanding anything to the contrary contained herein, the Extension Option exercised by Tenant shall, at Landlord's option, be null and void and of no further force or effect if Tenant is in Default under this Lease as of the date of Tenant's Extension Notice.

(b) If Tenant properly exercises the Extension Option, the initial Monthly Base Rent during the Option Term shall be determined in the following manner. Landlord shall advise Tenant in writing of Landlord's good faith, reasonable determination of the fair market rent (based on the definition of fair market rental set forth above) for the Premises as of the commencement of the Option Term ("Landlord's Fair Market Proposal") no less than ninety (90) days prior to the commencement of the Option Term, provided Landlord's notification to Tenant of Landlord's Fair Market Proposal shall specifically state that Tenant shall have fifteen (15) days after receipt of Landlord's Fair Market Proposal within which to approve or disapprove Landlord's Fair Market Proposal. If Tenant does not disapprove in writing Landlord's Fair Market Proposal within fifteen (15) days after receipt of Landlord's Fair Market Proposal, Landlord's Fair Market Proposal shall be deemed disapproved. In the event Tenant disapproves in writing (or is deemed to have disapproved) Landlord's Fair Market Proposal, Landlord and Tenant shall attempt in good faith to agree upon the fair market rent within twenty (20) days of Tenant's notice of or deemed disapproval. If after such twenty (20) day period, Landlord and Tenant have not agreed in writing as to the fair market rent, the parties shall determine the fair market rent in accordance with the procedure set forth below.

(i) Within five (5) days after the expiration of such twenty (20) day period, Tenant shall notify Landlord of the name and address of the broker appointed to represent Tenant ("Tenant's Broker"). Tenant's Broker shall

be licensed in the State of California, engaged in the brokerage business in the San Francisco-East Bay commercial real estate market for at least the immediately preceding five (5) years, and familiar with the office market in the cities of Richmond, Berkeley and Emeryville, California. Within ten (10) days of the appointment of Tenant's Broker's, Tenant shall advise Landlord in writing of Tenant's Broker's good faith, reasonable determination of the fair market rent for the Premises as of the commencement of the Option Term ("Tenant's Broker's Fair Market Proposal"). Landlord shall have ten (10) days after receipt of Tenant's Broker's Fair Market Proposal within which to approve or disapprove Tenant's Broker's Fair Market Proposal. In the event Landlord disapproves in writing Tenant's Broker's Fair Market Proposal, Landlord and Tenant shall attempt in good faith to agree upon the fair market rent within ten (10) days of Landlord's notice of disapproval. If after such ten (10) day period, Landlord and Tenant have not agreed in writing as to the fair market rent, the parties shall determine the fair market rent in accordance with the procedure set forth below.

(ii) If Landlord and Tenant are unable to agree upon the fair market rent within such ten (10) day period, Landlord and Tenant shall, within five (5) days thereafter, appoint a second broker meeting the qualifications set forth above with the added qualification that such second broker shall not have previously acted for either Landlord or Tenant. Within five (5) days following the appointment of the second broker, the second broker shall deliver his or her written determination of the fair market rent to Landlord and Tenant. If the second broker's determination of fair market rent falls between Landlord's Fair Market Proposal and Tenant's Broker's Fair Market Proposal, the second broker's determination shall be deemed to be the fair market rent for purposes of determining the initial Monthly Base Rent for the Premises for the Option Term. If the second broker's determination falls outside of Landlord's Fair Market Proposal and Tenant's Broker's Fair Market Proposal, whichever of Landlord's Fair Market Proposal and Tenant's Broker's Fair Market Proposal most closely reflects the fair market rent as determined by the second broker shall be deemed to be the fair market rent for purposes of determining the initial Monthly Base Rent for the Premises for the Option Term, and such determination shall be binding on both Landlord and Tenant. Tenant shall pay all costs, commissions and fees of Tenant's Broker in connection with such determination of the fair market rent. The costs and fees of the second broker shall be paid one-half by Landlord and one-half by Tenant.

(c) If the amount of the fair market rent has not been determined in accordance with this Section 2.5 as of the commencement of the Option Term, then Tenant shall continue to pay the Monthly Base Rent in effect during the last month of the initial Term, until the amount of the fair market rent is determined. When such determination is made, Tenant shall pay any deficiency to Landlord within twenty (20) days after such determination.

(d) The Monthly Base Rent payable hereunder during the Option Term shall be increased by three percent (3%) on each anniversary of the commencement date of the Option Term.

2.6 ACCELERATION OPTION

(a) Tenant shall have the right, in Tenant's sole discretion, to accelerate the Termination Date ("Acceleration Option") of the Lease, with respect to the entire Premises only, to May 31, 2011 (the "Accelerated Termination Date"), if:

(i) Tenant is not in Default under the Lease at the date Tenant provides Landlord with an Acceleration Notice (defined below); and

(ii) Landlord receives notice of acceleration ("Acceleration Notice") by no later than August 31, 2010.

(b) If Tenant exercises its Acceleration Option, Tenant, within twenty (20) days of the delivery of Landlord's statement of the Acceleration Fee, shall pay to Landlord an amount equal to the unamortized portion of any broker commissions, incurred or provided by Landlord in connection with this Lease (collectively, the "Acceleration Fee"). Within ninety (90) days of the Commencement Date, and the commencement date for any additional space leased by Tenant hereunder, as the case may be, Landlord shall provide Tenant with a statement setting forth the amount and calculation of the Acceleration Fee (including reasonable back up documentation). Tenant shall remain liable for all Monthly Base Rent, additional Rent and other sums due under this Lease up to and including the Accelerated Termination Date even though billings for such may occur subsequent to the Accelerated Termination Date. The "unamortized portion" of any broker commissions shall be determined on a straight-line basis over the initial Term.

(c) If Tenant defaults in the payment of the Acceleration Fee, Landlord, at its option, may, by written notice to Tenant within fifteen (15) days after such default, (1) declare Tenant's exercise of the Acceleration Option in that instance only to be null and void, and immediately so notify Tenant in writing, or (2) continue to honor Tenant's exercise of its Acceleration Option, in which case, Tenant shall remain liable for the payment of the Acceleration Fee and all Monthly Base Rent, additional Rent and other sums due under the Lease up to and including the Accelerated Termination Date even though billings for such may occur subsequent to the Accelerated Termination Date. If Landlord fails to notify Tenant of such election within such fifteen (15)-day period, Landlord shall be deemed to have elected clause (2) above.

(d) As of the date Tenant provides Landlord with an Acceleration Notice that is honored by Landlord, any unexercised rights or options of Tenant to extend the Term or expand the Premises shall immediately be deemed terminated and of no further force or effect.

2.7 AVAILABLE SPACE

Prior to Landlord leasing space in the Project ("Available Space") to a proposed third party tenant during the Term, Landlord shall first notify Tenant in writing of such Available Space and meet and confer with Tenant for not less than fifteen (15) days to discuss any interest Tenant may have in leasing the Available Space. Landlord shall have no obligation to (i) disclose to Tenant any term in connection with the proposed lease of the Available Premises, (ii) disclose to Tenant the proposed third party tenant, or (iii) lease the Available Space to Tenant following any discussion with Tenant. After providing notice to Tenant pursuant to this Section 2.7, Landlord may, in its sole and absolute discretion, elect to lease the Available Space to the third party tenant. Nothing in this Section 2.7 shall be deemed a right of first offer or a right of first refusal.

2.8 EXPANSION

(a) Point Richmond R&D Associates, a California limited partnership ("PRA I"), as landlord, and Tenant, as tenant, are parties to that certain Lease dated as of February 22, 2006 (as amended, the "PRI Lease"), pursuant to which Tenant leases from PRA I, an affiliate of Landlord, the premises commonly known as Suites 110 and 130 (the "PRI Premises") on the ground floor of the building located at 1003 West Cutting Boulevard, Richmond, California. Pursuant to the PRI Lease, Tenant holds an option to expand (the "PRI Expansion Option") into space consisting of at least 5,000 rentable square feet of area more than the aggregate of the Rentable Area of the Premises and the rentable area of the PRI Premises (the "Aggregate Premises").

(b) If PRA I (or its Affiliate) and Tenant have not agreed upon suitable space for Tenant (in Tenant's sole opinion) within six (6) months following Tenant's exercise of the PRI Expansion Option, Tenant shall have the right to terminate this Lease by providing Landlord one hundred eighty (180) days prior notice specifying the unequivocal termination of this Lease, and provided further that Tenant provide such termination notice within thirty (30) days of the expiration of such six-month period.

(c) If Tenant properly exercises its PRI Expansion Right, and PRA I (or its Affiliate) and Tenant are able to agree on a space suitable for Tenant in accordance with the PRI Lease (the "Expansion Space"), as evidenced by the execution and delivery of the Expansion Amendment (as defined in the PRI Lease), Tenant shall have the right to terminate this Lease as of the commencement date of the term for the Expansion Space by delivering written notice to Landlord within thirty (30) days following the date of the Expansion Amendment (as defined in the PRI Lease). If Tenant fails to timely deliver such termination notice, Tenant shall be deemed to have elected to continue this Lease, and this Lease will remain in full force and effect.

ARTICLE 3

RENT

Tenant agrees to pay to Landlord at the address specified in Section 1.1(2), or to such other persons, or at such other places designated by Landlord, without any prior demand therefor and without any deduction or offset whatsoever, Rent, including Monthly Base Rent and Rent Adjustments in accordance with Article Four, during the Term. Monthly Base Rent shall be paid monthly in advance on the first day of each month of the Term, except that the installment of Monthly Base Rent for the first full month of the Term shall be paid by Tenant to Landlord concurrently with Tenant's execution of this Lease. Monthly Base Rent shall be prorated for partial months within the Term. Unpaid Rent shall bear interest at the Default Rate from the date due until paid. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease.

ARTICLE 4

RENT ADJUSTMENTS AND PAYMENTS

4.1 RENT ADJUSTMENTS

Tenant shall pay to Landlord Rent Adjustments with respect to each calendar year (or partial calendar year) as follows:

(a) The Rent Adjustment Deposit representing Tenant's Share of Operating Expenses for the applicable calendar year (or partial calendar year), monthly during the Term with the payment of Monthly Base Rent; and

(b) The Rent Adjustment Deposit representing Tenant's Share of Taxes for the applicable calendar year (or partial calendar year), monthly during the Term with the payment of Monthly Base Rent; and

(c) Any Rent Adjustments due in excess of the Rent Adjustment Deposits in accordance with Section 4.2. Rent Adjustments due from Tenant to Landlord for any calendar year (or partial calendar year) shall be Tenant's Share of Operating Expenses for such year and Tenant's Share of Taxes for such year.

(d) Landlord shall reasonably allocate Operating Expenses and Taxes to the Building or Project as reasonably appropriate and Tenant's Share of Operating Expenses and Taxes shall be applied with respect to the Building or Project, as reasonably appropriate.

4.2 STATEMENT OF LANDLORD

As soon as practicable after the expiration of each calendar year, Landlord will furnish to Tenant a statement ("Landlord's Statement") showing the following:

(a) Actual Operating Expenses and Taxes for the calendar year;

(b) The amount of Rent Adjustments due Landlord for the last calendar year (or partial calendar year), less other amounts paid, if any; and

(c) Any change in the Rent Adjustment Deposit due monthly in the current calendar year, including the amount or revised amount due for months preceding any such change pursuant to Landlord's Statement.

Tenant shall pay to Landlord within thirty (30) days after receipt of such statement any amounts for Rent Adjustments then due in accordance with Landlord's Statement. Any amounts due from Landlord to Tenant pursuant to this Section shall be credited to the Rent next coming due, or refunded to Tenant if the Term has already expired provided Tenant is not in Default hereunder and no further Rent is due. No interest or penalties shall accrue on any amounts that Landlord is obligated to credit or refund to Tenant by reason of this Section 4.2. Landlord's failure to deliver Landlord's Statement or to compute the amount of the Rent Adjustments shall not constitute a waiver by Landlord of its right to deliver such items nor constitute a waiver or release of Tenant's obligations to pay such amounts. The Rent Adjustment Deposit shall be credited against Rent Adjustments due for the applicable calendar year. During the last complete calendar year or during any partial calendar year in which the Lease terminates, Landlord may include in the Rent Adjustment Deposit its reasonable estimate of Rent Adjustments which may not be finally determined until after the termination of this Lease. Tenant's obligation to pay Rent Adjustments survives the expiration or termination of the Lease.

4.3 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with generally accepted accounting principles, consistently applied. Tenant or its representative(s) (which representative(s) shall be experienced in reviewing building operating expenses not be paid on a contingency basis) shall have the right, for a period of ninety (90) days following the date upon which Landlord's Statement is delivered to Tenant, to examine Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during Landlord's normal business hours, upon written notice, delivered at least three (3) business days in advance (a "Tenant Review"). If Tenant does not object in writing to Landlord's Statement within ninety (90) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant. If Tenant does dispute any Landlord's Statement (or supplemental Landlord's Statement), Tenant shall deliver a copy of any such audit to Landlord at the time of notification of the dispute. If Tenant does not provide such notice of dispute and a copy of such audit to Landlord within such ninety day (90) day period, it shall be deemed to have waived such right to dispute Landlord's Statement. Any amount due to the Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception. In no event shall Tenant be permitted to examine Landlord's books and records or to dispute any statement of Operating Expenses unless Tenant has paid and continues to pay all Rent when due. Upon resolution of any dispute with respect to Operating Expenses and Taxes, Tenant, at its election, shall either pay Landlord any shortfall or Landlord shall credit Tenant with respect to any overages paid by Tenant. The records obtained by Tenant shall be treated as confidential and neither Tenant nor any of its representatives or agents shall disclose or discuss the information

set forth in the audit to or with any other person or entity, except in connection with any dispute resolution or other legal proceeding and except such disclosures as may be necessary to Tenant's attorneys, accountants, and other professional advisors, provided that the disclosing party ensures that such attorneys, accountants and prospective advisors maintain the confidentiality of such terms ("Confidentiality Requirement").

4.4 TENANT OR LEASE SPECIFIC TAXES

In addition to Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits and other charges to be paid by Tenant, Tenant shall pay to Landlord, upon demand, any and all taxes payable by Landlord (other than federal or state inheritance, general income, gift or estate taxes) whether or not now customary or within the contemplation of the parties hereto: (a) upon, allocable to, or measured by the Rent payable hereunder, including any gross receipts tax or excise tax levied by any governmental or taxing body with respect to the receipt of such Rent; or (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (c) upon the measured value of Tenant's personal property located in the Premises or in any storeroom or any other place in the Premises or the Property, or the areas used in connection with the operation of the Property, it being the intention of Landlord and Tenant that, to the extent possible, such personal property taxes shall be billed to and paid directly by Tenant; or (d) resulting from Tenant Alterations to the Premises, whether title thereto is in Landlord or Tenant; or (e) upon this transaction. Taxes paid by Tenant pursuant to this Section 4.5 shall not be included in any computation of Taxes payable pursuant to Sections 4.1 and 4.2.

ARTICLE 5

SECURITY DEPOSIT

Concurrently with the execution of this Lease, Tenant shall pay to Landlord the Security Deposit. The Security Deposit may be applied by Landlord to cure, in whole or part, any default of Tenant under this Lease (after applicable notice and cure periods), and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by paying to Landlord within ten (10) days of demand the amount so applied. Landlord's application of the Security Deposit shall not constitute a waiver of Tenant's default to the extent that the Security Deposit does not fully compensate Landlord for all losses, damages, costs and expenses incurred by Landlord in connection with such default and shall not prejudice any other rights or remedies available to Landlord under this Lease or by Law. Landlord shall not pay any interest on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its general accounts. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action that Landlord may at any time commence against Tenant. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant, regardless of one or more assignments of this Lease. Upon the transfer of Landlord's interest under this Lease, Landlord's obligation to Tenant with respect to the Security Deposit shall terminate upon transfer to the transferee of the Security Deposit, or any balance thereof. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions

of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after Landlord recovers possession of the Premises. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code or other Law regarding security deposits.

In lieu of the cash Security Deposit described above, Tenant shall have the right to deliver the Security Deposit in the form an unconditional, irrevocable, standby letter of credit (the "Letter of Credit") in the amounts described above, issued to Landlord, as beneficiary, by a bank reasonably approved by Landlord, in which case the Letter of Credit shall serve as the Security Deposit under this Lease. Tenant shall maintain the Letter of Credit for the entire Term, provided that Tenant may at any time substitute a cash Security Deposit for the Letter of Credit, and upon such substitution, Landlord shall return the Letter of Credit to Tenant. The Letter of Credit shall provide that it will be automatically renewed until sixty (60) days after the Expiration Date unless the issuer provides Landlord with written notice of non-renewal at least sixty (60) days prior to the expiration thereof. If, not later than thirty (30) days prior to expiration of the Letter of Credit, Tenant fails to furnish Landlord with a replacement Letter of Credit, Landlord shall have the right to draw the full amount of the Letter of Credit, in which event Landlord shall hold the proceeds of the Letter of Credit as a cash Security Deposit under this Lease. Except as set forth in the preceding sentence, Landlord shall only draw upon the Letter of Credit while a Default by Tenant exists and only to the extent required to cure such Default. If Landlord draws upon the Letter of Credit solely due to Tenant's failure to renew the Letter of Credit at least thirty (30) days before its expiration, then (i) such failure to renew shall not constitute a default hereunder, and (ii) Tenant shall at any time thereafter be entitled to provide Landlord with a replacement Letter of Credit that satisfies the requirements of this paragraph, at which time Landlord shall return the cash proceeds of the original Letter of Credit drawn by Landlord.

ARTICLE 6

SERVICES

6.1 LANDLORD'S GENERAL SERVICES

(a) So long as the Lease is in full force and effect, Landlord shall furnish the following, the cost of which shall be included in Operating Expenses or paid directly by Tenant to the utility or service provider:

(i) heat, ventilation and air-conditioning ("HVAC") in the Premises and the Common Areas;

(ii) tempered and cold water for use in lavatories in common with other tenants from the regular supply of the Building;

(iii) customary utilities, landscaping and cleaning services in the Common Areas; and

(iv) washing of the outside windows in the Premises weather permitting at intervals determined by Landlord.

(b) If Tenant uses heat generating machines or equipment in the Premises to an extent which adversely affects the temperature otherwise maintained by the air-cooling system or whenever the occupancy or electrical load adversely affects the temperature otherwise maintained by the air-cooling system, Landlord reserves the right to install or to require Tenant to install supplementary air-conditioning units in the Premises. Tenant shall bear all costs and expenses related to the installation, maintenance and operation of such units. Notwithstanding the foregoing or anything to the contrary in this Lease, Landlord acknowledges that Tenant may require additional HVAC for the server room in the Premises. Landlord shall cooperate reasonably with Tenant to provide such HVAC service with the existing facilities located at the Building.

(c) Landlord shall provide HVAC as reasonably required for Tenant's permitted use for the comfortable occupancy and operation of the Premises during normal business hours (i.e., 8:00 a.m. to 8:00 p.m. Monday through Friday). Landlord shall also furnish such water for use in the employee break room at the Premises. Landlord shall furnish trash pick-up and recycling services consistent with general office use at the Premises. Landlord shall provide Tenant with access to the Premises twenty-four hours per day, seven days per week.

6.2 GAS AND ELECTRICAL SERVICES

(a) The Premises are separately metered for gas and electricity, and Tenant shall contract directly with the utility company for the use of gas and electricity at the Premises. Electricity used by Tenant in the Premises shall be paid for by Tenant directly to the utility company. Gas used by Tenant in the Premises shall be paid for by Tenant directly to the utility company. Notwithstanding any provision of the Lease to the contrary, without, in each instance, the prior written approval of Landlord, in Landlord's reasonable business judgment, Tenant shall not: (i) make any alterations or additions to the utility equipment or systems; or (ii) install or use or permit the installation or use of any computer or electronic data processing equipment in the Premises other than personal computers, laptop computers and ancillary equipment consistent with Tenant's permitted use. Tenant's use of electric current shall at no time exceed the capacity of the wiring, feeders and risers providing electric current to the Premises or the Building. The consent of Landlord to the installation of electric equipment shall not relieve Tenant from the obligation to limit usage of electricity to no more than such capacity.

6.3 ADDITIONAL SERVICES

At Tenant's request, Landlord shall furnish additional quantities of any of the services specified in Section 6.1, if Landlord can reasonably do so, on the terms set forth herein. Landlord and Tenant acknowledge Tenant shall provide its request for weekend HVAC service during normal business hours. Landlord shall use reasonable efforts to accommodate any requests by Tenant outside of normal business hours. For services requested by Tenant and furnished by Landlord, Tenant shall pay to Landlord as a charge therefor Landlord's prevailing rates charged from time to time for such services and utilities. If Tenant shall fail to make any

such payment (beyond applicable notice and cure periods), Landlord may, upon notice to Tenant and in addition to Landlord's other remedies under this Lease, discontinue any of such additional services for which Tenant has not paid.

6.4 TELEPHONE SERVICES

All telephone, and communication connections which Tenant may desire shall be subject to Landlord's prior written approval, in Landlord's reasonable discretion, and the location of all wires and the work in connection therewith shall be performed by contractors approved by Landlord and shall be subject to the direction of Landlord, except that such approval is not required as to Tenant's telephone equipment (including cabling) within the Premises and from the Premises in a route designated by Landlord to any telephone cabinet or panel provided (as existing or as installed as part of Landlord Work, if any) on Tenant's floor for Tenant's connection to the telephone cable serving the Building so long as Tenant's equipment does not require connections different than or additional to those to the telephone cabinet or panel provided. Except to the extent of such cabling within the Premises or from the Premises to such telephone cabinet or panel, Landlord reserves the right to designate and control the entity or entities providing telephone or other communication cable installation, removal, repair and maintenance in the Building and to restrict and control access to telephone cabinets or panels. In the event Landlord designates a particular vendor or vendors to provide such cable installation, removal, repair and maintenance for the Building, Tenant agrees to abide by and participate in such program. Tenant shall be responsible for and shall pay all costs incurred in connection with the installation of telephone cables and communication wiring in the Premises, including any hook-up, access and maintenance fees related to the installation of such wires and cables in the Premises and the commencement of service therein, and the maintenance thereafter of such wire and cables; and there shall be included in Operating Expenses for the Building all reasonable installation, removal, hook-up or maintenance costs incurred by Landlord in connection with telephone cables and communication wiring serving the Building which are not allocable to any individual users of such service but are allocable to the Building generally. If Tenant fails to maintain all telephone cables and communication wiring in the Premises and such failure affects or interferes with the operation or maintenance of any other telephone cables or communication wiring serving the Building, Landlord or any vendor hired by Landlord may enter into and upon the Premises forthwith and perform such repairs, restorations or alterations as Landlord deems necessary in order to eliminate any such interference (and Landlord may recover from Tenant all of Landlord's costs in connection therewith). If required by Landlord, no later than the Termination Date Tenant shall remove all telephone cables and communication wiring installed by Tenant for and during Tenant's occupancy. Tenant agrees that neither Landlord nor any of its agents, or employees, contractors, or invitees shall be liable to Tenant, or any of Tenant's employees, agents, customers or invitees or anyone claiming through, by or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action because of any interruption, diminution, delay or discontinuance at any time for any reason in the furnishing of any telephone or other communication service to the Premises and the Building.

6.5 DELAYS IN FURNISHING SERVICES

Tenant agrees that Landlord shall not be in breach of this Lease nor be liable to Tenant for damages or otherwise, for any failure to furnish, or a delay in furnishing, or a change in the

quantity or character of any service when such failure, delay or change is occasioned, in whole or in part, by repairs, improvements or mechanical breakdowns by the act or default of Tenant or other parties or by an event of Force Majeure. No such failure, delay or change ("Service Failure") shall be deemed to be an eviction or disturbance of Tenant's use and possession of the Premises, or relieve Tenant from paying Rent or from performing any other obligations of Tenant under this Lease, without any deduction or offset. Failure to any extent to make available, or any slowdown, stoppage, or interruption of, the specified utility services resulting from any cause, including changes in service provider or Landlord's compliance with any voluntary or similar governmental or business guidelines now or hereafter published or any requirements now or hereafter established by any governmental agency, board, or bureau having jurisdiction over the operation of the Property shall not render Landlord liable in any respect for damages to either persons, property, or business, nor be construed as an eviction of Tenant or work an abatement of Rent, nor relieve Tenant of Tenant's obligations for fulfillment of any covenant or agreement hereof. Should any equipment or machinery furnished by Landlord break down or for any cause cease to function properly, Landlord shall use reasonable diligence to repair same promptly, but Tenant shall have no claim for abatement of Rent or damages on account of any interruption of service occasioned thereby or resulting therefrom. Notwithstanding the foregoing, if the Premises, or a material portion of the Premises, are made untenantable for a period in excess of three (3) consecutive business days as a result of a Service Failure that is reasonably within the control of Landlord to correct, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the fourth (4th) consecutive business day of the Service Failure and ending on the day the service has been restored. If the entire Premises have not been rendered untenantable by the Service Failure, the amount of abatement shall be equitably prorated. Notwithstanding the foregoing, if a Service Failure is reasonably within the control of Landlord and (a) continues for thirty (30) business days after the Service Failure and (b) is not being diligently remedied by Landlord, then Tenant, as its sole remedy, shall have the right to elect to terminate this Lease within 10 days after the expiration of said thirty (30) business day period without penalty, by delivering written notice to Landlord of its election thereof; provided, however, if Landlord is diligently pursuing the repair or restoration of the service, Tenant shall not be entitled to terminate the Lease but rather Tenant's sole remedy shall be to abate Rent as provided above. The foregoing termination right shall not apply if the Service Failure is due to fire or other casualty. Instead, in such an event, the terms and provisions of Article Fourteen shall apply.

6.6 CHOICE OF SERVICE PROVIDER

Tenant acknowledges that Landlord may, at Landlord's sole option, to the extent permitted by applicable law, elect to change, from time to time, the company or companies which provide services (including electrical service, gas service, water, telephone and technical services) to the Building, the Premises and/or its occupants. Notwithstanding anything to the contrary set forth in this Lease, Tenant acknowledges that Landlord has not and does not make any representations or warranties concerning the identity or identities of the company or companies which provide services to the Building and the Premises or its occupants and Tenant acknowledges that the choice of service providers and matters concerning the engagement and termination thereof shall be solely that of Landlord. The foregoing provision is not intended to modify, amend, change or otherwise derogate any provision of this Lease concerning the nature or type of service to be provided or any specific information concerning the amount thereof to be provided. Tenant agrees to cooperate with Landlord and each of its service providers in connection with any change in service or provider.

6.7 SIGNAGE

Initial Building standard signage will be installed by Landlord at Tenant's main entry door to the Premises at Landlord's sole cost and expense. Tenant's signage will also be installed by Landlord at the various monuments within the Project at Landlord's sole cost and expense. Tenant, at Tenant's sole cost and expense, may install signage on the exterior of the Building, subject to approval by Landlord (not to be unreasonably withheld) and the City of Richmond, in which case Tenant shall also be responsible for all costs to remove such exterior signage and restore any damage caused by such exterior signage to the Building. Any change in such signage shall be only with Landlord's prior written consent, shall conform to Building standard signage and shall be at Tenant's sole cost and expense. Tenant shall not place on the exterior of the Premises or the door, window or roof, within any display window space or within five (5) feet behind the entry to the Premises, or on the exterior of the Building, any sign, decoration, lettering, advertising matter or descriptive material without all applicable governmental approvals and Landlord's prior written approval. Tenant shall submit to Landlord reasonably detailed drawings of its proposed signs for review and approval by Landlord prior to utilizing same. All signs, awnings, canopies, decorations, lettering, advertising matter or other items used by Tenant shall conform to the standards of design, motif, and decor, from time to time, established by Landlord for the Building and shall be insured and maintained at all times by Tenant in good condition, operating order and repair. Flashing signs and credit card or other signs, advertisements and hand lettered signs visible from outside the Building or the Common Areas are prohibited. Landlord shall have the right, without notice to Tenant and without any liability for damage to the Premises reasonably caused thereby, to remove any items displayed or affixed in or to the Premises which Landlord determines to be in violation of the provisions of this Section. If any damage is done to Tenant's signs, or any damage to the Building or Project results from the installation, maintenance, or removal of Tenant's signs, Tenant shall commence to repair same within five (5) days after such damage occurs, and upon Tenant's failure to commence the repair work within said five (5) day period and to diligently prosecute the same to completion, Landlord may, after notice to Tenant, repair such damage and Tenant shall pay Landlord, upon demand, Landlord's costs and expenses in connection therewith.

ARTICLE 7

POSSESSION, USE AND CONDITION OF PREMISES

7.1 POSSESSION AND USE OF PREMISES

(a) Except as otherwise provided in Section 2.2(b), Tenant shall be entitled to possession of the Premises on the Commencement Date. Tenant shall occupy and use the Premises only for the uses specified in Section 1.1. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (1) is unlawful or in violation of any Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building

or covering its operations; (3) is contrary to or prohibited by the terms and conditions of this Lease or the rules of the Building set forth in Article Eighteen; or (4) would tend to create or continue a nuisance. Notwithstanding the foregoing or anything in this Lease to the contrary, Tenant shall not be required to comply with or cause the Premises to comply with any Laws unless such compliance is necessitated solely due to Tenant's particular use of the Premises.

(b) Tenant shall comply with all Environmental Laws pertaining to Tenant's occupancy and use of the Premises and concerning the proper storage, handling and disposal of any Hazardous Material introduced to the Premises, the Building or the Property by Tenant or other occupants of the Premises, or their employees, servants, agents, contractors, customers or invitees. Landlord shall comply with all Environmental Laws applicable to the Property other than those to be complied with by Tenant pursuant to the preceding sentence. Tenant shall not generate, store, handle or dispose of any Hazardous Material in, on, or about the Property without the prior written consent of Landlord, which may be withheld in Landlord's reasonable discretion, except that such consent shall not be required to the extent of Hazardous Material packaged and contained in office products for consumer use in general business offices in quantities for ordinary day-to-day use provided such use does not give rise to, or pose a risk of, exposure to or release of Hazardous Material. In the event that Tenant is notified of any investigation or violation of any Environmental Law arising from Tenant's activities at the Premises, Tenant shall immediately deliver to Landlord a copy of such notice. In such event or in the event Landlord reasonably believes that a violation of Environmental Law exists, Landlord may conduct such tests and studies relating to compliance by Tenant with Environmental Laws or the alleged presence of Hazardous Materials upon the Premises as Landlord deems desirable, all of which shall be completed at Tenant's expense if Landlord reasonably believes the violation of Environmental Law was caused by Tenant or Tenant's agents, contractors, invitees or employees. Landlord's inspection and testing rights are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed any responsibility to Tenant or any other party for compliance with Environmental Laws, as a result of the exercise, or non-exercise of such rights. Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claim, demand, action, expense, liability and cost (including reasonable attorneys' fees and expenses) arising out of or in any way related to the presence of any Hazardous Material introduced to the Premises or the Project during the Term by Tenant or Tenant's employees, contractors, agents, or invitees. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's reasonable discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. Unless caused by Tenant or Tenant's agents or contractors, Landlord hereby indemnifies, and agrees to defend, protect and hold harmless, Tenant from any and all loss, claim, demand, action, expense, liability and cost (including reasonable attorneys' fees and expenses) arising out of or in

any way related to the presence of any Hazardous Material existing at the Property prior to the Commencement Date. To Landlord's actual knowledge, (a) no underground storage tanks are present on the Property, and (b) no action, proceeding or claim is pending or threatened regarding the Building or the Property concerning any Hazardous Material or pursuant to any Environmental Law. Under no circumstance shall Tenant be liable for, and Landlord shall indemnify, defend, protect and hold harmless Tenant, its agents, contractors, stockholders, directors, successors, representatives, and assigns from and against, all losses, costs, claims, liabilities and damages (including reasonable attorneys' and consultants' fees) of every type and nature, directly or indirectly arising out of or in connection with any Hazardous Material released, discharged or disposed of on or about the Property caused by Landlord or Landlord's employees, servants, agents or contractors.

(c) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises, the Building and the Project depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease, and (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant Additions in the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

7.2 LANDLORD ACCESS TO PREMISES; APPROVALS

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant's use, layout or design of the Premises is not materially affected or altered. Landlord or Landlord's agents shall have the right to enter upon the Premises in the event of an emergency, or to inspect the Premises, to perform office janitorial and other customary services, to conduct safety and other testing in the Premises and to make such repairs, alterations, improvements or additions to the Premises or the Building or other parts of the Property as Landlord may deem necessary or desirable (including all alterations, improvements and additions in connection with a change in service provider or providers). Any entry or work by Landlord may be during normal business hours and Landlord shall use reasonable efforts to ensure that any entry or work does not materially interfere with Tenant's occupancy of the Premises. In exercising any rights under this Lease to enter the Premises, Landlord shall also comply with Tenant's reasonable security measures and operating procedures.

(b) If Tenant shall not be present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord's agents), after attempting to notify Tenant (unless Landlord believes an emergency situation exists), may enter the Premises without rendering Landlord or its agents liable therefor, and without relieving Tenant of any obligations under this Lease.

(c) Landlord may enter the Premises for the purpose of conducting such inspections, tests and studies as Landlord may deem desirable or necessary to confirm Tenant's compliance with all Laws and Environmental Laws or for other purposes necessary in Landlord's reasonable judgment to ensure the sound condition of the Property and the systems serving the Property, provided that such inspections, tests, or studies shall not materially interfere with Tenant's occupancy of the Premises. Landlord's rights under this Section 7.2(c) are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party as a result of the exercise or non-exercise of such rights, for compliance with Laws or Environmental Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of Tenant, or otherwise.

(e) The review, approval or consent of Landlord with respect to any item required or permitted under this Lease is for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party, as a result of the exercise or non-exercise of such rights, for compliance with Laws or Environmental Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

7.3 QUIET ENJOYMENT

Landlord covenants, in lieu of any implied covenant of quiet possession or quiet enjoyment, that so long as Tenant is in compliance with the covenants and conditions set forth in this Lease, Tenant shall have the right to quiet enjoyment of the Premises without hindrance or interference from Landlord or those claiming through Landlord, and subject to the covenants and conditions set forth in the Lease. This covenant shall be binding on Landlord and its successors only during its or their respective periods of ownership of the Building.

ARTICLE 8

MAINTENANCE

8.1 LANDLORD'S MAINTENANCE

Subject to the provisions of Articles Four and Fourteen, Landlord shall maintain and make necessary repairs to the foundations, roofs, exterior walls, and the structural elements of the Building, the electrical, plumbing, heating, ventilating, air-conditioning, mechanical, communication, security and the fire and life safety systems of the Building; and those corridors, washrooms and lobbies which are Common Areas of the Building and all other Common Areas of the Project, except that: (a) Landlord shall not be responsible for the maintenance or repair of any floor or wall coverings in the Premises or any of such systems which are located within the Premises and are supplemental or special to the Building's standard systems; and (b) the cost of performing any of said maintenance or repairs to the Premises shall be paid directly by Tenant as additional Rent and not included in Operating Expenses and (c) the cost of performing any maintenance or repairs whether to the Premises or to the Building caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid directly by Tenant as additional Rent and shall not be included in Operating Expenses, subject to the waivers set forth in Section 16.4. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or in connection with the use of, any adjacent or nearby building, land, street or alley. In performing all repair and maintenance, Landlord shall use its reasonable efforts to minimize disruption to Tenant's business.

8.2 TENANT'S MAINTENANCE

Subject to the provisions of Section 8.1 above and Article Fourteen, Landlord, at Tenant's expense, shall keep and maintain the Premises and all Tenant Additions in good order, condition and repair and in accordance with all Laws and Environmental Laws, subject to Section 7.1 above. Tenant shall provide regular janitorial services to the Premises, at Tenant's sole cost and expense. Tenant shall not permit waste and shall bear the expense of the repair of all damage to the Premises and the replacement and repair all damaged or broken glass in the interior of the Premises, fixtures or appurtenances. Any repairs or maintenance shall be completed by Landlord or Landlord's contractors with materials of similar quality to the original materials. Any such repairs or maintenance shall be performed only by Landlord or contractors or mechanics approved or designated by Landlord, which approval shall not be unreasonably withheld, and whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. If Tenant fails to perform any of its obligations set forth in this Section 8.2 (beyond applicable notice and cure periods), Landlord may, in its sole discretion and upon 24 hours prior notice to Tenant (except without notice in the case of emergencies), perform the same, and Tenant shall pay to Landlord any costs or expenses incurred by Landlord upon demand. Notwithstanding the foregoing or anything in this Lease to the contrary, Tenant shall have no responsibility to perform or construct, any repair, maintenance or improvements (i) necessitated by the acts or omissions of Landlord, (ii) required as a consequence of any violation of any Laws or construction defects in the Premises, the Building or the Property existing as of the Commencement Date and (iii) for which Landlord has a right of reimbursement from others.

ARTICLE 9

ALTERATIONS AND IMPROVEMENTS

9.1 TENANT ALTERATIONS

(a) The following provisions shall apply to the completion of any Tenant Alterations:

(i) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, make or cause to be made any Tenant Alterations in or to the Premises or any Property systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord ten (10) days prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of non-responsibility. Subject to all other requirements of this Article Nine, Tenant may undertake Decoration work without Landlord's prior written consent. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time reasonably designate, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld, provided, however, that Landlord may, in its sole discretion, specify the engineers and contractors to perform all work relating to the Building's systems (including the mechanical, heating, plumbing, security, ventilating, air-conditioning, electrical, communication and the fire and life safety systems in the Building). The contractors, mechanics and engineers who may be used are further limited to those whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord: architectural plans and specifications, opinions from Landlord's engineers stating that the Tenant Alterations will not in any way adversely affect the Building's systems, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. Landlord may, in the exercise of reasonable judgment, request that Tenant provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit, but only if the estimated cost of the Tenant Alterations exceeds

$100,000. Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

(ii) Tenant shall pay the cost of all Tenant Alterations and the cost of decorating the Premises and any work to the Property occasioned thereby. Upon completion of Tenant Alterations, Tenant shall furnish Landlord with contractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used in connection therewith and such other documentation reasonably requested by Landlord or Mortgagee.

(iii) Tenant agrees to complete all Tenant Alterations (i) in accordance with all Laws, Environmental Laws, all requirements of applicable insurance companies and in accordance with Landlord's standard construction rules and regulations, and (ii) in a good and workmanlike manner with the use of good grades of materials. Tenant shall notify Landlord immediately if Tenant receives any notice of violation of any Law in connection with completion of any Tenant Alterations and shall immediately take such steps as are necessary to remedy such violation. In no event shall such supervision or right to supervise by Landlord nor shall any approvals given by Landlord under this Lease constitute any warranty by Landlord to Tenant of the adequacy of the design, workmanship or quality of such work or materials for Tenant's intended use or of compliance with the requirements of this Section 9.1(a) or impose any liability upon Landlord in connection with the performance of such work.

(b) All Tenant Additions whether installed by Landlord or Tenant, shall without compensation or credit to Tenant, become part of the Premises and the property of Landlord at the time of their installation and shall remain in the Premises, unless pursuant to Article Twelve, Tenant may remove them or is required to remove them at Landlord's request.

(c) Notwithstanding the foregoing, all Tenant Alterations and Tenant's trade fixtures, furniture, equipment and other personal property installed in the Premises (collectively, "Tenant's Property") shall at all times be and remain Tenant's property. Except for Tenant Alterations which cannot be removed without structural injury to the Premises, at any time, Tenant may remove Tenant's Property from the Premises, provided that Tenant repairs all damage caused by such removal. Landlord shall have no right to require Tenant to remove any Tenant Alterations unless Landlord notifies Tenant at the time Landlord consents to such Tenant Alterations that Landlord shall require such Tenant Alterations to be removed. Under no circumstance shall Tenant be required to remove any of the Landlord Work.

9.2 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any other part of the Property arising out of work (excluding the Landlord Work) performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall within ten (10) days of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, in addition to its rights and remedies under Article Eleven, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and reasonable attorneys' fees.

ARTICLE 10

ASSIGNMENT AND SUBLETTING

10.1 ASSIGNMENT AND SUBLETTING

(a) Without the prior written consent of Landlord, which consent shall not be unreasonably withheld, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of Law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant, provided, however, if Landlord chooses not to recapture the space proposed to be subleased or assigned as provided in Section 10.2, Landlord shall not unreasonably withhold its consent to a subletting or assignment under this Section 10.1. Tenant agrees that the provisions governing sublease and assignment set forth in this Article Ten shall be deemed to be reasonable. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord ("Tenant's Notice"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least twenty (20) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease less than all of the Rentable Area of the Premises, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.2 within fifteen (15) days after receipt of Tenant's Notice (and all reasonably required information). In no event may Tenant sublease any portion of the Premises or assign the Lease to any other tenant of the

Project without Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant shall submit for Landlord's approval (which approval shall not be unreasonably withheld) any advertising which Tenant or its agents intend to use with respect to the space proposed to be sublet.

(b) With respect to Landlord's consent to an assignment or sublease, Landlord may take into consideration any factors that Landlord may deem relevant, and the reasons for which Landlord's denial shall be deemed to be reasonable shall include, without limitation, the following:

(1) the business reputation or creditworthiness of any proposed subtenant or assignee is not acceptable to Landlord; or

(2) in Landlord's reasonable judgment the proposed assignee or sublessee would diminish the value or reputation of the Building or Landlord; or

(3) any proposed assignee's or sublessee's use of the Premises would be different from the Use of the Premises set forth in Section 1.1 or would violate Section 7.1 of the Lease or would violate the provisions of any other leases of tenants in the Project; or

(4) the proposed sublessee or assignee is a bona fide prospective tenant of Landlord in the Project as demonstrated by a written proposal dated within sixty (60) days prior to the date of Tenant's request; or

(5) the proposed sublessee or assignee would materially and adversely increase the estimated pedestrian and vehicular traffic to and from the Premises and the Building.

(c) Any sublease or assignment shall be expressly subject to the terms and conditions of this Lease. Any subtenant or assignee shall execute such documents as Landlord may reasonably require to evidence such subtenant or assignee's assumption of the obligations and liabilities of Tenant under this Lease. Tenant shall deliver to Landlord a copy of all agreements executed by Tenant and the proposed subtenant and assignee with respect to the Premises. Landlord's approval of a sublease, assignment, hypothecation, transfer or third party use or occupancy shall not constitute a waiver of Tenant's obligation to obtain Landlord's consent to further assignments or subleases, hypothecations, transfers or third party use or occupancy.

(d) For purposes of this Article Ten, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock of Tenant occurring by operation of Law or otherwise if Tenant is a corporation whose shares of stock are not traded publicly; provided however, the foregoing shall not apply to any private or public offering of Tenant's stock. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment.

10.2 RECAPTURE

Landlord shall have the option to exclude from the Premises covered by this Lease ("recapture") the space proposed to be sublet or subject to the assignment, effective as of the proposed commencement date of such sublease or assignment. If Landlord elects to recapture, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises, such date being the Termination Date for such space. Effective as of the date of recapture of any portion of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant's Share shall be adjusted accordingly.

10.3 EXCESS RENT

Tenant shall pay Landlord on the first day of each month during the term of the sublease or assignment, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect) actually received by Tenant from the subtenant or assignee for such month exceeds: (i) that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet or assigned; and (ii) the following costs and expenses for the subletting or assignment of such space: (1) brokerage commissions and attorneys' fees and expenses, (2) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease or assignment; (3) "free rent" periods, costs of any inducements or concessions given to subtenant or assignee, moving costs, and other amounts in respect of such subtenant's or assignee's other leases or occupancy arrangements, and (4) the cost of Tenant Additions allocable to the space sublet or assigned. All such costs and expenses shall be amortized over the term of the sublease or assignment pursuant to sound accounting principles.

10.4 TENANT LIABILITY

In the event of any sublease or assignment, whether or not with Landlord's consent, Tenant shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option, to the extent such exercise is expressly permitted by Landlord. Tenant's liability shall remain primary, and in the event of default by any subtenant, assignee or successor of Tenant in performance or observance of any of the covenants or conditions of this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said subtenant, assignee or successor. After any assignment, Landlord may consent to subsequent assignments or subletting of this Lease, or amendments or modifications of 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 or any successor of Tenant of liability under this Lease. If Landlord grants consent to such sublease or assignment, Tenant shall pay all reasonable attorneys' fees and expenses incurred by Landlord with respect to such assignment or sublease. In addition, if Tenant has any options to extend the Term or to add other space to the Premises, such options shall not be available to any subtenant or assignee (other than a subtenant or assignee pursuant to a Permitted Transfer), directly or indirectly without Landlord's express written consent, which may be withheld in Landlord's sole discretion.

10.5 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord and furnished to Landlord not later than five (5) days after request by Landlord. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord's option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord and will pay all subrent directly to Landlord.

10.6 PERMITTED TRANSFERS

So long as Tenant is not entering into the Permitted Transfer (defined below) for the purpose of avoiding or otherwise circumventing the remaining terms of this Article Ten, Tenant may assign its entire interest under this Lease, without the consent of Landlord, to (i) an Affiliate of Tenant, or a corporation, partnership or other legal entity wholly owned by Tenant (collectively, an "Affiliated Party"), or (ii) an entity resulting from the purchase, merger, consolidation or reorganization of, with or into Tenant, provided that all of the following conditions are satisfied (each such transfer a "Permitted Transfer"): (1) Tenant is not in Default under this Lease; (2) the permitted use does not allow the Premises to be used for any use other than the uses set forth in Section 1.1 above; (3) Tenant shall give Landlord written notice within twenty (20) days after the effective date of the proposed Permitted Transfer; (4) with respect to a proposed Permitted Transfer to an Affiliated Party, Tenant continues to have a net worth immediately after the Permitted Transfer equal to or greater than Tenant's net worth as of the day prior to the proposed Permitted Transfer; and (5) with respect to a purchase, merger, consolidation or reorganization or any Permitted Transfer which results in Tenant ceasing to exist as a separate legal entity, (a) Tenant's successor shall own all or substantially all of the assets of Tenant, and (b) Tenant's successor shall have a net worth immediately after the Permitted Transfer which is at least equal to Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization. Tenant's notice to Landlord shall include information and documentation showing that each of the above conditions has been satisfied. If requested by Landlord, Tenant's successor shall sign a commercially reasonable form of assumption agreement.

ARTICLE 11

DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

The occurrence and continuance of any one or more of the following shall constitute a "Default" by Tenant under this Lease:

(a) Tenant fails to pay any installment or other payment of Rent including Rent Adjustment Deposits or Rent Adjustments within five (5) days after written notice

that the Rent is past due, provided however, a "Default" shall be deemed to have occurred hereunder without any obligation of Landlord to give any notice if (i) Tenant fails to pay Rent within five (5) days after the date when due and (ii) during the 12 month interval preceding such failure, Landlord has given Tenant written notice of failure to timely pay Rent on two or more occasions;

(b) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease and fails to cure such default within thirty (30) days after written notice thereof to Tenant. However, if Tenant's failure to comply cannot reasonably be cured within thirty (30) days, Tenant shall be allowed additional time (not to exceed sixty (60) days) as is reasonably necessary to cure the failure so long as: (1) Tenant commences to cure the failure within twenty (20) days, and (2) Tenant diligently pursues a course of action that can reasonably be expected to cure the failure and bring Tenant back into compliance with the Lease, unless the default involves a hazardous condition, which shall be cured forthwith or unless the failure to perform is a Default for which this Lease specifies there is no cure or grace period;

(c) the interest of Tenant in this Lease is levied upon under execution or other legal process;

(d) a petition is filed by or against Tenant to declare Tenant bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Act, or any amendment, replacement or substitution therefor, or to delay payment of, reduce or modify Tenant's debts, which in the case of an involuntary action is not discharged within sixty (60) days;

(e) Tenant is declared insolvent by Law or any assignment of Tenant's property is made for the benefit of creditors;

(f) a receiver is appointed for Tenant or Tenant's property, which appointment is not discharged within sixty (60) days;

(g) any action taken by or against Tenant to reorganize or modify Tenant's capital structure in a materially adverse way which in the case of an involuntary action is not discharged within sixty (60) days; or

(h) upon the dissolution of Tenant.

11.2 LANDLORD'S REMEDIES

(a) A Default shall constitute a breach of the Lease for which Landlord shall have the rights and remedies set forth in this Section 11.2 and all other rights and remedies set forth in this Lease or now or hereafter allowed by Law, whether legal or equitable, and all rights and remedies of Landlord shall be cumulative and none shall exclude any other right or remedy.

(b) With respect to a Default, at any time Landlord may terminate Tenant's right to possession by written notice to Tenant stating such election. Any written notice required pursuant to Section 11.1 shall constitute notice of unlawful detainer pursuant to California Code of Civil Procedure Section 1161 (provided that such notice is served upon Tenant in accordance with California Code of Civil Procedure Section 1162) if, at Landlord's sole discretion, it states Landlord's election that Tenant's right to possession is terminated after expiration of any period required by Law or any longer period required by Section 11.1. Upon the expiration of the period stated in Landlord's written notice of termination (and unless such notice provides an option to cure within such period and Tenant cures the Default within such period), Tenant's right to possession shall terminate and this Lease shall terminate, and Tenant shall remain liable as hereinafter provided. Upon such termination in writing of Tenant's right to possession, Landlord shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or otherwise as permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures, personal property and those Tenant Alterations which Tenant is required or permitted to remove under Article Twelve), but Landlord shall not be obligated to effect such removal, and such property may, at Landlord's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Tenant, and the proceeds of any sale shall be applied pursuant to Law. Landlord shall in no event be responsible for the value, preservation or safekeeping of any such property. Tenant hereby waives all claims for damages that may be caused by Landlord's removing or storing Tenant's personal property pursuant to this Section or Section 12.1, and Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including reasonable attorneys' fees and expenses) arising out of or in any way related to such removal or storage. Upon such written termination of Tenant's right to possession and this Lease, Landlord shall have the right to recover damages for Tenant's Default as provided herein or by Law, including the following damages provided by California Civil Code Section 1951.2:

(i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could reasonably have been avoided;

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term of this Lease after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; and

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, Landlord's unamortized costs of tenant improvements, leasing commissions and legal fees incurred in connection with entering into this Lease. The word "rent" as used in this Section 11.2 shall have the same meaning as the defined term Rent in this Lease. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the Default Rate. The worth at the time of award of the amount referred to in clause (3) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid Rent under clause (3) above, the monthly Rent reserved in this Lease shall be deemed to be the sum of the Monthly Base Rent, monthly storage space rent, if any, and the amounts last payable by Tenant as Rent Adjustments for the calendar year in which Landlord terminated this Lease as provided hereinabove.

(c) Even if Tenant is in Default and/or has abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession by written notice as provided in Section 11.2(b) above, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. In such event, Landlord shall have all of the rights and remedies of a landlord under California Civil Code Section 1951.4 (Landlord may continue Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute. During such time as Tenant is in Default, if Landlord has not terminated this Lease by written notice and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises, subject to Landlord's option to recapture pursuant to Section 10.2, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Tenant acknowledges and agrees that the provisions of Article Ten shall be deemed to constitute reasonable limitations of Tenant's right to assign or sublet. Tenant acknowledges and agrees that in the absence of written notice pursuant to Section 11.2(b) above terminating Tenant's right to possession, no other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, including acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease or the withholding of consent to a subletting or assignment, or terminating a subletting or assignment, if in accordance with other provisions of this Lease.

(d) In the event that Landlord seeks an injunction with respect to a breach or threatened breach by Tenant of any of the covenants, conditions or provisions of this Lease, Tenant agrees to pay the premium for any bond required in connection with such injunction.

(e) Tenant hereby waives any and all rights to relief from forfeiture, redemption or reinstatement granted by Law (including California Civil Code of Procedure Sections 1174 and 1179) in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of Tenant's Default or otherwise;

(f) Notwithstanding any other provision of this Lease, a notice to Tenant given under this Article and Article Twenty-four of this Lease or given pursuant to California Code of Civil Procedure Section 1161, and any notice served by mail shall be deemed served, and the requisite waiting period deemed to begin under said Code of Civil Procedure Section upon mailing, without any additional waiting requirement under Code of Civil Procedure Section 1011 et seq. or by other Law. For purposes of Code of Civil Procedure Section 1162, Tenant's "place of residence", "usual place of business", "the property" and "the place where the property is situated" shall mean and be the Premises, whether or not Tenant has vacated same at the time of service.

(g) The voluntary or other surrender or termination of this Lease, or a mutual termination or cancellation thereof, shall not work a merger and shall terminate all or any existing assignments, subleases, subtenancies or occupancies permitted by Tenant, except if and as otherwise specified in writing by Landlord.

(h) No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, and no exercise by Landlord of its rights pursuant to Section 25.14 to perform any duty which Tenant fails timely to perform, shall impair any right or remedy or be construed as a waiver. No provision of this Lease shall be deemed waived by Landlord or Tenant unless such waiver is in writing and signed by the party to be charged or as otherwise provided in this Lease. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease.

11.3 ATTORNEYS' FEES

In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses of investigation, and all attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes, in establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

11.4 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "Electing Party") must provide for:

(i) The Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of assumption and it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(ii) If the Electing Party has assumed this Lease or elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

(iii) For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(1) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease; and

(2) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(c) Landlord's acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

11.5 LANDLORD'S DEFAULT

Landlord shall be in default hereunder in the event Landlord has not begun and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform. Except as expressly provided in this Lease, (a) in no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord's default as to any covenant or agreement contained in this Lease, and (b) Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant's remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give the Mortgagee notice and a reasonable time to cure any default by Landlord.

ARTICLE 12

SURRENDER OF PREMISES

12.1 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition, ordinary wear and tear, damage caused by Landlord, casualty damage and Tenant Alterations which Landlord states may be surrendered at the termination of the Lease excepted, and Tenant shall deliver to Landlord all keys to the Premises. Tenant shall remove from the Premises all movable personal property of Tenant and Tenant's trade fixtures, including, subject to Section 6.4, cabling for any of the foregoing. Tenant shall be entitled to remove such Tenant Additions, which at the time of their installation Landlord and Tenant agreed may be removed by Tenant. Tenant shall also remove such other Tenant Alterations as required by Landlord at the time Landlord consented to the Tenant Alterations, including any Tenant Alterations containing Hazardous Materials. Tenant immediately shall repair all damage resulting from removal of any of Tenant's property, furnishings or Tenant Alterations, shall close all floor, ceiling and roof openings and shall restore the Premises to a tenantable condition as reasonably determined by Landlord. If any of the Tenant Alterations which were installed by Tenant involved the lowering of ceilings, raising of floors or the installation of specialized wall or floor coverings or lights, then Tenant shall also be obligated to return such surfaces to their condition prior to the commencement of this Lease. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above, Landlord may (but shall not be obligated to), at Tenant's expense, remove any of such property and store, sell or otherwise deal with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section, and undertake, at Tenant's expense, such restoration work as Landlord deems necessary or advisable.

12.2 LANDLORD'S RIGHTS

All property which may be removed from the Premises by Landlord in accordance with applicable law shall be conclusively presumed to have been abandoned by Tenant and Landlord may deal with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section. Tenant shall also reimburse Landlord for all costs and expenses incurred by Landlord in removing any of Tenant Alterations and in restoring the Premises to the condition required by this Lease at the Termination Date.

ARTICLE 13

HOLDING OVER

In the event that Tenant holds over in possession of the Premises after the Termination Date, Tenant shall pay Landlord one hundred fifty percent (150%) of the monthly Rent payable for the month immediately preceding the holding over (including increases for Rent Adjustments which Landlord may reasonably estimate. Tenant shall also pay all damages sustained by Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord, and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance.

ARTICLE 14

DAMAGE BY FIRE OR OTHER CASUALTY

14.1 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenantable, Landlord shall, with reasonable promptness after the occurrence of such damage, reasonably estimate the length of time that will be required to Substantially Complete the repair and restoration and shall by notice advise Tenant of such estimate ("Landlord's Notice"). If Landlord estimates that the amount of time required to substantially complete such repair and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant if all or a substantial portion of the Premises is rendered untenantable, shall have the right to terminate this Lease as of the date of such damage upon giving written notice to the other at any time within twenty (20) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination. Further, if Tenant is permitted and does properly terminate the PRI Lease in accordance with Article 14 (Damage by Fire or Other Casualty) of the PRI Lease, Tenant shall also have the right to terminate this Lease by giving Landlord written notice of such termination concurrently with its notice to terminate the PRI Lease. Tenant's notice to terminate this Lease pursuant to the preceding sentence shall designate a termination date for this Lease; provided, however, such date may not be earlier than ninety (90) days following the date Tenant delivers its termination notice for this Lease.

(b) Unless this Lease is terminated as provided in the preceding subparagraph, Landlord shall proceed with reasonable promptness to repair and restore the Premises to its condition as existed prior to such casualty, subject to reasonable delays for insurance adjustments and Force Majeure delays, and also subject to zoning Laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration, unless such repairs and restoration are not completed within ninety (90) days after the expiration of such time period.

(c) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damages to the Premises, provided that Tenant shall be entitled to the full proceeds of Tenant's insurance (including endorsements, if any) of Tenant's Property and its own business losses and personal property, trade fixtures, Tenant Alterations and equipment which would be removable by Tenant at the Termination Date. All such Landlord insurance proceeds shall be payable to Landlord whether or not the Premises are to be repaired and restored.

(d) Notwithstanding anything to the contrary herein set forth: (i) Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Alterations; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the act or neglect of Tenant, its agent or employees. Whether or not the Lease is terminated pursuant to this Article Fourteen, in no event shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding or restoration of the Premises or the Building or access thereto.

(e) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article Nine hereof.

14.2 INSUBSTANTIAL UNTENANTABILITY

If the Premises or the Building is damaged by a casualty but neither is rendered substantially untenantable and Landlord reasonably estimates that the time to substantially complete the repair or restoration will not exceed one hundred eighty (180) days from the date such damage occurred, then Landlord shall proceed to repair and restore the Building and the Premises (excluding Tenant Additions but including restoring the Landlord Work), with reasonable promptness, unless such damage is to the Premises and occurs during the last six (6) months of the Term, in which event either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within twenty (20) days after the date of such casualty. Notwithstanding the aforesaid, (i) Landlord's obligation to repair shall be limited in accordance with the provisions of Section 14.1 above, and (ii) Landlord shall not have the right to terminate this Lease due to any such damage during the

last six (6) months of the Term if Tenant has an option to extend the Term and gives Landlord written notice of Tenant's binding exercise of such option within twenty (20) days after any such notice of termination by Landlord and Landlord and Tenant enter into an amendment to this Lease extending the Term within fifteen (15) days thereafter.

14.3 RENT ABATEMENT

Except for the negligence or willful act of Tenant or its agents, employees, contractors or invitees, if all or any part of the Premises are rendered untenantable by fire or other casualty and this Lease is not terminated, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenantable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform, provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenantable during such period.

14.4 WAIVER OF STATUTORY REMEDIES

The provisions of this Lease, including this Article Fourteen, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, the Premises or the Property or any part of either, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or the Property or any part of either, and are hereby waived.

ARTICLE 15

EMINENT DOMAIN

15.1 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) and is thereby rendered untenantable, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Notwithstanding anything to the contrary herein set forth, in the event the taking is temporary (for less than the remaining Term of the Lease), Landlord may elect either (i) to terminate this Lease or (ii) permit Tenant to receive the entire award attributable to the Premises in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

15.2 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, the Lease shall be amended to reduce or increase, as the case may be, the Monthly Base Rent and Tenant's Share to reflect the Rentable Area of the Premises, Building or Project, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt

and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Alterations but inclusive of the Landlord Work) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days prior written notice to Tenant.

15.3 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, to Tenant Additions paid for by Tenant without any credit or allowance from Landlord, so long as there is no diminution of Landlord's award as a result.

ARTICLE 16

INSURANCE

16.1 TENANT'S INSURANCE

Tenant, at Tenant's expense, agrees to maintain in force, with a company or companies reasonably acceptable to Landlord, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease, and such insurance shall be for such limits that are reasonably required by Landlord from time to time but not less than a combined single limit of Three Million and No/100 Dollars ($3,000,000.00); (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "All Risks" property insurance in an amount adequate to cover the full replacement cost of all Tenant Alterations, equipment, installations, fixtures and contents of the Premises (except Landlord's Furniture, as defined in Article 21) in the event of loss; and (d) in the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles.

16.2 FORM OF POLICIES

Each policy referred to in Section 16.1 above shall satisfy the following requirements. Each policy shall (i) name Landlord, Wareham Property Group and the Indemnitees as additional insureds (except Workers' Compensation and Employers' Liability Insurance), (ii) be issued by one or more responsible insurance companies licensed to do business in the State of California reasonably satisfactory to Landlord, (iii) where applicable, provide for deductible amounts reasonably satisfactory to Landlord and not permit co-insurance, (iv) shall provide that such insurance may not be canceled or reduced without thirty (30) days' prior written notice to the Landlord, and (v) each policy of "All-Risks" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance and at Landlord's request, copies of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and not less than ten (10) days prior to the expiration date of each policy.

16.3 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Project in amounts not less than the greater of one hundred percent (100%) percent of the then full replacement cost (without depreciation) of the Project (above foundations and including the Landlord Work and Landlord's Furniture, but excluding Tenant Alterations and Tenant's equipment, installations, fixtures and other contents of the Premises) or an amount sufficient to prevent Landlord from becoming a co-insurer under the terms of the applicable policies, against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time, including, at Landlord's option, earthquake insurance. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Project on an occurrence basis against all claims for personal injury, bodily injury, death, and property damage. Such insurance shall be for a combined single limit of not less than Three Million and No/100 Dollars ($3,000,000.00). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

16.4 WAIVER OF SUBROGATION

(a) Landlord agrees that, so long as the same is permitted under the laws of the State of California, it will include in its "All Risks" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, so long as the same is permitted under the laws of the State of California, in its "All Risks" insurance policy or policies on Tenant Alterations, whether or not removable, and on Tenant's furniture, furnishings, fixtures and other personal property removable by Tenant under the provisions of this Lease appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. If Tenant is unable to obtain in such policy or policies either of the clauses described in the preceding sentence, Tenant shall, if legally possible and without necessitating a change in insurance carriers, have Landlord named in such policy or policies as an additional insured. If Landlord shall be named as an additional insured in accordance with the foregoing, Landlord agrees to endorse promptly to the order of Tenant, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy or representing any other payment growing out of or connected with said policies, and Landlord does hereby irrevocably waive any and all rights in and to such proceeds and payments.

(c) Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Project and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance (or would have been covered had Landlord maintained the insurance required to be maintained by it under this Lease), notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees for loss or damage to Tenant Alterations, whether or not removable, and to Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent the same is covered by Tenant's insurance required (or would have been covered had Tenant maintained the insurance required to be maintained by it under this Lease), notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy that would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insureds shall, to the extent obtainable, contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insureds.

16.5 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.

ARTICLE 17

WAIVER OF CLAIMS AND INDEMNITY

17.1 WAIVER OF CLAIMS

To the extent permitted by Law, Tenant releases the Indemnitees from, and waives all claims for, damage to person or property sustained by the Tenant or any occupant of the Premises or the Property resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Property or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Property, or resulting directly or indirectly from any act or neglect of Landlord, Landlord's agents and servants, except to the extent caused by the gross negligence or willful and wrongful act of any of the Indemnitees or by Landlord's breach of its obligations under this Lease. To the extent permitted by Law, Tenant hereby waives any consequential damages and/or claims for loss of business, rents, or profits as a result of such injury or damage, whether or not caused by the gross negligence or willful and wrongful act of any of the Indemnitees.

17.2 INDEMNITY BY TENANT

To the extent permitted by Law, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including attorneys' fees and expenses for the defense thereof, arising from Tenant's use of the Premises, from the undertaking by Tenant of any Tenant Alterations or repairs to the Premises, from the conduct of Tenant's business on the Premises, or from any breach or Default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any willful and wrongful act or negligence of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord in its reasonable discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not apply to or operate to relieve Indemnitees of liability to the extent such liability is caused by the grossly negligent or willful and wrongful act of Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers.

17.3 INDEMNITY BY LANDLORD

To the extent permitted by Law, Landlord hereby indemnifies, and agrees to protect, defend and hold Tenant harmless, against any and all actions, claims, demands, liability, costs and expenses, including attorneys' fees and expenses for the defense thereof, arising from any

default on the part of Landlord in the performance of any covenant or agreement on the part of Landlord to be performed pursuant to the terms of this Lease, or from any willful and wrongful act or gross negligence of Landlord, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against Tenant by reason of any such claim, upon notice from Tenant, Landlord covenants to defend such action or proceeding by counsel chosen by Tenant in its reasonable discretion. Tenant reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not apply to or operate to relieve Tenant of liability to the extent such liability is caused by the grossly negligent or willful and wrongful act of Tenant. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Tenant or its insurers.

ARTICLE 18

RULES AND REGULATIONS

18.1 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the rules and regulations listed on Exhibit C attached hereto and with all reasonable modifications and additions thereto which Landlord may make from time to time. If there is a conflict between this Lease and any rules and regulations enacted after the date of this Lease, the terms of this Lease shall control.

18.2 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce the rules and regulations as set forth on Exhibit C or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall use reasonable efforts to enforce the rules and regulations of the Project in a uniform and non-discriminatory manner.

ARTICLE 19

LANDLORD'S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for offset or abatement of Rent: (1) to change the Building's name or street address upon thirty (30) days' prior written notice to Tenant; (2) to install, affix and maintain all signs on the exterior and/or interior of the Building; (3) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises; (4) upon reasonable notice to Tenant, to display the Premises to prospective purchasers and lenders at reasonable hours at any

time during the Term and to prospective tenants at reasonable hours during the last twelve (12) months of the Term; (5) to grant to any party the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose permitted hereunder; (6) to change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, washrooms or public portions of the Building, and to close entrances, doors, corridors, elevators or other facilities, provided that such action shall not materially and adversely interfere with Tenant's access to the Premises or the Building; (7) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (8) to close the Building, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such regulations as Landlord prescribes for security purposes. In exercising all such rights, Landlord shall used reasonable efforts to minimize any disruption to Tenant and shall comply with Tenant's reasonable security measures and operating procedures.

ARTICLE 20

ESTOPPEL CERTIFICATE

20.1 IN GENERAL

Within ten (10) days after request therefor by Landlord, Mortgagee or any prospective mortgagee or owner, Tenant agrees as directed in such request to execute an Estoppel Certificate binding upon Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises if that is the case; (iv) that Landlord is not in default under this Lease, or, if Tenant believes Landlord is in default, the nature thereof in reasonable detail; (v) that Tenant has no offsets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any offsets or defenses, a reasonably detailed explanation thereof); (vi) that the Premises have been completed in accordance with the terms and provisions hereof, that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto, or, if Tenant believes that Tenant has any such claims against Landlord, the nature thereof in reasonable detail; (vii) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the provisions thereof; (viii) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord; and (ix) to any other information reasonably requested.

20.2 ENFORCEMENT

In the event that Tenant fails to deliver an Estoppel Certificate within ten (10) additional days after notice that such Estoppel Certificate is past-due, then such failure shall be a Default for which there shall be no further cure or grace period.

ARTICLE 21

LANDLORD'S FURNITURE

(a) Landlord and Tenant hereby acknowledge that, as of the Date of Lease, the Premises contains the furniture and furnishings owned by Landlord described on Exhibit E hereto ("Landlord's Furniture"). Throughout the Term of this Lease, (i) Tenant shall have the exclusive use of the Landlord's Furniture without charge, (ii) Landlord shall maintain insurance covering Landlord's Furniture pursuant to Section 16.3, and (iii) Landlord shall promptly repair or replace any Landlord's Furniture damaged by casualty, if required pursuant to Article 14.

(b) From time to time during the Term, Tenant may disassemble, remove, and transfer any item(s) of Landlord's Furniture to a warehouse owned or rented by Landlord or its Affiliate, as designated by Landlord ("Landlord's Warehouse") by delivering written notice to Landlord specifying the date of transfer and item(s) of Landlord's Furniture to be transferred; provided, however, the location of any such Landlord's Warehouse shall be in Berkeley, Richmond, or Emeryville, California. Tenant's notice to Landlord must be delivered to Landlord not less than two (2) business days prior to the date of transfer. Tenant shall repair or cause to be repaired any and all damage caused by the disassembly, removal, or transfer of Landlord's Furniture; however, Landlord shall be responsible for the storage costs of such item(s). Tenant may not request that any previously removed item of Landlord's Furniture be reinstalled. Tenant hereby acknowledges that Landlord may sell or use, in Landlord's sole discretion, any item(s) of Landlord's Furniture removed from the Premises in accordance with this Article 21.

ARTICLE 22

REAL ESTATE BROKERS

Tenant represents that, except for the broker(s) listed in Section 1.1(14), Tenant has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises to Tenant. Tenant hereby agrees to indemnify, protect, defend and hold Landlord and the Indemnitees, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation. Landlord agrees to pay any commission to which the brokers listed in Section 1.1 are entitled in connection with this Lease pursuant to Landlord's written agreement with such broker.

ARTICLE 23

MORTGAGEE PROTECTION

23.1 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, extensions, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, and all amendments, extensions, renewals, replacements and modifications of such mortgage or trust deed and/or the obligation secured thereby, unless such ground lease or ground lessor, or mortgage, trust deed or Mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage or trust deed. If any such mortgage or trust deed is foreclosed (including any sale of the Real Property pursuant to a power of sale), or if any such lease is terminated, upon request of the Mortgagee or ground lessor, as the case may be, Tenant shall attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, or damages arising out of a default of any obligations of any preceding Landlord (except that such purchaser or ground lessor shall be liable for continuing defaults, such as a continuing failure to repair and maintain); or (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor; or (iv) liable for any security deposits not actually received in cash by such purchaser or ground lessor. This subordination shall be self-operative and no further certificate or instrument of subordination need be required by any such Mortgagee or ground lessor. In confirmation of such subordination, however, Tenant shall execute promptly any reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attornment provided for herein. Notwithstanding the foregoing, upon written request by Tenant, Landlord will use reasonable efforts to obtain a non-disturbance, subordination and attornment agreement from Landlord's then current Mortgagee on a commercially reasonable form of agreement. "Reasonable efforts" of Landlord shall not require Landlord to incur any cost, expense or liability to obtain such agreement, it being agreed that Tenant shall be responsible for any fee or review costs charged by the Mortgagee. Upon request of Landlord, Tenant will execute the Mortgagee's commercially reasonable form of non-disturbance, subordination and attornment agreement and return the same to Landlord for execution by the Mortgagee. Landlord's failure to obtain a non-disturbance, subordination and attornment agreement for Tenant shall have no effect on the rights, obligations and liabilities of Landlord and Tenant or be considered to be a default by Landlord hereunder.

23.2 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail or by overnight courier, a copy of any notice of default served upon Landlord by Tenant, provided that prior to such notice Tenant has received notice (by way of service on Tenant of a copy of an

assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within that time, then such additional notice time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings or other proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of default. No ground lessor or Mortgagee shall be bound by any agreement to modify or amend this Lease so as to reduce the Rent or shorten the Term, or so as to cancel or surrender this Lease, without the prior written consent, in each instance, of the ground lessor or the Mortgagee.

ARTICLE 24

NOTICES

All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or mailed by first class, registered or certified United States mail, return receipt requested, postage prepaid. All notices, demands or requests to be sent pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed in Sections 1.1. Notices, demands or requests sent by mail or overnight courier service as described above shall be effective upon deposit in the mail or with such courier service. However, the time period in which a response to any such notice, demand or request must be given shall commence to run from (i) in the case of delivery by mail, the date of receipt on the return receipt of the notice, demand or request by the addressee thereof, or (ii) in the case of delivery by Federal Express or other overnight courier service, the date of acceptance of delivery by an employee, officer, director or partner of Landlord or Tenant. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, as indicated by advice from Federal Express or other overnight courier service or by mail return receipt, shall be deemed to be receipt of notice, demand or request sent. Notices may also be served by personal service upon any officer, director or partner of Landlord or Tenant, and shall be effective upon such service. By giving to the other party at least thirty (30) days written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

ARTICLE 25

MISCELLANEOUS

25.1 LATE CHARGES

(a) All payments required hereunder (other than the Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits, which shall be due as hereinbefore provided) to Landlord shall be paid within thirty (30) days after Landlord's demand therefor. All such amounts (including Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits) not paid when due shall bear interest from the date due until the date paid at the Default Rate in effect on the date such payment was due.

(b) In the event Tenant is more than five (5) days late in paying any installment of Rent due under this Lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent installment of Rent. The parties agree that (i) such delinquency will cause Landlord to incur costs and expenses not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Landlord in processing each delinquent payment of rent by Tenant, (b) the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Landlord for each delinquent payment in addition to all Rent otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for in subparagraph (a) above are distinct and separate from one another in that the payment of interest is to compensate Landlord for its inability to use the money improperly withheld by Tenant, while the payment of late charges is to compensate Landlord for its additional administrative expenses in handling and processing delinquent payments.

(c) Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Tenant under this Lease, nor shall the foregoing provisions of this Article or any such payments prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay Rent when due, including the right to terminate this Lease.

25.2 NO JURY TRIAL; VENUE; JURISDICTION

Each party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury, and hereby further waives any objection to venue in the County in which the Project is located, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter arising out of this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or the enforcement of any remedy under any statute, emergency or otherwise, whether any of the foregoing is based on this Lease or on tort law. No party will seek to consolidate any such action in which a jury has been waived with any other action in which a jury trial cannot or has not been

waived. It is the intention of the parties that these provisions shall be subject to no exceptions. By execution of this Lease the parties agree that this provision may be filed by any party hereto with the clerk or judge before whom any action is instituted, which filing shall constitute the written consent to a waiver of jury trial pursuant to and in accordance with Section 631 of the California Code of Civil Procedure. No party has in any way agreed with or represented to any other party that the provisions of this Section will not be fully enforced in all instances. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

25.3 NO OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of the Lease to Tenant does not constitute a reservation of or option for the Premises.

25.4 AUTHORITY

Landlord and Tenant each represents and warrants to the other that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Landlord or Tenant may request that the other provide evidence of its authority.

25.5 ENTIRE AGREEMENT

This Lease, and the Exhibits attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written, and no other representations or statements, either oral or written, on which Tenant has relied. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

25.6 OFAC. Tenant hereby represents, certifies and warrants to Landlord as follows: (i) Tenant is not named and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order, including without limitation Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control ("**OFAC**"); (ii) Tenant is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and (iii) none of the proceeds used to pay rent have been or will be derived from a "specified unlawful activity" as defined in, and Tenant is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Tenant agrees to immediately notify Landlord if Tenant was, is, or in the future becomes, a "senior foreign political figure" or an immediate family member or close associate of a "senior foreign political figure," within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything in this Lease to the contrary, Tenant understands that this Lease is a continuing transaction and that the foregoing representations, certifications and warranties are ongoing and shall be and remain true and in force on the date hereof and throughout the Term of this Lease and that any breach thereof shall be a Default under this Lease (not subject to any

notice or cure rights) giving rise to any and all Landlord remedies hereunder, and Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, fines, penalties, forfeitures and expenses (including without limitation costs and attorneys' fees) arising from or related to any such Default.

25.7 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Lease shall only be enforced against Landlord's equity interest in the Property (including, without limitation, any rental insurance and condemnation proceeds thereof) and in no event against any other assets of the Landlord, or Landlord's officers or directors or partners, and that any liability of Landlord with respect to this Lease shall be so limited and Tenant shall not be entitled to any judgment in excess of such amount.

25.8 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt or acceptance of payment from anyone other than Tenant, including an assignee of Tenant, is not a waiver of any breach of Article Ten, and Landlord may accept such payment on account of the amount due without prejudice to Landlord's right to pursue any remedies available to Landlord.

25.9 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, provided that the transferee expressly assumes all liabilities and obligations of the Landlord under this Lease. Landlord shall have the right to assign this Lease to an entity comprised of the principals of Landlord or affiliates of such entities. Upon such assignment and assumption of the obligations of Landlord by Landlord's successor hereunder, Landlord shall be entirely freed and relieved of all obligations hereunder accruing after the date of such transfer.

25.10 BINDING EFFECT

Subject to the provisions of Article Ten, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

25.11 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

25.12 TIME; APPLICABLE LAW; CONSTRUCTION

Time is of the essence of this Lease and each and all of its provisions. This Lease shall be construed in accordance with the Laws of the State of California. If more than one person signs this Lease as Tenant, the obligations hereunder imposed shall be joint and several. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by Law. Wherever the term "including" or "includes" is used in this Lease, it shall have the same meaning as if followed by the phrase "but not limited to". The language in all parts of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

25.13 ABANDONMENT

In the event Tenant vacates or abandons the Premises, but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (i) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises and (iii) during the last six (6) months of the Term, have the right to prepare the Premises for occupancy by another tenant upon the end of the Term. Tenant expressly acknowledges that in the absence of written notice pursuant to Section 11.2(b) or pursuant to California Civil Code Section 1951.3 terminating Tenant's right to possession, none of the foregoing acts of Landlord or any other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, and the Lease shall continue in effect.

25.14 LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES

If a Default of Tenant exists due to Tenant's failure to perform any of its duties under this Lease, Landlord shall have the right (but not the obligation), to perform such duty on behalf and at the expense of Tenant without further notice to Tenant and all sums expended or expenses incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable upon demand by Landlord.

25.15 SECURITY

Except as otherwise provided in this Section, Landlord shall not be obligated to provide or maintain any security patrol or security system. Landlord and Tenant acknowledge that as of the date of this Lease, the Premises are equipped with a security system installed by a prior

tenant of the Premises, but Landlord makes no representation or warranty of any sort with respect to such security system. Landlord shall not be responsible for the quality of any patrol or system which may be provided hereunder or for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such patrol or system. Landlord and Tenant acknowledge and agree that as of the date of this Lease, Landlord contracts with a provider to patrol the exterior of the Building and/or Project only. Notwithstanding the foregoing, Landlord shall, from time to time, have the right to change providers for such security services.

25.16 NO LIGHT, AIR OR VIEW EASEMENTS

Any diminution or shutting off of light, air or view by any structure which may be erected on lands of or adjacent to the Project shall in no way affect this Lease or impose any liability on Landlord.

25.17 RECORDATION

Neither this Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Tenant. Any such unauthorized recording shall be a Default for which there shall be no cure or grace period.

25.18 SURVIVAL

The waivers of the right of jury trial, the other waivers of claims or rights, the releases and the obligations of Landlord and Tenant under this Lease to indemnify, protect, defend and hold harmless Tenant, Landlord and/or Indemnitees, as applicable, shall survive the expiration or termination of this Lease, and so shall all other obligations or agreements which by their terms survive expiration or termination of the Lease.

25.19 RIDERS

All Riders attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

25.20 COUNTERPARTS; PDF.

This Lease may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Lease may be executed in so-called "pdf" format and each party has the right to rely upon a pdf counterpart of this Lease signed by the other party to the same extent as if such party had received an original counterpart.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Section 1.1 hereof.

TENANT:

TRANSCEPT PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ Glenn Oclassen
Glenn Oclassen, CEO

LANDLORD:

POINT RICHMOND R&D ASSOCIATES II, LLC,
a California limited liability company

By: /s/ Richard K. Robbins
Richard K. Robbins
Manager

EXHIBIT A

PLAN OF PREMISES

Exhibit A

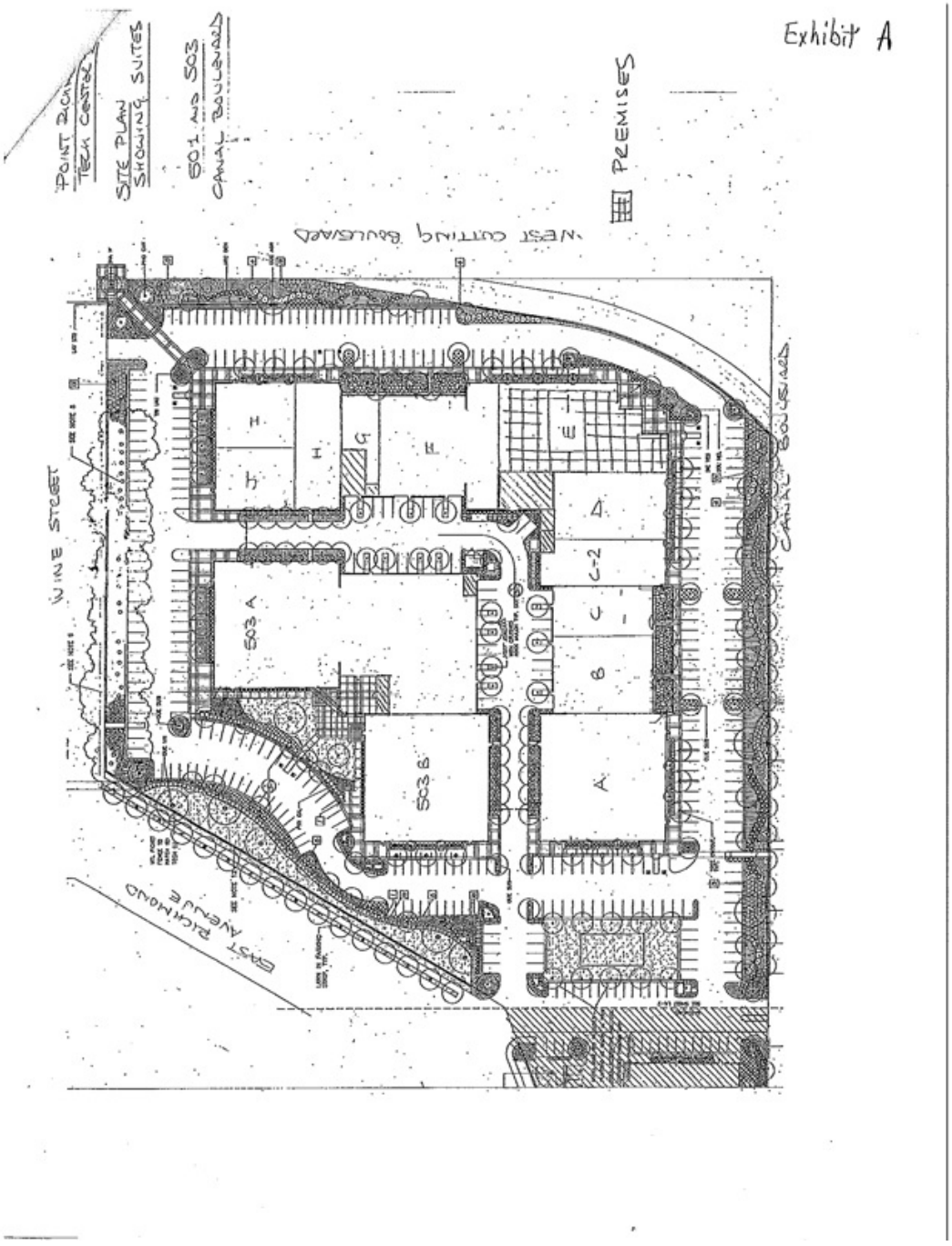

POINT ROMA TECH CENTER
SITE PLAN SHOWING SUITES
501 AND 503 CANAL BOULEVARD
PREMISES
WEST CUTTING BOULEVARD
WINE STREET
CANAL BOULEVARD
EAST PACIFIC HIGHWAY
503 A
503 B
A
B
C-1
C-2
4
E
F
G
H
h

EXHIBIT B

WORKLETTER

Landlord will perform, at its sole cost and expense the work described in this Exhibit B (the "Landlord Work"), and shall deliver the Premises to Tenant with the Landlord Work Substantially Complete. By its execution of the Lease, Tenant has authorized Landlord to commence with construction of the Landlord Work. The Landlord Work shall be as follows:

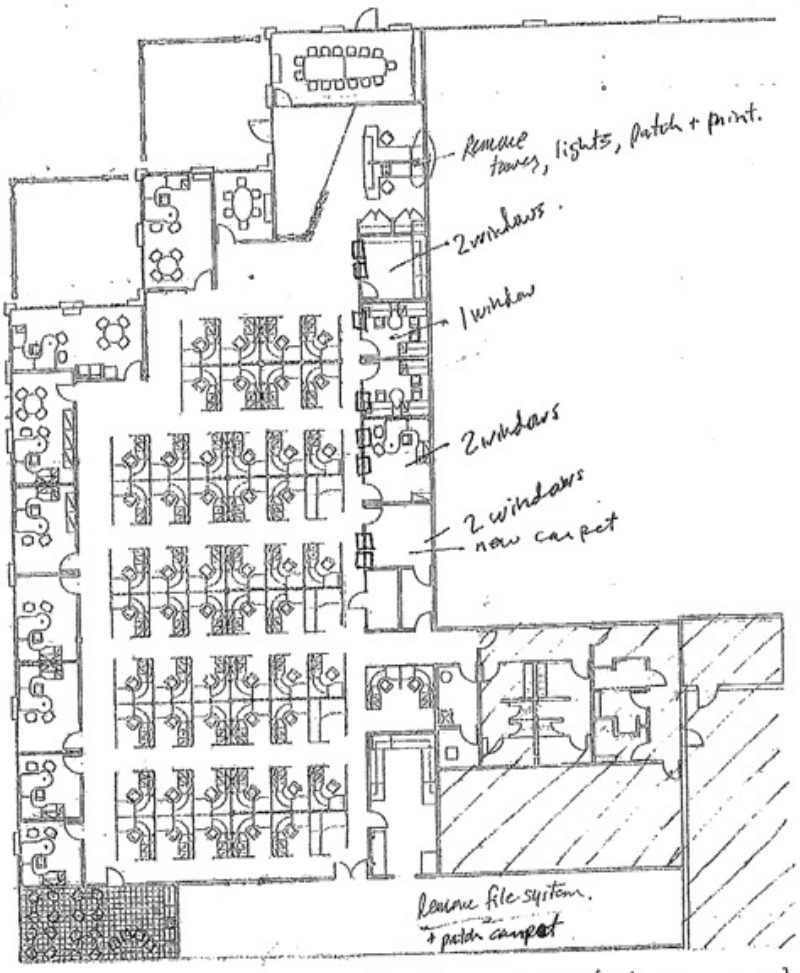
1. Install eight (8) windows in the Premises, such windows to be as described and of the dimensions and at the locations identified in Schedule 1 attached to this Exhibit B;
2. construct a paved stone and gravel walkway connecting the Building to the parking lot serving the building located at 1003 West Cutting Boulevard, Richmond, California;
3. clean and patch the carpet within the Premises and install carpet in one private office as noted on Schedule 1;
4. remove decorative steel sculptures and lights behind the reception desk in the Premises and patch and paint the wall as necessary as noted on Schedule 1; and
5. remove the high density file storage system in the Premises and patch carpet as necessary due to such removal.

Landlord shall perform the Landlord Work using new materials of good quality, in accordance with applicable Laws, and in a good and workmanlike manner reasonably acceptable to Tenant. In the event of any Tenant Delay, Substantial Completion of the Landlord Work shall be the date Landlord reasonably would have Substantially Completed such Landlord Work but for the Tenant Delay.

SCHEDULE 1 to Exhibit B

[ATTACHED]

SCHEDULE 1 to
Exhibit B
page 1/2

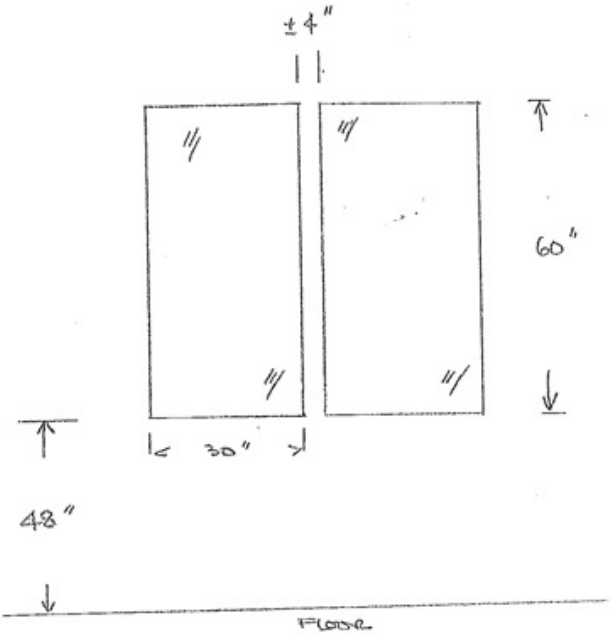


* professionally clean carpets to remove stains.

SCHEDULE 1 to
EXHIBIT B
page 2/2

501 CANAL BOULEVARD SUITE E

NEW WINDOW INSTALLATION



FRAMES TO BE ANODIZED ALUMINUM TO MATCH EXISTING IN THE SUITE

2/6/09

EXHIBIT C

RULES AND REGULATIONS

1. No sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors or halls shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and if the Premises are situated on the ground floor of the Project, Tenant shall further, at Tenant's own expense, keep the sidewalks and curb directly in front of the Premises clean and free from rubbish.

2. No awning or other projection shall be attached to the outside walls or windows of the Project without the prior written consent of Landlord. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Landlord, and shall be attached in the manner approved by Landlord. All lighting fixtures hung in offices or spaces along the perimeter of the Premises must be of a quality, type, design, bulb color, size and general appearance approved by Landlord.

3. No sign, advertisement, notice, lettering, decoration or other thing shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Project, without the prior written consent of Landlord. In the event of the violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

4. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Project shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the window sills or in the public portions of the Project.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in public portions thereof without the prior written consent of Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant to the extent that Tenant or Tenant's agents, servants, employees, contractors, visitors or licensees shall have caused the same.

7. Tenant shall not mark, paint, drill into or in any way deface any part of the Premises or the Project. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

8. No animal or bird of any kind shall be brought into or kept in or about the Premises or the Project, except seeing-eye dogs or other seeing-eye animals.

9. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Project, or neighboring buildings or premises, or those having business with them. Tenant shall not throw anything out of the doors, windows or skylights or down the passageways.

10. Except as expressly permitted under the Lease, neither Tenant nor any of Tenant's agents, servants, employees, contractors, visitors or licensees shall at any time bring or keep upon the Premises any flammable, combustible or explosive fluid, chemical or substance.

11. No additional locks, bolts or mail slots of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any change be made in existing locks or the mechanism thereof; provided, however, that subject to the provisions of Article 9 of the Lease, Tenant shall have the right to install a card-key or other security system at the Premises. Tenant must, upon the termination of the tenancy, restore to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.

12. All removals, or the carrying in or out of any safes, freight, furniture, construction material, bulky matter or heavy equipment of any description must take place during the hours which Landlord or its agent may determine from time to time. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon two-inch thick plank strips to distribute the weight. The moving of safes, freight, furniture, fixtures, bulky matter or heavy equipment of any kind must be made upon previous notice to the Building Manager and in a manner and at times prescribed by him, and the persons employed by Tenant for such work are subject to Landlord's prior approval. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Project and to exclude from the Project all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

13. Tenant shall not purchase spring water, janitorial or maintenance or other like service from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with security and proper operation of the Project.

14. Landlord shall have the right to prohibit any advertising or business conducted by Tenant referring to the Project which, in Landlord's opinion, tends to impair the reputation of the Project or its desirability as a first class building for offices and/or commercial services and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.

15. Tenant's contractors shall, while in the Premises or elsewhere in the Project, be subject to the reasonable supervision of the Building Manager (but not as agent or servant of said Building Manager or of Landlord).

16. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

17. The requirements of Tenant will be attended to only upon application at the office of the Project. Project personnel shall not perform any work or do anything outside of their regular duties unless under special instructions from the office of the Landlord.

18. Canvassing, soliciting and peddling in the Project are prohibited and Tenant shall cooperate to prevent the same.

19. No air conditioning unit or system or similar apparatus shall be installed or used by Tenant without the written consent of Landlord.

20. There shall not be used in any premises, or in the public halls, plaza areas, lobbies, or elsewhere in the Project, either by Tenant or by Tenant's contractors or others, in the delivery or receipt of merchandise, any hand trucks or dollies, except those equipped with rubber tires and sideguards.

21. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in any driveways, service entrances, or areas posted "No Parking" and shall comply with any other parking restrictions imposed by Landlord from time to time.

22. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

23. Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Project in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.

24. Tenant shall not prepare any food nor do any cooking, operate or conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, except that food and beverage preparation by Tenant's employees using microwave ovens or coffee makers shall be permitted provided no odors of cooking or other processes emanate from the Premises. Tenant shall not install or permit the installation or use of any vending machine or permit the delivery of any food or beverage to the Premises except by such persons and in such manner as are approved in advance in writing by Landlord.

25. The Premises shall not be used as an employment agency, a public stenographer or typist, a labor union office, a physician's or dentist's office, a dance or music studio, a school, a beauty salon, or barber shop, the business of photographic, multilith or multigraph reproductions or offset printing (not precluding using any part of the Premises for photographic, multilith or multigraph reproductions solely in connection with Tenant's own business and/or activities), a restaurant or bar, an establishment for the sale of confectionery, soda, beverages, sandwiches, ice cream or baked goods, an establishment for preparing, dispensing or

consumption of food or beverages of any kind in any manner whatsoever, or news or cigar stand, or a radio, television or recording studio, theatre or exhibition hall or sale of merchandise, goods, services or property of any kind at wholesale, retail or auction, or for lodging, sleeping or for any immoral purposes.

26. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not install any machine or equipment which causes noise, heat, cold or vibration to be transmitted to the structure of the building in which the Premises are located without Landlord's prior written consent, which consent may be conditioned on such terms as Landlord may reasonably require. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry and which is allowed by Law.

27. Tenant shall not bring any Hazardous Materials onto the Premises except for those that are in general commercial use and are incidental to Tenant's business operations and only in quantities suitable for prompt use and as otherwise expressly permitted by the Lease.

28. Tenant shall not store any vehicle within the parking area. Tenant's parking rights are limited to the use of parking spaces for short-term parking, of up to twenty-four (24) hours, of vehicles utilized in the normal and regular daily travel to and from the Project. Tenants who wish to park a vehicle for longer than a 24-hour period shall notify the Building Manager for the Project and consent to such long-term parking may be granted for periods up to two (2) weeks. Any motor vehicles parked without the prior written consent of the Building Manager for the Project for longer than a 24-hour period and that have not been moved within twenty-four (24) hours after the Building Manager shall have given Tenant written notice thereof shall be deemed stored in violation of this rule and regulation and shall be towed away and stored at the owner's expense or disposed of as provided by Law.

29. Smoking is prohibited in the Premises, the Building and all enclosed Common Areas of the Project, including all lobbies, all hallways, all elevators and all lavatories.

EXHIBIT D

VISITOR SPACES

D-1

EXHIBIT E

LANDLORD'S FURNITURE

EXHIBIT E

501 CANAL BOULEVARD – SUITE E FURNITURE:

ENTRANCE:

Reception Area:

4 Office Chairs – gray

2 desk chairs - purple

One "T" shaped reception desk, wood

MAIN CONFERENCE ROOM:

1 Large Conference Table
1 Credenza (matching)
1 Telephone Table
9 Purple Conference Room Chairs
1 White Board

ENTER MAIN SUITE AREA – TURN RIGHT:

OFFICE 120 –

1 "L" Shaped Desk
1 matching bookcase – 2 shelves - wooden
1 Desk Chair – purple
1 Office Chair - gray

OFFICE 119 –

1 rectangular Shaped Desk - wooden
1 Credenza
1 Bookcase Cabinet (door) – 3 shelves - wooden
1 Desk Chair – gray

OFFICE 118 –

1 "U" Shaped Desk
1 Credenza
1 Bookcase Cabinet (door) – no shelves
1 Desk Chair – blue

FFICE 117 –

1 "L" Shaped Desk
1 Bookcase Cabinet (door) – 3 shelves
1 Credenza
1 Desk Chair – grey
2 Office Chairs - gray

OFFICE 116 - (No 'nameplate") –

1 "L" Shaped Desk
1 Bookcase Cabinet (door) – 3 shelves
1 Desk Chair – gray

WORK AREA (along right corridor) -

5 Filing Cabinets – lateral - 4 drawer, dark grey
1 Filing Cabinet – 3 drawer, black wheeled

OFFICE 115 –

1 "L" Shaped Desk
1 round table - wooden
1 Desk Chair – gray
2 Office Chairs - gray
1 Dry Erase board

OFFICE 114 –

1 "L" Shaped Desk
1 Credenza
1 Bookcase – 4 shelves (open)
1 Desk Chair – black
2 Office Chairs - gray

OFFICE 113 –

1 "L" Shaped Desk
1 Bookcase Cabinet (door) – 1 shelf
1 Desk Chair – gray

OFFICE 112 -

1 "L" Shaped Desk
1 Bookcase Cabinet (door) – 2 shelves
1 Bookcase – 2 shelves (open)
1 Desk Chair – gray
1 Office Chair - gray

BACK WALL – (along rear corridor) –

9 Filing Cabinets – lateral - 4 drawer, dark grey

ROOM 111 – Employee Break Room –

3 stools
3 Round Tables w/silver legs
24 Chairs (portable) – grey with silver legs
1 Refrigerator
1 Dishwasher
1 Microwave

ROOM 110 – Filing System Room –

2 Filing Cabinet – vertical - 4 drawer, beige
4 Filing Cabinets – vertical - 4 drawer – black
1 Filing Cabinet – vertical - 4 drawer – brown
3 Filing Cabinets – lateral - 4 drawer – beige
5 Filing Cabinets – lateral - 4 drawer – lighter beige
1 Filing Cabinet – lateral - 4 drawer – black
1 rectangular work table w/silver legs – wooden
1 cork bulletin board
1 stepping stool
1 phone

ROOM 109 – Copy Room –

5 Work Tables – Green Laminate tops/black metal legs
2 Filing Cabinets – lateral - 4 drawer, dark grey

SEMI-CUBICLE AREA – (near back door corridor)

2 Filing Cabinets – lateral - 4 drawer, dark grey
1 Filing Cabinet – 2 drawer, black wheeled
1 Filing Cabinet – 3 drawer, black wheeled
1 Desk Chair – purple

JANITOR'S CLOSET –

2 Rubbermaid Storage Cabinets
1 Metal Shelf Rack (6 shelves)

ROOM 107 – Telephone Room –

1 UPS – Symetra APC Power Array

ROOM 108 – SERVER ROOM

1 Server Cabinet – black
1 UPS – Symetra APC Power Array

ROOM 106 – Work Room –

3 Work Tables – Green Laminate tops/black metal legs
1 Metal Storage Cabinet – beige – 4 shelves

OFFICE 105 –

1 "L" Shaped Desk
1 White Board
1 Desk Chair – purple
1 Office Chair - gray

OFFICE 104 –

1 "L" Shaped Desk
1 Desk Chair – purple

OFFICE 103 –

1 "L" Shaped Desk
2 Filing Cabinets – 2 drawer, black wheeled
1 Desk Chair – purple
1 Dry Erase Board

OFFICE 102 –

1 "L" Shaped Desk
1 Filing Cabinet – 2 drawer, black wheeled
1 Area Rug – Checkered Pattern/Multi colored
1 Desk Chair – purple
1 Office Chair - gray

CUBICLES/WORKSTATIONS –

ROW ONE (Closest to Main Entry):

6 CUBICLES/WORKSTATIONS:

6 Desk Chairs – purple
8 Filing Cabinets – 2 drawer, black wheeled
4 Filing Cabinets – 3 drawer, black wheeled

ROW TWO:

12 CUBICLES/WORKSTATIONS:

12 Desk Chairs – purple
10 Filing Cabinets – 2 drawer, black wheeled
14 Filing Cabinets – 3 drawer, black wheeled
1 black desk lamp

ROW THREE:

12 CUBICLES/WORKSTATIONS:

12 Desk Chairs – purple
9 Filing Cabinets – 2 drawer, black wheeled
15 Filing Cabinets – 3 drawer, black wheeled

ROW FOUR:

12 CUBICLES/WORKSTATIONS:

12 Desk Chairs – purple
9 Filing Cabinets – 2 drawer, black wheeled
15 Filing Cabinets – 3 drawer, black wheeled

ROW FIVE:

12 CUBICLES/WORKSTATIONS:

12 Desk Chairs – purple
12 Filing Cabinets – 2 drawer, black wheeled
12 Filing Cabinets – 3 drawer, black wheeled

Exhibit 10.34

March 4, 2009

Joseph Kennedy

Dear Joseph:

I am pleased to offer you a position with Transcept Pharmaceuticals (the "Company") as Vice President, General Counsel and Secretary. The position will be based out of our offices located at 1003 W. Cutting Blvd., Suite 110, Pt. Richmond, California. If you decide to join us you will receive a monthly salary of Twenty-Two Thousand Nine Hundred Sixteen Dollars and Sixty-Seven Cents ($22,916.67), less required deductions and withholdings, which will be paid semi-monthly in accordance with the Company's normal payroll procedures.

You will also be eligible to participate in the executive bonus program with a target bonus of up to 30% of your base salary. At Transcept our salary merit increases and potential bonus amounts, if any, are based upon the assumption that an employee has provided services to the Company for the entire calendar year. Therefore, if you join Transcept at any time between January 1 and November 1 of any calendar year, your potential salary merit increase and potential bonus, if either is awarded, will be pro-rated for the actual amount of service you provide during that calendar year. If you leave at any time during a year, you will not be eligible for any pro-rata amount of your unearned target bonus for that year. Bonus payments will be subject to required deductions and withholdings. The Company shall have the sole discretion to determine whether you have earned any bonus set forth in this paragraph and, if so, the amount of any such bonus.

As an employee, you are also eligible to receive certain employee benefits that currently include health, dental, life and vision insurance as well as a 401(k) plan pursuant to the terms of these benefit plans. You should note that the Company may modify compensation and benefits from time to time as it deems necessary. The Company will also reimburse you for business expenses consistent with Company practices and policies, continuing education expenses and bar fees required to maintain good standing as an attorney in the jurisdictions in which you are currently admitted, and fees and expenses related to licensing as an in-house counsel in California.

In addition, if you decide to join us, it will be recommended to the Company's Compensation Committee at the first meeting of the Compensation Committee following your start date, that the Company grant you an option to purchase 85,000 shares of the Company's Common Stock at a price per share equal to the fair market value per share of the Common Stock on the date of grant, as determined by the closing price. If granted, 25% of the shares subject to the option shall vest 12 months after the date your vesting begins (and, except as provided in your Change of Control and Severance Benefit Agreement), no shares shall vest before such date and no rights to any vesting shall be earned or accrued prior to such date) and the remaining shares subject to the option shall vest monthly over the next 36 months in equal monthly amounts subject to your continuing employment with the Company. This option grant shall be subject to the terms and conditions of the Company's Stock Option Plan and Stock Option Agreement. Over time, additional performance-based stock option grants may be made available in the sole discretion of the Company.

The Company also will enter into a Change of Control and Severance Benefits Agreement (the "Severance Agreement") with you.

We will not require you to relocate to the San Francisco Bay Area during the first six months of your employment, but we may require you to move thereafter. We expect that you will have a frequent presence in the office and that you will be present in the office when reasonably requested by the Company. Before you relocate, we anticipate that you will be in the office most business days of two weeks per month, part of a third week, and working from home or on the road the fourth week. During this initial six (6) month period of your employment, the Company will provide you i) reasonable reimbursement of travel expenses, including weekly round trip travel expenses between your current home and the Bay Area, ii) access to our corporate condominium for up to six (6) months, and iii) reimbursement of reasonable car rental expenses for up to six (6) months, collectively referred to as "**Other Reimbursement**." You also shall receive an additional payment to you (the "Other Reimbursement Gross-Up Payment") in an amount equal to thirty five percent (35%) of the amount of the aggregate Other Reimbursement paid to you. The Other Reimbursement Gross-Up Payment shall be paid to you shortly after the end of your first six months of employment but in no event later than March 15, 2010. The six (6) month periods set forth above period may be extended by the Company, subject to your continued employment at all times during such period.

You may choose to relocate to the San Francisco Bay Area at any time. The effective date of your relocation for purposes of this offer letter is the earlier of the date that you contract for the sale of your home in New York and the date that your primary residence ceases to be in New York and becomes a location in the Bay Area (regardless of whether that location is a rental property or a home that you purchase) (such date, the "**Effective Relocation Date**"). So long as you relocate to the Bay Area within twelve (12) months of your employment start date (or such later date as approved by the Company), and subject to your continued employment at the time of your relocation, we will reimburse your reasonable Moving Expenses. **"Moving Expenses"** consist of costs that are customarily incurred with the sale and purchase of a home and the actual cost of moving household goods and storage for up to two (2) months for your move from New York to the Bay Area, up to a maximum reimbursement of $45,000.

In addition, we will also agree to pay you a one-time lump sum cash bonus of $25,000, less required tax withholdings, payable within thirty (30) days after your start date, which you may use to cover miscellaneous moving expenses (the **"Relocation Bonus"**). In recognition that you require time to search for a home and move from New York to the Bay Area, the Company will further provide you with reimbursement for up to three (3) round trip airline tickets for you and your family between New York and the Bay Area during the first twelve (12) months of your employment start date, subject to your continued employment at the times of such trips (the **"Airfare Reimbursement"**). You also shall receive an additional payment to you (the "Airfare Gross-Up Payment") in an amount equal to thirty five percent (35%) of the amount of the aggregate Airfare Reimbursement paid to you. The Airfare Gross-Up Payment shall be paid to you shortly after you incur these expenses but in no event later than March 15, 2010. Once you have moved to the Bay Area, the Company also agrees to provide you with a two-tiered mortgage or rental allowance. This monthly allowance will be $2,500 per month for the first year and $1,500 per month for the second year (collectively referred to as **"Mortgage Allowance"**), provided that any such allowance only shall continue while you are employed by the Company.

The Other Reimbursement, mortgage/rental assistance, and all other relocation and commuting payments and benefits provided in this letter will be paid to you within 30 days after the date you submit receipts for the underlying expenses, provided you submit those receipts within 30 days after you incur the expenses. All such amounts will be subject to applicable tax withholdings.

For the avoidance of doubt, to the extent that any reimbursements payable pursuant to this letter are subject to the provisions of Section 409A of the Internal Revenue Code, any such reimbursements payable pursuant to this letter shall be paid no later than December 31 of the year following the year in which the expense was incurred, the amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year, and the right to reimbursement under this agreement will not be subject to liquidation or exchange for another benefit.

Any successor in interest to the Company shall be bound by the terms of this Agreement.

The Company is excited about the prospect of having you join our team, and we look forward to a beneficial and fruitful relationship. Nevertheless, you should be aware that your employment with the Company is for no specified period and constitutes at-will employment. As a result, you are free to resign at any time, for any reason or for no reason. Similarly, the Company is free to conclude its employment relationship with you at any time, with or without cause, and with or without advance notice. We request that, in the event of resignation, you give the Company at least two-week's notice.

For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire, or our employment relationship with you may be terminated.

We also ask that, if you have not already done so, you disclose to the Company any and all agreements relating to your prior employment that may affect your eligibility to be employed by the Company or limit the manner in which you may be employed. It is the Company's understanding that any such agreements will not prevent you from performing the duties of your position and you represent that such is the case. Moreover, you agree that, during the term of your employment with the Company, you will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to the Company, subject to the below. Notwithstanding the above, we recognize that you are a Business Advisory Board member of Fountain Healthcare Partners, an international venture capital group, and the Company is satisfied that you will exercise your responsibilities to the Company and FHP in a manner that is consistent with your professional obligations as an attorney and General Counsel to the Company and thus find that such involvement is not in violation of any policy of the Company. Similarly, you agree not to bring any third-party confidential information to the Company, including that of your former employer, and that in performing your duties for the Company, you will not in any way utilize any such information.

As you know, Transcept is involved in an industry that is highly competitive and that changes quickly. Thus, although the position we are offering is as its General Counsel, Transcept may change your position and/or your duties at any time, with or without cause or advance notice. As with all of our employees, your employment is also subject to our general employment policies, many of which are described in our Employee Handbook. As a Company employee, you will be expected to abide by company rules and standards. You will be specifically required to sign an acknowledgment that you have read and that you understand the Company's rules of conduct, which are included in the Company Handbook.

As a condition of your employment**,** you will also be required to sign and comply with an At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement which requires, among other provisions, the assignment of patent rights to any invention made during your employment at the Company, and non-disclosure of proprietary information. In the event of any dispute or claim relating to or arising out of this agreement or our employment relationship, you and the Company agree to an arbitration in which (i) you are waiving any and all rights to a jury trial but all court remedies will be available in arbitration, (ii) we agree that all disputes between you and the Company shall be fully and finally resolved by binding arbitration, (iii) all disputes shall be resolved by a single neutral arbitrator who shall issue a written opinion, (iv) the arbitration proceeding shall provide for adequate discovery, and (v) the Company shall pay all arbitration fees in excess of any court fees which you would be required to pay if the dispute were decided in a court of law. Any such arbitration shall be conducted in the San Francisco Bay Area by Judicial Arbitration and Mediation Services (JAMS) under the JAMS Employment Arbitration Rules and Procedures.

To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below. A duplicate original is enclosed for your records. If you accept our offer, your first day of employment shall be subject to mutual agreement, but in no event be later than **March 20, 2009.** This letter, along with your At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement and the Severance Agreement, sets forth the entire terms of your employment with the Company and supersede any prior representations or agreements including, but not limited to any representations made during your interviews or relocation negotiations, whether written or oral. This letter, including, but not limited to, its at-will employment provision, may not be modified or amended except by a written agreement signed by the Company President and you. This offer of employment will terminate if it is not accepted, signed and returned by **March 6, 2009**.

We look forward to your favorable reply and to working with you at Transcept.

Sincerely,
Transcept Pharmaceuticals, Inc.

/s/ Glenn A. Oclassen
Glenn A. Oclassen
President & Chief Executive Officer

Agreed to and accepted:

Signature: /s/ Joseph T. Kennedy
Joseph T. Kennedy
Date: March 4, 2009

Enclosures:

- Duplicate Original Letter
- At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement
- Severance Agreement

Exhibit 10.35

CHANGE OF CONTROL AND SEVERANCE BENEFITS AGREEMENT

This **CHANGE OF CONTROL AND SEVERANCE BENEFITS AGREEMENT** (the ***"Agreement"***) is entered into this 4th day of March, 2009 (the ***"Effective Date"***), between **TRANSCEPT PHARMACEUTICALS, INC.** (the ***"Company"***) and Joseph T. Kennedy (***"Executive"***). This Agreement is intended to provide Executive with the compensation and benefits described herein upon the occurrence of specific events.

WHEREAS, Executive is employed by the Company pursuant to the terms of Executive's offer letter with the Company, dated March 3, 2009 (the ***"Offer Letter"***); and

WHEREAS, the Company believes it is imperative to provide Executive with certain severance benefits in the event that Executive's employment is terminated without Cause (as defined herein) in circumstances unrelated to a Change of Control (as defined herein); and

WHEREAS, the Company believes it is imperative to provide Executive with certain change of control severance benefits, including certain equity acceleration, in the event that Executive's employment is terminated without Cause (as defined herein) in connection with a Change of Control (as defined herein).

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, the parties hereto hereby agree as follows:

1. TERM OF AGREEMENT. The term of this Agreement shall commence on the Effective Date and shall continue through the fifth anniversary of the Effective Date (the ***"Expiration Date"***), and if not amended or renewed by the Compensation Committee of the Company's Board of Directors (the ***"Compensation Committee"***) prior to the Expiration Date, this Agreement shall terminate automatically on such Expiration Date. Notwithstanding the foregoing, the Company agrees that after the fourth anniversary of the Effective Date, the Compensation Committee shall undertake to review this Agreement and the severance benefits and change of control severance benefits provided herein in good faith, with the assistance of the Company's outside advisors and compensation consultants, in order to determine, based upon the then current market conditions or any other factors deemed relevant by the Compensation Committee, the appropriateness of continuing this Agreement after the Expiration Date, or whether it would be more appropriate for the Company to amend or terminate this Agreement as of the Expiration Date.

2. TERMINATION OF EMPLOYMENT AND SEVERANCE BENEFITS.

(a) At-Will Employment. Executive's employment is at-will, which means that the Company may terminate Executive's employment at any time, with or without advance notice, and with or without Cause (as defined herein). Similarly, Executive may resign his/her employment at any time, with or without advance notice, and with or without reason. Executive shall not receive any compensation of any kind, including, without limitation, severance benefits or change of control severance benefits, following Executive's last day of employment with the Company (the ***"Termination Date"***), except as expressly provided for by this Agreement, applicable law, and/or any plan documents governing the compensatory equity awards that have been or may be granted to Executive from time to time in the sole discretion of the Company.

(b) Termination Without Cause Unrelated to a Change of Control. If: **(i)** Executive's employment is terminated without Cause (and other than as a result of Executive's death or disability) at any time (except for the time period commencing on the date of the consummation of a Change of Control and ending twelve (12) months after a Change of Control), **(ii)** such termination constitutes a "separation from service" (within the meaning of Treasury Regulation Section 1.409A-1(h)), **(iii)** Executive signs and allows to become effective a general release of all known and unknown claims in the form provided by the Company, which form shall be substantially in the form attached hereto as **Exhibit A**) (the "***Release***") within thirty (30) days after the Termination Date, and **(iv)** Executive fully complies with his continuing fiduciary, statutory and material contractual obligations to the Company (with a 30-day opportunity to cure after notice of any such non-compliance if he has not, unless such non-compliance is not capable of being cured); then the Company shall provide Executive with the following severance benefits:

(i) The Company shall make a single lump sum severance payment to Executive in an amount equal to **Executive's Base Annual Salary** in effect as of the Termination Date, less required tax withholdings and deductions (the "***Severance Payment***"). The Severance Payment will be paid within forty-five (45) days after the Termination Date, but in no event later than March 15 of the year following the year of termination.

(ii) Provided that Executive elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (together with any state or local laws of similar effect, ***"COBRA"***) within the time period provided for under COBRA, the Company will pay the premiums necessary to continue Executive's group health (including dental and vision) insurance coverage in effect as of the termination date of Executive's employment (including coverage for Executive's eligible dependents) for a maximum period of twelve (12) months following the Termination Date; provided, however, that no premium payments will be made by the Company pursuant to this paragraph following the effective date of Executive's coverage by a health (including dental and vision) insurance plan of a subsequent employer or such other date on which Executive (and Executive's dependents, as applicable) cease to be eligible for COBRA coverage. Executive agrees that he shall notify the Company in writing as soon as practical, but no later than 15 days after he receives coverage under a health insurance plan of a subsequent employer.

(iii) If the Termination Date is on or after the Effective Relocation Date (as defined in the Offer Letter), the Company shall:

(1) make a single lump sum payment to Executive in an amount equal to the entire remaining unpaid balance of the Mortgage Allowance (as defined in the Offer Letter) within forty-five (45) days after the Termination Date, but in no event later than March 15 of the year following the year of termination; and

(2) pay Executive any amounts constituting Other Reimbursement, Moving Expense, Relocation Bonus, and Airfare Reimbursement, as each such term is defined in the Offer Letter, that were incurred or earned (as applicable) as of the Termination Date. For purposes of this Agreement, if Executive has contracted for sale and/or purchase of his primary residence prior to the Termination Date, any contractual obligation to pay, or a payment that is reasonably anticipated to be incurred in connection with such contractual obligations, shall be reimbursed as a Moving Expense; provided, that the overall

Moving Expenses shall not exceed a total of $45,000. Any amounts in this Section 2(b)(iii)(2) shall be subject to the provision of receipts as set forth in the Offer Letter, with such payments made by the Company within forty-five (45) days after the Termination Date (or submission of such receipts if actually incurred after the Termination Date), but in no event later than March 15 of the year following the year of termination.

(c) Termination Without Cause or Resignation for Good Reason Within Twelve Months After a Change of Control. If: **(i)** Executive's employment is terminated without Cause (and other than as a result of Executive's death or disability), or if Executive resigns for Good Reason, during the time period commencing on the date of the consummation of a Change of Control and ending twelve (12) months after a Change of Control, **(ii)** such termination constitutes a "separation from service" (within the meaning of Treasury Regulation Section 1.409A-1(h)), **(iii)** Executive signs and allows to become effective the Release within thirty (30) days after the Termination Date, and **(iv)** Executive fully complies with his continuing fiduciary, statutory and material contractual obligations to the Company (with a 30-day opportunity to cure after notice of any such non-compliance if he has not, unless such non-compliance is not reasonably capable of being cured); then the Company shall provide Executive with the following change of control severance benefits:

(i) The Company shall make a single lump sum severance payment to Executive in an amount equal to **Executive's Base Annual Salary** in effect as of the Termination Date, less required tax withholdings and deductions (the "***Change of Control Payment***"). The Change of Control Payment will be paid within forty-five (45) days after the Termination Date, but in no event later than March 15 of the year following the year of termination.

(ii) Provided that Executive elects continued coverage under COBRA within the time period provided for under COBRA, the Company will pay the premiums necessary to continue Executive's group health (including dental and vision) insurance coverage in effect as of the termination date of Executive's employment (including coverage for Executive's eligible dependents) for a maximum period of **eighteen (18) months** following the Termination Date; provided, however, that no premium payments will be made by the Company pursuant to this paragraph following the effective date of Executive's coverage by a health (including dental and vision) insurance plan of a subsequent employer or such other date on which Executive (and Executive's dependents, as applicable) cease to be eligible for COBRA coverage. Executive agrees that he shall notify the Company in writing as soon as practical, but no later than 15 days after he receives coverage under a health insurance plan of a subsequent employer.

(iii) After taking into account any additional acceleration of vesting Executive may be entitled to receive under any other plan or agreement, the Company shall cause all outstanding equity awards then held by Executive (including, without limitation, stock options, stock appreciation rights, restricted stock or similar awards) to become **fully vested** and, if applicable, exercisable with respect to all the shares subject thereto effective immediately prior to the Termination Date. In all other respects, such equity awards shall continue to be governed by the terms of the applicable award agreements and equity incentive plan documents and any applicable agreements between the Company and Executive.

(iv) If the Termination Date is on or after the Effective Relocation Date, the Company shall:

(1) make a single lump sum payment to Executive in an amount equal to the entire remaining unpaid balance of the Mortgage Allowance (as defined in the Offer Letter) within forty-five (45) days after the Termination Date, but in no event later than March 15 of the year following the year of termination; and

(2) pay Executive any amounts constituting Other Reimbursement, Moving Expense, Relocation Bonus, and Airfare Reimbursement, as each such term is defined in the Offer Letter, that were incurred or earned (as applicable) as of the Termination Date. For purposes of this Agreement, if Executive has contracted for sale and/or purchase of his primary residence prior to the Termination Date, any contractual obligation to pay, or a payment that is reasonably anticipated to be incurred in connection with such contractual obligations, shall be reimbursed as a Moving Expense; provided, that the overall Moving Expenses shall not exceed a total of $45,000. Any amounts in this Section 2(c)(iv)(2) shall be subject to the provision of receipts as set forth in the Offer Letter, with such payments made by the Company within forty-five (45) days after the Termination Date (or submission of such receipts if actually incurred after the Termination Date), but in no event later than March 15 of the year following the year of termination.

3. DEFINITIONS.

(a) Definition of Base Annual Salary. For purposes of this Agreement, "***Base Annual Salary***" shall mean Executive's annualized base salary in effect immediately prior to the Termination Date. Base Annual Salary does not include variable forms of compensation such as but not limited to bonuses, incentive compensation, commissions, benefits, equity, expenses, or expense allowances.

(b) Definition of Cause. For the purposes of this Agreement, "***Cause***" shall mean any one or more of the following:

(i) Executive is convicted of (or pleads guilty or no contest to) any felony or any crime involving moral turpitude;

(ii) Executive participates in any material fraud, material act of dishonesty, or other act of intentional and material misconduct against the Company;

(iii) Executive intentionally damages or willfully misappropriates any property of the Company that in any case has a material adverse effect on the Company;

(iv) Executive materially breaches any fiduciary, statutory, or contractual duty he owes to the Company (including, but not limited to, any breach of the Company's Confidentiality Agreement);

(v) Executive regularly and materially fails to diligently and successfully perform his assigned duties;

(vi) Executive fails to cooperate with the Company in any investigation or proceeding by any governmental or similar authority or as otherwise authorized by the Board of Directors or a committee thereof; or

(vii) Executive is found liable in an SEC action and/or is disqualified by the SEC from serving in his executive role.

The determination that a termination is for Cause shall be made by the Company in its sole discretion; *provided, however,* that in the event that any of the foregoing events occurs, the Company shall provide written notice to Executive making reference to this Section describing the nature of such event and Executive shall thereafter have thirty (30) days to cure such event if such event is capable of being cured.

(c) Definition of Good Reason. For purposes of this Agreement, "Good Reason" means that Executive resigns his employment with the Company (or any successor thereto) if and only if:

(i) One of the following actions has been taken without Executive's express written consent:

(1) There is a material reduction in Executive's Base Annual Salary from the Base Annual Salary in effect immediately preceding the Change of Control;

(2) There is a material change in Executive's position or responsibilities (including the person or persons to whom Executive has reporting responsibilities) that represents an adverse change from Executive's position or responsibilities from those in effect at any time within ninety (90) days preceding the date of the Change of Control or at any time thereafter; provided, however, that a Change of Control which results in the subsequent conversion of the Company to a division or unit of the acquiring corporation will not by itself result in a material reduction in Executive's level of responsibility;

(3) Executive is required to relocate Executive's principal place of employment to a facility or location that would increase Executive's one way commute distance by more than thirty-five (35) miles; provided, however, that Executive's anticipated move to the San Francisco Bay Area as specified in the Offer Letter shall not be deemed a triggering relocation under this provision;

(4) The Company (or any successor thereto) materially breaches its obligations under this Agreement or any other then-effective employment agreement with Executive; or

(5) Any acquirer, successor or assignee of the Company fails to assume and perform, in any material respect, the obligations of the Company hereunder; and

(ii) Executive provides written notice to the Company's Board within the thirty (30) day period immediately following such action; and

(iii) Such action is not remedied by the Company within thirty (30) days following the Company's receipt of such written notice; and

(iv) Executive's resignation is effective not later than sixty (60) days after the expiration of such thirty (30) day cure period.

The termination of Executive's employment as a result of Executive's death or disability will not be deemed to be a Good Reason.

(d) Definition of Change of Control. For purposes of this Agreement, "Change of Control" shall mean:

(i) A transaction or series of transactions (other than an offering of Stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934 (the "***Exchange Act***")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(ii) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board of Directors of the Company (the "***Board***") together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in Section 3(c)(i) or Section 3(c)(ii)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(iii) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(1) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the ***"Successor Entity"***)) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(2) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this Section 3(c)(iii)(2) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(iv) The Company's stockholders approve a liquidation or dissolution of the Company.

The Company shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change of Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change of Control and any incidental matters relating thereto.

4. COMPLIANCE WITH SECTION 409A.

(a) It is intended that each installment of the payments and benefits provided for in this Agreement is a separate "payment" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). It is also intended that payments of the amounts set forth in this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A of the Internal Revenue Code of 1986, as amended (the ***"Code"***) (Section 409A of the Code, together, with any state law of similar effect, ***"Section 409A"***) provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9).

(b) Notwithstanding the foregoing, if the Company (or, if applicable, the successor entity thereto) determines that the Severance Payment, the Change of Control Payment and/or other benefits provided under this Agreement (the ***"Agreement Payments"***) constitute "deferred compensation" under Section 409A and Executive is, on the Termination Date, a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) of the Code, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Agreement Payments shall be delayed as follows: on the earlier to occur of (i) the date that is six months and one day after Executive's "separation from service" (as defined above) or (ii) the date of Executive's death (such earlier date, the ***"Delayed Initial Payment Date"***), the Company (or the successor entity thereto, as applicable) shall (A) pay to Executive a lump sum amount equal to the sum of the Agreement Payments that Executive would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Agreement Payments had not been so delayed pursuant to this Section 4(b) and (B) commence paying the balance of the Agreement Payments in accordance with the applicable payment schedules set forth in this Agreement.

5. INTERNAL REVENUE CODE SECTION 280G.

(a) If the payments and benefits (including but not limited to payments and benefits pursuant to this Agreement) that Executive would receive in connection with a change of control of the Company, whether from the Company or otherwise (a ***"Transaction Payment"***) would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the ***"Excise Tax"***), then the Company shall cause to be determined, before any amounts of the Transaction Payment are paid to Executive, which of the following two alternative forms of payment would result in Executive's receipt, on an after-tax basis, of the greater amount of the Transaction Payment notwithstanding that all or some portion of the Transaction Payment may be subject to

the Excise Tax: (1) payment in full of the entire amount of the Transaction Payment (a ***"Full Payment"***), or (2) payment of only a part of the Transaction Payment so that Executive receives the largest payment possible without the imposition of the Excise Tax (a ***"Reduced Payment"***).

(b) For purposes of determining whether to make a Full Payment or a Reduced Payment, the Company shall cause to be taken into account all applicable federal, state and local income and employment taxes and the Excise Tax (all computed at the highest applicable marginal rate, net of the maximum reduction in federal income taxes which could be obtained from a deduction of such state and local taxes). If a Reduced Payment is made, (i) Executive shall have no rights to any additional payments and/or benefits constituting the Transaction Payment, and (ii) reduction in payments and/or benefits shall occur in the following order: (1) reduction of cash payments; (2) cancellation of accelerated vesting of equity awards other than stock options; (3) cancellation of accelerated vesting of stock options; and (4) reduction of other benefits (if any) paid to Executive. In the event that acceleration of compensation from Executive's equity awards is to be reduced, such acceleration of vesting shall be canceled in the reverse order of the date of grant.

(c) The independent registered public accounting firm engaged by the Company for general audit purposes as of the day prior to the Termination Date shall make all determinations required to be made under this Section 5. If the independent registered public accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Company shall appoint a nationally recognized independent registered public accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such independent registered public accounting firm required to be made hereunder.

(d) The independent registered public accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within fifteen (15) calendar days after the date on which Executive's right to a Transaction Payment is triggered or such other time as reasonably requested by the Company or Executive. If the independent registered public accounting firm determines that no Excise Tax is payable with respect to the Transaction Payment, either before or after the application of the Reduced Amount, it shall furnish the Company and Executive with detailed supporting calculations of its determinations that no Excise Tax will be imposed with respect to such Transaction Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive.

6. DISPUTE RESOLUTION. Any dispute, claim or controversy of whatever nature arising out of or relating to this Agreement, including, without limitation, any action or claim based on tort, contract or statute, or concerning the interpretation, performance, or execution of this Agreement (including any determination of Cause or Good Reason hereunder) shall be resolved by confidential, final and binding arbitration administered by Judicial Arbitration and Mediation Services, Inc. (***"JAMS"***), in San Francisco, California, before a single arbitrator, in accordance with JAMS' then applicable arbitration rules. **Executive acknowledges that by agreeing to this arbitration procedure, Executive and the Company waive the right to resolve any such dispute, claim or demand through a trial by jury or judge or by administrative proceeding.** Executive will have the right to be represented by legal counsel at any arbitration proceeding. The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court

proceeding; and (b) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. Company shall bear all JAMS fees for the arbitration. Nothing in this Agreement shall prevent any of the parties from obtaining injunctive relief in court if necessary to prevent irreparable harm pending the conclusion of any arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in any court of competent jurisdiction.

7. GENERAL PROVISIONS.

(a) This Agreement constitutes the complete, final and exclusive embodiment of the entire agreement between Company and Executive with regard to the payments and benefits described herein, and it supersedes and replaces any other agreements (whether written or unwritten) Executive may have with the Company concerning severance benefits or change of control benefits (including but not limited to the provisions of Executive's Offer Letter concerning severance benefits or change of control benefits). This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises or representations. This Agreement may not be modified or amended except in a written agreement approved by the Compensation Committee and signed by Executive and a duly authorized officer of the Company.

(b) Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective under applicable law. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any invalid or unenforceable provision shall be modified so as to be rendered valid and enforceable in a manner consistent with the intent of the parties insofar as possible.

(c) Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(d) This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Facsimile signatures shall be deemed as effective as originals.

(e) This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive, the Company and their respective successors, assigns, heirs, executives and administrators, except that Executive may not assign any of his duties hereunder and he may not assign any of his rights hereunder without the written consent of the Company. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

(f) Any ambiguity in this Agreement shall not be construed against either party as the drafter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written below.

/s/ Joseph T. Kennedy
JOSEPH T. KENNEDY

Date: March 4, 2009

TRANSCEPT PHARMACEUTICALS, INC.

/s/ Glenn Oclassen
Name: Glenn Oclassen
Title: President and CEO

Date: March 4, 2009

EXHIBIT A

FORM OF RELEASE AGREEMENT

(INDIVIDUAL TERMINATION)

As provided in the **CHANGE OF CONTROL AND SEVERANCE BENEFITS AGREEMENT** dated , 2009 (the "**Agreement**") between me and Transcept Pharmaceuticals, Inc. (the "**Company**"), I will be eligible for certain Severance Benefits or Change of Control Benefits if I enter into this Release Agreement (the "**Release**"). I am not relying on any promise or representation by the Company that is not expressly stated in the Agreement. Certain capitalized terms used in this Release are defined in the Agreement.

I hereby acknowledge and reaffirm my obligations under my Confidentiality Agreement with the Company.

In consideration of the Severance Benefits or Change of Control Agreements, and other consideration, provided to me under the Agreement that I am not otherwise entitled to receive, and except as otherwise set forth in this Release, I hereby generally and completely release the Company and its current and former directors, officers, employees, stockholders, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively, the "**Released Parties**") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release (collectively, the "**Released Claims**"). The Released Claims include, but are not limited to: (1) all claims arising out of or in any way related to my employment with the Company or its affiliates, or the termination of that employment; (2) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company or its affiliates; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("**ADEA**"), the federal Employee Retirement Income Security Act of 1974 (as amended), the California Fair Employment and Housing Act (as amended), and the California Labor Code.

Notwithstanding the foregoing, the following are not included in the Released Claims (the "**Excluded Claims**"): (1) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with the Company to which I am a party, the charter, bylaws, or operating agreements of the Company, or under applicable law; or (2) any rights which are not waivable as a matter of law. In addition, nothing in this Release prevents me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, the California Department of Fair Employment and Housing, or any other government agency, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the Excluded Claims, I am not aware of any claims I have or might have against any of the Released Parties that are not included in the Released Claims.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA. I also acknowledge that the consideration given for the Released Claims is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (1) the Released Claims do not apply to any rights or claims that arise after the date I sign this Release; (2) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not to do so); (3) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (4) I have seven (7) days following the date I sign this Release to revoke the Release by providing written notice to the Company; and (5) the Release will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims I may have against the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, I have received all the leave and leave benefits and protections for which I am eligible, and I have not suffered any on-the-job injury for which I have not already filed a workers' compensation claim.

I acknowledge that to become effective, I must: (1) sign and return this Release to the Company within twenty-one (21) days after I am requested to sign it by the Company or its successor (as applicable); and (2) I must not revoke it thereafter.

JOSEPH T. KENNEDY

_____

Date: _____

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-135506) pertaining to the Novacea, Inc. 2006 Incentive Award Plan and the Amended 2001 Stock Option Plan of Novacea, Inc., the Registration Statement on Form S-8 (No. 333-150869) pertaining to the Novacea, Inc. 2006 Incentive Award Plan, the Registration Statement on Form S-8 (No. 333-157929) pertaining to the Transcept Pharmaceuticals, Inc. Amended and Restated 2002 Stock Option Plan, the Registration Statement on Form S-8 (No. 333-157927) pertaining to the Transcept Pharmaceuticals, Inc. 2006 Incentive Award Plan, the Registration Statement on Form S-3 (No. 333-145840), and the Registration Statement on Form S-4 (No. 333-153844) of our report dated March 26, 2009 with respect to the financial statements of Novacea, Inc., included in this Annual Report on Form 10-K for the year ended December 31, 2008.

/s/ Ernst & Young LLP

Palo Alto, California
March 26, 2009

Exhibit 31.1

Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Glenn A. Oclassen, certify that:

1. I have reviewed this annual report on Form 10-K of Transcept Pharmaceuticals, Inc.;

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 officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 30, 2009

/s/ GLENN A. OCLASSEN
Glenn A. Oclassen
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Thomas P. Soloway, certify that:

1. I have reviewed this annual report on Form 10-K of Transcept Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 30, 2009

/s/ THOMAS P. SOLOWAY

Thomas P. Soloway
Senior Vice President, Operations and
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

Certification of Chief Executive Officer and Chief Financial Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Transcept Pharmaceuticals, Inc. (the "*Company*") hereby certifies, to such officer's knowledge, that:

(i) the accompanying Annual Report on Form 10-K of the Company for the annual period ended December 31, 2008 (the "*Report*") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

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

Date: March 30, 2009

/s/ GLENN A. OCLASSEN
Glenn A. Oclassen
President and Chief Executive Officer
(Principal Executive Officer)

/s/ THOMAS P. SOLOWAY
Thomas P. Soloway
Senior Vice President, Operations and
Chief Financial Officer
(Principal Financial Officer)