INOVIO PHARMACEUTICALS, INC.

FORM 10-K
(Annual Report)

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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, 2004

OR

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

FOR THE TRANSITION PERIOD FROM TO

COMMISSION FILE NO. 001-14888

GENETRONICS BIOMEDICAL CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE (State or other jurisdiction of incorporation or organization)	**33-0969592** (I.R.S. Employer Identification No.)
11494 SORRENTO VALLEY ROAD **SAN DIEGO, CALIFORNIA** (Address of principal executive offices)	**92121-1318** (Zip Code)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (858) 597-6006

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

COMMON STOCK, $0.001 PAR VALUE (Title of Class)	**AMERICAN STOCK EXCHANGE** (Name of Each Exchange on Which Registered)

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT: NONE

Indicate by check mark whether the Company (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 if whether the Registrant is an accelerated filer (as defined, in Exchange Act Rule 12b-2). Yes ☒ No ☐

The aggregate market value of the voting and non-voting common equity (which consists solely of shares of Common Stock) held by non-affiliates of the Registrant as of June 30, 2004 was approximately $90,924,877 based on $5.20, the closing price on that date of the Registrant's Common Stock on the American Stock Exchange.

The number of shares outstanding of the Registrant's Common Stock, $0.001 par value, was 20,012,910 as of March 2, 2005.

DOCUMENTS INCORPORATED BY REFERENCE

We have incorporated by reference into Part III of this Annual Report portions of our proxy statement for the 2005 Annual Meeting of Stockholders, for which a definitive proxy statement will be filed with the Securities and Exchange Commission within 120 days after the fiscal year to which this Annual Report relates.

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THIS ANNUAL REPORT ON FORM 10-K CONTAINS FORWARD-LOOKING STATEMENTS THAT INVOLVE RISKS AND UNCERTAINTIES. SUCH STATEMENTS INCLUDE, BUT ARE NOT LIMITED TO, STATEMENTS CONTAINING THE WORDS "BELIEVES," "ANTICIPATES," "EXPECTS," "ESTIMATES" AND WORDS OF SIMILAR MEANING. OUR ACTUAL RESULTS COULD DIFFER MATERIALLY FROM ANY FORWARD-LOOKING STATEMENTS, WHICH REFLECT MANAGEMENT'S OPINIONS ONLY AS OF THE DATE OF THIS REPORT, AS A RESULT OF SUCH RISKS AND UNCERTAINTIES. WE UNDERTAKE NO OBLIGATION TO REVISE OR PUBLICLY RELEASE THE RESULTS OF ANY REVISIONS TO THESE FORWARD-LOOKING STATEMENTS. FACTORS THAT COULD CAUSE OR CONTRIBUTE TO SUCH DIFFERENCES INCLUDE, BUT ARE NOT LIMITED TO, THOSE FOUND IN THIS ANNUAL REPORT ON FORM 10-K IN PART I, ITEM 1 UNDER THE CAPTION "RISK FACTORS," IN PART II, ITEM 7 UNDER THE CAPTION "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" AND ADDITIONAL FACTORS DISCUSSED ELSEWHERE IN THIS ANNUAL REPORT AND IN OTHER DOCUMENTS WE FILE FROM TIME TO TIME WITH THE SECURITIES AND EXCHANGE COMMISSION, INCLUDING OUR QUARTERLY REPORTS ON FORM 10-Q. READERS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON ANY FORWARD-LOOKING STATEMENTS.

PART I

ITEM 1. BUSINESS

OVERVIEW

We were incorporated on August 8, 1979, under the laws of British Columbia, Canada, as Genetronics Biomedical Ltd. On June 15, 2001, we completed a change in our jurisdiction of incorporation from British Columbia, Canada, to the state of Delaware. This change was accomplished through a continuation of Genetronics Biomedical Ltd. into Genetronics Biomedical Corporation, a Delaware corporation. We carry out our business through our United States wholly-owned subsidiary, Genetronics, Inc., which was incorporated in California on June 29, 1983.

We are a San Diego-based biomedical company whose technology platform is based on medical devices that use Electroporation Therapy ("EPT") to deliver drugs and genes into cells. We are developing and commercializing novel medical therapies to address a number of diseases with critical unmet treatment needs using EPT. Our MedPulser Electroporation Therapy System is in Phase III clinical trials in the United States for the treatment of recurrent head and neck cancer. In addition, we are currently conducting pre-marketing studies to support the commercialization of the MedPulser Electroporation Therapy System in Europe. Our system delivers electrical pulses to tumors injected with the generic drug bleomycin. The unique feature of the system, which uses a generator together with disposable needle applicators, is the preservation of healthy tissue at the margins of the tumor. We believe this may afford distinct advantages over surgery in preserving function and improving the quality of life for cancer patients who would otherwise face significant morbidity associated with cancer surgery. Prior to commercial sales of the MedPulser Electroporation Therapy System in the European Union ("EU"), we were required to receive CE Mark Certification, an international symbol of quality and compliance. We believe that the planned commercial launch of our CE certified MedPulser Electroporation Therapy System in Europe in 2006 represents an important milestone for us.

The primary front line treatment of solid tumors involves surgical resection and/or radiation to debulk and control tumor growth prior to initiating systemic therapy with chemotherapeutic agents. Because it is often difficult or impossible for surgeons to determine the border, or margins, between healthy and diseased tissue, they will often resect an area outside of the obvious tumor mass to ensure that they have excised all of the cancerous tissue. This can result in the loss of function and appearance of the surrounding tissues and organs, reducing the patient's quality of life. Examples include the loss of speech from resection of tumors on the tongue or larynx or loss of erectile function from resection of the prostate. Recent advances in non-surgical forms of tumor ablation, such as cryoablation, microwave or high frequency radio ablation therapy, fail to meet clinical needs in preserving normal healthy tissue. Given the desire for improved outcomes in the surgical resection of a large number of solid tumors such as head and neck, cutaneous, pancreatic, breast and prostate cancer, we believe that there will be significant demand for our technology from surgical oncologists.

As part of our MedPulser Electroporation Therapy System product line, we have also been developing devices for the delivery of DNA for vaccinations and gene therapy. We were the first company to initiate a clinical study involving the use of EPT with DNA involving human patients. This was done in collaboration with investigators at the Moffitt Regional Cancer Center in Tampa, Florida in December 2004. This investigation was approved by the U.S. Food and Drug Administration ("FDA") and involves electroporating melanomas with DNA-encoded cytokines in an attempt to stimulate immunity against the patient's tumor. In 2004, we also extended our license with Vical to include a worldwide exclusive license for the use of electroporation together with Vical's "naked" DNA technology for their development of an HIV DNA vaccine. We also executed a major licensing deal with milestone and royalty payments with Merck for the development of proprietary DNA vaccines for cancer and infectious disease using electroporation. In addition, in January 2005, we acquired Inovio AS, a Norwegian company, to expand our patent portfolio in the area of intramuscular electroporation.

We believe our compelling asset base of intellectual property and scientific and engineering accomplishments, combined with clinical results, position us as a leader in EPT.

We believe that attempts to pioneer new therapies based on DNA have been hampered by the side effects associated with the use of viral vectors for DNA delivery. In addition to safety issues, viral vectors are difficult and expensive to manufacture. Because electroporation has proven efficient and safe in animal experiments, we have been developing MedPulser DNA Delivery Systems for different target tissues. By engineering different applicators and choosing appropriate electroporation parameters, we can deliver DNA to the muscle, tumor tissue, skin or vasculature. This should facilitate attempts to use DNA for therapies ranging from vaccination to gene therapy of single or multiple gene defects, including cancer and vascular diseases. As with our oncology program, we believe that our efforts in DNA delivery position us as a leader in the field.

AVAILABLE INFORMATION

Our Internet website address is *www.genetronics.com* . We make our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, Forms 3, 4, and 5 filed on behalf of directors and executive officers, and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, available free of charge on our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the "SEC"). You can learn more about us by reviewing such filings on our website or at the SEC's website at *www.sec.gov* .

RECENT DEVELOPMENTS

In January 2005, we announced the acquisition of Inovio AS, a Norwegian company dedicated to intramuscular electroporation, in a stock purchase transaction for $3.0 million in cash and $7.0 million in Series D Preferred Stock. Inovio holds several patents for the use of intramuscular electroporation for gene therapy, supports a number of clinical studies and is the recipient of a significant appropriation from the U.S. Department of Defense to develop electroporation devices. We feel that the acquisition represents a consolidation within the industry that will serve to strengthen our position as a leader in EPT.

In January 2005, we completed a private placement to accredited investors whereby we sold 1,540,123 shares of our common stock at a purchase price of $4.05 per share and issued warrants to purchase 508,240 shares of our common stock at an exercise price of $5.50 per share, which resulted in aggregate cash proceeds of $3.03 million (assuming no exercise of the warrants). A portion of this private placement involved investors who converted $3.2 million of their previous investment in our Series C Preferred Stock into 790,123 shares of the common stock issued as part of this private placement with no associated cash proceeds to us.

In December 2004, we announced the initiation of a clinical study at the Moffitt Regional Cancer Center to treat melanomas injected with a cytokine gene followed by electroporation. This study is a first for the combined use of DNA with electroporation in humans and highlights our pioneering efforts with DNA and that of our other partners Vical and Merck. If successful, we have rights to the proprietary method being used at Moffitt (which is held by RMR Technologies and licensed to us) and could subsequently enter into a licensing deal with a partner for the treatment of melanoma.

In October 2004, we announced the extension of our licensing deal with Vical to include the development of HIV DNA vaccines using electroporation. This expands the existing license to include HIV and increases the milestone and royalty payments we would receive from the successful development of this vaccine by Vical or its future partners.

In August 2004, we announced that we had been awarded a grant by the National Institutes of Health to conduct research in the field of vascular gene therapy. The $100,000 Phase I grant entitled "Ex vivo venous gene delivery by pulsed electric fields," was awarded through the Small Business Innovative Research ("SBIR") program and may be followed, upon evaluation, by a Phase II award of up to $1.0 million. Vascular diseases are the number one cause of death in the U.S and other industrialized countries. Vascular transplants, a frequently used method to treat these diseases, unfortunately suffer from a high failure rate, resulting in a significant unmet treatment need. The SBIR grant will support our research aimed at making vascular transplants more effective and longer lasting.

In May 2004, we closed a private preferred share placement and raised an aggregate of $10.9 million through the sale of our Series C Cumulative Convertible Preferred Stock to institutional and accredited investors. All proceeds from the sale of the Series C Preferred Stock were received as of December 31, 2004.

In May 2004, we announced a significant licensing deal with Merck for the development of Merck's DNA cancer and infectious disease vaccines. The terms of the agreement include milestone and royalty payments for successful completion of the clinical development of the vaccines by Merck. Merck will also reimburse us for the co-development of a proprietary electroporation system for the delivery of the Merck DNA vaccines. In addition, Merck and Genetronics will execute a supply and licensing agreement according to a timeline mutually agreed upon by the companies.

In March 2004, we announced the selection of Quintiles Transnational Corp., a leading global pharmaceutical services organization, as the clinical research organization ("CRO") for our clinical trials in the U.S. and EU for the treatment of head and neck cancer.

In March 2004, we announced that we have begun treating patients with new and recurrent primary squamous cell carcinoma of the head and neck ("SCCHN") in a post European regulatory approval clinical study. The clinical study is designed to support the commercialization of our MedPulser Electroporation Therapy System in the EU. The European clinical study will facilitate adoption of the technology by thought leaders and allow us to apply for reimbursement. Prior clinical trials established the safety and performance of the MedPulser Electroporation Therapy System for the treatment of SCCHN, leading to approval for sale in the EU based on achieving the CE Mark.

During the first quarter of 2004, we initiated two Phase III head and neck clinical trials in the U.S. and EU. In February 2004 , we announced that we have completed the Special Protocol Assessment review process with the FDA for the two Phase III pivotal studies to evaluate the use of our MedPulser Electroporation Therapy System as a treatment for recurrent and second primary SCCHN. Several Institutional Review Boards ("IRB") in the U.S. have approved the two protocols to date, and we have initiated patient enrollment. These trials compare EPT to surgery using a primary endpoint of function preservation and secondary endpoints of local tumor control, disease-free survival and overall survival. Shifting from a primary endpoint of survival to a quality of life outcome allows us to carry out clinical trials that we expect may be faster, less costly and have a higher likelihood of success. As a result, our previously announced Phase III head and neck trials focusing on survival as a primary endpoint have been discontinued.

In February 2004, we announced that we have entered into an agreement with RMR Technologies, LLC ("RMR"), to permit us to commercialize RMR's electroporation methods and devices on a worldwide exclusive basis. This extends a long-standing relationship with University of South Florida scientists and RMR founders Drs. Richard Heller, Mark Jaroszeski, and Richard Gilbert, dating back to the co-development of our CE marked MedPulser Electroporation Therapy System for the treatment of solid malignant tumors including head and neck cancers.

In January 2004, we announced that we have been granted two new U.S. patents. The first patent includes claims to novel, less severe methods for delivering an agent, such as a drug or polynucleotide,

into a cell. We believe that this patent enhances the intellectual property for the oncology, gene therapy and DNA vaccine applications of electroporation. The second patent includes claims to methods for reducing changes in target muscle tissue from the application of an electric field, the key elements including electric pulsing parameters. We believe this patent has applicability in the field of gene therapy and DNA vaccines.

BUSINESS OBJECTIVES

Going forward, we have the following business objectives:

1. Conclude patient enrollment in phase III recurrent and second primary head and neck cancer study in the U.S. and EU (see "Oncology—Overview");

2. Conclude the European pre-marketing clinical study in new and recurrent primary SCCHN to support the commercialization of our MedPulser Electroporation Therapy System in the EU (see "Oncology—Overview");

3. Conclude the European pre-marketing clinical study for new and recurrent primary skin cancers to support commercialization of the MedPulser Electroporation Therapy System (see "Oncology—Overview");

4. Develop additional indications, such as breast and pancreas cancers (see "Oncology—Overview");

5. Obtain codes for reimbursement and early sales of the MedPulser Electroporation Therapy System for the treatment of head and neck or cutaneous cancers in the EU (see "Oncology—Overview");

6. Enter into further industry relationships for the use of our EPT technology in the delivery of specific genes (see "Gene Therapy—Overview");

7. Initiate additional Phase I human clinical studies involving the use of electroporation with DNA, most likely in the areas of infectious disease and cancer (see "Gene Therapy—Overview"); and

8. Conclude a strategic license with a partner in the U.S. and/or EU for the marketing rights to the MedPulser Electroporation Therapy System in oncology.

DRUG AND GENE DELIVERY

We develop equipment that is designed to allow physicians to use EPT to achieve more efficient and cost-effective delivery of drugs or genes to patients with a variety of illnesses. Although there are many diseases where improved drug or gene delivery is important, we believe that our greatest opportunities lie in applying EPT in the areas of oncology and gene therapy (including DNA vaccines) where we are focusing our major efforts.

ONCOLOGY

OVERVIEW

In the area of oncology, we have initiated Phase III clinical trials and have completed Phase II clinical trials in the United States using the MedPulser Electroporation Therapy System to deliver bleomycin for the treatment of late stage head and neck cancer. Bleomycin is an effective generic chemotherapeutic agent that induces single and double strand DNA breaks in cancer cells. However, because of its size and electrical charge, it is difficult to deliver across the cell membrane. We have chosen bleomycin as the chemotherapeutic agent for the treatment of cancer because of its unmatched

efficacy as a chemotherapeutic agent when delivered by electroporation. Bleomycin has been approved by the FDA, the Health Protection Branch in Canada and across the EU, and has been used as a chemotherapeutic agent in North America for the treatment of certain cancers for more than 25 years.

Initially, we made head and neck ("H&N") and cutaneous cancers our highest priority. A Phase II trial using EPT and bleomycin to treat late stage recurrent H&N squamous cell carcinoma produced a 25% complete response and 57% objective response, which we believe are excellent results at this disease stage. In a European early stage oral cavity squamous cell carcinoma trial, 16 out of 20 patients (80%) showed no viable cancer cells after four weeks, which we believe validates EPT's potential as a primary treatment for H&N cancer. In a cutaneous cancer trial, 130 of 146 tumors (89%) demonstrated a complete response. Using significantly smaller chemotherapeutic doses than in conventional chemotherapy, results to date indicate that EPT matches or exceeds tumor response and survival results of current traditional therapies while preserving healthy tissue, and results in minimal systemic drug distribution and related side effects, and potentially lower treatment costs. EPT may preserve a patient's appearance or ability to speak, smell, eat, or taste, and this may uniquely enhance the quality of life of patients suffering from cancer's harsh effects.

We have completed a number of other clinical studies in the EU using the MedPulser Electroporation Therapy System to deliver bleomycin for the treatment of liver and pancreatic cancer, basal cell carcinoma and Kaposi's sarcoma. The results from the clinical studies we carried out in Europe have allowed us to obtain a CE Mark certification qualifying the MedPulser Electroporation Therapy System for sale in Europe. We are continuing to carry out and expand our market seeding clinical studies in the EU using the MedPulser Electroporation Therapy System to deliver bleomycin for the treatment of skin cancer and both early and late stage head and neck cancer.

In addition to our work in head and neck cancer, we plan to use the MedPulser Electroporation Therapy System to deliver bleomycin for the treatment of other cancers. We are currently reviewing a number of other cancer indications in order to assess our competitive advantage for the treatment of cancers and the size of the market that we might serve. The next application for which we are preparing protocols for submission to the FDA is for the treatment of disfiguring cutaneous cancers where patients may benefit from the tissue and function-sparing attributes of EPT and bleomycin.

PARTNERSHIPS AND COLLABORATIONS

On September 20, 2000, the University of South Florida Research, Inc. ("USF") granted us an exclusive, worldwide license to its rights for certain patents and patent applications generally related to needle electrodes. We jointly developed these electrodes with USF. The terms of the exclusive license include a royalty to be paid to USF based on net sales of products under the license. As of December 31, 2004, no royalty had accrued as no sales were generated from this product. In connection with the acquisition of this exclusive license, we issued 37,500 shares of our common stock and warrants to purchase 150,000 shares of our common stock at $9.00 per share (some of which will vest subject to the occurrence of specified milestones) to USF and its designees, Drs. Heller, Jaroszeski, and Gilbert.

On August 8, 2000, we entered into a new supply agreement with Abbott Laboratories ("Abbott") to purchase the approved anti-cancer drug bleomycin for use in the United States with our MedPulser Electroporation Therapy System after regulatory approval had been granted for its use for the treatment of patients with solid tumor cancers. Under a separate agreement, we entered into a supply agreement with Faulding, Inc. to purchase bleomycin for use in Canada after regulatory approval had been granted for its use. Both agreements provide that we may purchase bleomycin from time to time in accordance with the terms of the respective agreements.

MARKET

We hope to market our MedPulser Electroporation Therapy System to deliver chemotherapeutic agents, such as bleomycin, for the treatment of cancer. We believe that EPT can address many diseases, but we have focused on oncology's significant unmet needs. There is still much that scientists do not know about cancer; consequently, there are significant unmet needs in its treatment. We have initially targeted those indications, such as head and neck cancer, for which current treatments result in a poor quality of life and very high mortality rates.

TREATMENT OF HEAD AND NECK TUMORS

The use of EPT is quite simply understood and easy to apply:

- The physician selects and connects the sterile applicator appropriate for the nature and location of the tumor.
- The patient is given general anesthesia in a hospital operating room setting. Certain future applications may require only local anesthesia.
- The drug is injected into the selected tissue, followed by a brief interval lasting only a few minutes.
- The applicator needles are then inserted into the tumor.
- The physician activates the electrical pulse using a foot pedal or hand switch.
- For a larger tumor or area, the applicator is reinserted in an overlapping pattern to cover the entire tissue area requiring treatment.
- After treatment, the needle array applicator is discarded.

The entire procedure can be completed within 20 minutes or less and typically needs to be done only once. The dosage of drug used is based on tumor volume and is typically a small fraction (one-third to as little as one-fiftieth) of the dosage that would be used if injected systemically into the patient's blood during chemotherapy. As a result of the lower dosage administered locally, side effects have been minimal. No episodes of injury to normal (non-tumor) tissue adjacent to the tumors have been observed in the patients treated to date.

CLINICAL TRIALS—Head and Neck Cancer

Current International Trials

We are enrolling patients in our two Phase III pivotal studies to evaluate the use of the MedPulser Electroporation Therapy System as a treatment for recurrent and second primary SCCHN. Both trials have sites in North America and Europe and both protocols will compare our MedPulser Electroporation Therapy System to surgery in patients with resectable recurrent or second primary SCCHN. The primary endpoint is to demonstrate that patients treated with electroporation therapy have superior preservation of function (e.g. eating in public, diet, and talking) compared with those who have surgery, as well as showing local tumor control and survival that are equivalent to results achieved by surgical treatment. The secondary endpoints include comparison of quality of life, safety, and pharmacoeconomics.

In late 1997, the FDA granted us clearance to initiate multi-center Phase II clinical trials in the United States utilizing the MedPulser Electroporation Therapy System in combination with bleomycin to treat squamous cell carcinoma of the head and neck in late stage patients who had failed conventional therapies such as surgery or chemotherapy. We also obtained IND clearance from the Canadian Health Protection Branch to initiate the Phase II trials in Canada. Two Phase II protocols were initiated. The first Phase II was a single crossover controlled study evaluating the effectiveness of the MedPulser Electroporation Therapy System with bleomycin to treat tumors that failed an initial

bleomycin-alone treatment. The second Phase II protocol was a single arm study that evaluated the effect of EPT with bleomycin as the only treatment.

Twenty-five patients (37 tumors) were enrolled in the crossover-controlled study and initially received bleomycin-alone treatment. No tumors showed a complete response [1] and only one tumor demonstrated a partial clinical response [2] . Seventeen of these patients subsequently had lesions treated with bleomycin and EPT. Of the 20 lesions treated, 55% achieved an objective clinical response [3] .

In the open-label Phase II (single arm) study, all patients received full bleomycin and EPT as their initial treatment. Among the 25 patients (31 tumors) treated, 58% achieved an objective clinical response.

In a similar open-label single arm study conducted in France, 56% of lesions achieved an objective clinical response, consistent with the North American results.

More recently, market seeding trials in the EU evaluated bleomycin and EPT for localized primary or recurrent oral cavity squamous cell carcinoma. Sixteen of 20 patient tumors (80%) had no evidence of cancer cells by histopathology assessment following bleomycin EPT four weeks after treatment, which we believe validates the potential of EPT as a primary local treatment for H&N cancer.

The results of these H&N cancer studies are provided in the table below.

				Objective Tumor Response [3]	
Study	**H&N Cancer Type / Treatment**	**# Patients**	**# Tumors**	**Responding Tumors**	**Non-Responding Tumors**
Phase I/II North America	Advanced Bleo-EPT	10	10	8 (80%)	2 (20%)
Phase II—Study 1 North America	Advanced Bleo-alone	25	37	1 (3%)	36 (97%)
Phase II—Study 1 (cross-over) North America	Advanced Bleo-EPT	17	20	11 (55%)	9 (45%)
Phase II—Study 2 North America	Advanced Bleo-EPT	25	31	18 (58%)	12 (42%)
Phase II—Study 3 EU	Advanced Bleo-EPT	12	18	10 (56%)	8 (44%)
Market Seeding EU	Primary and Early Recurrent Bleo-EPT	20	20	16 (80%)	4 (20%)

1 Complete response means that no sign of the tumor is present.

2 Partial response is > 50% reduction in tumor volume.

3 Objective tumor response includes complete and partial responses to treatment.

Pre-Marketing Studies

We are enrolling patients in two post European regulatory approval clinical studies, one in patients with primary or recurrent SCCHN and one in patients with primary or recurrent cutaneous or subcutaneous tumors. Both studies are consistent with the approved intended use of the MedPulser Electroporation Therapy System and are designed to support the commercialization in the EU. Prior clinical trials established the safety and performance of the MedPulser Electroporation Therapy System for the treatment of these tumors, leading to approval for sale in the EU based on achieving the CE Mark. The European clinical studies will:

- document the clinical and pharmacoeconomic benefits of the MedPulser Electroporation Therapy System in support of reimbursement approval throughout Western Europe;
- establish centers of excellence to facilitate early sales;

- create a reference and customer base among key opinion leaders for a projected European commercial launch in 2005; and
- generate safety and efficacy data to support marketing applications in North America.

Each study will enroll approximately 100 patients with primary or recurrent SCCHN and cutaneous and subcutaneous tumors at about 30 hospitals located in the UK, Germany, Italy, France, Austria, and other western European countries. The studies will evaluate the MedPulser Electroporation Therapy System's pharmacoeconomic impact on the cost of operative and post-operative care. It will also examine patient quality of life, preservation of organ function (i.e. ability to speak, swallow, and eat in public), and local tumor control. These data will help to define the overall benefits of the MedPulser Electroporation Therapy System for the treatment of SCCHN relative to surgery, the standard of care, which frequently compromises a patient's ability to speak or swallow and may be grossly disfiguring. The European studies differ from the current U.S. Phase III clinical trials, which are controlled two-armed trials for the purpose of filing a Pre-Market Approval ("PMA") application in the U.S. and are restricted to the treatment of recurrent SCCHN.

In late 1997 and early 1998, we received regulatory approval to initiate clinical trials in France for head and neck cancer, metastatic cancer of the liver, pancreatic cancer, metastatic melanoma and Kaposi's sarcoma and in Australia to initiate an expanded metastatic melanoma study. These trials involved treating multiple lesions with bleo-EPT and control lesions with bleomycin-only on each patient. The overall results of the cutaneous and subcutaneous cancer studies sponsored by us is provided in the table below.

		Bleo-EPT Tumor Response		Bleo-alone Tumor Response	
Study	# Patients	# Lesions	Objective Response	# Lesions	Objective Response [4]
Melanoma	44	178	141 (79%)	61	13 (21%)
BCC	25	64	64 (100%)	8	1 (13%)
KS	5	13	13 (100%)	11	6 (55%)

[4] Objective tumor response includes complete and partial responses to treatment.

The overall average tumor response rate following EPT with bleomycin to cutaneous and subcutaneous cancer was 86% (ranging from 79% for metastatic melanoma to 100% for basal cell carcinoma ("BCC") and kaposi's sarcoma ("KS") compared with an overall tumor response rate of 25% for bleomycin-alone treated lesions (ranging from 13% for BCC, 21% for metastatic melanoma to 55% for KS cancer).

These trials were initiated to demonstrate the MedPulser Electroporation Therapy System device's safety and performance in treating a variety of solid tumors in support of CE Mark certification in accordance with the essential requirement of the Medical Device Directive 93/42/EEC. We received CE Mark certification in March 1999. To date, the MedPulser Electroporation Therapy System is CE marked as an electroporation device indicated for the treatment of head and neck cancer and for cutaneous and subcutaneous cancers with bleomycin. This certification allows us to market our MedPulser Electroporation Therapy System within the countries of the European Union.

In December 2004, we initiated a Phase I clinical trial with the H. Lee Moffitt Cancer Center using our MedPulser Electroporation Therapy System to deliver plasmid DNA to tumors with the aim of treating malignant melanoma. The trial is sponsored by the H. Lee Moffitt Cancer Center and will measure the safety of our Medpulser Electroporation Therapy System to deliver plasmid DNA into tumor cells to mount an immune response. In this Phase I open-label study, plasmid DNA encoding a cytokine is delivered directly to tumors in patients with malignant melanoma through electroporation

using the MedPulser Electroporation Therapy System. This technology enables the entry and significant uptake of plasmid DNA into the tumor cells, ultimately leading to cytokine production. The intent of this procedure is to induce an immune response that will eliminate the cancer.

RESEARCH AND DEVELOPMENT

We have historically directed our research and development activities to the areas of oncology, gene therapy, vascular therapy, transdermal delivery and dermatology. Currently, our areas of focus are oncology and gene therapy.

The following table summarizes our programs in the area of oncology, the primary indications for each product and the current status of development. "Pre-Clinical Studies" means the program is at the stage where results from animal studies have been obtained. "Human Clinical Studies" means that human data is available. In March 1999, we received CE Mark certification in the EU. This certification allows us to market our MedPulser Electroporation Therapy System within the countries of the EU. Commercial launch is dependent on having compelling data from the ongoing market seeding trials and pharmacoeconomic data with which to obtain national reimbursement or hospital purchasing under approved codes.

Clinical Development Status

Progress in Pre-Clinical Development and Clinical Trials Applications	Pre-Clinical Studies		Human Clinical Studies*		
	In Vitro	In Vivo	Phase I	Phase II	Phase III/IV ***
Therapeutic Drug Delivery					
Oncology					
Head & Neck	X	X	X	X	X
Cutaneous BCC & SCC	X	X	X	X	X
Melanoma	X	X	X	X	X
Kaposi's Sarcoma	X	X	X		
Pancreas	X	X	X		
Liver	X	X	X		
Breast	X	X			X
Prostate	X	X			
Hepatocellular Carcinoma	X	X			
Lewis Lung Carcinoma	X	X			
Non-Small Cell Lung	X	X			
Fibrosarcoma	X	X			
Glioma	X	X			
Ovarian	X				
Dermatology					
Vitamin C	X	X			
Warts	X	X			
Vascular					
DNA Delivery					
DNA Vaccines	X	X			
Gene Therapy	X	X	X**		
Gene Immunotherapy			IP****		

X = Completed

IP = In Progress
* Efficacy studies conducted in North America with approval of selected clinics' Investigational Review Boards (IRB) or in the EU by clinics' Ethics Committees
** Ex-vivo Phase I study
*** Phase IV trial in EU only
**** Phase I trial with Cytokine DNA at Moffitt Cancer Center

Our research and development efforts in the field of oncology will focus on preparing for a strategic alliance with a major partner in oncology, expanding applications of the MedPulser Electroporation Therapy System, and designing the next generation of EPT devices. Preparations for forging a strategic alliance include the organization and summarizing of engineering, pre-clinical and clinical data and records to be able to convey information to strategic partners in the most effective manner. The expansion of the MedPulser Electroporation Therapy System to additional applications is intended to involve pre-clinical and engineering work regarding the treatment of additional types of cancers, and the design and manufacture of new types of electrode applicators, such as an applicator for treating laryngeal cancer. We intend to develop second-generation EPT devices for cancer treatment to include devices causing reduced muscle contractions and a device specifically targeted for treating deep-seated tumors, such as prostate tumors. Finally, we intend to continue to strengthen our intellectual property position in the oncology area by pursuing patent protection of any new inventions.

COMPETITION

Current Treatment Practices

Surgery

The primary treatment (90%) for localized and operable tumors or lesions is surgical resection alone or in combination with other modalities. Given the ability to cut an appropriate margin around the tumor, surgery is highly effective for early stage cancers, but accessibility of a tumor often prevents its use or limits the margin that can be removed. The drawback of cutting away tissue is potential disfigurement or debilitating effects on organ function. Surgery may require a costly hospital stay.

Radiation Therapy

Radiation therapy's high-energy rays, generated by an external machine, or by radioactive materials placed directly into or near the tumor, are used to damage and stop growth of malignant cells. It is typically used in place of or in conjunction with surgery, or afterwards to destroy remaining cancer cells. It damages healthy cells surrounding the target area and takes several weeks to administer.

Chemotherapy

Where surgery is not an option, chemotherapy is often combined with radiation. Typically, a secondary or palliative treatment with the goal of helping control tumor growth and making a patient more comfortable, it is used under the following circumstances:

- When a cancer has advanced from a local tumor and has become a larger regional mass or has metastasized to other organs;
- When the tumor is difficult to access;
- For organ preservation, when appearance and/or function are threatened; and
- For palliation, to achieve tumor shrinkage that may improve quality of life.

The cytotoxicity of many existing anti-cancer drugs is well proven, but their systemic application in required high dosages produces many detrimental side effects, including alopecia (loss of hair), nausea, vomiting, myelosuppression and in some cases drug resistance.

Surgery and radiation cannot be used where treatment poses a risk to nearby nerves, blood vessels, or vital organs. All of these practices have limited efficacy in treating cancers of certain organs, such as the pancreas.

Alternative Treatments

Radio Frequency Ablation

This modality uses radio frequency energy to heat tissue to a high enough temperature to ablate it, or cause cell death. An ablation probe is placed directly into the target tissue. An array of several small, curved electrodes are deployed from the end of the probe. Once sufficient temperatures are reached, the heat kills the target tissue within a few minutes. This treatment has been proven efficacious in treating solid tumors. It also destroys surrounding healthy tissue and can result in burns.

Photodynamic Therapy

Photodynamic therapy ("PDT") uses intravenous administration of a light-activated drug that naturally accumulates in malignant cells. A non-thermal laser is used to activate the drug, producing free radical oxygen molecules that destroy the cancer. PDT has low risk of damage to adjacent normal tissue, the ability to retreat, and can be used concurrently with other treatment modalities. A major side effect of PDT is photosensitivity that can last up to eight weeks. Other side effects include nausea and vomiting. This method is limited to penetration just below the skin or organ lining.

Cryoablation

Cryoablation is a technique being tested for liver, kidney, prostate, and breast cancer, for which it is being heralded as a method to avoid scarring. This method freezes cancer cells with liquid nitrogen. Necrosis (cell death) occurs and the dead cells are naturally sloughed off into the body. Cryoablation is a relatively inexpensive treatment modality. The treatment of prostate cancer can result in impotence. Tumor accessibility may be a limitation and this modality also damages healthy tissue. Cryoablation may be a competitive treatment modality for certain indications.

Biological Therapy or Immunotherapy

This treatment encompasses many approaches focused on invoking an immune response against the cancer, including vaccine-based treatments and treatments using monoclonal antibodies.

One leading type of immunotherapy perceived as a medical breakthrough uses epidermal growth factors (EGF) or EGF inhibitors. These drugs are thought to interfere with EGF receptors found on the surface of many cancer cells. When this receptor is triggered, it instructs the cell to grow and divide into two new cells. EGF inhibitors are thought to not only prevent or slow the division of cancer cells, but also enhance the killing power of chemotherapeutics.

DNA DELIVERY

OVERVIEW

In the context of this section, DNA delivery refers to the transfer of therapeutic DNA molecules into cells of humans or animals to prevent or treat diseases. Therapeutic DNA delivery can be performed either *ex vivo* or *in vivo*. *Ex vivo* DNA delivery involves the delivery of DNA into cells outside the body. Typically, a small amount of tissue or blood is removed from the patient and the cells

within that tissue are propagated outside the body. After they have grown to a sufficient mass, new genetic information in the form of DNA is introduced into the cells. The genetically modified cells, typically blood, bone marrow or other cells, are then returned to the patient, usually by blood transfusion or direct engraftment. *In vivo* DNA delivery is the introduction of genetic information directly into cells within the patient's body. Theoretically, any tissue or cell type in the body can be used, and the choice is dependent upon the specific goals of treatment and indications being treated. For internal tissue targets, a gene may be transfused through the blood stream to the organ or site of action, or it may be injected at the desired site and then electroporated to allow the gene to pass through the cell membrane of the cells present at the treatment site. Once the DNA is inside the cell, it finds its way to the nucleus where RNA copies are made from the therapeutic genes encoded in that DNA. The RNA copies are then translated into specific proteins, which either accumulate inside the cell or are secreted into the cellular environment from where they eventually enter the lymph or blood stream. Thus, therapeutic genes may either act locally or systemically.

Both for DNA vaccines and gene therapy, effective DNA delivery technologies are crucial. Many of the leading scientists in these fields have pointed out that the major obstacle to success has been the lack of safe, efficient, and economical methods of delivering DNA.

Methods in the past, including a variety of viral vectors, lipid formulations, the "gene gun" approach, and "naked" DNA injection, have not been successful. Reasons include toxicity, safety issues, low efficiency, and concerns about economic feasibility. Of the more than 600 gene therapy and DNA vaccine clinical trials started in the U.S. to date, none have progressed to regulatory approval. We believe that the DNA delivery problem must be solved if the promise of gene therapy and DNA vaccines are to be fulfilled.

The simplest DNA delivery mode is the injection of "naked" plasmid DNA into target tissue, usually skeletal muscle. This method is safe and economical but inefficient in terms of cell transfection. Transfection is the process of transferring DNA into a cell across the outer cell membrane. However, when naked DNA injection is followed by electroporation of the target tissue, transfection efficiency is generally enhanced 100 to 1000-fold. This increase makes many gene therapy and DNA vaccination projects feasible without unduly compromising safety or cost. We believe we are a leading company in the field of in vivo DNA delivery.

In recent years, DNA vaccine projects have increased in number and scope while pharmaceutical companies have slowed or shelved most gene therapy projects. This shift was prompted both by serious incidents in the gene therapy area caused by the toxicity of viral vectors, and by a strong demand for better vaccines. Within a few years, surprisingly rapid progress has been achieved in the development and testing of DNA vaccines. This trend is also reflected in our shift from gene therapy to DNA vaccines. The latter are now the subject of most of our DNA delivery projects and partnerships. In December 2004, the first patient was treated with EPT and DNA and we anticipate to initiate, together with our partners, additional Phase I clinical trials using our EPT and DNA technology.

We believe that the greatest obstacle to making DNA vaccines and gene therapy a reality, namely the safe, efficient, and economical delivery of the DNA construct into the target cells, may be surmounted by our electroporation technology. The instrumentation we use for high-efficiency *in vivo* gene transfer is derived from the instrumentation we developed for intratumoral and transdermal drug delivery, an extension of the Medpulser Electroporation Therapy System. We believe electroporation may become the method of choice for DNA delivery into cells in many applications of DNA vaccination and gene therapy.

DNA VACCINES

DNA vaccines consist of DNA molecules that are introduced into cells of humans or animals with the purpose of evoking an immune response, either to prevent a disease (prophylactic vaccines) or to

treat an existing disease (therapeutic vaccines). The information encoded in the vaccine DNA molecules directs the cells to produce proteins ("antigens") that trigger the immune system to mount two responses-the production of antibodies and the activation of "killer cells." These responses can neutralize or eliminate infectious agents (viruses, bacteria, and other microorganisms) or abnormal cells (e.g. malignant tumor cells). DNA vaccines have several advantages over traditional vaccines in that they are completely non-pathogenic, may be effective against diseases which cannot be controlled by traditional vaccines, and are relatively easy and inexpensive to produce. These vaccines are also stable at normal environmental conditions for extended periods of time and do not require continuous refrigeration. A potentially major advantage of DNA vaccines is their short development cycle. In principle, vaccines against new infectious agents may be developed within weeks or months, as opposed to traditional vaccines that take years for development.

We have acquired considerable expertise in the delivery and efficacy evaluation of DNA vaccines, both against infectious agents and complex metabolic diseases. In most cases, we have chosen skeletal muscle as the target tissue for vaccine delivery. However, skin is also an attractive target for DNA vaccination and we have developed and patented technology for DNA delivery into skin cells as well.

GENE THERAPY

Gene therapy, as well as DNA vaccination, involves the introduction of new genetic information into cells for therapeutic purposes. However, in gene therapy, cells of the body are transfected with a specific gene to compensate for a genetic defect that results in a deficiency of a specific protein factor. In this context, one goal of gene therapy is to convert target cells or tissues into "protein factories" for the production and secretion of a normal protein for local or systemic treatment. Many genetic illnesses, including those currently treated by regular injection of a missing protein, can potentially be "cured" by supplying the functional gene to a sufficient number of cells under conditions which allow these cells to produce a therapeutically effective dose of the protein.

Currently, single-gene recessive genetic disorders are the most accessible targets for correction by gene therapy, but ultimately researchers believe that polygenic and acquired diseases will be treated using genes as pharmaceutical agents. In principle, any aspect of metabolism can be manipulated by modifying gene function, and it is this application of gene therapy that has enormous potential, extending far beyond the treatment of rare genetic diseases. For example, the ability to influence cellular metabolism by introducing specific genes has led to extensive investigations into the use of gene therapy for cancer treatment. By adding a tumor suppressor gene to certain types of cancers, the uncontrolled growth of those cells potentially could be brought under normal regulation. Likewise, transfecting tumor cells with genes capable of inducing programmed cell death may result in tumor death.

As mentioned earlier, gene therapy can be performed by delivering DNA either *ex vivo* or *in vivo* . We have focused on *in vivo* DNA delivery, in particular delivery into skeletal muscle tissue. To a lesser extent, we have also explored DNA delivery into skin, cancer tissue and blood vessel walls for gene therapy purposes.

STRATEGY

In advanced pre-clinical trials, our technology has enabled high levels of DNA uptake and gene expression without significant acute side effects. Based on the results obtained, we believe that our technology is well suited as compared to competing technologies to meet the requirements for DNA vaccines and gene therapy. We have adopted the strategy of co-developing DNA vaccine and gene therapy applications with corporate partners where possible, or licensing our gene delivery technology for specific genes or specific medical indications. In most cases, we provide proprietary instruments and expertise to optimize the delivery of genes for particular applications, and a partner company provides its proprietary gene or gene regulation technology. Our collaboration with partners allows pre-clinical research and clinical trials to be undertaken which may lead to the introduction of a new treatment and/or products in the marketplace at a rate and range which we would not be able to support on our own. Our goal is to enter into additional agreements to license our EPT technology for use in the delivery of specific genes in 2005 and 2006. See "Business Objectives" for further discussion of our corporate strategy and goals.

PARTNERSHIPS AND COLLABORATIONS

DNA VACCINES

In January 2005, we acquired privately-held Inovio AS, a Norwegian company. Inovio's use of electroporation for gene therapy and DNA vaccines is a complement to our existing electroporation therapy program. The acquisition expands our intellectual property in electroporation, expands the number of agreements with major pharmaceutical companies, and provides for the near-term initiation of a Phase I/II DNA vaccine clinical trial.

In October 2004, we entered into an agreement with Vical Incorporated wherein Vical received an option to license HIV and IL-2 as targets. This agreement is an extension of our October 2003 agreement with Vical. Under this agreement, Vical has an option to a worldwide exclusive license for the use of our proprietary in vivo electroporation delivery technology in combination with Vical's vaccine and therapeutic DNA technology for undisclosed targets. Upon completion of a collaborative research program, this partnership could lead to a definitive licensing agreement, encompassing multiple indications with the potential for commercialization.

In May 2004, we announced that we had signed a collaboration and licensing agreement with Merck & Co., Inc. ("Merck") to develop and commercialize our MedPulser DNA Delivery System, which will be developed for use with certain of Merck's DNA vaccine programs. This development and commercialization agreement is an extension of an initial evaluation agreement that was established in 2003. Under the terms of the agreement, Merck receives the right to use our proprietary technology initially for two specific antigens with an option to extend the agreement to include a limited number of additional target antigens. In addition, Merck obtains a non-exclusive license to the intellectual property related to the initial two specific antigens. The companies will co-develop certain components of the electroporation system designed for administering DNA vaccines. Merck will be responsible for all development costs and clinical programs.

In December 2003, we announced the extension of our collaboration with Chiron to continue to explore the delivery of its proprietary DNA vaccine for HIV using EPT, with the potential for possible clinical development. We previously had entered into evaluation and option agreements with Chiron for the delivery of one or more of Chiron's DNA vaccines for the treatment of infectious diseases using our DNA delivery technology. In accordance with these agreements, we have granted an option to Chiron, during the terms of the agreements and for three months thereafter, to license our EPT technology for use in the field of certain DNA vaccines. The extension of these agreements expires on May 21, 2005.

GENE THERAPY

In August 2004, we announced that we had been awarded a grant by the National Institutes of Health to conduct research in the field of vascular gene therapy. The $100,000 Phase I grant, entitled "Ex vivo venous gene delivery by pulsed electric fields," was awarded through the Small Business Innovative Research (SBIR) program and may be followed, upon evaluation, by a Phase II award of up to $1.0 million. Vascular diseases are the number one cause of death in the U.S. and other industrialized countries. Vascular transplants, a frequently used method to treat these diseases, unfortunately suffer from a high failure rate, resulting in a significant unmet treatment need. The SBIR grant will support our research aimed at making vascular transplants more effective and longer lasting.

In February 2004, we entered into an agreement with RMR to permit us to commercialize RMR's electroporation methods and devices on a worldwide exclusive basis. This extends a long-standing relationship with the University of South Florida scientists and RMR founders Drs. Richard Heller, Mark Jaroszeski, and Richard Gilbert, dating back to the co-development of our CE marked MedPulser Electroporation Therapy System, for treatment of all types of solid tumors including head and neck cancers. RMR is the collective effort of three scientists, collaborating with the University of South Florida and the H. Lee Moffitt Cancer Center and Research Institute.

In November 2001, we entered into a non-exclusive license and supply agreement with Valentis to use our MedPulser Electroporation Therapy System for the development of certain Genemedicine™ products. When combined with Valentis' GeneSwitch™ gene regulation system, EPT allows researchers to control the level and duration of gene expression in cells for up to several months.

The research carried out under the above agreements may result in our entering into long-term license agreements with the other parties and should provide us with additional data that we believe will assist us in assessing the efficacy of using our MedPulser Electroporation Therapy System for delivery of DNA vaccines and gene delivery and should further assist us in our other licensing and commercialization efforts.

In December 2004, we initiated a Phase I clinical trial with the H. Lee Moffitt Cancer Center using our MedPulser Electroporation Therapy System to deliver plasmid DNA to tumors with the aim of treating malignant melanoma. The trial is sponsored by the H. Lee Moffitt Cancer Center and will measure the safety of Genetronics' electroporation system to deliver plasmid DNA into tumor cells to mount an immune response. In this Phase I open-label study, plasmid DNA encoding a cytokine is delivered directly to tumors in patients with malignant melanoma through electroporation using the MedPulser Electroporation Therapy System. This technology enables the entry and significant uptake of plasmid DNA into the tumor cells, ultimately leading to cytokine production. The intent of this procedure is to induce an immune response that will eliminate the cancer.

In addition to the above collaboration and licensing arrangements, we may develop our own gene therapeutic through early stage clinical trials and partner the product for late stage clinical development and marketing. We may have to negotiate license(s) for genes or other components of the product if they are not in the public domain.

MARKET

DNA VACCINES

We believe that there is a significant unmet clinical need to develop more efficacious vaccines that stimulate cellular immunity or can be applied in therapeutic settings such as cancer, hepatitis C or HIV infection. For these applications, scientists believe that DNA vaccines may offer an improvement over classical vaccination. Our scientists believe that electroporation of naked DNA is critical in maximizing the efficiency of DNA vaccination in meeting the unmet clinical need for therapeutic vaccines. We therefore plan to work with its corporate partners to develop electroporation for the delivery of DNA vaccines to capture what some analysts consider a multi-billion dollar market opportunity. DNA vaccines also represent a technology platform that is of interest to government agencies concerned with warfighter preparedness and bioterrorism threat prevention. We are working with the U.S. government to develop the technology for selected infectious disease targets.

GENE THERAPY

The gene therapy market includes treatment of single gene defects as well as complex polygenic diseases such as cancer and vascular diseases. Examples of markets for single gene defects include hemophilia, sickle cell anemia, and EPO deficiency. For sickle cell anemia, one of the most prevalent genetic diseases, there is presently no effective and sustainable treatment available. EPO deficiency affects cancer patients undergoing chemotherapy, patients with chronic kidney failure, and others as well.

In addition to the many diseases caused by single gene defects, the two major polygenic disease groups, vascular disease and cancer, are prime targets for gene therapy.

RESEARCH AND DEVELOPMENT

The following table summarizes the ongoing programs in the area of gene therapy, the primary indications for each product and the current status of development.

Programs	Development Status	Ongoing Partnership or Collaboration
In vivo Gene Transfer to Muscle or Tumor		
(a) Cytokines	Ph. I clinical trials	Moffitt Cancer Center, Vical (pre-clinical)
(b) DNA vaccines	Pre-clinical data	Merck, Vical, Chiron, U.S. Navy
(c) Hormones	Pre-clinical data	Valentis, U.S. Navy
In vivo Gene Transfer to Skin —hormones, regulatory proteins	Pre-clinical data	U.S. Navy; University of Pennsylvania
In vivo Gene Transfer to Blood Vessels —undisclosed gene	Pre-clinical data	

We intend to proceed with the joint projects that we are currently working on with our partners as set out above. We also intend to expand ongoing collaborations and forge new alliances and research collaborations with the goal of having these relationships mature into licensing agreements.

In addition, we may complete pre-clinical research for other DNA delivery projects that we intend to carry out ourselves. Projects presently under evaluation are focused on developing therapeutic vaccines for infectious diseases. Other research and development activities will target improvements in DNA delivery, both *in vivo* and *ex vivo* , and the strengthening of our intellectual property position in the fields of DNA delivery, gene therapy, and DNA vaccines.

COMPETITION

The main competitive technologies in the area of DNA delivery are the following:

- Viral DNA delivery;
- Lipid DNA delivery; and
- The injection of "naked" DNA.

To our knowledge, we are presently the only U.S. company that has publicly announced that it has the capability to manufacture electroporation equipment under the Quality System Regulations ("QSRs"). Our competitors include several companies that either have rights to intellectual property related to electroporation devices, to electroporation methods, or to applications of electroporation.

MEDPULSER ELECTROPORATION THERAPY SYSTEM

OVERVIEW

The MedPulser Electroporation Therapy System is designed for the clinical application of EPT. In the field of oncology, the MedPulser Electroporation Therapy System is used to treat tumors by the local application of a controlled electric field to targeted tumor tissues that have been previously injected with a chemotherapeutic agent, typically bleomycin. The controlled short duration electric field pulses temporarily increase the cellular membrane permeability within the tumor, thus allowing the chemotherapeutic agent to more easily enter the tumor cells and kill them.

The system has two components: (1) a pulse generator that creates the electric field; and (2) a sterile, disposable electrode applicator for single patient use. Applicators presently used contain needle electrode arrays that are inserted into the tumor tissue.

The pulse generator is designed for ease of use, such that minimal user input is needed to apply the therapy. Based on the size and anatomical location of the tumor to be treated, a physician selects the most appropriate electrode applicator. The applicator is then connected to the pulse generator of the MedPulser Electroporation Therapy System and sends configuration information for that particular applicator size and shape to the pulse generator, which automatically selects the appropriate treatment parameters. Currently, several different electrode applicator configurations are available. The applicators vary in needle length, needle gauge, electrode needle spacing, tip angle and handle configuration to allow the physician to access a wide range of tumors.

New models of electrode applicators will be considered in the future to address customer needs. The system is designed such that the installed base of the MedPulser Electroporation Therapy System instruments allows for a wide variety of new electrode applicator configurations. In addition, the system incorporates other features to minimize the possibility of applicator reuse as well as prevent the use of competitive applicators with the MedPulser Electroporation Therapy System. The commercial version of the MedPulser Electroporation Therapy System has been certified by an independent test laboratory as meeting strict international product standards.

In the U.S., the MedPulser Electroporation Therapy System and bleomycin are currently regulated as a combination drug-device system. As a result, we will be required to obtain both drug labeling and device approvals from the FDA. For drug labeling approvals, we have filed an IND and have successfully completed Phase I and II clinical trials. We are currently engaged in Phase III clinical trials and after successful completion we intend to submit a U.S. New Drug Application ("NDA"). We may also submit a device Pre-Market Approval or 510(k) for FDA approval as a device. We are unable, due to the complexities of completing Phases I, II, and III clinical trials, to estimate the length of time or cost involved in obtaining approvals from the FDA.

In most of the rest of the world, we anticipate that the MedPulser Electroporation Therapy System will be regulated as a device. In the EU, the MedPulser Electroporation Therapy System comes under Medical Device Directive 93/42/EEC ("MDD") which means that prior to marketing the MedPulser

Electroporation Therapy System, we are required to obtain a CE Mark certification of conformity to the quality system, production and clinical investigation essential requirements of the directive. We have obtained CE Mark certification for the MedPulser Electroporation Therapy System, which allows us to market it in the European community. In many of the EU countries, bleomycin is approved for intra-tumoral, intra-lesional, local, intramuscular or subcutaneous administration. While the administration of approved drugs outside the label indication may be at the discretion of the physician and hospital pharmacist, we cannot predict with absolute certainty whether additional regulatory approvals for the combined use of the drug with our system may be required in certain countries. The costs associated with such a filing cannot be reasonably determined at this time.

MEDICAL DEVICE MANUFACTURING

We are a medical device manufacturer and, as such, operate in a regulated industry. We must comply with a variety of manufacturing, product development and quality regulations in order to be able to distribute our products commercially around the world. In Europe, we must comply with the MDD. We have a Quality System certified by our international Notified Body to meet the requirements of the MDD and to be in compliance with the ISO13485 and ISO9001 international quality systems standards. We completed an Annex II Conformity Assessment procedure and achieved our CE Mark of the MedPulser Electroporation Therapy System in March 1999. This CE Mark clears the MedPulser Electroporation Therapy System for sale in the EU.

In the U.S., we are required to maintain facilities, equipment, processes and procedures that are in compliance with quality systems regulations. Our systems have been constructed in compliance with these regulations and our ongoing operations are conducted within these regulations. Commercially distributed devices within the U.S. must be developed under formal design controls and be submitted to the FDA for clearance or approval. As we prepare for U.S. marketing approval, all development activity is performed according to formal procedures to ensure compliance with all design control regulations.

We employ modern manufacturing methods and controls to optimize performance and control costs. Internal capabilities and core competencies are strategically determined to optimize our manufacturing efficiency. We utilize contract manufacturers for key operations, such as clean room assembly and sterilization, which are not economically conducted in-house. We also outsource significant sub-assemblies, such as populated printed circuit boards, where capital requirements or volumes do not justify vertical integration. As we transition from late-stage development activities into higher volume manufacturing activities, internal capabilities will be modified and added, as appropriate, to meet our changing priorities.

Currently, the durable electronic generator in the MedPulser Electroporation Therapy System is assembled from outsourced populated printed circuit boards, and then tested, packaged and inventoried at our manufacturing facility. The disposable applicators used with the MedPulser Electroporation Therapy System are assembled and sterilized in a clean room at outside contract manufacturers. Manufacture of applicators for commercial distribution will be done in a clean room that is currently being planned at our manufacturing facility.

BTX INSTRUMENT DIVISION

We were originally founded as Biotechnologies and Experimental Research, Inc. ("BTX") in San Diego, California in 1983. We established a reputation and leadership position in the field of electroporation by developing a product line of instruments for scientific research. BTX sold its first product in 1985. In the early 1990s, we extended our focus to include human therapeutics.

In January 2003, we closed the sale of the non-cash assets of the BTX division to Harvard Bioscience, Inc. The terms of the sale were $3.7 million in cash, subject to possible adjustments, and a

royalty on net sales of certain BTX products above certain sales targets. This transaction allowed us to focus on our electroporation-based therapies for humans.

In April 2004, we received the final payment of $200,862 in connection with the sale of the BTX Division and recorded expenses related to this transaction of $5,000. In addition, we received a one-time settlement payment of $61,000 associated with the termination of a purchase agreement to acquire the BTX Division by a potential buyer. During the three-month period ended September 30, 2004, we realized a gain of $33,347 from the write-off of an accrued warranty liability related to the sale of the BTX division.

REVENUE AND INTEREST INCOME

The following table provides the revenue obtained from licensing and research and development agreements and interest income, net, generated by us for the past three fiscal years. The following table sets forth our selected consolidated financial data for the periods indicated, derived from consolidated financial statements prepared in accordance with U.S. generally accepted accounting principles.

	Year Ended		
	December 31, 2004	December 31, 2003	December 31, 2002
License fee and milesone payments	$ 214,351	$ 5,882	$ 5,883
Revenue under collaborative research and development arrangements			
United States	945,591	74,647	10,000
Germany	—	—	173,638
Grant revenue	7,157	—	—
Interest income, net	247,555	45,017	26,871

We, like many biomedical companies, devote a substantial portion of our annual budget to research and development. Research and development expenses totaled $6.5 million, $2.1 million and $2.5 million for the years ended December 31, 2004, 2003 and 2002, respectively. These amounts far exceed revenue from research arrangements and contribute substantially to our losses.

INTELLECTUAL PROPERTY

Our success and ability to compete depends upon our intellectual property. As of December 31, 2004, we have been issued 55 U.S. patents and two additional U.S. patent applications allowed and awaiting issuance. We have also been granted patents in individual countries, including European patents that have been validated in numerous EU countries, such that we now have collectively 137 issued foreign patents in those foreign jurisdictions. We also have numerous pending patent applications in the U.S. and foreign jurisdictions. On January 25, 2005, we obtained additional U.S. patents and foreign patent applications through our acquisition of Inovio AS, a Norwegian company, including three issued U.S. patents.

EMPLOYEES

As of February 7, 2005, we employed 35 people on a full-time basis and six people under consulting and project employment agreements. Of the combined total, 15 were in product research, which includes research and development, quality assurance, and clinical, three in engineering, six in manufacturing, and 17 in general and administrative, which includes corporate development, information technology, legal, investor relations, finance, and corporate administration. None of our employees is subject to collective bargaining agreements. We consider our employee relations to be good.

RISK FACTORS

You should carefully consider the following factors regarding information included in this Annual Report. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. If any of the following risks actually occur, our business, financial condition and operating results could be materially adversely affected.

IF WE ARE UNABLE TO DEVELOP COMMERCIALLY SUCCESSFUL PRODUCTS, INCLUDING OUR MEDPULSER ELECTROPORATION THERAPY SYSTEM IN VARIOUS MARKETS FOR MULTIPLE INDICATIONS, PARTICULARLY FOR THE TREATMENT OF HEAD AND NECK CANCER, OUR BUSINESS WILL BE HARMED AND WE MAY BE FORCED TO CURTAIL OR CEASE OPERATIONS.

Our ability to achieve and sustain operating profitability depends on our ability to successfully commercialize our MedPulser Electroporation Therapy System in various markets for use in treating solid tumors, particularly for the treatment of head and neck cancer, and other indications, which depends in large part on our ability to commence, execute and complete clinical programs and obtain regulatory approvals for our MedPulser Electroporation Therapy System. In particular, our ability to achieve and sustain profitability will depend in large part on our ability to commercialize our MedPulser Electroporation Therapy System for the treatment of head and neck cancer in Europe and the United States. We have received various regulatory approvals, which apply to Europe for our MedPulser Electroporation Therapy System for use in treating solid tumors; the products related to such regulatory approval have not yet been commercialized. We have not yet received any regulatory approvals to sell our clinical products in the United States and further clinical trials are still necessary before we can seek regulatory approval to sell our products in the United States for treating solid tumors. We cannot assure you we will receive approval for our MedPulser Electroporation Therapy System for the treatment of head and neck cancer or other types of cancer or indications in the United States or in other countries or, if approved, that we will achieve significant level of sales. If we fail to commercialize our products, we may be forced to curtail or cease operations.

We will be starting additional clinical studies in different indications, such as breast and pancreas, and are also in the pre-clinical stages of research and development with new product candidates using our electroporation technology. These new indications and product candidates will require significant costs to advance through the development stages. If such product candidates are advanced through clinical trials, the results of such trials may not gain FDA approval. Even if approved, our products may not be commercially successful. If we fail to develop and commercialize our products, we may be forced to curtail or cease operations.

We cannot assure you that we will successfully develop any products. If we fail to develop or successfully commercialize any products, we may be forced to curtail or cease operations. Additionally, much of the commercialization efforts for our products must be carried forward by a licensing partner. We may not be able to obtain such a partner.

WE WILL HAVE A NEED FOR SIGNIFICANT FUNDS IN THE FUTURE AND THERE IS NO GUARANTEE THAT WE WILL BE ABLE TO OBTAIN THE FUNDS WE NEED.

Developing a new drug and conducting clinical trials is expensive. Our product development efforts may not lead to commercial products, either because our product candidates fail to be found safe or effective in clinical trials or because we lack the necessary financial or other resources or relationships to pursue our programs through commercialization. Our capital and future revenues may not be sufficient to support the expenses of our operations, the development of commercial infrastructure and the conduct of our clinical trials and pre-clinical research.

As discussed, we have operated at a loss in the past, and expect that to continue for some time in the future. Our plans for continuing clinical trials, conducting research, furthering development and,

eventually, marketing our human-use equipment will involve substantial costs. We expect we will fund our operations until the second half of 2006 with our current working capital. The extent of these costs will depend on many factors, including some of the following:

- The progress and breadth of pre-clinical testing and the size or complexity of our clinical trials and drug delivery programs, all of which directly influence cost;
- Higher then expected costs involved in complying with the regulatory process to get our human-use products approved, including the number, size, and timing of necessary clinical trials and costs associated with the current assembly and review of existing clinical and pre-clinical information;
- Higher then expected costs involved in patenting our technologies and defending them and pursuing our intellectual property strategy;
- Changes in our existing research and development relationships and our ability to enter into new agreements;
- Changes in or terminations of our existing collaboration and licensing arrangements;
- Faster than expected rate of progress and cost of our research and development and clinical trial activities;
- Decrease in the amount and timing of milestone payments we receive from collaborators;
- Higher than expected costs of preparing an application for FDA approval of our MedPulser Electroporation Therapy System;
- Higher than expected costs of developing the processes and systems to support FDA approval of our MedPulser Electroporation Therapy System;
- An increase in our timetable and costs for the development of marketing operations and other activities related to the commercialization of our MedPulser Electroporation Therapy System and our other product candidates;
- A change in the degree of success in our Phase III clinical trial of MedPulser Electroporation Therapy System and in our other clinical trials;
- Higher then expected costs to further develop and scale up our manufacturing capability of our human-use equipment; and
- Competition for our products and our ability, and that of our partners, to commercialize our products.

We plan to fund operations by several means. We will attempt to enter into contracts with partners that will fund either general operating expenses or specific programs or projects. Some funding also may be received through government grants. We cannot promise that we will enter into any such contracts or receive such grants or, if we do, that our partners and the grants will provide enough funding to meet our needs.

In the past, we have raised funds by public and private sale of our stock, and we are likely to do this in the future to raise needed funds. Sale of our stock to new private or public investors usually results in existing stockholders becoming "diluted." The greater the number of shares sold, the greater the dilution. A high degree of dilution can make it difficult for the price of our stock to rise rapidly, among other things. Dilution also lessens a stockholder's voting power.

We cannot assure you that we will be able to raise capital needed to fund operations, or that we will be able to raise capital under terms that are favorable to us.

IF WE DO NOT HAVE ENOUGH CAPITAL TO FUND OPERATIONS, THEN WE WILL HAVE TO CUT COSTS.

If we are not able to raise needed money under acceptable terms, then we will have to take measures to cut costs, such as:

- Delay, scale back or discontinue one or more of our oncology or gene delivery programs or other aspects of operations, including laying off some personnel or stopping or delaying clinical trials;
- Sell or license some of our technologies that we would not otherwise give up if we were in a better financial position;
- Sell or license some of our technologies under terms that are a lot less favorable than they otherwise might have been if we were in a better financial position; and
- Consider merging with another company or positioning ourselves to be acquired by another company.

If it became necessary to take one or more of the above-listed actions, then we may have a lower valuation, which may be reflected in our stock price.

PRE-CLINICAL AND CLINICAL TRIALS OF HUMAN-USE EQUIPMENT ARE UNPREDICTABLE. IF WE EXPERIENCE UNSUCCESSFUL TRIAL RESULTS, OUR BUSINESS WILL SUFFER.

Before any of our human-use equipment can be sold, the FDA or applicable foreign regulatory authorities must determine that the equipment meets specified criteria for use in the indications for which approval is requested, including obtaining appropriate regulatory approvals. Satisfaction of regulatory requirements typically takes many years, and involves compliance with requirements covering research and development, testing, manufacturing, quality control, labeling and promotion of drugs for human use. To obtain regulatory approvals, we must, among other requirements, complete clinical trials demonstrating our product candidates are safe and effective for a particular cancer type or other disease. Regulatory approval of a new drug is never guaranteed. The FDA will make this determination based on the results from our pre-clinical testing and clinical trials and has substantial discretion in the approval process. Despite the time and experience exerted, failure can occur at any stage, and we could encounter problems causing us to abandon clinical trials.

We have completed Phase II clinical trials and are conducting two Phase III clinical trials of our lead product candidate, the MedPulser Electroporation Therapy System, for the treatment of recurrent head and neck cancer. In addition, we are conducting two Phase IV (or Pre-Marketing) clinical trial of our MedPulser Electroporation Therapy System for the treatment of primary and recurrent head and neck cancer and are starting a Phase I clinical trial of our MedPulser Electroporation Therapy System for the treatment of breast and pancreas cancers. Current or future clinical trials may demonstrate the MedPulser Electroporation Therapy System is neither safe nor effective.

Any delays or difficulties we encounter in our pre-clinical research and clinical trials, in particular the Phase III clinical trials of our MedPulser Electroporation Therapy System for the treatment of recurrent head and neck cancer, may delay or preclude regulatory approval. Our product development costs will increase if we experience delays in testing or regulatory approvals or if we need to perform more or larger clinical trials than planned. Any delay or preclusion could also delay or preclude the commercialization of our MedPulser Electroporation Therapy System or any other product candidates.

Clinical trials are unpredictable, especially human-use trials. Results achieved in early stage clinical trials may not be repeated in later stage trials, or in trials with more patients. When early positive results were not repeated in later stage trials, pharmaceutical and biotechnology companies have suffered significant setbacks. Not only are commercialization timelines pushed back, but some companies, particularly smaller biotechnology companies with limited cash reserves, have gone out of business after releasing news of unsuccessful clinical trial results.

We cannot be certain the results we observed in our pre-clinical testing will be confirmed in clinical trials or the results of any of our clinical trials will support FDA approval. If we experience unexpected, inconsistent or disappointing results in connection with a clinical or pre-clinical trial our business will suffer.

In addition, any of our clinical trials for our treatment may be delayed or halted at any time for various reasons, including:

- The electroporation-mediated delivery of drugs or other agents may be found to be ineffective or to cause harmful side effects, including death;
- Our clinical trials may take longer than anticipated, for any of a number of reasons including a scarcity of subjects that meet the physiological or pathological criteria for entry into the study, a scarcity of subjects that are willing to participate through the end of the trial, or data and document review;
- The reported clinical data may change over time as a result of the continuing evaluation of patients or the current assembly and review of existing clinical and pre-clinical information;
- Data from various sites participating in the clinical trials may be incomplete or unreliable, which could result in the need to repeat the trial or abandon the project; and
- Pre-clinical and clinical data can be interpreted in many different ways, and the FDA and other regulatory authorities may interpret our data differently than we do, which could halt or delay our clinical trials or prevent regulatory approval.

If any of the above events arise during our clinical trials or data review, then we would expect this to have a serious negative effect on our company and your investment.

Despite the FDA's designation of our MedPulser Electroporation Therapy System as a Fast Track product, we may encounter delays in the regulatory approval process due to additional information requirements from the FDA, unintentional omissions in our PMA for our MedPulser Electroporation Therapy System, or other delays in the FDA's review process. We may encounter delays or rejections in the regulatory approval process because of additional government regulation from future legislation or administrative action or changes in FDA policy during the period of product development, clinical trials and FDA regulatory review.

Clinical trials are generally quite expensive. A delay in our trials, for whatever reason, will probably require us to spend additional funds to keep the product(s) moving through the regulatory process. If we do not have or cannot raise the needed funds, then the testing of our human-use products could be shelved. In the event the clinical trials are not successful, we will have to determine whether to put more money into the program to address its deficiencies or whether to abandon the clinical development programs for the products in the tested indications. Loss of the human-use product line would be a significant setback for our company.

Because there are so many variables inherent in clinical trials, we cannot predict whether any of our future regulatory applications to conduct clinical trials will be approved by the FDA or other regulatory authorities, whether our clinical trials will commence or proceed as planned, and whether the trials will ultimately be deemed to be successful. To date, our experience has been that submission and approval of clinical protocols has taken longer than desired or expected.

OUR BUSINESS IS HIGHLY DEPENDENT ON RECEIVING APPROVALS FROM VARIOUS UNITED STATES AND INTERNATIONAL GOVERNMENT AGENCIES AND WILL BE DRAMATICALLY AFFECTED IF APPROVAL TO MANUFACTURE AND SELL OUR HUMAN-USE EQUIPMENT IS NOT GRANTED OR IS NOT GRANTED IN A TIMELY MANNER.

The production and marketing of our human-use equipment and the ongoing research, development, pre-clinical testing, and clinical trial activities are subject to extensive regulation. Numerous governmental agencies in the U.S. and internationally, including the FDA, must review our

applications and decide whether to grant approval. All of our human-use equipment must go through an approval process, in some instances for each indication for which we want to label it for use (such as use for dermatology, use for transfer of a certain gene to a certain tissue, or use for administering a certain drug to a certain tumor type in a patient having certain characteristics). These regulatory processes are extensive and involve substantial costs and time.

We have limited experience in, and limited resources available for, regulatory activities. Failure to comply with applicable regulations can, among other things, result in non-approval, suspensions of regulatory approvals, fines, product seizures and recalls, operating restrictions, injunctions and criminal prosecution.

Any of the following events can occur and, if any did occur, any one could have a material adverse effect on our business, financial conditions and results of operations:

- As mentioned earlier, clinical trials may not yield sufficiently conclusive results for regulatory agencies to approve the use of our products;
- There can be delays, sometimes long, in obtaining approval for our human-use devices, and indeed, we have experienced such delays in obtaining FDA approval of our clinical protocols;
- The rules and regulations governing human-use equipment such as ours can change during the review process, which can result in the need to spend time and money for further testing or review;
- If approval for commercialization is granted, it is possible the authorized use will be more limited than we believe is necessary for commercial success, or that approval may be conditioned on completion of further clinical trials or other activities; and
- Once granted, approval can be withdrawn, or limited, if previously unknown problems arise with our human-use product or data arising from its use.

WE COULD BE SUBSTANTIALLY DAMAGED IF PHYSICIANS AND HOSPITALS PERFORMING OUR CLINICAL TRIALS DO NOT ADHERE TO PROTOCOLS OR PROMISES MADE IN CLINICAL TRIAL AGREEMENTS.

We work and have worked with a number of hospitals to perform clinical trials, primarily in oncology. We depend on these hospitals to recruit patients for the trials, to perform the trials according to our protocols, and to report the results in a thorough, accurate and consistent fashion. Although we have agreements with these hospitals, which govern what each party is to do with respect to the protocol, patient safety, and avoidance of conflict of interest, there are risks that the terms of the contracts will not be followed, such as the following:

Risk of Deviations from Protocol. The hospitals or the physicians working at the hospitals may not perform the trial correctly. Deviations from protocol may make the clinical data not useful and the trial could be essentially worthless.

Risk of Improper Conflict of Interest. Physicians working on protocols may have an improper economic interest in our company, or other conflict of interest. When a physician has a personal stake in the success of the trial, such as can be inferred if the physician owns stock, or rights to purchase stock, of the trial sponsor, it can create suspicion that the trial results were improperly influenced by the physician's interest in economic gain. Not only can this put the clinical trial results at risk, but it can also do serious damage to a company's reputation.

Risks Involving Patient Safety and Consent. Physicians and hospitals may fail to secure formal written consent as instructed or report adverse effects that arise during the trial in the proper manner, which could put patients at unnecessary risk. Physicians and hospital staff may fail to observe proper safety measures such as the mishandling of used medical needles, which may result in the transmission of infectious and deadly diseases, such as HIV and AIDS. This increases our liability, affects the data, and can damage our reputation.

If any of these events were to occur, then it could have a material adverse effect on our ability to receive regulatory authorization to sell our human-use equipment, not to mention on our reputation. Negative events that arise in the performance of clinical trials sponsored by biotechnology companies of our size and with limited cash reserves similar to ours have resulted in companies going out of business. While these risks are ever present, to date, our contracted physicians and clinics have been successful in collecting significant data regarding the clinical protocols under which they have operated, and we are unaware of any conflicts of interest or improprieties regarding our protocols.

EVEN IF OUR PRODUCTS ARE APPROVED BY REGULATORY AUTHORITIES, IF WE FAIL TO COMPLY WITH ON-GOING REGULATORY REQUIREMENTS, OR IF WE EXPERIENCE UNANTICIPATED PROBLEMS WITH OUR PRODUCTS, THESE PRODUCTS COULD BE SUBJECT TO RESTRICTIONS OR WITHDRAWAL FROM THE MARKET.

Any product for which we obtain marketing approval, along with the manufacturing processes, post-approval clinical data and promotional activities for such product, will be subject to continual review and periodic inspections by FDA and other regulatory bodies. Even if regulatory approval of a product is granted, the approval may be subject to limitations on the indicated uses for which the product may be marketed or certain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product. Later discovery of previously unknown problems with our products, including unanticipated adverse events of unanticipated severity or frequency, manufacturer or manufacturing processes or failure to comply with regulatory requirements, may result in restrictions on such products or manufacturing processes, withdrawal of the products from the market, voluntary or mandatory recall, fines, suspension of regulatory approvals, product seizures or detention, injunctions or the imposition of civil or criminal penalties.

FAILURE TO COMPLY WITH FOREIGN REGULATORY REQUIREMENTS GOVERNING HUMAN CLINICAL TRIALS AND MARKETING APPROVAL FOR OUR HUMAN-USE EQUIPMENT COULD PREVENT US FROM SELLING OUR PRODUCTS IN FOREIGN MARKETS, WHICH MAY ADVERSELY AFFECT OUR OPERATING RESULTS AND FINANCIAL CONDITIONS.

For marketing our MedPulser Electroporation Therapy System outside the United States, the requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country and may require additional testing. The time required to obtain approvals outside the United States may differ from that required to obtain FDA approval. We may not obtain foreign regulatory approval on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other countries or by the FDA. Failure to comply with these regulatory requirements or to obtain required approvals could impair our ability to develop these markets and could have a material adverse effect on our results of operations and financial condition.

IF WE CANNOT MAINTAIN OUR EXISTING CORPORATE AND ACADEMIC ARRANGEMENTS AND ENTER INTO NEW ARRANGEMENTS, WE MAY BE UNABLE TO DEVELOP PRODUCTS EFFECTIVELY, OR AT ALL.

Our strategy for the research, development and commercialization of our product candidates may result in our entering into contractual arrangements with corporate collaborators, academic institutions and others. We have entered into sponsored research, license and/or collaborative arrangements with several entities, including Merck, Vical, Valentis, the U.S. Navy, Chiron and the University of South Florida, as well as numerous other institutions that conduct clinical trials work or perform pre-clinical research for us. Our success depends upon our collaborative partners performing their responsibilities under these arrangements and complying with the regulations and requirements governing clinical trials. We cannot control the amount and timing of resources our collaborative partners devote to our research and testing programs or product candidates, or their compliance with regulatory requirements which can vary because of factors unrelated to such programs or product candidates. These relationships may in some cases be terminated at the discretion of our collaborative partners with only limited notice to us. We may not be able to maintain our existing arrangements, enter into new arrangements or negotiate current or new arrangements on acceptable terms, if at all. Some of our collaborative partners may also be researching competing technologies independently from us to treat the diseases targeted by our collaborative programs.

IF WE ARE NOT ABLE TO CREATE EFFECTIVE COLLABORATIVE MARKETING RELATIONSHIPS, WE MAY BE UNABLE TO MARKET OUR MEDPULSER ELECTROPORATION THERAPY SYSTEM SUCCESSFULLY OR IN A COST-EFFECTIVE MANNER.

To effectively market our products, we will need to develop sales, marketing and distribution capabilities. In order to develop or otherwise obtain these capabilities, we may have to enter into marketing, distribution or other similar arrangements with third parties in order to sell, market and distribute our products successfully. To the extent we enter into any such arrangements with third parties, our product revenues are likely to be lower than if we directly marketed and sold our products, and any revenues we receive will depend upon the efforts of such third parties. We have no experience in marketing or selling pharmaceutical products and we currently have no sales, marketing or distribution capability. We may be unable to develop sufficient sales, marketing and distribution capabilities to commercialize our products successfully.

WE RELY ON COLLABORATIVE AND LICENSING RELATIONSHIPS TO FUND A PORTION OF OUR RESEARCH AND DEVELOPMENT EXPENSES. IF WE ARE UNABLE TO MAINTAIN OR EXPAND EXISTING RELATIONSHIPS, OR INITIATE NEW RELATIONSHIPS, WE WILL HAVE TO DEFER OR CURTAIL RESEARCH AND DEVELOPMENT ACTIVITIES IN ONE OR MORE AREAS.

Our partners and collaborators fund a portion of our research and development expenses and assist us in the research and development of our human-use equipment. These collaborations and partnerships can help pay the salaries and other overhead expenses related to research. In the past, we encountered operational difficulties after the termination of an agreement by a former partner. Because this partnership was terminated, we did not receive significant milestone payments which we had expected and were forced to delay some clinical trials as well as some product development.

Our clinical trials to date have used our equipment with the anti-cancer drug bleomycin. We do not currently intend to package bleomycin together with the equipment for sale, but if it should be necessary or desirable to do this, we would need a reliable source of the drug. At this time we do not have a fixed source of bleomycin for inclusion with equipment or alone. If it becomes necessary or

desirable to include bleomycin in our package, we would have to form a relationship with another provider of this generic drug before any product could be launched.

We also rely on scientific collaborators at companies and universities to further our research and test our equipment. In most cases, we lend our equipment to a collaborator, teach him or her how to use it, and together design experiments to test the equipment in one of the collaborator's fields of expertise. We aim to secure agreements that restrict collaborators' rights to use the equipment outside of the agreed upon research, and outline the rights each of us will have in any results or inventions arising from the work.

Nevertheless, there is always risk that:

- Our equipment will be used in ways we did not authorize, which can lead to liability and unwanted competition;
- We may determine that our technology has been improperly assigned to us or a collaborator may claim rights to certain of our technology, which may require us to pay license fees or milestone payments and, if commercial sales of the underlying product is achieved, royalties;
- We may lose rights to inventions made by our collaborators in the field of our business, which can lead to expensive legal fights and unwanted competition;
- Our collaborators may not keep our confidential information to themselves, which can lead to loss of our right to seek patent protection and loss of trade secrets, and expensive legal fights; and
- Collaborative associations can damage a company's reputation if they go awry and thus, by association or otherwise, the scientific or medical community may develop a negative view of us.

We cannot guarantee that any of the results from these collaborations will be successful. We also cannot tell you that we will be able to continue to collaborate with individuals and institutions that will further our work, or that we will be able to do so under terms that are not overly restrictive. If we are not able to maintain or develop new collaborative relationships, then it is likely the research pace will slow down and it will take longer to identify and commercialize new products, or new indications for our existing products.

WE RELY HEAVILY ON OUR PATENTS AND PROPRIETARY RIGHTS TO ATTRACT PARTNERSHIPS AND MAINTAIN MARKET POSITION.

Another factor that will influence our success is the strength of our patent portfolio. Patents give the patent holder the right to prevent others from using its patented technology. If someone infringes upon the patented material of a patent holder, then the patent holder has the right to initiate legal proceedings against that person to protect the patented material. These proceedings, however, can be lengthy and costly. We are in the process of performing an ongoing review of our patent portfolio to confirm that our key technologies are adequately protected. If we determine that any of our patents require either additional disclosures or revisions to existing information, we may ask that such patents be reexamined or reissued, as applicable, by the United States Patent and Trademark Office.

The patenting process, enforcement of issued patents, and defense against claims of infringement are inherently risky. Because we rely heavily on patent protection, for us the risks are significant and include the following:

Risk of Inadequate Patent Protection for Product. The United States Patent and Trademark Office or foreign patent offices may not grant patents of meaningful scope based on the applications we have already filed and those we intend to file. If we do not have patents that adequately protect our human-use equipment and indications for its use, then we will not be competitive.

Risk That Important Patents Will Be Judged Invalid. Some of the issued patents we now own or license may be determined to be invalid. If we have to defend the validity of any of our patents, the costs of such defense could be substantial, and there is no guarantee of a successful outcome. In the event an important patent related to our drug delivery technology is found to be invalid, we may lose competitive position and may not be able to receive royalties for products covered in part or whole by that patent under license agreements.

Risk of Being Charged With Infringement. Although we and our partners try to avoid infringement, there is the risk that we will use a patented technology owned by another person and/or be charged with infringement. Defending or indemnifying a third party against a charge of infringement can involve lengthy and costly legal actions, and there can be no guarantee of a successful outcome. Biotechnology companies of roughly our size and financial position have gone out of business after fighting and losing an infringement battle. If we or our partners were prevented from using or selling our human-use equipment, then our business would be seriously affected.

Freedom to Operate Risks. We are aware that patents related to electrically-assisted drug delivery have been granted to, and patent applications filed by, our potential competitors. We or our partners have taken licenses to some of these patents, and will consider taking additional licenses in the future. Nevertheless, the competitive nature of our field of business and the fact that others have sought patent protection for technologies similar to ours make these risks significant.

In addition to patents, we also rely on trade secrets and proprietary know-how. We try to protect this information with appropriate confidentiality and inventions agreements with our employees, scientific advisors, consultants, and collaborators. We cannot assure you that these agreements will not be breached, that we will be able to do much to protect ourselves if they are breached, or that our trade secrets will not otherwise become known or be independently discovered by competitors. If any of these events occurs, then we run the risk of losing control over valuable company information, which could negatively affect our competitive position.

IF WE ARE NOT SUCCESSFUL DEVELOPING OUR CURRENT PRODUCTS, OUR BUSINESS MODEL MAY CHANGE AS OUR PRIORITIES AND OPPORTUNITIES CHANGE. OUR BUSINESS MAY NEVER DEVELOP TO BE PROFITABLE OR SUSTAINABLE.

There are many products and programs that to us seem promising and that we could pursue. However, with limited resources, we may decide to change priorities and shift programs away from those that we had been pursuing for the purpose of exploiting our core technology of electroporation. The choices we may make will be dependent upon numerous factors, which we cannot predict. We cannot assure you that our business model, as it currently exists or as it may evolve, will enable us to become profitable or to sustain operations.

SERIOUS AND UNEXPECTED SIDE EFFECTS ATTRIBUTABLE TO GENE THERAPY MAY RESULT IN GOVERNMENTAL AUTHORITIES IMPOSING ADDITIONAL REGULATORY REQUIREMENTS OR A NEGATIVE PUBLIC PERCEPTION OF OUR PRODUCTS.

The MedPulser DNA Delivery System and any of our other Gene Therapy or DNA Vaccine product candidates under development could be broadly described as gene therapies. A number of clinical trials are being conducted by other pharmaceutical companies involving gene therapy, including compounds similar to, or competitive with, our product candidates. The announcement of adverse results from these clinical trials, such as serious unwanted and unexpected side effects attributable to treatment, or any response by the FDA to such clinical trials, may impede the timing of our clinical trials, delay or prevent us from obtaining regulatory approval or negatively influence public perception

of our product candidates, which could harm our business and results of operations and depress the value of our stock.

The U.S. Senate has held hearings concerning the adequacy of regulatory oversight of gene therapy clinical trials, as well as the adequacy of research subject education and protection in clinical research in general, and to determine whether additional legislation is required to protect volunteers and patients who participate in such clinical trials. The Recombinant DNA Advisory Committee, or RAC, which acts as an advisory body to the National Institutes of Health, has expanded its public role in evaluating important public and ethical issues in gene therapy clinical trials. Implementation of any additional review and reporting procedures or other additional regulatory measures could increase the costs of or prolong our product development efforts or clinical trials.

We report to the FDA and other regulatory agencies serious adverse events, including those we believe may be reasonably related to the treatments administered in our clinical trials. Such serious adverse events, whether treatment-related or not, could result in negative public perception of our treatments and require additional regulatory review or measures, which could increase the cost of or prolong our clinical trials.

The FDA has not approved any gene therapy product or gene-induced product for sale in the United States. The commercial success of our products will depend in part on public acceptance of the use of gene therapy products or gene-induced products, which are a new type of disease treatment for the prevention or treatment of human diseases. Public attitudes may be influenced by claims that gene therapy products or gene-induced products are unsafe, and these treatment methodologies may not gain the acceptance of the public or the medical community. Negative public reaction to gene therapy products or gene-induced products could also result in greater government regulation and stricter clinical trial oversight.

WE CANNOT PREDICT THE SAFETY PROFILE OF THE USE OF OUR MEDPULSER ELECTROPORATION SYSTEM WHEN USED IN COMBINATION WITH OTHER THERAPIES.

Our trials involve the use of our MedPulser Electroporation System in combination with bleomycin, an anti-cancer drug. While the data we have evaluated to date suggest the MedPulser Electroporation Therapy System does not increase the adverse effects of other therapies, we cannot predict if this outcome will continue to be true or whether possible adverse side effects not directly attributable to the other drugs will compromise the safety profile of our MedPulser Electroporation Therapy System when used in certain combination therapies or if used off-label with other drugs by physicians.

WE RUN THE RISK THAT OUR TECHNOLOGY WILL BECOME OBSOLETE OR LOSE ITS COMPETITIVE ADVANTAGE.

The drug delivery business is very competitive, fast moving and intense, and expected to be increasingly so in the future. Other companies and research institutions are developing drug delivery systems that, if not similar in type to our systems, are designed to address the same patient or subject population. Therefore, we cannot promise you that our products will be the best, the safest, the first to market, or the most economical to make or use. If competitors' products are better than ours, for whatever reason, then we could make less money from sales and our products risk becoming obsolete.

There are many reasons why a competitor might be more successful than us, including:

Financial Resources. Some competitors have greater financial resources and can afford more technical and development setbacks than we can.

Greater Experience. Some competitors have been in the drug delivery business longer than we have. They have greater experience than us in critical areas like clinical testing, obtaining regulatory approval, and sales and marketing. This experience or their name recognition may give them a competitive advantage over us.

Superior Patent Position. Some competitors may have a better patent position protecting their technology than we have or will have to protect our technology. If we cannot use our patents to prevent others from copying our technology or developing similar technology, or if we cannot obtain a critical license to another's patent that we need to make and use our equipment, then we would expect our competitive position to lessen. However, we feel that our patent position adequately protects our technology portfolio.

Faster to Market. Some companies with competitive technologies may move through stages of development, approval, and marketing faster than us. If a competitor receives FDA approval before us, then it will be authorized to sell its products before we can sell ours. Because the first company "to market" often has a significant advantage over late-comers, a second place position could result in less than anticipated sales.

Reimbursement Allowed. In the U.S., third party payers, such as Medicare, may reimburse physicians and hospitals for competitors' products but not for our human-use products. This would significantly affect our ability to sell our human-use products in the U.S. and would have a serious effect on revenues and our business as a whole. Outside of the U.S., reimbursement and funding policies vary widely.

ANY ACQUISITION WE MIGHT MAKE MAY BE COSTLY AND DIFFICULT TO INTEGRATE, MAY DIVERT MANAGEMENT RESOURCES OR DILUTE STOCKHOLDER VALUE.

We have considered and made strategic acquisitions in the past, including Inovio AS in January 2005, and, in the future, may acquire or make investments in complementary companies, products or technologies. As part of our business strategy, we may acquire assets or businesses principally relating to or complementary to our current operations, and we have in the past evaluated and discussed such opportunities with interested parties. Any acquisitions we undertake will be accompanied by the risks commonly encountered in business acquisitions. These risks include, among other things:

- Potential exposure to unknown liabilities of acquired companies;
- The difficulty and expense of assimilating the operations and personnel of acquired businesses;
- Diversion of management time and attention and other resources;
- Loss of key employees and customers as a result of changes in management;
- Incurrence of amortization expenses related to intangible assets or large impairment charges; and
- Possible dilution to our stockholders.

In addition, geographic distances may make the integration of businesses more difficult. We may not be successful in overcoming these risks or any other problems encountered in connection with any acquisitions.

OUR ABILITY TO ACHIEVE SIGNIFICANT REVENUES FROM SALES OR LEASES OF HUMAN-USE EQUIPMENT WILL DEPEND ON ESTABLISHING EFFECTIVE SALES, MARKETING AND DISTRIBUTION CAPABILITIES OR RELATIONSHIPS AND WE CURRENTLY LACK SUBSTANTIAL EXPERIENCE IN THESE AREAS.

We have limited experience in sales, marketing and distribution of clinical and human-use products. If we want to be direct distributors of the human-use products, then we must develop a marketing and sales force. This would involve substantial costs, training, and time. Alternatively, we may decide to rely on a company with a large distribution system and a large direct sales force to undertake the majority of these activities on our behalf. This route could result in less profit for us, but may permit us to reach market faster. In any event, we may not be able to undertake this effort on our own, or contract with another to do this at a reasonable cost. Regardless of the route we take, we may not be able to successfully commercialize any product.

THE MARKET FOR OUR STOCK IS VOLATILE, WHICH COULD ADVERSELY AFFECT AN INVESTMENT IN OUR STOCK.

Our share price and volume are highly volatile. This is not unusual for biomedical companies of our size, age, and with a discrete market niche. It also is common for the trading volume and price of biotechnology stocks to be unrelated to a company's operations, i.e. to go up or down on positive news and to go up or down on no news. Our stock has exhibited this type of behavior in the past, and may well exhibit it in the future. The historically low trading volume of our stock, in relation to many other biomedical companies of our size, makes it more likely that a severe fluctuation in volume, either up or down, will affect the stock price.

Some factors that we would expect to depress the price of our stock include:

- Adverse clinical trial results;
- Our inability to obtain additional capital;
- Announcement that the FDA denied our request to approve our human-use product for commercialization in the United States, or similar denial by other regulatory bodies which make independent decisions outside the United States. To date, the EU is the only foreign jurisdiction in which we have sought approval for commercialization;
- Announcement of legal actions brought by or filed against us for patent or other matters, especially if we do not win such actions;
- Cancellation of important corporate partnerships or agreements;
- Public concern as to the safety or efficacy of our human-use products including public perceptions regarding gene therapy in general;
- Stockholders' decisions, for whatever reasons, to sell large amounts of our stock;
- Adverse research and development results;
- Declining working capital to fund operations, or other signs of apparent financial uncertainty; and
- Significant advances made by competitors that are perceived to limit our market position.

Additionally, our clinical trials are open-ended and, therefore, there is a risk that information regarding the success of our clinical trials maybe be obtained by the public prior to a formal announcement by us.

ECONOMIC, POLITICAL, MILITARY OR OTHER EVENTS IN THE UNITED STATES OR IN OTHER COUNTRIES COULD INTERFERE WITH OUR SUCCESS OR OPERATIONS AND HARM OUR BUSINESS

The September 11, 2001 terrorist attacks disrupted commerce throughout the United States and other parts of the world. The continued threat of similar attacks throughout the world and the military action taken by the United States and other nations in Iraq or other countries may cause significant disruption to commerce throughout the world. To the extent that such disruptions further slow the global economy, our business and results of operations could be materially adversely affected. We are unable to predict whether the threat of new attacks or the responses thereto will result in any long-term commercial disruptions or if such activities or responses will have a long-term material adverse effect on our business, results of operations or financial condition.

OUR DEPENDENCE UPON NON-MARKETED PRODUCTS, LACK OF EXPERIENCE IN MANUFACTURING AND MARKETING HUMAN-USE PRODUCTS, AND OUR CONTINUING DEFICIT MAY RESULT IN EVEN FURTHER FLUCTUATIONS IN OUR TRADING VOLUME AND SHARE PRICE.

Successful approval, marketing, and sales of our human-use equipment are critical to the financial future of our company. Our human-use products are not yet approved for sale in the United States and some other jurisdictions and we may never obtain those approvals. Even if we do obtain approvals to sell our human-use products in the United States, those sales may not be as large or timely as we expect. These uncertainties may cause our operating results to fluctuate dramatically in the next several years. We believe that quarter-to-quarter or annual comparisons of our operating results are not a good indication of our future performance. Nevertheless, these fluctuations may cause us to perform below the expectations of the public market analysts and investors. If this happens, the price of our common shares would likely fall.

THERE IS A RISK OF PRODUCT LIABILITY WITH HUMAN-USE EQUIPMENT

The testing, marketing and sale of human-use products expose us to significant and unpredictable risks of equipment product liability claims. These claims may arise from patients, clinical trial volunteers, consumers, physicians, hospitals, companies, institutions, researchers or others using, selling, or buying our equipment. Product liability risks are inherent in our business and will exist even after the products are approved for sale. If and when our human-use equipment is commercialized, we run the risk that use (or misuse) of the equipment will result in personal injury. The chance of such an occurrence will increase after a product type is on the market.

We possess liability insurance in connection with ongoing business and products, and we will purchase additional policies if such policies are determined by management to be necessary. The insurance we purchase may not provide adequate coverage in the event a claim is made, however, and we may be required to pay claims directly. If we did have to make payment against a claim, then it would impact our financial ability to perform the research, development, and sales activities we have planned.

If and when our human-use equipment is commercialized, there is always the risk of product defects. Product defects can lead to loss of future sales, decrease in market acceptance, damage to our brand or reputation, and product returns and warranty costs. These events can occur whether the defect resides in a component we purchased from a third party or whether it was due to our design and/or manufacture. We expect that our sales agreements will contain provisions designed to limit our exposure to product liability claims. However, we do not know whether these limitations are enforceable in the countries in which the sale is made. Any product liability or other claim brought

against us, if successful and of sufficient magnitude, could negatively impact our financial performance, even if we have insurance.

WE CANNOT BE CERTAIN THAT WE WILL BE ABLE TO MANUFACTURE OUR HUMAN-USE EQUIPMENT IN SUFFICIENT VOLUMES AT COMMERCIALLY REASONABLE RATES.

Our manufacturing facilities for human-use products will be subject to quality systems regulations, international quality standards and other regulatory requirements, including pre-approval inspection for the human-use equipment and periodic post-approval inspections for all human-use products. While we have undergone and passed a quality systems audit from an international body, we have never undergone a quality systems inspection by the FDA. We may not be able to pass an FDA inspection when it occurs. If our facilities are found not to be up to the FDA standards in sufficient time, prior to United States launch of product, then it will result in a delay or termination of our ability to produce the human-use equipment in our facility. Any delay in production will have a negative effect on our business. There are no immediate dates set forth for launch of our products in the United States. We plan on launching these products once we successfully perform a Phase III clinical study, obtain the requisite regulatory approval, and engage a partner who has the financial resources and marketing capacity to bring our products to market.

Our products must be manufactured in sufficient commercial quantities, in compliance with regulatory requirements, and at an acceptable cost to be attractive to purchasers. We rely on third parties to manufacture and assemble most aspects of our equipment.

Disruption of the manufacture of our products, for whatever reason, could delay or interrupt our ability to manufacture or deliver our products to customers on a timely basis. This would be expected to affect revenues and may affect our long-term reputation, as well. In the event we provide product of inferior quality, we run the risk of product liability claims and warranty obligations, which will negatively affect our financial performance.

IF WE LOSE KEY PERSONNEL OR ARE UNABLE TO ATTRACT AND RETAIN ADDITIONAL, HIGHLY SKILLED PERSONNEL REQUIRED TO DEVELOP OUR PRODUCTS OR OBTAIN NEW COLLABORATIONS, OUR BUSINESS MAY SUFFER.

We depend, to a significant extent, on the efforts of our key employees, including senior management and senior scientific, clinical, regulatory and other personnel. The development of new therapeutic products requires expertise from a number of different disciplines, some of which is not widely available. We depend upon our scientific staff to discover new product candidates and to develop and conduct pre-clinical studies of those new potential products. Our clinical and regulatory staff is responsible for the design and execution of clinical trials in accordance with FDA requirements and for the advancement of our product candidates toward FDA approval. Our manufacturing staff is responsible for designing and conducting our manufacturing processes in accordance with the FDA's Quality System Regulations. The quality and reputation of our scientific, clinical, regulatory and manufacturing staff, especially the senior staff, and their success in performing their responsibilities, are a basis on which we attract potential funding sources and collaborators. In addition, our Chief Executive Officer and Chief Financial Officer and other executive officers are involved in a broad range of critical activities, including providing strategic and operational guidance. The loss of these individuals, or our inability to retain or recruit other key management and scientific, clinical, regulatory, manufacturing and other personnel, may delay or prevent us from achieving our business objectives. We face intense competition for personnel from other companies, universities, public and private research institutions, government entities and other organizations.

WE MAY NOT MEET ENVIRONMENTAL GUIDELINES AND AS A RESULT COULD BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

Like all companies in our line of work, we are subject to a variety of governmental regulations relating to the use, storage, discharge and disposal of hazardous substances. Our safety procedures for handling, storage and disposal of such materials are designed to comply with applicable laws and regulations. Nevertheless, if we are found to not comply with environmental regulations, or if we are involved with contamination or injury from these materials, then we may be subject to civil and criminal penalties. This would have a negative impact on our reputation and finances, and could result in a slowdown or even complete cessation of our business.

OUR FACILITIES ARE LOCATED NEAR KNOWN EARTHQUAKE FAULT ZONES, AND THE OCCURRENCE OF AN EARTHQUAKE OR OTHER CATASTROPHIC DISASTER COULD CAUSE DAMAGE TO OUR FACILITIES AND EQUIPMENT.

Our facilities are located near known earthquake fault zones and are vulnerable to damage from earthquakes. We are also vulnerable to damage from other types of disasters, including fire, floods, power loss, communications failures and similar events. If any disaster were to occur, our ability to operate our business at our facilities would be seriously impaired. In addition, the unique nature of our research activities could cause significant delays in our programs and make it difficult for us to recover from a disaster. The insurance we maintain may not be adequate to cover our losses resulting from disasters or other business interruptions. Accordingly, an earthquake or other disaster could materially and adversely harm our ability to conduct business.

WE ARE EXPOSED TO POTENTIAL RISKS FROM RECENT LEGISLATION REQUIRING COMPANIES TO EVALUATE INTERNAL CONTROLS UNDER SECTION 404 OF THE SARBANES-OXLEY ACT OF 2002.

As directed by Section 404 of the Sarbanes-Oxley Act of 2002 ("Section 404"), the Securities and Exchange Commission adopted rules requiring public companies to include a report of management on our internal controls over financial reporting in our annual reports on Form 10-K that contains an assessment by management of the effectiveness of our internal controls over financial reporting. In addition, our independent auditor must attest to and report on management's assessment of the effectiveness of our internal controls over financial reporting. This requirement first applies to this Annual Report on Form 10-K.

How companies are implementing these new requirements including internal control reforms, if any, to comply with Section 404's requirements, and how independent auditors are applying these new requirements and testing companies' internal controls, remains subject to uncertainty. The requirements of Section 404 are ongoing and apply to future years. We expect that our internal controls will continue to evolve as our business activities change. During the course of management's and our independent auditor's review of our internal controls over financial reporting as of December 31, 2004, we did identify two significant control deficiencies that did not rise to the level of material weaknesses, as defined by the Public Company Accounting Oversight Board (PCAOB). Although we will continue to diligently and vigorously review our internal controls over financial reporting in order to ensure compliance with the Section 404 requirements, any control system, regardless of how well designed, operated and evaluated, can provide only reasonable, not absolute, assurance that its objectives will be met.

If, during any year, our independent auditor is not satisfied with our internal controls over financial reporting or the level at which these controls are documented, designed, operated, tested or assessed, or if the independent auditor interprets the requirements, rules or regulations differently than

we do, then our independent auditor may decline to attest to management's assessment or may issue a report that is qualified. This could result in an adverse reaction in the financial marketplace due to a loss of investor confidence in the reliability of our financial statements, which ultimately could negatively impact the market price of our stock.

ITEM 2. PROPERTIES

We own no real property and have no plans to acquire any real property in the future. On January 28, 2005, we moved into new headquarters of 22,867 square feet at 11494 Sorrento Valley Road in San Diego, California. This facility provides adequate space for our current research, manufacturing, and administrative operations. This new lease runs through February 28, 2010. The annual rent for this leased property is $452,767 in the first four years of the original lease term. The annual rent for the fifth and final year of the original lease term is $480,207. At the end of the original lease term, we have the option of renewing this lease for an additional five-year lease term at an annual rate equal to the fair market rental value of the property, as defined in the lease agreement.

In connection with this new lease, we issued a warrant to purchase 50,000 shares of our common stock at $5.00 per share to the landlord of this leased facility in December 2004. This warrant is immediately exercisable and expires five years from the date of issuance. This warrant was valued on the date of issuance using the Black-Scholes pricing model. The fair value of this warrant, $120,913, will be recognized ratably over the five-year term of the lease as rent expense.

During the transition to our new headquarters, we will maintain a portion of our previous headquarters at 11199 Sorrento Valley Road in San Diego, California as our manufacturing facility. The lease for this manufacturing facility runs through May 31, 2005. The monthly rent for this leased property is $7,679.

We believe our current facilities will be adequate to meet our operating needs for the foreseeable future. Should we need additional space, we believe we will be able to secure additional space at commercially reasonable rates.

ITEM 3. LEGAL PROCEEDINGS

We are not a party to any material legal proceedings with respect to us, our subsidiaries, or any of our properties.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of fiscal 2004.

PART II

ITEM 5. MARKET FOR COMPANY'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER REPURCHASES OF EQUITY SECURITIES

Market Information

Our common stock is traded on the American Stock Exchange ("AMEX") under the symbol "GEB." Trading began on the AMEX on December 8, 1998. On January 17, 2003, we voluntarily de-listed from the Toronto Stock Exchange ("TSE") where our common stock had been listed since September 2, 1997. The decision was made to decrease the time required and costs of dual regulatory filings, concentrate all of the volume on one exchange and focus on building a higher profile with our expanding domestic investor base. Our common shares have also traded on the former Vancouver Stock Exchange ("VSE"). We voluntarily de-listed from that exchange on March 6, 1998.

Effective September 13, 2004, we implemented a one-for-four reverse split of our common stock. At the time of the reverse stock split, each four shares of our issued and outstanding common stock were combined into one share of our common stock. The reverse stock split did not change the number of authorized shares of our common stock. The one-for-four reverse stock split was approved by the registrant's stockholders at a special meeting on September 10, 2004, and subsequently approved by our Board of Directors. All common share and per share amounts throughout this filing have been adjusted to give effect to this reverse stock split.

The table below sets forth the quarterly high and low sales prices of our common shares in the two most recent fiscal years and gives effect to this reverse stock split.

	Toronto Stock Exchange CDN$		American Stock Exchange US$	
Year ended December 31, 2004	**High**	**Low**	**High**	**Low**
First quarter	—	—	7.76	5.00
Second quarter	—	—	6.92	4.84
Third quarter	—	—	5.20	2.64
Fourth quarter	—	—	4.45	2.37
Year ended December 31, 2003				
First quarter (1)	2.20	1.60	1.76	1.04
Second quarter	—	—	3.72	0.96
Third quarter	—	—	4.56	2.36
Fourth quarter	—	—	5.52	3.80

(1) We voluntarily de-listed from the TSE on January 17, 2003.

As of March 2, 2005, there were approximately 466 stockholders of record. This figure does not include beneficial owners who hold shares in nominee name. The closing price per share of our common stock on March 2, 2005 was $4.45, as reported on the AMEX.

Recent Sales of Unregistered Securities

In January 2005, we consummated the acquisition of Inovio AS, a Norwegian company. Under the terms of the transaction, we acquired the entire share capital of Inovio for an aggregate purchase price of $10.0 million; $3.0 million of the purchase price consisted of cash and $7.0 million consisted of shares of our Series D Convertible Preferred Stock, par value $0.001 per share (the "Series D Preferred Stock"). We issued 1,966,292 shares of the Series D Preferred Stock in the transaction, based on the average closing price of our common stock as reported on the American Stock Exchange during the 30 trading day period immediately preceding the closing. Those shareholders of Inovio who received shares of Series D Preferred Stock in the transaction will also be entitled to additional issuances of Series D Preferred Stock in the event we achieve certain strategic and commercial milestones, as set forth in the Stock Purchase Agreement. The shares of Series D Preferred Stock are convertible to shares of our common stock on a one-for-one basis. We intend to file a registration statement covering the resale of such shares of common stock.

In January 2005, we completed a private placement to accredited investors whereby we sold 1,540,123 shares of our common stock at a purchase price of $4.05 per share and issued warrants to purchase 508,240 shares of our common stock at an exercise price of $5.50 per share, which resulted in aggregate cash proceeds of $3.03 million (assuming no exercise of the warrants). A portion of this private placement involved investors who converted $3.2 million of their previous investment in our

Series C Preferred Stock into 790,123 shares of the common stock issued as part of this private placement with no associated cash proceeds to us.

At the signing, each investor provided payment for at least 20% of the subscription amount, the balance due at the earlier of (i) September 30, 2005 or (ii) the occurrence of an "early triggering event," as set forth in the agreement. The balance of the subscription amount is evidenced by a full recourse promissory note. All of the shares shall be held in an escrow account pending the final closing, in accordance with the terms of the escrow agreement.

In conjunction with this private placement, we received a subscription amount of $607,421 in cash from one investor in advance of the signing of this agreement, which was recorded in accrued expenses in the consolidated balance sheet as of December 31, 2004.

Dividends

The holders of our Series A and B Preferred Stock will receive an annual dividend rate of 6%, in shares of common stock or cash, payable quarterly. Holders of Series A and B Preferred Stock are entitled to receive this quarterly dividend through September 30, 2006. In 2004 and 2003, our Board of Directors declared dividends to the holders of our Series A and B Preferred Stock, which were paid through the issuance of our common stock. As part of this dividend to holders of Series A and B Preferred Stock, we issued a total of 73,072 common shares valued at $322,397 in 2004, and 84,595 common shares valued at $357,587 in 2003.

The holders of our Series C Preferred Stock will receive an annual dividend rate of 6%, in shares of common stock or cash, payable quarterly. Holders of Series C Preferred Stock are entitled to receive this quarterly dividend through June 30, 2007. In 2004, our Board of Directors declared dividends to the holders of our Series C Preferred Stock, which were paid through the issuance of our common stock, as well as cash. As part of this dividend to the holders of Series C Preferred Stock, we issued 30,124 common shares valued at $133,693, and paid cash of $276,315 in 2004.

Repurchases

We did not repurchase any of our equity securities during the fourth quarter of fiscal 2004.

Equity Compensation Plans

Our equity compensation plan information is provided as set forth in Part III, Item 11 herein.

ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following table sets forth our selected consolidated financial data for the periods indicated, derived from consolidated financial statements prepared in accordance with U.S. generally accepted accounting principles. The data set forth below should be read in conjunction with our Consolidated Financial Statements and the Notes thereto included elsewhere in this report and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" set forth below. Effective June 15, 2001, our Board of Directors approved the change of our fiscal year-end from March 31 to December 31.

	Year Ended December 31, 2004	Year Ended December 31, 2003	Year Ended December 31, 2002	Nine Months Ended December 31, 2001	Year Ended March 31, 2001
License fee and milestone payments	$ 214,351	$ 5,882	$ 5,883	$ 981	$ 3,730,392
Revenue under collaborative research and development arrangements and grants	952,748	74,674	183,638	109,669	560,797
Loss from continuing operations	(11,263,140)	(6,588,245)	(5,908,044)	(5,851,744)	(4,935,600)
Gain on disposal of assets	290,209	2,034,078	—	—	—
Loss from discontinued operations	—	(110,740)	(56,783)	(508,046)	(283,696)
Net loss	(10,972,391)	(4,664,907)	(5,964,827)	(6,359,790)	(5,219,296)
Imputed and declared dividends	(732,405)	(18,210,530)	—	—	—
Loss attributable to common stockholders	(11,705,336)	(22,875,437)	(5,967,827)	(6,359,790)	(5,219,296)
Cumulative effect on prior years of change in accounting principle	—	—	—	—	(3,647,059)
Net loss after change in accounting principle	(11,705,336)	(22,875,437)	(5,964,827)	(6,359,790)	(8,866,355)
Pro forma net loss assuming change in accounting principle is retroactively applied	(11,705,336)	(22,875,437)	(5,964,827)	(6,359,790)	(5,219,296)
Amounts per common share—basic and diluted:					
Loss from continuing operations	(0.64)	(0.49)	(0.58)	(0.68)	(0.72)
Gain (loss) from discontinued operations	0.02	0.14	(0.01)	(0.08)	(0.04)
Net loss	(0.62)	(0.35)	(0.59)	(0.76)	(0.76)
Imputed and declared dividends	(0.04)	(1.37)	—	—	—
Net loss attributable to common stockholders	(0.66)	(1.72)	(0.59)	(0.76)	(0.76)
Cumulative effect on prior years of change in accounting principle	—	—	—	—	(0.52)
Net loss after change in accounting principle	(0.66)	(1.72)	(0.59)	(0.76)	(1.28)
Pro forma net loss assuming change in accounting principle is retroactively applied	(0.66)	(1.72)	(0.59)	(0.76)	(0.76)
Total assets	20,951,502	16,228,990	5,419,225	6,633,714	11,486,266
Long-term liabilities, including current portion	—	—	20,642	48,117	117,463

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward-Looking Statements

The following discussion should be read in conjunction with the audited consolidated financial statements and the notes thereto contained elsewhere in this annual report. The following discussion and analysis explains trends in our financial condition and results of operations for the years ended December 31, 2004, 2003 and 2002.

This Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including statements with regards to our revenue, spending, cash flow, products, actions, plans, strategies and objectives. Forward-looking statements include, without limitation, any statement that may predict, forecast, indicate or simply state future results, performance or achievements, and may contain the words "believe," "anticipate," "expect," "estimate," "intend," "plan," "project," "will be," "will continue," "will result," "could," "may," "might," or any variations of such words with similar meanings. Any such statements are subject to risks and uncertainties that could cause our actual results to differ materially from those which are management's current expectations or forecasts. Such information is subject to the risk that such expectations or forecasts, or the assumptions underlying such expectations or forecasts, become inaccurate.

The risks and uncertainties are detailed from time to time in our reports filed with the SEC, including Forms 8-K, 10-Q, and 10-K, and include, among others, the following: our ability to develop commercially successful products; international and national general economic, political and market conditions; our significant additional financing requirements and the uncertainty of future capital funding; potential changes in our strategy that may occur depending on the successful development of our current products; potential changes in the focus of existing and potential collaborative partners with respect to research and development activities; the timing and uncertainty of results of both research and regulatory processes; competitive conditions and demand for our products and technology; the unproven safety and efficacy of our device products and our potential exposure to product liability or recall; our significant reliance upon our collaborative partners with respect to sales, marketing and distribution capabilities for achieving our goals; uncertainties relating to patents and other intellectual property, including whether we will obtain sufficient protection or competitive advantage therefrom; existing extensive domestic and foreign government regulations, including environmental guidelines, applicable to our business and the potential for additional regulatory requirements that may be imposed; the volatility of our stock price; our dependence on third parties to manufacture equipment for our manufacturing facilities that meets FDA standards; our lack of experience in manufacturing and marketing human-use products; business disruptions due to natural disasters such as an earthquake due to the location of our facilities; our dependence upon a limited number of key personnel and consultants; our ability to successfully integrate any assets or businesses that we acquire into our existing operations; compliance with recent legislation including the Sarbanes-Oxley Act of 2002; and other factors referenced or incorporated by reference in this report and other reports.

The risks included here are not exhaustive. Other sections of this report may include additional factors that could adversely impact our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and we cannot predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward looking statements. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results. Investors should also be aware that while we do, from time to time, communicate with securities analysts, we do not disclose any material non-public information or other confidential commercial information to them. Accordingly, individuals should not assume that we agree with any

statement or report issued by any analyst, regardless of the content of the report. Thus, to the extent that reports issued by securities analysts contain any projections, forecasts or opinions, such reports are not our responsibility.

Overview

We are a San Diego-based biomedical company whose technology platform is based on medical devices that use Electroporation Therapy ("EPT") to deliver drugs and genes into cells. We are developing and commercializing novel medical therapies to address a number of diseases with critical unmet treatment needs using EPT. Our MedPulser Electroporation Therapy System is in Phase III clinical trials in the United States for the treatment of recurrent head and neck cancer. In addition, we are currently conducting pre-marketing studies to support the commercialization of the MedPulser Electroporation Therapy System in Europe. Our system delivers electrical pulses to tumors injected with the generic drug bleomycin. The unique feature of the system, which uses a generator together with disposable needle applicators, is the preservation of healthy tissue at the margins of the tumor. We believe this may afford distinct advantages over surgery in preserving function and improving the quality of life for cancer patients who would otherwise face significant morbidity associated with cancer surgery. Prior to commercial sales of the MedPulser Electroporation Therapy System in the European Union ("EU"), we were required to receive CE Mark Certification, an international symbol of quality and compliance. We believe that the planned commercial launch of our CE certified MedPulser Electroporation Therapy System in Europe in 2006 represents an important milestone for us.

We will continue to seek new strategic licensing partners for the use of electroporation for the delivery of drugs in the treatment of cancer and delivery of genes into cells. We will not receive any additional milestone or licensing payments for development or sale of our products until a new strategic alliance is in place or we achieve the milestones specified in our existing agreements, or product sales commence under our existing agreement. There can be no assurance that we will be able to contract with such a partner or that we can achieve the milestones set out in our agreements.

Until the commercialization of clinical products, we expect revenues to continue to be attributable to collaborative research arrangements, licensing fees, grants and interest income.

Due to the amount of expenses incurred in the development of the oncology and gene delivery systems, we have been unprofitable since 1994. As of December 31, 2004, we had an accumulated deficit of $87,907,320. We expect to continue to incur substantial operating losses in the future due to our commitment to our research and development programs, the funding of preclinical studies, clinical trials and regulatory activities and the costs of general and administrative activities.

Critical Accounting Policies

The SEC defines critical accounting policies as those that are, in management's view, important to the portrayal of our financial condition and results of operations and demanding of management's judgment. Our discussion and analysis of our financial condition and results of operations is based on our audited consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. We base our estimates on experience and on various assumptions that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates.

Our critical accounting policies include:

Revenue Recognition. We have adopted a strategy of co-developing or licensing our gene delivery technology for specific genes or specific medical indications. Accordingly, we have entered into collaborative research and development agreements and have received funding for pre-clinical research and clinical trials. Payments under these agreements, which are non-refundable, are recorded as revenue as the related research expenditures are incurred pursuant to the terms of the agreement and provided collectibility is reasonably assured.

License fees comprise initial fees and milestone payments derived from collaborative licensing arrangements. Non-refundable milestone payments continue to be recognized upon the achievement of specified milestones when we have earned the milestone payment, provided the milestone payment is substantive in nature and the achievement of the milestone was not reasonably assured at the inception of the agreement. We defer payments for milestone events which are reasonably assured and recognize them ratably over the minimum remaining period of our performance obligations. Payments for milestones which are not reasonably assured are treated as the culmination of a separate earnings process and are recognized as revenue when the milestones are achieved.

Patent and License Costs. Patents are recorded at cost and amortized using the straight-line method over the expected useful lives of the patents or 17 years, whichever is less. Cost is comprised of the consideration paid for patents and related legal costs. If management determines that development of products to which patent costs relate is not reasonably certain or that costs exceed recoverable value, such costs are charged to operations.

License costs are recorded based on the fair value of consideration paid and amortized using the straight-line method over the shorter of the expected useful life of the underlying patents or the term of the related license agreement.

Long-lived Assets. We assess the recoverability of long-lived assets by determining whether the carrying value of such assets can be recovered through undiscounted future operating cash flows. If impairment is indicated, we reduce the carrying value of the asset to fair value. While our current and historical operating and cash flow losses are potential indicators of impairment, we believe the future cash flows to be received from the long-lived assets will exceed the assets' carrying value, and accordingly, we have not recognized any impairment losses through December 31, 2004.

Research and Development Expenses. Since our inception, virtually all of our activities have consisted of research and development efforts related to developing our electroporation technologies. We expense all such expenditures in the period incurred. Our expenses related to clinical trials are based on services received and efforts expended pursuant to contracts with multiple research institutions and clinical research organizations that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation and vary from contract to contract and may result in uneven payment flows. Generally, these agreements set forth the scope of work to be performed at a fixed fee or unit price. Payments under the contracts depend on factors such as the successful enrollment of patients or the completion of clinical trial milestones. Expenses related to clinical trials generally are accrued based on contracted amounts applied to the level of patient enrollment and activity according to the protocol. If timelines or contracts are modified based upon changes in the clinical trial protocol or scope of work to be performed, we modify our estimates accordingly on a prospective basis.

Results of Operations

Comparison of Years Ended December 31, 2004 and 2003

The audited consolidated financial data for the years ended December 31, 2004 and December 31, 2003 is presented in the following table and the results of these two periods are used in the discussion thereafter.

	Year Ended December 31, 2004	Year Ended December 31, 2003
Revenue:		
License fee and milestone payments	$ 214,351	$ 5,882
Revenue under collaborative research and development arrangements	945,591	74,647
Grants	7,157	—
Total revenue	1,167,099	80,529
Operating expenses:		
Research and development	6,548,599	2,146,909
General and administrative	6,129,195	4,566,882
Total operating expenses	12,677,794	6,713,791
Loss from operations	(11,510,695)	(6,633,262)
Other income (expense):		
Interest income	247,555	65,497
Interest expense	—	(20,480)
Loss from continuing operations	(11,263,140)	(6,588,245)
Discontinued operations:		
Gain on disposal and other, net	290,209	2,034,078
Loss from discontinued operations	—	(110,740)
Net loss	(10,972,931)	(4,664,907)
Imputed and declared dividends on preferred stock	(732,405)	(18,210,530)
Net loss attributable to common stockholders	$ (11,705,336)	$ (22,875,437)
Amount per common share—basic and diluted		
Loss from continuing operations	$ (0.64)	$ (0.49)
Income from discontinued operations, net	0.02	0.14
Net loss	(0.62)	(0.35)
Imputed and declared dividends on preferred stock	(0.04)	(1.37)
Net loss attributable to common stockholders	$ (0.66)	$ (1.72)

Revenue

During the year ended December 31, 2004, we recorded total revenue of $1,167,099, as compared to $80,529 for the year ended December 31, 2003. Revenue consists of license fees, milestone payments and amounts received from collaborative research and development arrangements and grants.

During the year ended December 31, 2004 and 2003, we recorded revenue under license fees and milestone payments of $214,351 and $5,882, respectively. The increase in license fees for the year ended December 31, 2004, as compared to fiscal 2003, was mainly due to license revenue of $204,301 recognized from the collaboration and licensing agreement with Merck signed in May 2004 to develop

and commercialize our MedPulser DNA Delivery System, which will be developed for use with certain of Merck's DNA vaccine programs. Under the Merck agreement, we will receive milestone payments linked to the successful development of a product if achieved. The upfront payment received from Merck in 2004 and prospective future milestone payments will be amortized over the term of the agreement. Royalties are payable on sales of a product utilizing the device developed under this agreement with Merck.

Revenue from license fees during the years ended December 31, 2004 and 2003 included the amortization of license fees we received from a non-exclusive license and supply agreement we entered into with Valentis, Inc in November 2001. We will receive further payments, in the form of cash and stock of Valentis, if certain milestones are achieved under this agreement.

During the year ended December 31, 2004, we recorded revenue under collaborative research and development arrangements of $945,591, as compared to $74,647 for the year ended December 31, 2003. The increase in revenue from collaborative research and development arrangements during the year ended December 31, 2004, as compared to fiscal 2003, was primarily due to revenue of $685,937 recognized from the collaboration and licensing agreements with Merck signed in May 2004. Billings from research and development work performed pursuant to the Merck agreement are recorded as revenue to match the related research expenditures incurred pursuant to the terms of the agreement.

Research and Development Expenses

Research and development expenses, which include clinical trial costs, for the year ended December 31, 2004, were $6,548,599, as compared to $2,146,909 for the year ended December 31, 2003. The increase in research and development expenses for the year ended December 31, 2004, as compared to fiscal 2003, was primarily due to an increase in clinical trial expenses of approximately $3,150,000. These clinical trial expenses included the use of a Clinical Research Organization ("CRO") hired in association with our clinical trials and costs associated with the use of outside clinical and regulatory consultants associated with our clinical trials. The remainder of the increase was mainly due to increased personnel expenses to support internal efforts related to product development and clinical trials, increased external research expenses and additional travel and other consulting expenses associated with our clinical trials.

We initiated two Phase III head and neck clinical trials during 2004 in the United States and Europe. These trials compare Electroporation Therapy to surgery using a primary endpoint of function preservation and secondary endpoints of local tumor control, disease free survival and overall survival. Shifting from a primary endpoint of survival to a quality of life outcome allows us to carry out clinical trials that will be faster, less costly and have a higher likelihood of success. As a result, previously announced Phase III head and neck trials focusing on survival as a primary endpoint have been discontinued. In addition, we initiated two European post-regulatory approval trials for skin and head and neck cancer to gather additional clinical and pharmacoeconomic data. Due to the initiation of the clinical trials, we anticipate research and development expenses from clinical and regulatory activities to increase in fiscal 2005.

General and Administrative Expenses

General and administrative expenses, which include business development expenses, for the year ended December 31, 2004, were $6,129,195, as compared to $4,566,882 for the year ended December 31, 2003. The increase in general and administrative expenses for the year ended December 31, 2004, as compared to fiscal 2003, was mainly due to increased consulting and legal expenses, increased stock option expenses recorded pursuant the issuance of stock options for non-employee consultants and increased personnel costs. The increase in general and administrative expenses was also due to significant external consulting and accounting-related expenses incurred

during the year ended December 31, 2004, related to the implementation of internal control over financial reporting requirements under Section 404 of the Sarbanes-Oxley Act of 2002.

Interest Income, Net

Interest income for the year ended December 31, 2004, was $247,555, as compared to interest income, net, of $45,017 for the year ended December 31, 2003. The increase in interest income, net, for the year ended December 31, 2004, as compared to fiscal 2003, was mainly due to the receipt of proceeds from financing activities received in May 2004 and during the fourth quarter of 2003, as well as proceeds from the exercise of warrants and stock options. This activity increased our cash balance significantly, which, in turn, generated increased interest income. This increase in interest income was offset, in part, by interest expense of $19,800 related to a bridge loan in the first quarter of 2003.

Discontinued Operations

In January 2003, we closed the sale of the non-cash assets of our BTX division to Harvard Bioscience, Inc. The terms of the sale were $3.7 million in cash, subject to possible adjustments, and a royalty on net sales of certain BTX products above certain sales targets. This transaction allowed us to focus on our electroporation-based therapies for humans. We realized a gain of $2,034,078 related to this transaction during the year ended December 31, 2003.

In April 2004, we received the final payment of $200,862 in connection with the sale of the BTX Division and recorded expenses related to this transaction of $5,000. In addition, we received a one-time settlement payment of $61,000 associated with the termination of a purchase agreement to acquire the BTX Division by a potential buyer. During the three-month period ended September 30, 2004, we realized a gain of $33,347 from the write-off of an accrued warranty liability related to the sale of the BTX division.

Imputed and Declared Dividends on Preferred Stock

The holders of our Series A and B Preferred Stock will receive an annual dividend rate of 6%, in shares of common stock or cash payable quarterly. Holders of Series A and B Preferred Stock are entitled to receive this quarterly dividend through September 30, 2006. In 2004 and 2003, our Board of Directors declared dividends to the holders of our Series A and B Preferred Stock, which were paid through the issuance of our common stock. As part of this dividend to holders of Series A and B Preferred Stock, we issued a total of 73,072 common shares valued at $322,397 in 2004, and 84,595 common shares valued at $357,587 in 2003.

The holders of our Series C Preferred Stock will receive an annual dividend rate of 6%, in shares of common stock or cash payable quarterly. Holders of Series C Preferred Stock are entitled to receive this quarterly dividend through June 30, 2007. In 2004, our Board of Directors declared dividends to the holders of our Series C Preferred Stock, which were paid through the issuance of our common stock, as well as cash. As part of this dividend to the holders of Series C Preferred Stock, we issued 30,909 common shares valued at $137,967, and paid cash of $272,041 in 2004.

During the year ended December 31, 2003, in connection with the sale of the Series A and B Preferred Stock, we recorded an imputed dividend charge of $6,045,799 and $11,807,144, respectively, related to the beneficial conversion feature of this preferred stock.

Comparison of Years Ended December 31, 2003 and 2002

The audited consolidated financial data for the years ended December 31, 2003 and December 31, 2002 is presented in the following table and the results of these two periods are used in the discussion thereafter.

	Year Ended December 31, 2003	Year Ended December 31, 2002
Revenue:		
License fee and milestone payments	$ 5,882	$ 5,883
Revenue under collaborative research and development arrangements	74,647	183,638
Total revenue	80,529	189,521
Operating expenses:		
Research and development	2,146,909	2,466,129
General and administrative	4,566,882	3,658,307
Total operating expenses	6,713,791	6,124,436
Loss from operations	(6,633,262)	(5,934,915)
Other income (expense):		
Interest income	65,497	32,316
Interest expense	(20,480)	(5,445)
Loss from continuing operations	(6,588,245)	(5,908,044)
Discontinued operations:		
Gain on disposal and other, net	2,034,078	—
Loss from discontinued operations	(110,740)	(56,783)
Net loss	(4,664,907)	(5,964,827)
Imputed and declared dividends on preferred stock	(18,210,530)	—
Net loss attributable to common stockholders	$ (22,875,437)	$ (5,964,827)
Amount per common share—basic and diluted		
Loss from continuing operations	$ (0.49)	$ (0.58)
Income (loss) from discontinued operations, net	0.14	(0.01)
Net loss	(0.35)	(0.59)
Imputed and declared dividends on preferred stock	(1.37)	—
Net loss attributable to common stockholders	$ (1.72)	$ (0.59)

Revenue

During the year ended December 31, 2003, we had total revenue of $80,529, compared to $189,521 for the year ended December 31, 2002. Revenue consists of license fees, milestone payments and amounts received from collaborative research and development arrangements.

During the year ended December 31, 2003 and 2002, we recorded revenue under license fees and milestone payments of $5,882 and $5,883, respectively. The licenses fees which were recorded for the years ended December 31, 2003 and 2002, resulted from the amortization of a $100,000 license fee received according to a non-exclusive license and supply agreement entered into with Valentis, Inc signed in November 2001. We will receive further payments, in the form of cash and stock of Valentis, if certain milestones are achieved under the agreement. In October 2002, we received an additional milestone payment of $100,000, which was recorded as deferred revenue.

During the year ended December 31, 2003, we recorded revenue under collaborative research and development arrangements of $74,647, compared to $183,638 for the year ended December 31, 2002. For the year ended December 31, 2003 and 2002, revenue under collaborative research and development arrangements primarily reflected amounts received from several small research agreements. The decrease was primarily due to the expiration of the experimental stage portion of a small collaborative research agreement in late 2002, which required the purchase of our equipment for experiments, offset, in part, by several new small collaborative research agreements.

Research and Development Expenses

Research and development expenses for the year ended December 31, 2003, were $2,146,909, compared to $2,466,129, for the year ended December 31, 2002. The decrease reflects a reduction in research and development activities and lower salary expense during the first half of 2003. During the second half of 2003, research and development expenses increased primarily due to clinical and regulatory consulting and travel expenses associated with potential European sites.

General and Administrative Expenses

General and administrative expenses for the year ended December 31, 2003, were $4,566,882, compared to $3,658,307 for the year ended December 31, 2002. The increase in general and administrative expenses mainly reflects increased salary and travel expenses, increased severance costs resulting from the sale of our BTX division, increased corporate insurance costs, the absorption of certain BTX fixed costs, and increased business development efforts. In addition, during the first quarter of 2003, we recorded a realized loss of $102,238 associated with a foreign currency translation adjustment.

Interest Income, Net

Interest income, net, for the year ended December 31, 2003, was $45,017, compared to $26,871 for the year ended December 31, 2002. The increase in interest income, net, for the year ended December 31, 2003, as compared to fiscal 2002, was due to the receipt of the investment funds from the sale of our Series A and B Preferred Stock. This increase in interest income was offset, in part, by interest expense of $19,800 related to a bridge loan in the first quarter of 2003.

Imputed and Declared Dividends on Preferred Stock

During the year ended December 31, 2003, in connection with the sale of the Series A and B Preferred Stock, we recorded an imputed dividend charge of $6,045,799 and $11,807,144, respectively, related to the beneficial conversion feature of this preferred stock.

The holders of our Series A and B Preferred Stock will receive an annual dividend rate of 6%, in shares of common stock or cash payable quarterly. Holders of Series A and B Preferred Stock are entitled to receive this quarterly dividend through September 30, 2006. In 2003, our Board of Directors declared dividends to the holders of our Series A and B Preferred Stock, which were paid through the issuance of our common stock. As part of this dividend to holders of Series A and B Preferred Stock, we issued a total of 84,595 common shares valued at $357,587 in 2003.

Liquidity and Capital Resources

During the last six years, our primary uses of cash have been to finance research and development activities and clinical trial activities in the Oncology and Gene Delivery Division. Since inception, we have satisfied our cash requirements principally from proceeds from the sale of equity securities.

As of December 31, 2004, we had working capital of $13,036,685, as compared to $12,593,153 as of December 31, 2003. The increase in working capital during 2004 was primarily a result of a preferred share private placement that raised an aggregate of $10,901,333 through the sale of our Series C Preferred Stock to institutional and accredited investors, as well as the receipt of licensing payments and the exercise of warrants and stock options. These receipts were offset, in part, by expenditures related to our research and development and clinical trial activities, as well as various general and administrative expenses related to legal, corporate development, investor relations and finance activities.

On May 20, 2004, we closed a private preferred share placement and raised an aggregate of $10,901,333 through the sale of our Series C Preferred Stock to institutional and accredited investors. Each holder of preferred stock is entitled to the number of votes equal to the number of shares of common stock into which such shares of Series C Preferred Stock could be converted on the record date for the taking of a vote. In any event of our voluntary or involuntary liquidation, dissolution or winding up, before any distribution of our assets shall be made to or set apart for the holders of common stock, the holders of Series C Preferred Stock shall be entitled to receive payment out of our assets in an amount equal to $10,000 per share of Series C Preferred Stock plus any accumulated and unpaid dividends.

The Series C Preferred Stock is convertible into our common stock at a conversion price of $6.80 per share, and there is no escrow provision. As of December 31, 2004, 1,040 shares of Series C Preferred Stock were outstanding. Upon conversion, the Series C Preferred Stock outstanding as of December 31, 2004 will convert into 1,529,412 shares of our common stock.

On July 16, 2003, we closed a preferred share private placement and raised an aggregate of $15,670,000, through the sale of $8,170,000 of our Series A Preferred Stock and $7,500,000 of our Series B Preferred Stock, to institutional and accredited investors. Each holder of Series A and B Preferred Stock is entitled to the number of votes equal to the number of shares of common stock into which such shares of Series A and B Preferred Stock could be converted on the record date for the taking of a vote. In any event of our voluntary or involuntary liquidation, dissolution or winding up, before any distribution of our assets shall be made to or set apart for the holders of common stock, the holders of Series A and B Preferred Stock shall be entitled to receive payment out of our assets in an amount equal to $10,000 per share of Series A and B Preferred Stock plus any accumulated and unpaid dividends. The Series A Preferred Stock is convertible into our common stock at a conversion price of $2.40 per share, and there is no escrow provision. In connection with the sale of the Series A Preferred Stock, we recorded an imputed dividend charge of $6,045,799 related to the beneficial conversion feature of the stock during the year ended December 31, 2003.

The Series B Preferred Stock is convertible into our common stock at a conversion price of $2.80 per share, and the proceeds from the sale of the Series B Preferred Stock were to remain in escrow until the achievement of specific milestones by the Company. In October 2003, the Company achieved these milestones and the $7,500,000 was released from escrow. In connection with the release of the Series B Preferred Stock proceeds, we recorded an imputed dividend charge of $11,807,144 related to the beneficial conversion feature of the stock during the year ended December 31, 2003.

As of December 31, 2004, 291 shares of Series A Preferred Stock and 110 shares of Series B Preferred Stock remained outstanding. Upon conversion, the Series A and B Preferred Stock outstanding as of December 31, 2004 will convert into 1,605,381 shares of our common stock.

As of December 31, 2004, we had an accumulated deficit of $87,907,320. We have operated at a loss since 1994, and we expect this to continue for some time. The amount of the accumulated deficit will continue to increase, as it is expensive to continue clinical, research and development efforts. If these activities are successful and if we receive approval from the FDA to market equipment, then even more funding will be required to market and sell the equipment. We are evaluating potential partnerships as an additional way to fund operations. We will continue to rely on outside sources of financing to meet our capital needs beyond next year. The outcome of these matters cannot be predicted at this time.

Further, there can be no assurance, assuming we successfully raise additional funds, that we will achieve positive cash flow. If we are not able to secure additional funding, we will be required to further scale back our research and development programs, preclinical studies and clinical trials, general and administrative activities and may not be able to continue in business. Including the cash proceeds received from the May 2004 and July 2003 financing, the exercise of employee stock options and investor warrants, and the sale of the BTX Division, we believe we have sufficient funds to fund operations until the second half of 2006.

Our long-term capital requirements will depend on numerous factors including:

- The progress and magnitude of the research and development programs, including preclinical and clinical trials;
- The time involved in obtaining regulatory approvals;
- The cost involved in filing and maintaining patent claims;
- Competitor and market conditions;
- The ability to establish and maintain collaborative arrangements;
- The ability to obtain grants to finance research and development projects; and
- The cost of manufacturing scale-up and the cost of commercialization activities and arrangements.

The ability to generate substantial funding to continue research and development activities, preclinical and clinical studies and clinical trials and manufacturing, scale-up, and selling, general, and administrative activities is subject to a number of risks and uncertainties and will depend on numerous factors including:

- The ability to raise funds in the future through public or private financings, collaborative arrangements, grant awards or from other sources;
- Our potential to obtain equity investments, collaborative arrangements, license agreements or development or other funding programs in exchange for manufacturing, marketing, distribution or other rights to products developed by us; and
- The ability to maintain existing collaborative arrangements.

We cannot guarantee that additional funding will be available when needed or on favorable terms. If it is not, we will be required to scale back our research and development programs, preclinical studies and clinical trials, and selling, general and administrative activities, or otherwise reduce or cease operations and our business and financial results and condition would be materially adversely affected.

Recent Events

In January 2005, we consummated the acquisition of Inovio AS, a Norwegian company. Under the terms of the transaction, we acquired the entire share capital of Inovio for an aggregate purchase price of $10.0 million; $3.0 million of the purchase price consisted of cash and $7.0 million consisted of shares of our Series D Convertible Preferred Stock, par value $0.001 per share (the "Series D

Preferred Stock"). We issued 1,966,292 shares of the Series D Preferred Stock in the transaction, based on the average closing price of our common stock as reported on the American Stock Exchange during the 30 trading day period immediately preceding the closing. Those shareholders of Inovio who received shares of Series D Preferred Stock in the transaction will also be entitled to additional issuances of Series D Preferred Stock in the event we achieve certain strategic and commercial milestones, as set forth in the Stock Purchase Agreement. The shares of Series D Preferred Stock are convertible to shares of our common stock on a one-for-one basis. We intend to file a registration statement covering the resale of such shares of common stock.

In January 2005, we completed a private placement to accredited investors whereby we sold 1,540,123 shares of our common stock at a purchase price of $4.05 per share and issued warrants to purchase 508,240 shares of our common stock at an exercise price of $5.50 per share, which will result in aggregate cash proceeds of $3.03 million (assuming no exercise of the warrants). A portion of this private placement involved investors who converted $3.2 million of their previous investment in our Series C Preferred Stock into 790,123 shares of the common stock issued as part of this private placement with no associated cash proceeds to us.

At the signing, each investor provided payment for at least 20% of the subscription amount, the balance due at the earlier of (i) September 30, 2005 or (ii) the occurrence of an "early triggering event," as set forth in the agreement. The balance of the subscription amount is evidenced by a full recourse promissory note. All of the shares shall be held in an escrow account pending the final closing, in accordance with the terms of the escrow agreement.

In conjunction with this private placement, we received a subscription amount of $607,421 in cash from one investor in advance of the signing of this agreement, which was recorded in accrued expenses in the consolidated balance sheet as of December 31, 2004.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenue, expenses, results of operations, liquidity, capital expenditures or capital resources.

Contractual Obligations

As of December 31, 2004, we did not have any long-term debt or other known contractual obligations, except for the operating lease for our new facility, which expires in February 2010, the operating lease for our manufacturing facility, which expires in May 2005, and operating leases for copiers, which expire in 2006.

We are contractually obligated to make the following operating lease payments as of December 31, 2004:

	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating lease obligations	$ 2,459,310	$ 476,333	$ 963,058	$ 939,884	$ 80,035

ITEM 7A. QUALITATIVE AND QUANTITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

Our exposure to market risk for changes in interest rates relates primarily to the increase or decrease in the amount of interest income that we can earn on our cash equivalents. We are subject to interest rate risk on our cash equivalents, which, as of December 31, 2004, had an average interest rate of approximately 2.4%. Under our current policies, we do not use interest rate derivative instruments to manage exposure to interest rate changes. We ensure the safety and preservation of our invested

principal funds by limiting default risk, market risk and reinvestment risk. We mitigate default risk by investing in investment grade securities. A hypothetical 100 basis point adverse move in interest rates along the entire interest rate yield curve would not materially affect the fair value of our interest sensitive financial instruments. However, declines in interest rates over time will reduce our interest income.

Foreign Currency Risk

We have operated primarily in the United States and most transactions in the fiscal year ended December 31, 2004, have been made in U.S. dollars. Accordingly, we have not had any material exposure to foreign currency rate fluctuations, nor do we have any foreign currency hedging instruments in place.

We are currently conducting clinical trials in Europe in conjunction with our CRO, Quintiles Transnational Corp. While invoices from Quintiles relating to work done on our European clinical trials are generally denominated in U.S. dollars, our financial results could be affected by factors such as inflation in foreign currencies, in relation to the U.S. dollar, in markets where Quintiles is assisting us in conducting these clinical trials.

In January 2005, we acquired Inovio AS, a Norwegian company. We plan to operate Inovio as a wholly-owed subsidiary at least until the second half of 2005, at which time we would consolidate Inovio's operations into our San Diego, California headquarters. Inovio's transactions will be mainly denominated in foreign currencies, including Euros, Norwegian Kroner and Swedish Krona. As a result, our financial results could be affected by factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets where Inovio conducts business.

We do not use derivative financial instruments for speculative purposes. We do not engage in exchange rate hedging or hold or issue foreign exchange contracts for trading purposes. We do not expect the impact of fluctuations in the relative fair value of other currencies to be material in 2005.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required by this Item 8 is incorporated by reference to our Consolidated Financial Statements and the Report of Independent Registered Public Accounting Firm beginning at page F-1 of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

As of December 31, 2004, an evaluation was carried out by our management, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that these disclosure controls and procedures were effective as of the end of the period covered by this report.

Internal Controls over Financial Reporting

(a) Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a—15(f) and 15d—15(f) under the Securities Exchange Act of 1934. Our internal control over financial reporting is a process designed under the supervision of our Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

As of December 31, 2004, management, with the participation of the Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of our internal control over financial reporting based on the criteria for effective internal control over financial reporting established in "Internal Control—Integrated Framework," issued by the Committee of Sponsoring Organizations ("COSO") of the Treadway Commission. Based on the assessment, management determined that we maintained effective internal control over financial reporting as of December 31, 2004.

Ernst & Young LLP, the independent registered public accounting firm that audited our consolidated financial statements included in this Annual Report on Form 10-K, has issued an attestation report on our management's assessment of the effectiveness of our internal control over financial reporting as of December 31, 2004. The report, which expresses unqualified opinions on management's assessment and on the effectiveness of our internal control over financial reporting as of December 31, 2004, is included in this Item under the heading "Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting."

(b) Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting

To the Board of Directors and Stockholders of Genetronics Biomedical Corporation

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting, that Genetronics Biomedical Corporation (Genetronics) maintained effective internal control over financial reporting as of December 31, 2004, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Genetronics management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of Genetronics' internal control over financial reporting based on our audit.

We conducted our audit 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 effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally

accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Genetronics maintained effective internal control over financial reporting as of December 31, 2004, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Genetronics maintained, in all material respects, effective internal control over financial reporting as of December 31, 2004, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Genetronics Biomedical Corporation as of December 31, 2004 and 2003 and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2004 of Genetronics and our report dated February 28, 2005 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Diego, California
February 28, 2005

(c) Changes in Internal Control over Financial Reporting

There have not been any changes in our internal control over financial reporting (as defined in Rules 13a—15(f) and 15d—15(f) under the Securities Exchange Act of 1934) that occurred during the fourth quarter of our fiscal year ended December 31, 2004, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE COMPANY

The information required by this Item 10 is hereby incorporated by reference from our definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of our 2004 fiscal year.

We have adopted the Genetronics Biomedical Corporation Code of Ethics for Senior Officers (the "Code of Ethics"), a copy of which is filed with this Annual Report as Exhibit 14.1. If any substantive amendments are made to the Code of Ethics, or we grant any waiver, including any implicit waiver, from a provision to the Code of Ethics to our Chief Executive Officer or Chief Financial Officer, we will disclose the nature of the amendment or waiver on our website or in a report on Form 8-K, as required by applicable laws.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is hereby incorporated by reference from our definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of our 2004 fiscal year.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this Item 12 is hereby incorporated by reference from our definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of our 2004 fiscal year.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this Item 13 is hereby incorporated by reference from our definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of our 2004 fiscal year.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item 14 is hereby incorporated by reference from our definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of our 2004 fiscal year.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

1. Financial Statements

Consolidated financial statements required to be filed hereunder are indexed on Page F-1 hereof.

2. Financial Statement Schedules

Schedules not listed herein have been omitted because the information required to be set forth therein is not applicable or is included in the Financial Statements or notes thereto.

3. Exhibits

The following exhibits are filed as part of this annual report on Form 10-K:

Exhibit Number	Description of Document
2.1	Plan of Reorganization (incorporated by reference to exhibit number 2.1 of the Registrant's Registration Statement on Form S-4, as amended (File No. 333-56978), filed with the Securities and Exchange Commission on April 5, 2001).
3.1	Certificate of Incorporation (incorporated by reference to exhibit number 3.1 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
3.1(a)	Certificate of Amendment to Amended and Restated Certificate of Incorporation as filed with the Delaware Secretary of State on September 10, 2004 (incorporated by reference to Current Report on Form 8-K filed September 16, 2004).
3.2	Amended and Restated Bylaws (incorporated by reference to exhibit number 3.2 of the Registrant's Form 10-Q for the three months ending September 30, 2002).
3.3	Certificate of Designations, Rights and Preferences of Series A Cumulative Convertible Preferred Stock (incorporated by reference to exhibit number 3.3 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).

3.4	Certificate of Designations, Rights and Preferences of Series B Cumulative Convertible Preferred Stock (incorporated by reference to exhibit number 3.4 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
3.5	Certificate of Designations, Rights and Preferences of Series C Convertible Preferred Stock of Registrant (incorporated by reference to Registration Statement on Form S-3 filed June 21, 2004).
3.6	Certificate of Decrease of Shares of Series C Cumulative Convertible Preferred Stock of Registrant (incorporated by reference to Registration Statement on Form S-3 filed June 21, 2004).
3.7	Certificate of Designations, Rights and Preferences of Series D Convertible Preferred Stock of Registrant (incorporated by reference to Current Report on Form 8-K filed January 31, 2005).
4.1	Amended and Restated Stockholders Rights Agreement dated June 20, 1997 by and between the Registrant and Computershare Trust Company of Canada, as amended on March 25, 2003 (incorporated by reference to Exhibit A to the Registrant's Definitive Proxy Statement filed with the Securities and Exchange Commission on April 28, 2003).
4.2†	Warrant to Purchase Common Stock, dated September 15, 2000 by and between the Registrant and the University of South Florida Research Foundation (incorporated by reference to exhibit number 10.6 of the Registrant's Form 10-Q for the three months ending September 30, 2000).
4.3†	Warrant to Purchase Common Stock, dated September 15, 2000 by and between the Registrant and Dr. Richard Gilbert (incorporated by reference to exhibit number 10.7 of the Registrant's Form 10-Q for the three months ending September 30, 2000).
4.4†	Warrant to Purchase Common Stock, dated September 15, 2000 by and between the Registrant and Dr. Richard Heller (incorporated by reference to exhibit number 10.8 of the Registrant's Form 10-Q for the three months ending September 30, 2000).
4.5†	Warrant to Purchase Common Stock, dated September 15, 2000 by and between the Registrant and Dr. Mark Jaroszeski (incorporated by reference to exhibit number 10.9 of the Registrant's Form 10-Q for the three months ending September 30, 2000).
4.6	Investors Rights Agreement, dated July 14, 2003, between the Registrant and the Purchasers listed on Schedule 1 thereto (incorporated by reference to exhibit number 4.2 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
4.7	Form of Series A Common Stock Purchase Warrant, dated July 14, 2003, between the Registrant and the Purchasers listed on Schedule 1 of Purchase Agreement (Exhibit 10.4) (incorporated by reference to exhibit number 4.3 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
4.8	Form of Series B Common Stock Purchase Warrant, dated July 14, 2003, between the Registrant and the Purchasers listed on Schedule 1 of Purchase Agreement (Exhibit 10.4) (incorporated by reference to exhibit number 4.4 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).

4.9	Placement Agent Series A Common Stock Purchase Warrant, dated July 14, 2003, between the Registrant and SCO Securities LLC (incorporated by reference to exhibit number 4.5 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
4.10	Placement Agent Series B Common Stock Purchase Warrant, dated July 14, 2003, between the Registrant and SCO Securities LLC (incorporated by reference to exhibit number 4.6 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
4.11	Specimen common stock certificate (incorporated by reference to exhibit number 4.8 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
4.12	Preferred Stock and Warrant Purchase Agreement dated as of May 10, 2004 by and between the Registrant and the purchasers indicated on the schedule thereto (incorporated by reference to Registration Statement on Form S-3 filed June 21, 2004).
4.13	Investor Rights Agreement dated as of May 10, 2004 by and between the Registrant and the purchasers indicated on the schedule thereto (incorporated by reference to Registration Statement on Form S-3 filed June 21, 2004).
4.14	Form of Series C Common Stock Purchase Warrant dated as of May 10, 2004 by and between the Registrant and the purchasers indicated on the schedule thereto (incorporated by reference to Registration Statement on Form S-3 filed June 21, 2004).
4.15	Form of Placement Agent Common Stock Purchase Warrant dated as of May 20, 2004 by and between the Registrant and each of SCO Capital Partners LLC, Jeffery B. Davis, Preston Tsao, Daniel DiPietro and Mark Alvino (incorporated by reference to Registration Statement on Form S-3 filed June 21, 2004).
4.16	Warrant to Purchase Common Stock, dated December 6, 2004 by and between the Registrant and Collins Development Company, Arlin Miller Multiples, Roger R. and Sally J. Post, Tatiana Lansche and Kent M. Scudder.
4.17	Registration Rights Agreement dated as of January 10, 2005 by and among the Registrant and certain investors indicated on the schedule thereto (incorporated by reference to Current Report on Form 8-K filed January 13, 2005).
4.18	Form of Warrants issued by the Registrant on January 10, 2005, including a schedule of warrant holders (incorporated by reference to Current Report on Form 8-K filed January 13, 2005).
4.19	Registration Rights Agreement dated as of January 25, 2005 by and among the Registrant and the Shareholders of Inovio AS (incorporated by reference to Current Report on Form 8-K filed January 31, 2005).
10.1	Amended 2000 Stock Option Plan (incorporated by reference to exhibit number 10.2 of the Registrant's Form 10-Q for the three months ending September 30, 2001).
10.2	Forms of Incentive and Nonstatutory Stock Option Agreements used in connection with the 2000 Stock Option Plan (incorporated by reference to exhibit number 99.2 of the Registrant's Registration Statement on Form S-4 (File No. 333-58168) filed with the Securities and Exchange Commission on April 2, 2001).

10.3	Preferred Stock and Warrant Purchase Agreement, dated July 14, 2003, between the Registrant and the Purchasers listed on Schedule 1 thereto (incorporated by reference to exhibit number 4.1 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
10.4	Employment Agreement dated October 10, 2001 by and between the Registrant and Avtar Dhillon (incorporated by reference to exhibit number 99.1 of the Registrant's Registration Statement on Form S-3, as amended (File No. 333-76738), filed with the Securities and Exchange Commission on February 25, 2002).
10.5	Employment Agreement dated October November 15, 2001 by and between the Registrant and James L. Heppell (incorporated by reference to exhibit number 10.24 of the Registrant's Form 10-K for the year ending December 31, 2001).
10.6†	License Agreement dated September 20, 2000 by and between the Registrant and the University of South Florida Research Foundation, Inc. (incorporated by reference to exhibit number 10.5 of the Registrant's Form 10-Q for the three months ending September 30, 2000).
10.7	Asset Purchase Agreement by and among the Registrant, Genetronics, Inc., a subsidiary of the Registrant, and Harvard Bioscience, Inc. dated December 24, 2002 (incorporated by reference to Exhibit A to the Registrant's Definitive Proxy Statement filed with the Securities and Exchange Commission on January 7, 2003).
10.8	Financial Consultant Agreement, dated October 3, 2002, between the Registrant and Catalyst Capital, LLC (incorporated by reference to exhibit number 4.7 of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
10.9(a)	Amendment to Financial Consultant Agreement, dated July 14, 2003, between the Registrant and Catalyst Capital, LLC (incorporated by reference to exhibit number 4.7(a) of the Registrant's Registration Statement on Form S-3 (File No. 333-108752) filed with the Securities and Exchange Commission on September 12, 2003).
10.10	Securities Purchase Agreement dated as of January 10, 2005 by and among the Registrant and certain investors indicated on the schedule thereto (incorporated by reference to Current Report on Form 8-K filed January 13, 2005).
10.11	Form of Promissory Notes issued by the Registrant on January 10, 2005, including a schedule of note holders (incorporated by reference to Current Report on Form 8-K filed January 10, 2005).
10.12†	Non-Exclusive License and Research Collaboration Agreement dated as of May 21, 2004 by and among the Registrant and Merck & Co., Inc. and Genetronics, Inc., a subsidiary of the Registrant (incorporated by reference to Quarterly Report on Form 10-Q filed August 13, 2004).
10.13	Escrow Agreement dated as of January 10, 2005 by and among the Registrant, certain investors indicated on the schedule thereto and Computershare Trust Company of Canada (incorporated by reference to Current Report on Form 8-K filed January 10, 2005).
10.14	Stock Purchase Agreement dated January 25, 2005 by and among the Registrant, Inovio AS and the Shareholders of Inovio AS (incorporated by reference to Current Report on Form 8-K filed January 31, 2005).

10.15	Lease Agreement by and between the Registrant and Nexus Sorrento Glen LLC dated August 26, 1999 (incorporated by reference to exhibit number 10.15 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-88427), filed with the Securities and Exchange Commission on October 5, 1999).
10.16	Lease Agreement by and between the Registrant and Sorrento Centre Tenancy in Common dated November 29, 2004.
10.17	Lease Amendment #3 by and between the Registrant and Nexus Sorrento Glen LLC dated January 21, 2005.
14.1	Genetronics Biomedical Corporation Code of Ethics for Senior Officers.
21.1	Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included on signature page).
31.1	Certification of the Chief Executive Officer pursuant Securities Exchange Act Rule 13a-14(a).
31.2	Certification of the Chief Financial Officer pursuant Securities Exchange Act Rule 13a-14(a).
32.1	Certification pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

† We have applied with the Secretary of the Securities and Exchange Commission for confidential treatment of certain information pursuant to Rule 24b-2 of the Securities Exchange Act of 1934. We have filed separately with its application a copy of the exhibit including all confidential portions, which may be made available for public inspection pending the Securities and Exchange Commission's review of the application in accordance with Rule 24b-2.

4. Reports on Form 8-K

On November 16, 2004, we furnished a report on Form 8-K, which disclosed, under Items 2.02 and 9.01, our results of operations for the three and nine months ended September 30, 2004.

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 on March 15, 2005.

GENETRONICS BIOMEDICAL CORPORATION

By: /s/ AVTAR DHILLON

Avtar Dhillon
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Avtar Dhillon and Peter Kies, and each of them severally, his or her true and lawful attorney-in-fact with power of substitution and resubstitution to sign in his or her name, place and stead, in any and all capacities, to do any and all things and execute any and all instruments that such attorney may deem necessary or advisable under the Securities Exchange Act of 1934 and any rules, regulations and requirements of the U.S. Securities and Exchange Commission in connection with the Annual Report on Form 10-K and any and all amendments hereto, as fully for all intents and purposes as he or she might or could do in person, and hereby ratifies and confirms all said attorneys-in-fact and agents, each acting alone, and his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ AVTAR DHILLON Avtar Dhillon	President, Chief Executive Officer (Principal Executive Officer), Director	March 15, 2005
/s/ PETER KIES Peter Kies	Chief Financial Officer (Principal Accounting Officer and Principal Financial Officer)	March 15, 2005
/s/ FELIX THEEUWES Felix Theeuwes	Director	March 15, 2005
/s/ JAMES L. HEPPELL James L. Heppell	Director	March 15, 2005
/s/ RIAZ BANDALI Riaz Bandali	Director	March 15, 2005
/s/ TAZDIN ESMAIL Tazdin Esmail	Director	March 15, 2005
/s/ GENE LARSON Gene Larson	Director	March 15, 2005
/s/ SIMON X. BENITO Simon X. Benito	Director	March 15, 2005

GENETRONICS BIOMEDICAL CORPORATION

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Genetronics Biomedical Corporation

We have audited the accompanying consolidated balance sheets of Genetronics Biomedical Corporation (the Company) as of December 31, 2004 and 2003 and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2004. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing 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 consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Genetronics Biomedical Corporation at December 31, 2004 and 2003, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2004 in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Genetronics Biomedical Corporation's internal control over financial reporting as of December 31, 2004, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 28, 2005, expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Diego, California
February 28, 2005

Genetronics Biomedical Corporation

CONSOLIDATED BALANCE SHEETS

	December 31, 2004	December 31, 2003
ASSETS		
Current assets:		
Cash and cash equivalents	$ 17,889,797	$ 13,460,446
Accounts receivable	424,157	175,000
Prepaid expenses and other	124,723	116,526
Total current assets	18,438,677	13,751,972
Fixed assets, net	155,253	175,902
Patents and other assets, net	2,357,572	2,301,116
Total assets	$ 20,951,502	$ 16,228,990
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	$ 2,155,592	$ 787,087
Accrued clinical trial expenses	2,195,816	40,568
Deferred revenue	1,050,584	331,164
Total current liabilities	5,401,992	1,158,819
Deferred rent	—	22,536
Total liabilities	5,401,992	1,181,355
Stockholders' equity:		
Preferred stock—par value $0.001; Authorized shares: 10,000,000, issued and outstanding: 1,441 and 847 at December 31, 2004 and 2003, respectively	2	1
Common stock—par value $0.001; Authorized shares: 300,000,000, issued and outstanding: 18,420,427 and 15,920,432 at December 31, 2004 and 2003, respectively	18,420	15,920
Additional paid-in capital	103,438,408	91,233,698
Accumulated deficit	(87,907,320)	(76,201,984)
Total stockholders' equity	15,549,510	15,047,635
Total liabilities and stockholders' equity	$ 20,951,502	$ 16,228,990

All applicable share and per share amounts have been adjusted to give effect to the one-for-four reverse stock split of our common stock on September 13, 2004.

The accompanying notes are an integral part of these consolidated financial statements.

Genetronics Biomedical Corporation

CONSOLIDATED STATEMENTS OF OPERATIONS

	Year ended December 31, 2004	Year ended December 31, 2003	Year ended December 31, 2002
Revenue:			
License fee and milestone payments	$ 214,351	$ 5,882	$ 5,883
Revenues under collaborative research and development arrangements	945,591	74,647	183,638
Grants	7,157	—	—
Total revenue	1,167,099	80,529	189,521
Operating expenses:			
Research and development	6,548,599	2,146,909	2,466,129
General and administrative	6,129,195	4,566,882	3,658,307
Total operating expenses	12,677,794	6,713,791	6,124,436
Loss from operations	(11,510,695)	(6,633,262)	(5,934,915)
Other income(expense):			
Interest income	247,555	65,497	32,316
Interest expense	—	(20,480)	(5,445)
Loss from continuing operations	(11,263,140)	(6,588,245)	(5,908,044)
Discontinued operations:			
Gain on disposal of assets	290,209	2,034,078	—
Loss from discontinued operations	—	(110,740)	(56,783)
Net loss	(10,972,931)	(4,664,907)	(5,964,827)
Imputed and declared dividends on preferred stock	(732,405)	(18,210,530)	—
Net loss attributable to common stockholders	$ (11,705,336)	$ (22,875,437)	$ (5,964,827)
Amounts per common share—basic and diluted:			
Loss from continuing operations	$ (0.64)	$ (0.49)	$ (0.58)
Income (loss) from discontinued operations, net	0.02	0.14	(0.01)
Net loss	(0.62)	(0.35)	(0.59)
Imputed and declared dividends on preferred stock	(0.04)	(1.37)	—
Net loss attributable to common stockholders	$ (0.66)	$ (1.72)	$ (0.59)
Weighted average number of common shares—basic and diluted	17,623,559	13,316,624	10,148,208

All applicable share and per share amounts have been adjusted to give effect to the one-for-four reverse stock split of our common stock on September 13, 2004.

The accompanying notes are an integral part of these consolidated financial statements.

Genetronics Biomedical Corporation
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Preferred stock		Common stock								
	Number of shares	Amount	Number of shares	Amount	Additional paid-in capital	Special warrant	Receivables from executive/stockholder	Common stock issuable	Accumulated comprehensive income	Accumulated deficit	Total stockholders' equity
Balance at December 31, 2001	—	$ —	8,440,242	$ 8,440	$ 51,149,081	$ 1,748,937	$ (534,395)	$ 55,000	$ (102,238)	$ (47,361,720)	$ 4,963,105
Exercise of stock options for cash	—	—	124,799	125	361,162	—	—	—	—	—	361,287
Exercise of warrants for cash	—	—	125,000	125	337,381	—	—	—	—	—	337,506
Common stock issued from exercise of special warrants, net of issuance costs of $413,833	—	—	1,303,123	1,303	1,333,701	(1,748,837)	—	—	—	—	(413,833)
Common stock issued from exercise of Series A special warrants	—	—	25,000	25	75	(100)	—	—	—	—	—
Common stock issued from exercise of special warrants for cash, net of issuance cost of $571,121	—	—	—	—	—	3,835,769	—	—	—	—	3,835,769
Common stock issued from exercise of special warrants	—	—	2,556,475	2,557	3,833,212	(3,835,769)	—	—	—	—	— —
Common stock issued for services	—	—	25,000	25	54,975	—	—	(55,000)	—	—	—
Repayment of note receivable from executive for purchase of stock	—	—	—	—	—	—	31,826	—	—	—	31,826
Repayment of receivable from shareholders	—	—	—	—	—	—	469,124	—	—	—	469,124
Stock-based compensation	—	—	—	—	105,413	—	—	—	—	—	105,413
Net loss attributable to common stockholders	—	—	—	—	—	—	—	—	—	(5,964,827)	(5,964,827)
Balance at December 31, 2002	—	—	12,599,639	12,600	57,175,000	—	(33,445)	—	(102,238)	(53,326,547)	3,725,370
Issuance of Series A and B preferred stock for cash, net of issuance costs of $1,058,864	1,567	2	—	—	14,611,133	—	—	—	—	—	14,611,135
Common stock issued for services	—	—	39,041	39	273	—	—	—	—	—	312
Exercise of stock options for cash	—	—	129,531	130	372,751	—	—	—	—	—	372,881
Exercise of warrants for cash	—	—	258,106	258	695,944	—	—	—	—	—	696,202
Conversions of preferred stock to common stock	(720)	(1)	2,809,520	2,809	(2,808)	—	—	—	—	—	—
Repayment of note receivable	—	—	—	—	—	—	33,445	—	—	—	33,445
Stock-based compensation	—	—	—	—	170,959	—	—	—	—	—	170,959
Declared dividends	—	—	84,595	84	357,503	—	—	—	—	—	357,587
Imputed dividends	—	—	—	—	17,852,943	—	—	—	—	—	17,852,943
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	102,238	—	102,238
Net loss attributable to common stockholders	—	—	—	—	—	—	—	—	—	(22,875,437)	(22,875,437)
Balance at December 31, 2003	847	1	15,920,432	15,920	91,233,698	—	—	—	—	(76,201,984)	15,047,635
Exercise of stock options for cash	—	—	140,821	141	270,233	—	—	—	—	—	270,374
Exercise of warrants for cash	—	—	474,713	475	1,335,982	—	—	—	—	—	1,336,457
Cashless exercise of warrants	—	—	39,883	40	(40)	—	—	—	—	—	—
Issuance of Series C preferred stock for cash, net of issuance costs of $1,170,363	1,090	2	—	—	9,730,968	—	—	—	—	—	9,730,970
Conversions of preferred stock to common stock	(496)	(1)	1,741,382	1,741	(1,740)	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	413,320	—	—	—	—	—	413,320
Declared dividends	—	—	103,981	104	460,260	—	—	—	—	—	460,364
Reversal of declared dividends	—	—	(785)	(1)	(4,273)	—	—	—	—	—	(4,274)
Net loss attributable to common stockholders	—	—	—	—	—	—	—	—	—	(11,705,336)	(11,705,336)
Balance at December 31, 2004	1,441	$ 2	18,420,427	$ 18,420	$103,438,408	$ —	$ —	$ —	$ —	$ (87,907,320)	$ 15,549,510

All applicable share amounts have been adjusted to give effect to the one-for-four reverse stock split of our common stock on September 13, 2004.

The accompanying notes are an integral part of these consolidated financial statements.

Genetronics Biomedical Corporation

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Year ended December 31, 2004	Year ended December 31, 2003	Year ended December 31, 2002
Cash flows from operating activities:			
Loss from continuing operations	$ (11,263,140)	$ (6,588,245)	$ (5,908,044)
Adjustments to reconcile loss from continuing operations to net cash used in operating activities			
Compensation for services paid in stock options	413,320	170,959	105,413
Depreciation and amortization	573,041	584,413	619,344
Warrants issued in connection with debt	—	19,800	—
Deferred rent	(22,536)	(13,315)	(9,029)
Changes in operating assets and liabilities:			
Accounts receivable	(249,157)	(99,412)	88,639
Prepaid expenses and other	(177,928)	112,858	(223,057)
Accounts payable and accrued expenses	2,949,629	(205,284)	279,482
Deferred revenue	719,420	128,510	87,634
Foreign currency translation adjustment	—	102,236	—
Net cash used in operating activities	(7,057,351)	(5,787,480)	(4,959,618)
Cash flows from investing activities:			
(Purchase) disposal of capital assets	(102,365)	(59,618)	19,561
Increase in patents and other assets	(336,752)	(280,499)	(408,715)
Net cash used in investing activities	(439,117)	(340,117)	(389,154)
Cash flows from financing activities:			
Payments on obligations under capital leases	—	(20,642)	(27,475)
Repayment of loan from executive	—	—	31,826
Repayment of receivable from shareholder	—	—	469,124
Proceeds from issuance of preferred stock, net of issuance costs	9,730,970	15,694,176	—
Proceeds from issuance of special warrants, net of issuance costs	—	—	3,421,936
Proceeds from issuance of common shares, net of issuance costs	1,606,831	—	698,793
Cash received for common stock to be issued	607,471	—	—
Payment of preferred stock cash dividend	(276,315)	—	—
Net cash provided by financing activities	11,668,957	15,673,534	4,594,204
Net cash provided by (used in) discontinued operations	256,862	3,039,065	(183,088)
Increase (decrease) in cash and cash equivalents	4,429,351	12,585,002	(937,656)
Cash and cash equivalents, beginning of period	13,460,446	875,444	1,813,100
Cash and cash equivalents, end of period	$ 17,889,797	$ 13,460,446	$ 875,444

The accompanying notes are an integral part of these consolidated financial statements.

1. Description of Company

We were incorporated on August 8, 1979, under the laws of British Columbia, Canada, as Genetronics Biomedical Ltd. On June 15, 2001, we completed a change in our jurisdiction of incorporation from British Columbia, Canada, to the state of Delaware. This change was accomplished through a continuation of Genetronics Biomedical Ltd. into Genetronics Biomedical Corporation, a Delaware corporation. We carry out our business through our United States wholly-owned subsidiary, Genetronics, Inc., which was incorporated in California on June 29, 1983.

We are a San Diego-based biomedical company whose technology platform is based on medical devices that use Electroporation Therapy ("EPT") to deliver drugs and genes into cells. We are developing and commercializing novel medical therapies to address a number of diseases with critical unmet treatment needs using EPT. Our MedPulser Electroporation Therapy System is in Phase III clinical trials in the United States for the treatment of recurrent head and neck cancer. In addition, we are currently conducting pre-marketing studies to support the commercialization of the Medpulser Electroporation Therapy System in Europe. Our system delivers electrical pulses to tumors injected with the generic drug bleomycin. The unique feature of the system, which uses a generator together with disposable needle applicators, is the preservation of healthy tissue at the margins of the tumor.

We incurred a net loss attributable to common stockholders of $11,705,336 for the year ended December 31, 2004. We had working capital of $13,036,685 and an accumulated deficit of $87,907,320 as of December 31, 2004. Our ability to continue as a going concern is dependent upon our ability to achieve profitable operations and to obtain additional capital. We will continue to rely on outside sources of financing to meet our capital needs beyond 2005. The outcome of these matters cannot be predicted at this time. Further, there can be no assurance, assuming we successfully raise additional funds, that we will achieve positive cash flow. If we are not able to secure additional funding, we will be required to scale back our research and development programs, preclinical studies and clinical trials, and general and administrative activities and may not be able to continue in business. These consolidated financial statements do not include any adjustments to the specific amounts and classifications of assets and liabilities, which might be necessary should we be unable to continue in business. Our consolidated financial statements as of and for the year ended December 31, 2004 have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business for the foreseeable future.

2. Summary of Significant Accounting Policies

Consolidation

These consolidated financial statements include the accounts of Genetronics Biomedical Corporation and its wholly-owned subsidiary, Genetronics, Inc., a company incorporated in the state of California. Significant intercompany accounts and transactions have been eliminated upon consolidation.

Discontinued operations

Our Board of Directors has decided to focus our attention and resources on our Drug and Gene Delivery Division. In connection with this decision, we sold the assets of the BTX Instrument Division in January 2003. Operating results of these discontinued operations are shown separately in the accompanying consolidated statements of operations. The BTX Instruments Division had revenue of $0,

$162,060 and $3,500,557 for the years ended December 31, 2004, 2003 and 2002, respectively. These amounts are not included as revenue in the consolidated statements of operations.

Use of estimates

The preparation of consolidated financial statements in accordance with U.S. generally accepted accounting principles requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Cash equivalents

We consider all highly liquid investments with original maturities of 90 days or less, when purchased, to be cash equivalents. Cash equivalents are stated at cost, which approximates market value. At December 31, 2004, cash equivalents included $16,376,459 of commercial paper with an average interest rate of 2.41%. At December 31, 2003, cash equivalents included $12,722,653 of commercial paper with an average interest rate of 1.15%.

Accounts receivable

Trade accounts receivable are recorded at invoiced amounts and do not bear interest. We perform ongoing credit evaluations of our customers' financial condition. Credit is extended to customers as deemed necessary and generally does not require collateral. Management believes that the risk of loss is significantly reduced due to the quality and financial position of our customers. As of December 31, 2004 and 2003, we did not record an allowance for doubtful accounts.

Fixed assets

Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful life of the assets, generally three to five years. Equipment recorded under capital lease agreements are depreciated over the shorter of the estimated useful life of the equipment or the lease term. Leasehold improvements are depreciated over the shorter of the remaining term of the related leases or the estimated economic useful lives of the improvements. Repairs and maintenance are expensed as incurred.

Patent and license costs

Patents are recorded at cost and amortized using the straight-line method over the expected useful lives of the patents or 17 years, whichever is less. Cost is comprised of the consideration paid for patents and related legal costs. If management determines that development of products to which patent costs relate is not reasonably certain or that costs exceed recoverable value, such costs are charged to operations.

License costs are recorded based on the fair value of consideration paid and amortized using the straight-line method over the shorter of the expected useful life of the underlying patents or the term of the related license agreement.

Long-lived assets

We review long-lived assets, including intangible assets, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. While our current and historical operating and cash flow losses are indicators of impairment, we believe the future discounted cash flows to be received from the long-lived assets will exceed the assets carrying value, and accordingly, we have not recognized any impairment losses through December 31, 2004.

Income taxes

We account for income taxes using the liability method of tax allocation. Future income taxes are recognized for the future income tax consequences attributable to differences between the carrying values of assets and liabilities and their respective income tax bases. Future income tax assets and liabilities are measured using enacted income tax rates expected to apply to taxable income in the years in which temporary differences are expected to be recovered or settled. The effect on future income tax assets and liabilities of a change in rates is included in earnings in the period that includes the enactment date. Future income tax assets are recorded in the consolidated financial statements if realization is considered more likely than not.

Government grants

We receive non-refundable grants under available government programs. Government grants towards current expenditures are recorded as revenue when there is reasonable assurance that we have complied with all conditions necessary to receive the grants, collectibility is reasonably assured, and as the expenditures are incurred.

Revenue recognition

License fees comprise initial fees and milestone payments derived from collaborative licensing arrangements. Non-refundable milestone payments continue to be recognized upon the achievement of specified milestones when we have earned the milestone payment, provided the milestone payment is substantive in nature and the achievement of the milestone was not reasonably assured at the inception of the agreement. We defer payments for milestone events which are reasonably assured and recognize them ratably over the minimum remaining period of our performance obligations. Payments for milestones which are not reasonably assured are treated as the culmination of a separate earnings process and are recognized as revenue when the milestones are achieved.

We have adopted a strategy of co-developing or licensing our gene delivery technology for specific genes or specific medical indications. Accordingly, we have entered into collaborative research and development agreements and have received funding for pre-clinical research and clinical trials. Payments under these agreements, which are non-refundable, are recorded as revenue as the related research expenditures are incurred pursuant to the terms of the agreement and provided collectibility is reasonably assured.

Research and development expenses

Since our inception, virtually all of our activities have consisted of research and development efforts related to developing our electroporation technologies. We expense all such expenditures in the period incurred. Our expenses related to clinical trials are based on services received and efforts expended pursuant to contracts with multiple research institutions and clinical research organizations that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation and vary from contract to contract and may result in uneven payment flows. Generally, these agreements set forth the scope of work to be performed at a fixed fee or unit price. Payments under the contracts depend on factors such as the successful enrollment of patients or the completion of clinical trial milestones. Expenses related to clinical trials generally are accrued based on contracted amounts applied to the level of patient enrollment and activity according to the protocol. If timelines or contracts are modified based upon changes in the clinical trial protocol or scope of work to be performed, we modify our estimates accordingly on a prospective basis.

Net loss per share

Net loss per share is calculated in accordance with the Financial Accounting Standards Board's ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 128, *Earnings Per Share* . Basic loss per share is computed by dividing the net loss for the year by the weighted average number of common shares outstanding during the year. Diluted loss per share is calculated in accordance with the treasury stock method and reflects the potential dilution that would occur if securities or other contracts to issue common stock were exercised or converted to common stock. Since the effect of the assumed exercise of common stock options and other convertible securities was anti-dilutive for all periods presented, basic and diluted loss per share are the same.

The following table summarizes potential common shares that were excluded from historical basic and diluted net loss per share calculation because of their anti-dilutive effect:

Common stock equivalents	As of December 31, 2004	As of December 31, 2003	As of December 31, 2002
Options to purchase common stock	1,472,841	1,809,378	1,726,100
Warrants to purchase common stock	2,435,487	3,148,077	1,336,056
Convertible preferred stock	1,605,381	3,273,218	—
Total	5,513,709	8,230,673	3,062,156

Leases

Leases have been classified as either capital or operating leases. Leases which transfer substantially all of the benefits and risks incidental to the ownership of assets are accounted for as if there was an acquisition of an asset and incurrence of an obligation at the inception of the lease. All other leases are accounted for as operating leases, wherein rental payments are expensed as incurred with the exception of the facility lease.

Stock-based compensation

We follow Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock Issued to Employees* (APB No. 25) and related interpretations, in accounting for our employee stock options. Under APB No. 25, because the exercise price of our options for common shares granted to employees is not less than the fair market value of the underlying stock on the date of grant, no compensation expense has been recognized. Options awarded to non-employees, including consultants, are recorded at their fair values using the Black-Scholes option pricing model based on the vesting terms of the options. We have also adopted the disclosure-only alternative of SFAS No.123, *Accounting for Stock-Based Compensation* .

On December 16, 2004, the FASB issued SFAS No. 123 (revised 2004), *Share-Based Payment* , which is a revision of SFAS No. 123. SFAS No. 123(R) supersedes APB Opinion No. 25, *Accounting for Stock Issued to Employees* , and amends SFAS No. 95, *Statement of Cash Flows* . Generally, the approach in SFAS No. 123(R) is similar to the approach described in SFAS No. 123. However, SFAS No. 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Pro forma disclosure is no longer an alternative. SFAS No. 123(R) must be adopted no later than July 1, 2005. We will be analyzing our options related to the adoption of SFAS No. 123(R), which we will adopt as of July 1, 2005.

As permitted by SFAS No. 123, we currently account for share-based payments to employees using APB No. 25's intrinsic value method and, as such, generally recognize no compensation cost for employee stock options. Accordingly, the adoption of SFAS No. 123(R)'s fair value method will have a significant impact on our result of operations, although it will have no impact on our overall financial position. The impact of adoption of SFAS No. 123(R) cannot be predicted at this time because it will depend on levels of share-based payments granted in the future. However, had we adopted SFAS No. 123(R) in prior periods, the impact of that standard would have approximated the impact of SFAS No. 123 as described in the disclosure of pro forma net loss and loss per share in our consolidated financial statements. SFAS No. 123(R) also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature. This requirement will reduce net operating cash flows and increase net financing cash flows in periods after adoption. While we cannot estimate what those amounts will be in the future (because they depend on, among other things, when employees exercise stock options), the amount of operating cash flows recognized in prior periods for such excess tax deductions were $0 for the years ended December 31, 2004, 2003 and 2002, respectively.

Pro forma information regarding net income and earnings per share is required by SFAS No. 123, which also requires that the information be determined as if we had accounted for our employee stock options granted under the fair value method of that statement. The weighted-average fair value of options granted to employees during the years ended December 31, 2004, 2003 and 2002, was $1.34, $2.52 and $1.40, respectively.

The fair value for these options was estimated at the date of grant using a Black-Scholes option pricing model using the following assumptions:

	Year ended December 31,		
	2004	2003	2002
Risk-free interest rate	4.25%	4.25%	3.88%
Expected volatility	110%	123%	143%
Expected life in years	9.00	9.00	9.00
Dividend yield	—	—	—

The Black-Scholes option pricing model was developed for use in estimating the fair value of trade options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because our employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of our employee stock options.

The following table illustrates the effect on net loss attributable to stockholders if the fair value-based method had been applied to all outstanding and unvested awards in each period:

	Year ended December 31,		
	2004	2003	2002
Net loss attributable to common stockholders, as reported	$ (11,705,336)	$ (22,875,437)	$ (5,964,827)
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	(598,338)	(818,951)	(586,333)
Pro-forma net loss attributable to common stockholders	$ (12,303,674)	$ (23,694,388)	$ (6,551,160)
Basic and diluted net loss attributable to common stockholders per share, as reported	$ (0.66)	$ (1.72)	$ (0.59)
Pro-forma basic and diluted net loss attributable to common stockholders per share	$ (0.70)	$ (1.78)	$ (0.65)

Recent accounting pronouncements

In November 2004, the FASB issued SFAS No. 151, *Inventory Costs, an Amendment of ARB No. 43, Chapter 4* . This statement amends the guidance in Accounting Research Board (ARB) No. 43 Chapter 4, *Inventory Pricing* , to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). Paragraph 5 of ARB No. 43, Chapter 4, previously stated that ". . . under some circumstances, items such as idle facility expense, excessive spoilage, double freight, and rehandling costs may be so abnormal to require treatment as a current period charges . . ." This statement requires that those items be recognized as current period charges regardless of whether they meet the criterion of "so abnormal." In addition, this statement requires

that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. The provisions of this statement will be effective for inventory costs during the fiscal years beginning after June 15, 2005. We do not believe that the adoption of this statement will have a material impact on our financial condition or results of operations.

In December 2004, the FASB issued SFAS No. 153, *Exchanges of Nonmonetary Assets—An Amendment of APB Opinion No. 29, Accounting for Nonmonetary Transactions* . SFAS No. 153 eliminates the exception from fair value measurement for nonmonetary exchanges of similar productive assets in paragraph 21(b) of APB No. 29, *Accounting for Nonmonetary Transactions* , and replaces it with an exception for exchanges that do not have commercial substance. SFAS No. 153 specifies that a nonmonetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. SFAS No. 153 is effective for the fiscal periods beginning after June 15, 2005 and is required to be adopted by us beginning January 1, 2006. We are currently evaluating the effect that the adoption of SFAS No. 153 will have on our consolidated results of operations and financial condition, but do not expect it to have a material impact.

3. Financial Instruments

For certain of our financial instruments, including cash equivalents, accounts receivable, accounts payable and accrued expenses, the carrying values of these instruments approximate fair value due to their short-term nature.

4. Major Customers and Concentration of Credit Risk

In May 2004, we announced that we had signed a collaboration and licensing agreement with Merck & Co., Inc. ("Merck") to develop and commercialize our MedPulser DNA Delivery System, which will be developed for use with certain of Merck's DNA vaccine programs. This development and commercialization agreement is an extension of an initial evaluation agreement that was established in 2003. Under the terms of the agreement, Merck receives the right to use our proprietary technology initially for two specific antigens with an option to extend the agreement to include a limited number of additional target antigens. We have received an upfront license payment under this agreement, and will receive milestone payments linked to the successful development of a product. Royalties would be payable on sales of a product utilizing the device developed under the agreement. An option fee would be payable if Merck includes additional target antigens in the agreement. Under the agreement, Merck will be responsible for all development costs and clinical programs. During the year ended December 31, 2004, we recorded revenue under this collaboration and licensing agreement of $890,238. In addition, $374,177 of our total accounts receivable balance as of December 31, 2004 of $424,157 was attributable to Merck.

5. Fixed Assets

	Cost	Accumulated depreciation and amortization	Net book value
As of December 31, 2004			
Machinery, equipment and office furniture	$ 1,612,392	$ (1,457,190)	$ 155,202
Leasehold improvements	435,304	(435,253)	51
Equipment under capital leases	119,671	(119,671)	—
	$ 2,167,367	$ (2,012,114)	$ 155,253
As of December 31, 2003			
Machinery, equipment and office furniture	$ 1,580,776	$ (1,412,976)	$ 167,800
Leasehold improvements	435,304	(432,298)	3,006
Equipment under capital leases	119,671	(114,575)	5,096
	$ 2,135,751	$ (1,959,849)	$ 175,902

6. Patents and Other Assets, Net

	As of December 31, 2004	As of December 31, 2003
Patent costs, net	$ 1,775,135	$ 1,727,660
License costs, net	412,706	525,263
Other	169,731	48,193
	$ 2,357,572	$ 2,301,116

Accumulated amortization of patent costs was $1,498,009 and $1,160,500 as of December 31, 2004 and 2003, respectively. Accumulated amortization of license costs was $487,744 and $375,188 at December 31, 2004 and 2003, respectively. We expect total depreciation and amortization expense related to these patent and license costs, as well as our fixed assets, to be approximately $562,000, $507,000, $430,000, $324,000 and $202,000 for the years ended December 31, 2005, 2006, 2007, 2008 and 2009, respectively.

7. Accounts Payable and Accrued Expenses

	As of December 31, 2004	As of December 31, 2003
Trade accounts payable	$ 677,268	$ 293,630
Accrued dividends	118,871	—
Accrued compensation	484,517	335,519
Accrued legal	43,000	28,113
Accrued expenses	224,465	129,825
Cash received for common stock to be issued	607,471	—
	$ 2,155,592	$ 787,087

8. Stockholders' Equity

Reverse stock split

Effective September 13, 2004, we implemented a one-for-four reverse split of our common stock. At the time of the reverse stock split, each four shares of our issued and outstanding common stock were combined into one share of our common stock. The reverse stock split did not change the number of authorized shares of our common stock. The one-for-four reverse stock split was approved by the registrant's stockholders at a special meeting on September 10, 2004, and subsequently approved by our Board of Directors. All common share and per share amounts throughout this filing have been adjusted to give effect to this reverse stock split. The conversion prices of our Series A, B and C Preferred Stock were also adjusted to give effect to this reverse stock split.

Preferred stock

On May 20, 2004, we closed a private preferred share placement and raised an aggregate of $10,901,333 through the sale of our Series C Preferred Stock to institutional and accredited investors. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted on the record date for the taking of a vote. In any event of our voluntary or involuntary liquidation, dissolution or winding up, before any distribution of our assets shall be made to or set apart for the holders of Common Stock, the holders of Series C Preferred Stock shall be entitled to receive payment out of our assets in an amount equal to $10,000 per share of Series C Preferred Stock plus any accumulated and unpaid dividends. The Series C Preferred Stock is convertible into our common stock at a conversion price of $6.80 per share, and there is no escrow provision. As of December 31, 2004, 1,040 shares of Series C Preferred Stock were outstanding. Upon conversion, the Series C Preferred Stock outstanding as of December 31, 2004 will convert into 1,529,412 shares of our common stock.

The holders of our Series C Preferred Stock will receive an annual dividend rate of 6%, in shares of common stock or cash, payable quarterly. Holders of Series C Preferred Stock are entitled to receive this quarterly dividend through June 30, 2007. In 2004, our Board of Directors declared dividends to the holders of our Series C Preferred Stock, which were paid through the issuance of our common stock, as well as cash. As part of this dividend to the holders of Series C Preferred Stock, we issued 30,124 common shares valued at $133,693, and paid cash of $276,315 in 2004.

Each holder received 35% warrant coverage at an exercise price of $8.80 per share exercisable through May 10, 2009. Warrants granted to holders of our Series C Preferred Stock entitle these investors the right to acquire 561,084 shares of our common stock. The placement agents for the Series C Preferred Stock were also granted warrants entitling the agents to acquire 152,519 shares of our common stock. Each placement agent's warrant entitles the holder to acquire one share of common stock at a price of $6.80 per share, exercisable through May 10, 2009. As of December 31, 2004, no warrants issued as part of this Series C Preferred Stock offering had been exercised.

On July 16, 2003 we closed a preferred share private placement and raised an aggregate of $15,670,000, through the sale of $8,170,000 of our Series A Preferred Stock and $7,500,000 of our Series B Preferred Stock, to institutional and accredited investors. Each holder of Series A and B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A and B Preferred Stock could be converted on the record date for the taking of a vote. In any event of our voluntary or involuntary liquidation, dissolution or winding, before any distribution of our assets shall be made to or set apart for the holders of Common Stock, the holders of Series A and B Preferred Stock shall be entitled to receive payment out of our assets in an amount equal to $10,000 per share of Series A and B Preferred Stock plus any accumulated and unpaid dividends. The Series A Preferred Stock is convertible into our common stock at a conversion price of $2.40 per share, and there is no escrow provision. In connection with the sale of the Series A Preferred Stock, we recorded an imputed dividend charge of $6,045,799 related to the beneficial conversion feature of the stock during the year ended December 31, 2003. The Series B Preferred Stock is convertible into our common stock at a conversion price of $2.80 per share, and the proceeds from the sale of the Series B Preferred Stock were to remain in escrow until the achievement of specific milestones by the Company. In October 2003, we achieved these milestones and the $7,500,000 was released from escrow. In connection with the release of the Series B Preferred Stock proceeds, we recorded an imputed dividend charge of $11,807,144 related to the beneficial conversion feature of the stock during the year ended December 31, 2003. As of December 31, 2004, 291 shares of Series A Preferred Stock and 110 shares of Series B Preferred Stock remained outstanding. Upon conversion, the Series A and B Preferred Stock will convert into a total of 1,605,381 shares of our common stock.

The holders of our Series A and B Preferred Stock will receive an annual dividend rate of 6%, in shares of common stock or cash, payable quarterly. Holders of Series A and B Preferred Stock are entitled to receive this quarterly dividend through September 30, 2006. In 2004 and 2003, our Board of Directors declared dividends to the holders of our Series A and B Preferred Stock, which were paid through the issuance of our common stock. As part of this dividend to holders of Series A and B Preferred Stock, we issued a total of 73,072 common shares valued at $322,397 in 2004, and 84,595 common shares valued at $357,587 in 2003.

Each holder received 40% warrant coverage at an exercise price of $3.00 per share exercisable through July 13, 2008. Warrants granted to holders of our Series A and B Preferred Stock entitle these investors the right to acquire 2,433,073 shares of our common stock. The placement agents for the Series A and B Preferred Stock were also granted warrants entitling the agents to acquire 447,060 shares of our common stock. Each placement agent's warrant entitles the holder to acquire one share of common stock at a price between $2.40 and $2.80 per share, exercisable through July 13, 2008. As of December 31, 2004, warrants to purchase 547,920 shares issued as part of this offering had been exercised, resulting in $1,436,460 of gross proceeds. In addition, we issued 39,041 shares of our

common stock valued at $116,500 as a placement agent fee in conjunction with the Series A and B Preferred Stock offering.

Special warrants

On June 6, 2002, we closed a private placement of 2,556,472 special warrants. 1,996,393 special warrants were issued at a subscription price of $1.68 per special warrant and 560,079 special warrants were issued at a subscription price of $1.88 per special warrant, for gross proceeds of $4,406,890. Each $1.68 special warrant was exercisable, without additional payment, into one share of common stock and a warrant for the purchase of one-third of one share of common stock. Each full common stock purchase warrant was exercisable at $2.80 per share. Total warrants at $2.80 per share were 665,462. Each $1.88 special warrant was exercisable, without additional payment, into one share of common stock and a warrant for the purchase of forty percent of one share of common stock Each full common stock purchase warrant is exercisable at $2.60 per share. The gross proceeds of this financing were reduced by issuance costs including the placement agent's commission of 6.0% of the gross proceeds of $264,413 and other issuance costs of $306,708.

In October 2002, these special warrants were converted into 2,556,472 shares of common stock and 889,494 common stock purchaser warrants. On June 9, 2003, our Board of Directors approved an extension of the expiration date from June 6, 2003 until July 7, 2003, for the exercise of each of the $2.60 warrants and the $2.80 warrants that were issued in June 2002. Warrants were exercised for 194,773 shares resulting in gross proceeds of $539,803. All remaining warrants expired on July 7, 2003.

Warrants

In addition to warrants granted in connection with our Preferred Stock offerings, as discussed above, we have issued the following additional warrants.

In connection with the leasing of our new corporate headquarters, we issued a warrant to purchase 50,000 shares of our common stock at $5.00 per share to the landlord of this leased facility in December 2004. This warrant is immediately exercisable and expires five years from the date of issuance. This warrant was valued on the date of issuance using the Black-Scholes pricing model. The fair value of this warrant, $120,913, will be recognized ratably over the five-year term of the lease as rent expense.

On January 21, 2003, we entered into a $1,000,000 bridge loan with a major shareholder. Warrants to purchase 15,000 shares of our common stock at $0.04 per share were granted in lieu of interest being charged to the loan. The warrants were valued at $19,800 using a fair value model and were charged to interest expense. In February 2003, the bridge loan was paid in full with proceeds from the sale of the BTX Division. During March 2004, all of such warrants were exercised.

In connection with the issuance of the special warrants on June 6, 2002, we granted warrants to the placement agent to acquire 166,250 shares of common stock for $1.88 per share. In September 2003, warrants to purchase 30,000 shares of common stock were exercised totaling $56,400 in gross proceeds. The remaining 136,250 warrants expire on June 6, 2005.

On September 15, 2000, we entered into an exclusive license agreement with the University of South Florida Research Foundation, Inc. ("USF"), whereby USF granted us an exclusive, worldwide

license to USF's rights in patents and patent applications generally related to needle electrodes ("License Agreement"). Pursuant to the License Agreement, we granted USF and its designees warrants to acquire 150,000 common shares for $9.00 per share until September 14, 2010. Of the total warrants granted, 75,000 vested at the date of grant and the remainder will vest upon the achievement of certain milestones. The 75,000 non-forfeitable vested warrants were valued at $553,950 using the Black-Scholes pricing model and were recorded as other assets with a credit to additional paid-in capital. The remaining 75,000 warrants are forfeitable and will be valued at the fair value on the date of vesting using the Black-Scholes pricing model.

In addition, pursuant to the above License Agreement, we issued a total of 37,500 common shares with a fair market value of $346,500 to USF and its designees for no additional consideration. The fair market value of the common shares on September 15, 2000 was recorded as other assets and a credit to common stock and additional paid-in capital.

Stock options

We have three stock option plans pursuant to which stock options are granted to executive officers, directors, employees and consultants.

The 1995 Stock Option Plan (the "1995 Plan") was approved by the stockholders in 1995 and subsequently amended in 1997. The 1995 Plan was suspended by the Board of Directors in June 1997 and no further options will be granted pursuant to the 1995 Plan. As at December 31, 2004, there were 22,625 options outstanding pursuant to the 1995 Plan.

The 1997 Stock Option Plan (the "1997 Plan"), as amended in 1999, was approved by the stockholders in July 1999. The 1997 Plan was suspended by the Board of Directors in July 2000 and no further options will be granted pursuant to the 1997 Plan. As at December 31, 2004, there were 93,935 options outstanding pursuant to the 1997 Plan.

The 2000 Stock Option Plan (the "2000 Plan"), effective July 31, 2000, was approved by the stockholders on August 7, 2000, pursuant to which 1,850,000 common shares were reserved for issuance to our executive officers, directors, employees and consultants. In April 2002, the annual meeting of stockholder approved to amend the 2000 Plan to increase the maximum number of common shares reserved for issuance to 2,500,000. In June 2004, the annual meeting of stockholder approved to amend the 2000 Plan to increase the maximum number of common shares reserved for issuance to 3,750,000. The 2000 Plan supercedes all previous stock option plans. At December 31, 2004, 1,035,404 options are available for future grants and 1,977,153 stock options are outstanding pursuant to the 2000 Plan. The options available for issuance under the 2000 Plan generally have a term of ten years and vest over a period of three years. The 2000 Plan will terminate on July 30, 2010.

We account for options granted to non-employees in accordance with EITF No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services* , and SFAS No. 123. The fair value of these options at the measurement dates was estimated using the Black-Scholes pricing model.

In January 2002, we extended the expiration date of 156,050 consultant stock options from January 15, 2002, to January 31, 2002 and reduced the exercise price from between Cdn $5.00 and Cdn $16.52 to Cdn $4.60. On January 21, 2002, we issued 124,800 common shares in respect of the exercise

of these stock options for gross proceeds of Cdn $574,079 (US $361,287). As a result, additional stock-based compensation was recorded in January 2002 of $39,936 at a fair value of $0.32 per option, which was estimated by using the Black Scholes pricing model. The remaining 31,250 stock options expired unexercised.

Total stock-based compensation for options granted to non-employees for the years ended December 31, 2004, 2003 and 2002, was $413,320, $170,959 and $105,413, respectively.

The following table summarizes the stock options outstanding at December 31, 2004:

	Options outstanding			Options exercisable	
Exercise price	Options outstanding	Weighted-average remaining contractual life (in years)	Weighted-average exercise price	Options exercisable	Weighted-average exercise price
$1.00-$4.00	1,446,279	8.0	$ 2.11	980,473	$ 2.07
$4.01-$8.00	545,124	8.2	$ 5.46	289,183	$ 5.50
$8.01-$12.00	69,935	3.4	$ 9.80	69,935	$ 9.80
$12.01-$16.00	15,750	4.2	$ 15.05	15,750	$ 15.05
$16.01-$22.00	16,625	5.2	$ 19.52	16,625	$ 19.52
	2,093,713	7.9	$ 3.47	1,371,966	$ 3.55

Stock option activity under our stock option plans was as follows:

	Number of shares	Weighted-average exercise price
Balance, December 31, 2001	1,442,721	$ 7.52
Granted	930,300	1.84
Exercised	(124,799)	(2.88)
Cancelled	(522,131)	(8.52)
Balance, December 31, 2002	1,726,091	4.48
Granted	696,640	2.52
Exercised	(129,531)	(2.88)
Cancelled	(483,831)	(5.84)
Balance, December 31, 2003	1,809,369	2.72
Granted	624,375	4.58
Exercised	(140,821)	(1.92)
Cancelled	(199,210)	(5.93)
Balance, December 31, 2004	2,093,713	$ 3.47

Stockholder rights plan

In 2003, our stockholders approved a five-year extension of a Stockholder Rights Plan (the "Rights Plan") to protect our stockholders from unfair, abusive or coercive takeover strategies. Under the Rights Plan, holders of common shares are entitled to one share purchase right ("Right") for each common share held. If any person or group makes a take-over bid, other than a bid permitted under the plan or acquires 20% or more of our outstanding common shares without complying with the Rights Plan, each Right entitles the registered holder thereof to purchase, in effect, $80 equivalent of our common shares at 50% of the prevailing market price.

9. Commitments

Rent expense was $372,765, $450,799 and $472,518 for the years ended December 31, 2004, 2003 and 2002, respectively. We do not have any active leases under capital lease arrangements. As of December 31, 2004, future minimum lease payments under non-cancelable operating leases are as follows:

2005	$ 476,333
2006	482,731
2007	480,327
2008	464,250
2009	475,634
Thereafter	80,035
Total	$ 2,459,310

10. Income Taxes

As of December 31, 2004, we had federal and California income tax net operating loss carryforwards of approximately $59,916,000 and $29,173,000, respectively. The federal loss carryforwards will begin to expire in 2008 unless previously utilized. The California loss carryforwards will continue to expire in 2005. The difference between the federal and California tax loss carryforwards is primarily attributable to the capitalization of research and development expenses for California income tax purposes and the 50% to 60% limitation of California loss carryforwards. In addition, we have federal research tax credit carryforwards of approximately $1,411,000, which will continue to expire in 2005 unless previously utilized, and California research tax credit carryforwards of approximately $654,000.

Pursuant to Internal Revenue Code Sections 382 and 383, annual use of the subsidiary's net operating loss and credit carryforwards may be limited because of a cumulative change in ownership of more than 50%.

Significant components of our deferred tax assets as of December 31, 2004 and 2003 are shown below:

	As of December 31, 2004	As of December 31, 2003
Deferred tax assets:		
Capitalized research expense	$ 874,000	$ 791,000
Net operating loss carryforwards	22,648,000	18,915,000
Research and development and other tax credits	1,866,000	1,592,000
Other	855,000	413,000
	26,243,000	21,711,000
Valuation allowance	(26,037,000)	(21,363,000)
Total deferred tax assets	206,000	348,000
Deferred tax liabilities:		
Difference between book and tax basis for patent and license costs	(206,000)	(348,000)
Total deferred tax liabilities	(206,000)	(348,000)
Net deferred tax assets	$ —	$ —

We have established a valuation allowance for all deferred tax assets, including those for net operating loss and tax credit carryforwards. Such a valuation allowance is recorded when it is more likely than not that the deferred tax assets will not be realized.

The reconciliation of income tax attributable to operations computed at the statutory tax rates to income tax expense (recovery), using a 35% statutory tax rate, is:

	Year ended December 31, 2004	Year ended December 31, 2003	Year ended December 31, 2002
Income taxes at statutory rates	$ (3,841,000)	$ (2,306,000)	$ (2,088,000)
State income tax, net of federal benefit	(625,000)	(245,000)	(225,000)
Change in valuation allowance	4,674,000	2,181,000	2,272,000
Other	(208,000)	370,000	41,000
	$ —	$ —	$ —

11. 401(k) Plan

In 1995, our U.S. subsidiary adopted a 401(k) Profit Sharing Plan covering substantially all of its employees in the U.S. The defined contribution plan allows the employees to contribute a percentage of their compensation each year. We currently match 50% of our employees' contributions, up to 6% of annual compensation. This contribution is recorded as expense in the accompanying consolidated statements of operations as incurred. Our contributions are invested in our common shares on behalf of the participants, which are included in the calculation of net loss per share for the years presented.

401(k) contributions totaled $23,410, $28,699 and $62,721 for the years ended December 31, 2004, 2003 and 2002, respectively.

12. Segment Information

Our reportable business segments had historically included the BTX Instrument Division and the Drug and Gene Delivery Division. In connection with the sale of assets of the BTX Instrument Division in January 2003, the BTX Instrument Division, which was previously classified as a separate segment, has been classified as discontinued operations for financial reporting purposes. We now operate in one business segment.

13. Related Party Transactions

During the years ended December 31, 2004, 2003 and 2002, we made payments of $111,345, $170,599 and $337,150, respectively, for legal services provided by Catalyst Corporate Lawyers, where one of the partners is the Chairman of our company. As of December 31, 2004 and 2003, we owed $6,301 and $8,587 in fees to this firm, which is included in trade accounts payable and accrued expenses in the accompanying consolidated balance sheets. Total expenses paid to Catalyst Corporate Lawyers and included in share issuance costs for the years ended December 31, 2004, 2003 and 2002, were $34,470, $68,219 and $221,585, respectively. All transactions are recorded at their exchange amounts.

In March 2004, we announced the selection of Quintiles Transnational Corp., a global pharmaceutical services organization, as the clinical research organization ("CRO") for our clinical trials in the U.S. and Europe. In addition, the investment division of this CRO, Qfinance, Inc., is an investor in our Series A, B and C Preferred Stock. As of December 31, 2004, Qfinance, Inc. owned 50, 100 and 109 shares respectively, of our Series A, B and C Preferred Stock, which were convertible into a total of 725,769 of our common shares. As of December 31, 2003, Qfinance, Inc. owned 50 and 100 shares respectively, of our Series A and B Preferred Stock. Total clinical trial expenses paid to Quintiles Transnational Corp. for the years ended December 31, 2004, 2003 and 2002, were $692,124, $58,375 and $22,868, respectively.

14. Supplemental Disclosures of Cash Flow Information

	Year ended December 31, 2004	Year ended December 31, 2003	Year ended December 31, 2002
Cash paid for interest	$ —	$ 20,480	$ 5,445
Supplemental schedule of financing activities:			
Imputed dividends on preferred stock	$ —	$ 17,852,943	$ —
Common stock issued in connection with declared dividends on preferred stock	$ 456,090	$ 357,587	$ —
Cashless exercise of warrants	$ 40	$ —	$ —
Conversions of preferred stock to common stock	$ 1,741	$ 2,809	$ —

During the year ended December 31, 2002, we issued common shares pursuant to a consulting agreement aggregating $55,000. See note 8 for further disclosure.

15. Subsequent Events

Inovio AS acquisition

In January 2005, we consummated the acquisition of Inovio AS, a Norwegian company. Under the terms of the transaction, we acquired the entire share capital of Inovio for an aggregate purchase price of $10.0 million; $3.0 million of the purchase price consisted of cash and $7.0 million consisted of shares of our Series D Convertible Preferred Stock, par value $0.001 per share (the "Series D Preferred Stock"). We issued 1,966,292 shares of the Series D Preferred Stock in the transaction, based on the average closing price of our common stock as reported on the American Stock Exchange during the 30 trading day period immediately preceding the closing. Those shareholders of Inovio who received shares of Series D Preferred Stock in the transaction will also be entitled to additional issuances of Series D Preferred Stock in the event we achieve certain strategic and commercial milestones, as set forth in the Stock Purchase Agreement. The shares of Series D Preferred Stock are convertible to shares of our common stock on a one-for-one basis.

Private placement

In January 2005, we completed a private placement to accredited investors whereby we sold 1,540,123 shares of our common stock at a purchase price of $4.05 per share and issued warrants to purchase 508,240 shares of our common stock at an exercise price of $5.50 per share, which will result in aggregate cash proceeds of $3.03 million (assuming no exercise of the warrants). A portion of this private placement involved investors who converted $3.2 million of their previous investment in our Series C Preferred Stock into 790,123 shares of the common stock issued as part of this private placement with no associated cash proceeds to us.

At the signing, each investor provided payment for at least 20% of the subscription amount, the balance due at the earlier of (i) September 30, 2005 or (ii) the occurrence of an "early triggering event," as set forth in the agreement. The balance of the subscription amount is evidenced by a full recourse promissory note. All of the shares shall be held in an escrow account pending the final closing, in accordance with the terms of the escrow agreement.

In conjunction with this private placement, we received a subscription amount of $607,421 in cash from one investor in advance of the signing of this agreement, which was recorded in accrued expenses in the consolidated balance sheet as of December 31, 2004.

16. Quarterly Financial Information (Unaudited)

The following unaudited quarterly financial information reflects all normal recurring adjustments, which are, in the opinion of management, necessary for a fair statement of the results of the interim periods. The four quarters for per share figures may not add for the year because of the different number of shares outstanding during the year. Summarized unaudited quarterly data for the years ended December 31, 2004 and 2003, are as follows:

	Quarter Ended December 31, 2004	Quarter Ended September 30, 2004	Quarter Ended June 30, 2004	Quarter Ended March 31, 2004
Revenue	$ 542,738	$ 455,157	$ 99,819	$ 69,385
Loss from continuing operations	(3,794,416)	(3,465,097)	(2,421,995)	(1,581,632)
Gain on disposal of assets	—	33,347	256,862	—
Loss from discontinued operations	—	—	—	—
Net loss	(3,794,416)	(3,431,750)	(2,165,133)	(1,581,632)
Declared dividends on preferred stock	(218,430)	(238,911)	(176,924)	(98,140)
Net loss attributable to common stockholders	(4,012,846)	(3,670,661)	(2,342,057)	(1,679,772)
Amounts per common share—basic and diluted:				
Loss from continuing operations	$ (0.21)	$ (0.20)	$ (0.14)	$ (0.10)
Discontinued operations, net	—	—	0.01	—
Declared dividends on preferred stock	(0.01)	(0.01)	(0.01)	(0.01)
Net loss attributable to common stockholders	$ (0.22)	$ (0.21)	$ (0.14)	$ (0.11)
Weighted average number of common shares—basic and diluted	18,341,032	17,813,659	17,504,685	16,318,645

	Quarter Ended December 31, 2003	Quarter Ended September 30, 2003	Quarter Ended June 30, 2003	Quarter Ended March 31, 2003
Revenue	$ 38,077	$ 22,311	$ 9,004	$ 11,137
Loss from continuing operations	(1,765,404)	(1,680,313)	(1,397,238)	(1,745,290)
Gain on disposal of assets	—	—	—	2,034,078
Loss from discontinued operations	—	—	—	(110,740)
Net income (loss)	(1,765,404)	(1,680,313)	(1,397,238)	178,048
Imputed and declared dividends on preferred stock	(11,962,269)	(6,248,261)	—	—
Net loss attributable to common stockholders	(13,727,673)	(7,928,574)	(1,397,238)	178,048
Amounts per common share—basic and diluted:				
Loss from continuing operations	$ (0.12)	$ (0.13)	$ (0.11)	$ (0.14)
Discontinued operations, net	—	—	—	0.15
Imputed and declared dividends on preferred stock	(0.79)	(0.48)	—	—
Net income (loss) attributable to common stockholders	$ (0.91)	$ (0.61)	$ (0.11)	$ 0.01
Weighted average number of common shares:				
Basic	15,122,008	12,895,325	12,624,443	12,601,652
Diluted	15,122,008	12,895,325	12,624,443	12,658,022

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Exhibit 4.16

VOID AFTER 5:00 P.M., SAN DIEGO TIME, ON THE FIFTH ANNIVERSARY OF THE DATE HEREOF

THIS WARRANT AND THE SHARES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED, SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED, SOLD OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

Date: December 6, 2004 50,000 Shares of Common Stock

Warrant Number: GEN — W3

GENETRONICS BIOMEDICAL CORPORATION

COMMON STOCK PURCHASE WARRANT

THIS CERTIFIES THAT, for value received, the persons listed on Exhibit "A", or their respective registered assigns, is entitled to purchase from GENETRONICS BIOMEDICAL CORPORATION, a corporation organized under the laws of the State of Delaware (the " *Company* "), at any time or from time to time during the period specified in Section 2 hereof, 50,000 fully paid and nonassessable shares of the Company's common stock, par value $0.001 per share (" *Common Stock* "), at an exercise price per share equal to $5,00 (the " *Exercise Price* "). The number of shares of Common Stock purchasable hereunder (the " *Warrant Shares* ") and the Exercise Price are subject to adjustment as provided in Section 4 hereof.

This Warrant is subject to the following terms, provisions and conditions:

1. *Manner of Exercise; Issuance of Certificates; Payment for Shares.* Subject to the provisions hereof, this Warrant may be exercised by the holder hereof, in whole or in part, by the surrender of this Warrant, together with a completed Notice of Exercise in the form attached hereto (the " *Notice of Exercise* "), to the Company during normal business hours on any business day at the Company's principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder hereof), and payment to the Company in cash, by certified or official bank check or by wire transfer to the account of the Company, of the Exercise Price for the Warrant Shares specified in the Notice of Exercise. The Warrant Shares so purchased shall be deemed to be issued to the holder hereof, as the record owner of such shares, as of the close of business on the date on which this Warrant shall have been surrendered, the completed Notice of Exercise shall have been delivered, and payment shall have been made for such shares as set forth above or, if such date is not a business day, on the next succeeding business day. Physical certificates representing the number of Warrant Shares so purchased, as specified in the Notice of Exercise, shall (by the Company or through its transfer agent) be delivered (i.e., deposited with a nationally-recognized overnight courier service postage prepaid) to the holder hereof within a reasonable time, not exceeding two business days, after this Warrant shall have been so exercised (the " *Delivery Period* "). Any certificates so delivered shall be in such denominations as may be reasonably requested by the holder hereof, shall be registered in the name of such holder or such other name as shall be designated by such holder and, following the date on which the resale of the Warrant Shares has been registered under the Securities Act or the Warrant Shares otherwise may be sold by the holder pursuant to Rule 144 promulgated under the Securities Act (or a

successor rule), shall not bear any restrictive legend. If this Warrant shall have been exercised only in part, then the Company shall, at its expense, at the time of delivery of such certificates, deliver to the holder a new Warrant representing the number of shares with respect to which this Warrant shall not then have been exercised.

2. *Period of Exercise.* This Warrant shall be exercisable at any time and from time to time during the period beginning on the date of initial issuance of this Warrant (the " *Issue Date* ") and ending at 5:00 p.m., Los Angeles time, on the fifth anniversary of the Issue Date (the " *Exercise Period* "). The Exercise Period shall automatically be extended by one (1) day for each day on which the Company does not have a number of shares of Common Stock reserved for issuance upon exercise hereof at least equal to the number of shares of Common Stock issuable upon exercise hereof.

3. *Certain Agreements of the Company.* The Company hereby covenants and agrees as follows:

(a) *Shares to be Fully Paid.* All Warrant Shares shall, upon issuance in accordance with the terms of this Warrant, be validly issued, fully paid and nonassessable and free from all taxes, liens, claims and encumbrances.

(b) *Reservation of Shares.* During the Exercise Period, the Company shall at all times have authorized, and reserved for the purpose of issuance upon exercise of this Warrant, a sufficient number of shares of Common Stock to provide for the exercise in full of this Warrant.

(c) *Certain Actions Prohibited.* The Company shall not, by amendment of its charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it hereunder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

(d) *Successors and Assigns.* This Warrant shall be binding upon any entity succeeding to the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets.

(e) *Blue Sky Laws.* The Company shall, on or before the date of issuance of any Warrant Shares, take such actions as the Company shall reasonably determine are necessary to qualify the Warrant Shares for, or obtain exemption for the Warrant Shares for, sale to the holder of this Warrant upon the exercise hereof under applicable securities or "blue sky" laws of the states of the United States, and shall provide evidence of any such action so taken to the holder of this Warrant prior to such date; *provided, however,* that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (ii) subject itself to taxation in any such jurisdiction or (iii) file a consent to service of process in any such jurisdiction.

4. *Adjustment Provisions.* During the Exercise Period, the Exercise Price and the number of Warrant Shares issuable hereunder shall be subject to adjustment from time to time as provided in this Section 4.

(a) *Subdivision or Combination of Common Stock.* If the Company, at any time during the Exercise Period, subdivides (by any stock split, stock dividend, recapitalization, reorganization, reclassification or otherwise) its shares of Common Stock into a greater number of shares, then, after the date of record for effecting such subdivision, the Exercise Price in effect immediately prior to such subdivision shall be proportionately reduced. If the Company, at any time during the Exercise Period, combines (by reverse stock split, recapitalization, reorganization, reclassification or

otherwise) its shares of Common Stock into a smaller number of shares, then, after the date of record for effecting such combination, the Exercise Price in effect immediately prior to such combination shall be proportionately increased.

(b) *Consolidation, Merger or Sale.* In case of any consolidation of the Company with, or merger of the Company into, any other corporation or other entity, or in case of any sale or conveyance of all or substantially all of the assets of the Company other than in connection with a plan of complete liquidation of the Company at any time during the Exercise Period, then as a condition of such consolidation, merger or sale or conveyance, adequate provision shall be made whereby the holder hereof shall have the right to acquire and receive upon exercise of this Warrant in lieu of the shares of Common Stock immediately theretofore acquirable upon the exercise of this Warrant, such shares of stock, securities, cash or assets as may be issued or payable with respect to or in exchange for the number of shares of Common Stock immediately theretofore acquirable and receivable upon exercise of this Warrant had this Warrant been exercised immediately prior to such consolidation, merger or sale or conveyance. In any such case, the Company shall make appropriate provision to ensure that the provisions of this Section 4 will thereafter be applicable as nearly as may be in relation to any shares of stock or securities thereafter deliverable upon the exercise of this Warrant. The Company shall not effect any consolidation, merger or sale or conveyance unless prior to the consummation thereof, the successor or acquiring entity (if other than the Company) and, if an entity different from the successor or acquiring entity, the entity whose securities into which the Common Stock shall become convertible or exchangeable in such transaction, assumes by written instrument the obligations under this Warrant and the obligations to deliver to the holder hereof such shares of stock, securities, cash or assets as, in accordance with the foregoing provisions, the holder may be entitled to acquire. Notwithstanding the foregoing, in the event of any consolidation of the Company with, or merger of the Company into, any other corporation or other entity, or the sale or conveyance of all or substantially all of the assets of the Company, at any time during the Exercise Period, the holder hereof shall, at its option, have the right to receive, in connection with such transaction, cash consideration equal to the fair market value of this Warrant as determined in accordance with customary valuation methodology used in the investment banking industry.

(c) *Adjustment in Number of Shares.* Upon each adjustment of the Exercise Price pursuant to the provisions of this Section 4, the number of shares of Common Stock issuable upon exercise of this Warrant at each such Exercise Price shall be adjusted by multiplying a number equal to the Exercise Price in effect immediately prior to such adjustment by the number of shares of Common Stock issuable upon exercise of this Warrant at such Exercise Price immediately prior to such adjustment and dividing the product so obtained by the adjusted Exercise Price.

(d) *Additional Adjustment Provisions.* The following provisions shall be applicable to the making of adjustments in the Exercise Price and the number of Warrant Shares pursuant to this Section 4:

(i) In the event that all or any part of the consideration received or paid by the Company in connection with any of the transactions described in this Section 4 consists of property other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Company in a manner reasonably acceptable to the holder of this Warrant.

(ii) All calculations under this Section 4 shall be made to the nearest 1/l00th of a cent or 1/10,000th of a share of Common Stock, as the case may be. No adjustment to the Exercise Price (and, correspondingly, to the number of Warrant Shares) shall be required unless such adjustment (plus any adjustments not previously made by reason of this Section 4(f)(v)) would require an increase or decrease of at least 1% in such Exercise

Price; *provided, however*, that any adjustment(s) that by reason of this Section 4(f)(v) are not required to be made shall be carried forward and taken into account upon the earlier of (A) any subsequent adjustment or (B) any exercise of this Warrant.

(iii) Notwithstanding any other provision of this Warrant, no adjustment to the Exercise Price shall be made to the extent such adjustment would reduce the Exercise Price below the par value of the Common Stock.

(e) *Notice of Adjustment.* Upon the occurrence of any event which requires any adjustment of the Exercise Price, then, and in each such case, the Company shall give notice thereof to the holder hereof, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease in the number of Warrant Shares purchasable at such price upon exercise, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Such calculation shall be certified by the chief financial officer of the Company.

(f) *Other Notices.* In case at any time:

(i) there shall be any capital reorganization of the Company, or reclassification of the Common Stock, or consolidation or merger of the Company with or into, or sale of all or substantially all of its assets to, another corporation or entity; or

(ii) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in each such case, the Company shall give to the holder of this Warrant (A) notice of the date or estimated date on which the books of the Company shall close or a record shall be taken for determining the holders of Common Stock entitled to receive any such dividend, distribution, or subscription rights or for determining the holders of Common Stock entitled to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up and (B) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, notice of the date (or, if not then known, a reasonable estimate thereof by the Company) when the same shall take place. Such notice shall also specify the date on which the holders of Common Stock shall be entitled to receive such dividend, distribution, or subscription rights or to exchange their Common Stock for stock or other securities or property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, or winding-up, as the case may be. Such notice shall be given at least fifteen (15) days prior to the record date or the date on which the Company's books are closed in respect thereto. Failure to give any such notice or any defect therein shall not affect the validity of the proceedings referred to in clauses (i), (ii), (iii) and (iv) above. Notwithstanding the foregoing, the Company shall publicly disclose the substance of any notice delivered hereunder prior to delivery of such notice to the holder hereof.

(g) *Certain Events.* If, at any time during the Exercise Period, any event occurs of the type contemplated by the adjustment provisions of this Section 4 but not expressly provided for by such provisions, the Company shall give notice of such event as provided in Section 4(g) hereof, and an appropriate adjustment in the Exercise Price and the number of Warrant Shares shall be made so that the rights of the holder shall be neither enhanced nor diminished by such event.

(h) *Definition of Common Stock.* " *Common Stock* " shall include, for purposes of this Section 4, the Common Stock and any additional class of stock of the Company having no preference as to dividends or distributions on liquidation, provided that the shares purchasable pursuant to this Warrant shall include only Common Stock in respect of which this Warrant is exercisable, or shares resulting from any subdivision or combination of such Common Stock, or in the case of any reorganization, reclassification, consolidation, merger, or sale of the character

referred to in Section 4(c) hereof, the stock or other securities or property provided for in such Section.

5. *Issue Tax.* The issuance of certificates for Warrant Shares upon the exercise of this Warrant shall be made without charge to the holder of this Warrant or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the holder of this Warrant.

6. *No Rights on Liabilities as a Stockholder.* This Warrant shall not entitle the holder hereof to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative action by the holder hereof to purchase Warrant Shares, and no mere enumeration herein of the rights or privileges of the holder hereof, shall give rise to any liability of such holder for the Exercise Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

7. *Transfer, Exchange and Replacement of Warrant*

(a) *Restriction on Transfer*. This Warrant and the rights granted to the holder hereof are transferable, in whole or in part, in accordance with the requirements of state and federal securities laws, upon surrender of this Warrant, together with a properly executed assignment in the form attached hereto, at the office or agency of the Company referred to in Section 7(e) below, *provided, however*, that any transfer or assignment shall be subject to the conditions set forth in Section 7(f) hereof. Until due presentment for registration of transfer on the books of the Company, the Company may treat the registered holder hereof as the owner and holder hereof for all purposes, and the Company shall not be affected by any notice to the contrary.

(b) *Warrant Exchangeable for Different Denominations.* This Warrant is exchangeable, upon the surrender hereof by the holder at the office or agency of the Company referred to in Section 7(e) below, for new warrants of like tenor of different denominations representing in the aggregate the right to purchase the number of shares of Common Stock which may be purchased hereunder, each of such new warrants to represent the right to purchase such number of shares (at the Exercise Price therefor) as shall be designated by the holder hereof at the time of such surrender, and all such warrants thereafter constituting the Warrant referenced herein.

(c) *Replacement of Warrant.* Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction, or mutilation of this Warrant and, in the case of any such loss, theft, or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company, at its expense, shall execute and deliver, in lieu thereof, a new Warrant of like tenor.

(d) *Cancellation; Payment of Expenses.* Upon the surrender of this Warrant in connection with any transfer, exchange, or replacement as provided in this Section 7, this Warrant shall be promptly canceled by the Company. The Company shall pay all taxes (other than securities transfer taxes) and all other expenses (other than legal expenses, if any, incurred by the Holder or transferees) and charges payable in connection with the preparation, execution, and delivery of any Warrant pursuant to this Section 7.

(e) *Warrant Register*. The Company shall maintain, at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder hereof), a register for this Warrant, in which the Company shall record the name and address of the person in whose name this Warrant has been issued, as well as the name and address of each transferee and each prior owner of this Warrant.

(f) *Exercise or Transfer Without Registration.* If, at the time of the surrender of this Warrant in connection with any exercise, transfer, or exchange of this Warrant, this Warrant (or, in the case of any exercise, the Warrant Shares issuable hereunder), shall not be registered under the Securities Act and under applicable state securities or blue sky laws, the Company may require, as a condition of allowing such exercise, transfer, or exchange, (i) that the holder or transferee of this Warrant, as the case may be, furnish to the Company a written opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such exercise, transfer, or exchange may be made without registration under the Securities Act and under applicable state securities or blue sky laws (the cost of which shall be borne by the Company if the Company's counsel renders such an opinion, (ii) that the holder or transferee execute and deliver to the Company an investment letter in form and substance acceptable to the Company and (iii) that the transferee be an "accredited investor" as defined in Rule 501 (a) promulgated under the Securities Act; *provided, however*,, that no such opinion, letter, or status as an "accredited investor" shall be required in connection with a transfer pursuant to Rule 144 under the Securities Act.\

8. *Registration Rights.* By April 30, 2005, the Issuer shall include all of the shares of Common Stock purchased or purchasable upon the exercise of this Warrant (the "Registrable Shares") within a registration statement filed by the Company covering shares of its Common Stock.

9. *No Fractional Shares.* No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but the Company shall pay a cash adjustment in respect of any fractional share which would otherwise be issuable in an amount equal to the same fraction of the Market Price (as determined by reference to the last price reported by Bloomberg Financial Markets or, if not available, another recognized price reporting service) of a share of Common Stock on the date of such exercise.

10. *Notices.* Any notices required or permitted to be given under the terms of this Warrant shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier or by confirmed telecopy, and shall be effective five days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by courier, or by confirmed telecopy, in each case addressed to a party. The initial addresses for such communications shall be as follows, and each party shall provide notice to the other parties of any change in such party's address:

If to the Company:

Genetronics Biomedical Corporation
11494 Sorrento Valley Road
San Diego, California 92121
Facsimile:
Attention: Chief Executive Officer

If to the holder:

Sorrento Center, a Tenancy in Common
c/o Collins Development Company, Manager
11750 Sorrento Valley Road, Suite 209
San Diego, California 92121
Facsimile: (858) 259-5694
Attention: President, Asset Management Group

11. *Indemnification by Company.* The Company shall hold harmless and indemnify the holder of this Warrant from and against, and shall compensate and reimburse such holder for, any damages which are directly or indirectly suffered or incurred by such holder or to which such holder may otherwise become subject (regardless of whether or not such damages relate to any third party claim) and which arise from or as a result of, or are directly or indirectly connected with any breach of any of

the Company's covenants set forth herein. In the event of the assertion or commencement by any person of any claim or legal proceeding with respect to which the holder may have indemnification rights pursuant to this Section 11, the holder shall promptly notify the Company thereof in writing, but the failure to so notify the Company shall not limit the holder's rights to indemnification hereunder, except to the extent the Company demonstrates that the defense of such action is prejudiced by the failure to so give such notice.

12. *Miscellaneous*

(a) *Governing Law; Jurisdiction.* This Warrant shall be governed by and construed in accordance with the laws of the State of California. The Company irrevocably consents to the exclusive jurisdiction of the United States federal courts and state courts located in the State of California, County of San Diego in any suit or proceeding based on or arising under this Warrant and irrevocably agrees that all claims in respect of such suit or proceeding may be determined in such courts. The Company irrevocably waives any objection to the laying of venue and the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company further agrees that service of process upon the Company mailed by certified or registered mail shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. Nothing herein shall affect the holder's right to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

(b) *Amendment and Waiver*. This Warrant and any provision hereof may only be amended by an instrument in writing signed by the Company and the holder hereof. The failure of any party to enforce any of the provisions of this Warrant shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Warrant in accordance with its terms.

(c) *Prevailing Party's Costs and Expenses.* The prevailing party in any mediation, arbitration or legal action to enforce or interpret this Warrant shall be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorneys' fees, incurred in such action or proceeding.

(d) *Construction.* Whenever the context requires, the gender of any word used in this Warrant includes the masculine, feminine or neuter, and the number of any word includes the singular or plural. Unless the context otherwise requires, all references to articles and sections refer to articles and sections of this Warrant, and all references to schedules are to schedules attached hereto, each of which is made a part hereof for all purposes. The descriptive headings of the several Sections of this Warrant are inserted for purposes of reference only, and shall not affect the meaning or construction of any of the provisions hereof.

13. *Issuance of Shares Via Exercise of the Warrant.* The Company acknowledges that it is issuing this Warrant to acquire 50,000 shares to Sorrento Center, a tenancy in common, composed of individuals, trusts and corporations. If this Warrant is exercised, the Shares shall be issued to the individual tenants in common in such percentages set forth on Exhibit "A".

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its duly authorized officer as of the date first above written.

GENETRONICS, BIOMEDICAL CORPORATION

By: /s/ PETER KIES

Name: Peter Kies
Title: Chief Financial Officer

Attest:

By: /s/ DOUGLAS MURDOCK

Name: Douglas Murdock
Title: Secretary

NOTICE OF EXERCISE

To: Genetronics Biomedical Corporation
[**ADDRESS**]
Attention: Chief Executive Officer

(1) The undersigned holder hereby irrevocably exercises the right to purchase shares of the Common Stock of Genetronics Biomedical Corporation, a corporation organized under the laws of the State of Delaware (the " *Company* "), evidenced by the attached Warrant, and herewith makes payment of the Exercise Price with respect to such shares in full.

(2) The undersigned holder hereby confirms, acknowledges and agrees that (a) the shares of Common Stock are being acquired solely for the account of the undersigned and not as a nominee for any other party, (b) the holder will not offer, sell, transfer or otherwise dispose of any Common Stock obtained upon exercise of the Warrant, except under circumstances that will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws, and (c) the holder is an "accredited investor" as that term is defined in Rule 50l(a) of Regulation D under the Securities Act of 1933, as amended.

(3) Please issue a certificate or certificates representing such shares of Common Stock in the name of the undersigned holder or such other name as is specified below:

(Name)

(4) Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned holder and delivered to the holder at the address set forth below:

Printed Name of Holder

Signature of Holder

Date

Address:

ASSIGNMENT FORM

FOR VALUE RECEIVED, the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under the attached Warrant, with respect to the number of shares of Common Stock set forth below:

Name of Assignee	Address	No. of Shares

and does hereby irrevocably constitute and appoint the Secretary of Genetronics Biomedical Corporation, a corporation organized under the laws of the State of Delaware (the " *Company* ") as its true and lawful attorney-in-fact to make such transfer on the books of the Company, maintained for that purpose, with full power of substitution in the premises.

Printed Name of Holder (must correspond exactly to the name on the face of the Warrant)

Signature of Holder

Title of Signing Officer or Agent if Holder is Not an Individual

Date

The undersigned Assignee represents and warrants to the Company that this Warrant and the shares of stock to be issued upon exercise hereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of the Warrant or any shares of stock to be issued upon exercise hereof except under circumstances which will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws. Further, the undersigned Assignee represents and warrants that upon exercise of this Warrant, the Assignee shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the shares of stock so purchased are being acquired for investment and not with a view toward distribution or resale.

Printed Name of Assignee

Signature of Assignee

Date

EXHIBIT A

Names of Owners; Percentage Interests

Name of Owners	Percentage Interests
Collins Development Company	15.742%
Arlin Miller Multiples, a California limited partnership	26.3395%
Roger R. and Sally J. Post, Trustees of the Roger R. Post Family Trust dated January 7, 1983	26.3395%
Tatiana Lansche, Trustee of the Lansche Trust A of the Lansche Family Trust dated March 31, 2000	7.89475%
Tatiana Lansche, Trustee of the Lansche Trust C of the Lansche Family Trust dated March 31, 2000	7.89475%
Kent M. Scudder, Trustee of the Kent M. Scudder Family Trust dated January 11, 1985	15.7895%
TOTAL	100%

Exhibit 4.16

GENETRONICS BIOMEDICAL CORPORATION COMMON STOCK PURCHASE WARRANT
NOTICE OF EXERCISE
ASSIGNMENT FORM
EXHIBIT A Names of Owners; Percentage Interests

Exhibit 10.16

STANDARD INDUSTRIAL NET LEASE

CENTER NAME:	**SORRENTO CENTRE**
LANDLORD:	**SORRENTO CENTRE TENANCY IN COMMON**
TENANT:	**GENETRONICS BIOMEDICAL CORPORATION, a Delaware corporation**

STANDARD INDUSTRIAL NET LEASE
(Genetronics Biomedical Corporation)

This STANDARD INDUSTRIAL NET LEASE (" **Lease** "), dated for reference purposes only November 29, 2004, is entered into by SORRENTO CENTRE TENANCY IN COMMON (" **Landlord** "), and GENETRONICS BIOMEDICAL CORPORATION, a Delaware corporation (" **Tenant** ").

1. BASIC LEASE TERMS.

The basic terms of the Lease set forth in this Article 1 shall be read in conjunction with the other Articles of this Lease, which define and explain the basic terms.

1.1 **Address for Notice** (see Section 24.19):

Landlord: 11750 Sorrento Valley Road, Suite 209
San Diego, California 92121
Attention: Sorrento Centre Property Management

Tenant; At the Premises

1.2 **Description of Premises:**

Center Name: Sorrento Center

Address: 11494 Sorrento Valley Road
San Diego, California 92121

Suite/Unit: A

Approximate Rentable Square Footage (see **Exhibit "A"**); 22,867

1.3 **Commencement Date:** March 1, 2005.

1.4 **Lease Term** (see Article 3): Five (5) years and -0- months, beginning on the Commencement Date and ending on February 28, 2010 (the " **Expiration Date** "). Tenant has one, 5 year Option at Fair Market Rental Value, as set forth in Section 3.4 below.

1.5 **Minimum Monthly Rent** : $37,730,55 per month for the first through fourth Lease Years, as provided in Article 4 and $40,017.25 per month for the fifth Lease Year.

1.6 **Security Deposit** : $132,000 (see Article 5).

1.7 **Tenant's Pro Rata Share** (see Article 6): 74.1%.

1.8 **Permitted Use** (see Article 11): Laboratory, light manufacturing, and general office uses, and for no other use.

1.9 **Tenant's Guarantor** (If none, so state): None

1.10 **Tenant's Parking Spaces** (Unassigned) (see Section 11.6): 69

1.11 **Landlord's Brokers** (If none, so state): Asset Management Group; Burnham Real Estate Services

Tenant's Broker (If none, so state): Phase 3 Properties, Inc.

1.12 **Tenant Improvement Allowance:** $300,000 (the **"Allowance"**), in accordance with the Construction Addendum to Standard Industrial Net Lease attached hereto and made a part hereof.

1.13 **Exhibits** : The following Exhibits and Addendum are attached to and made a part of this Lease:

Exhibit "A"	— Description of Premises
Exhibit "B"	— Rules and Regulations
Exhibit "C"	— Sign Criteria
Exhibit "D"	— List of Hazardous Materials Used by Tenant (Section 14.2)
Exhibit "E"	— List of Modular Work Stations, Equipment And Furniture
Addendum	— Construction Addendum to Standard Industrial Net Lease

2. LEASE OF PREMISES.

2.1 **The Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises (the **"Premises"**) described in Section 1.2, which Premises are indicated on the site/floor plan attached as **Exhibit "A"** . The Premises are part of the office or industrial center identified in Section 1.2 (the **"Center"**). The approximate Rentable Square Footage identified in Section 1.2 is a measurement of the leaseable floor area of the Premises, as determined by Landlord and applied on a consistent basis throughout the Center. As used herein, the term **"Building"** means the building of which the Premises are a part; if the Premises encompasses the entire Building, then the terms "Premises" and "Building" shall have the same meanings.

2.2 **Modular Furniture.** In connection with its use of the Premises, Tenant shall have the right to use the modular work stations, equipment and furniture currently located in the Premises (collectively, the **"Modular Furniture"**). An inventory of the Modular Furniture is attached hereto as Exhibit "E". Notwithstanding anything to the contrary contained here, all of the Modular Furniture shall remain the Property of Landlord and shall be surrendered to Landlord with the Premises upon expiration or earlier termination of this Lease in the same condition as received, reasonable wear and tear excepted. Tenant shall accept such Furniture in its "as-is" condition without any representation or warranty by Landlord.

3. LEASE TERM.

3.1 **Commencement.** The term of this Lease (the **"Lease Term"**) shall commence on the Commencement Date stated in Section 1.3 and shall continue for the period stated in Section 1.4, unless sooner terminated pursuant to any provision of this Lease.

3.2 **Delay In Commencement.** If Landlord cannot deliver possession of the Premises to Tenant on the Commencement Date specified in Section 1.3 for any reason, Landlord shall not be subject to any liability therefor. Such nondelivery shall not affect the validity of this Lease nor the obligations of Tenant hereunder. However: (a) Tenant shall not be obligated to pay rent until possession of the Premises is delivered to Tenant, (b) if possession of the Premises is not delivered to Tenant within thirty (30) days of the Commencement Date, the last day of the Lease Term shall be extended by the total number of days that possession is so delayed, plus the minimum number of additional days necessary to make the Expiration Date the last day of a calendar month, and (c) if Landlord has not delivered possession of the Premises within ninety (90) days after the Commencement Date, Tenant may elect to terminate this Lease by delivering written notice to Landlord within ten (10) days

thereafter, in which event the parties shall be discharged from all further obligations hereunder, provided that Landlord shall return to Tenant any security deposit and prepaid rent paid by Tenant.

3.3 **Early Occupancy.** Tenant shall be entitled to immediate occupancy of the Premises upon mutual execution of this Lease, prior to the Commencement Date; provided however, such occupancy shall be subject to all provisions of this Lease, other than the payment of Minimum Monthly Rent or Additional Rent. Such early occupancy shall not advance the Expiration Date. Tenant shall pay for any utilities actually consumed during such early occupancy period.

3.4 **Option to Extend.**

(a) Tenant shall have the option (the **"Option"**) to extend the term of this Lease for one (1) additional period (**"Option Term"**) of five (5) years upon all of the terms and conditions of this Lease, other than the Minimum Monthly Rent, which shall be determined as described below. The Option must be exercised, if at all, by Tenant giving Landlord written notice of the exercise thereof no more than twelve (12) and no less than eight (8) months prior to the expiration of this Lease Term (as extended by any previously duly exercised Option). Any failure of Tenant to give due notice of its exercise of the Option within the required time shall constitute an irrevocable election on the part of Tenant not to exercise the Option, and this Lease shall expire at the end of the Term. Tenant shall have no other right to extend this Lease Term beyond the Option Term described herein. Notwithstanding anything set forth herein to the contrary, if on the date of giving the notice, there exists any Event of Default on the part of Tenant under this Lease, this Section shall be void. Tenant's notice shall be ineffective, the Option Term shall not commence and this Lease shall expire as scheduled. In addition, any due exercise of the Option hereunder shall be voidable by Landlord if, at the time of such exercise, there existed any condition of default on the part of Tenant that Tenant thereafter fails to cure within any applicable notice and/or cure period.

(b) The Minimum Monthly Rent during the Option Term initially shall be the "Fair Market Rental Value" of the Premises, as defined below, as of the first day of the Option Term; provided, however, that in no event shall the Minimum Monthly Rent for any portion of the Option Term be less than the Minimum Monthly Rent in effect for the last month of the Term immediately preceding the commencement of the Option Term, regardless of any determination of a Fair Market Rental Value pursuant to the other provisions of this Section that would result in a lower Minimum Monthly Rent.

(c) Upon exercise of the Option, Landlord and Tenant shall, in good faith, attempt to reach a mutually acceptable Fair Market Rental Value of the Premises and consequent Minimum Monthly Rent for the Option Term. If Landlord and Tenant cannot agree upon the Fair Market Rental Value within thirty (30) days of Tenant's exercise of the Option, then, each party shall make a separate determination of the Fair Market Rental Value within five (5) business days thereafter and, concurrently exchange such determinations and such determinations shall be submitted to arbitration as set forth below, Within ten (10) days thereafter, Landlord and Tenant shall each select and notify the other of the name of an " **Evaluator** ," who, for purposes of this Section, shall be an independent and impartial real estate professional (such as a licensed real estate agent) having more than ten years' experience in the leasing of space comparable to the Premises. The determination of the Evaluators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Value is the closest to the actual Fair Market Rental Value, as determined by the Evaluators, taking into account the requirements of this Section 3.4 (i.e., the arbitrators may only select Landlord's or Tenant's determination and shall not be entitled to make a compromise determination). In the event the Evaluators cannot agree on the actual Fair Market Rental Value, each Evaluator shall promptly proceed to select a third Evaluator, who shall have the aforesaid qualifications of an Evaluator. The three Evaluators shall determine the Fair Market Rental Value of the Premises and shall deliver to both Landlord and Tenant a copy of such

determination within thirty (30) days after the appointment of the third Evaluator. The parties agree that the Evaluators' determination as aforesaid shall be considered as the Fair Market Rental Value of the Premises and shall be conclusive and binding upon Landlord and Tenant. If the original two Evaluators shall fail to agree upon the selection of a third Evaluator, the same shall be designated by the president of the San Diego Board of Realtors, or any successor organization thereto. Landlord and Tenant shall each pay any fees of their own Evaluator and shall share equally the fees of the third Evaluator, if As used herein, the term "Fair Market Rental Value" shall mean the then-prevailing rental for space comparable to the Premises in the Sorrento Valley area of the City of San Diego that a willing, comparable Tenant would pay to a willing Landlord, neither of whom is compelled to rent, at arms length on all of the terms and conditions of the Lease (other than the Minimum Monthly Rent, which is to be determined pursuant to this Section). The determination of Fair Market Rental Value shall also include any appropriate adjustments over the term of the Option Term in the Minimum Monthly Rent based on the cost of living, fixed rate, or otherwise.

(d) No brokerage commissions or fees shall be payable by Landlord in connection with any extension of the Lease Term pursuant to the Option contained in this Section.

3.5 **Right of First Offer on Remainder of Building.** Provided that, at the time Tenant is entitled to any benefit under this Section, there exists no Event of Default on the part of Tenant under this Lease nor any condition that with the giving of notice or the passage of time or both would constitute an Event of Default on the part of Tenant under this Lease, Landlord agrees that it will offer to lease any unleased portion of the Building adjacent to the Premises (the **"Additional Space"**) to Tenant prior to offering the Additional Space to any other person. Such offer shall be in writing and shall specify all of the economic terms upon which Landlord is willing to Lease the Additional Space to Tenant. Tenant shall have ten (10) days after receipt of such offer to accept or reject the same. Tenant's failure to accept the same in writing unconditionally and without change within such 10-day period shall constitute a rejection of such offer. The rental rate and term of occupancy applicable to the Additional Space shall be as determined by Landlord in its sole discretion. If Landlord's offer is rejected or deemed rejected, then Landlord shall be free to let the Additional Space to any person, on terms and conditions determined by Landlord (which shall not be more economically advantageous than those offered to Tenant unless Landlord re-offers such more economically advantageous terms to Tenant). If Landlord has not received a proposal from a potential tenant that leads to the consummation of a lease for the Additional Space within six (6) months of the date Tenant rejects or is deemed to have rejected Landlord's offer, then Landlord shall not let the Additional Space without re-offering the same to Tenant pursuant to the terms of this Section. No brokerage commissions or fees shall be payable by Landlord in connection with any such expansion. This Section shall not apply (i) to any use or leasing of the Additional Space by Landlord or any affiliate of Landlord, (ii) to the renewal or modification of the lease of any then-existing tenant, or (iii) the exercise of any option to extend the term of any lease or the exercise of or any other right held by any other tenant of the Center as of the date of this Lease.

4. RENT.

4.1 **Minimum Monthly Rent.**

(a) **Minimum Monthly Rent.** Tenant shall pay minimum monthly rent (**"Minimum Monthly Rent"**) in the initial amount stated in Section 1.5. The Minimum Monthly Rent shall be increased as set forth in Section 1.5 and/or elsewhere in this Lease. Tenant shall pay the Minimum Monthly Rent on or before the first day of each calendar month, in advance, at the office of Landlord or at such other place designated by Landlord, without deduction, offset or prior demand. If the Commencement Date is not the first day of a calendar month, the rent for the partial month at the beginning of the Lease Term shall be prorated on a per diem basis and shall be due on the

first day of such partial month. Upon execution of this Lease, and before the Commencement Date, Tenant shall pay to Landlord the aggregate of the first month's Minimum Monthly Rent, the first month's Monthly Impound Payment (see Section 4.4), and the Security Deposit (see Article 5).

(b) **Abated Rent.** One-half of the Minimum Monthly Rent for the Last Month of the First Lease Year and the Last Month of the second Lease Year shall be abated, provided Tenant is not in default under any of the terms of this Lease. During such rental concession periods (i.e., the months during which the Minimum Month Rent is partially abated), Tenant shall pay its full share of Additional Rent and other charges hereunder.

(c) **Conditional Abatement.** The abated rental described in subsection (b) above, together with the cost of any unamortized tenant improvements made to the Premises pursuant to this Lease are collectively referred to herein as the "rent concession." The rent concession is granted to Tenant on the condition that Tenant complete the term of the Lease, and perform all of its obligations throughout the entire term of the Lease, including timely payment of all rent and other charges due hereunder. The full amount of the rent concession (or so much thereof as Tenant may have received the benefit at the time) shall become immediately due and payable upon the occurrence of any Event of Default on the part of Tenant which results in a termination of this Lease. In addition to all other remedies of Landlord, Landlord shall have the right to include the full amount of the rent concession (or so much thereof as Tenant may have received the benefit at that time) in its demand in any Three-Day Notice to Pay Rent or Quit that Landlord may give Tenant hereunder.

4.2 **Lease Year.** As used in this Lease, the term **"Lease Year"** means (i) the first period of twelve (12) full calendar months following the Commencement Date (including, if the Commencement Date is not the first day of a calendar month, the period between the Commencement Date and the next first day of the month), (ii) each period of twelve (12) full calendar months thereafter, and (iii) any remaining period at the end of the Lease Term of less than twelve (12) full calendar months.

4.3 **Additional Rent.** All charges payable by Tenant for Operating Costs (Article 6), Maintenance and Repairs (Article 7), Real Property Taxes (Article 8), Insurance Costs (Article 9), and Utilities (Article 10) are hereinafter referred to herein as " **Additional Rent** ." All Minimum Monthly Rent, Additional Rent, and all other charges and monetary amounts due Landlord from Tenant under this Lease or otherwise shall constitute " **rent** ." Unless this Lease provides otherwise, all Additional Rent shall be paid by Tenant, without limitation or offset, within thirty (30) days after Tenant's receipt of a statement from Landlord. If any Minimum Monthly Rent is abated or waived pursuant to another specific term of this Lease or in any separate agreement, it is understood that such abatement or waiver shall apply only to the Minimum Monthly Rent, and Tenant shall be obligated to pay all Additional Rent and other charges (including the applicable impounds thereof) during such periods of abatement or waiver of Minimum Monthly Rent.

4.4 **Impounds.** Landlord shall have the right, but not the obligation, to collect and impound, in advance, any or all components of Additional Rent based upon Landlord's reasonable estimate of Tenant's future liability for such amounts under this Lease. Landlord shall initially establish the monthly amount of such impound (**"Monthly Impound Payments"**), based upon its estimate of one-twelfth of Tenant's annual liability therefor. Landlord shall have the right at any time to adjust the amount of the Monthly Impound Payment upon notice to Tenant. The Monthly Impound Payment shall be due and payable on the first day of each month throughout the Lease Term. Any failure to pay the Monthly Impound Payment when due shall be considered a failure to pay rent when due under Section 21(a) and other relevant provisions of this Lease, and shall entitle Landlord to exercise any or all of its remedies available in the same manner as for the failure to pay rent. Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the right to apply all unapplied

amounts of Monthly Impound Payments to Tenant's default. Within ninety (90) days after the end of each calendar year, Landlord shall deliver to Tenant an accounting of Tenant's actual Share of Additional Rent and the estimated amounts previously paid by Tenant. Any overpayment by Tenant shall be credited against next Monthly Impound Payments due hereunder, or, if the Term has expired, shall be remitted to Tenant. Tenant shall pay the amount of any underpayment within thirty (30) days after receipt of the accounting. Tenant acknowledges that the Monthly Impound Payments are estimates only and not a representation of the amount of Tenant's ultimate liability for Additional Rent.

4.5 **Payment by EFT or ACH.** At Landlord's election, and upon at least thirty (30) days' notice to Tenant, Landlord may require that all payments of Minimum Monthly Rent, Additional Rent and other amounts due hereunder be made in immediately available funds or by wire transfer by electronic fund transfer through the Automated Clearing House network or any similar system designated by Landlord (**"ACH"**). Such payments shall be initiated by Tenant or Landlord, at Landlord's election, to an account designated from time to time by Landlord at an ACH member bank for settlement not later than 12:00 o'clock noon, San Diego, California time, on the dates such sums or payments are respectively due. Any payment received after such time shall be deemed to have been made after the due date.

5. SECURITY DEPOSIT. Upon execution of this Lease, Tenant shall deposit with Landlord the amount specified in Section 1.6 (the "Security Deposit"), to be held by Landlord, without liability for interest, as security for Tenant's performance of its obligations under this Lease. Landlord shall not be required to keep the Security Deposit separate from its other accounts. Landlord may apply all or a part of the Security Deposit to any unpaid rent (including unpaid Additional Rent or Monthly Impound Payments) or other monetary payments due from Tenant after expiration of all applicable notice and cure periods or to cure any other default of Tenant hereunder and to compensate Landlord for all damage and expense sustained as a result of such default. If all or any portion of the Security Deposit is so applied, Tenant shall deposit cash sufficient to restore the Security Deposit to its original amount within fifteen (15) days after receipt of Landlord's written demand. If Tenant is not then in default upon the termination of this Lease, the Security Deposit or any balance thereof shall be returned to Tenant within thirty (30) days of the later of the expiration or earlier termination of this Lease or the vacation of the Premises by Tenant. At Landlord's request, Tenant shall accompany Landlord or Landlord's representative on a "walk-through" of the Premises prior to Landlord's return of the Security Deposit.

6. OPERATING COSTS.

6.1 **Payment of Operating Costs by Tenant.** Tenant shall pay its Share of Operating Costs to Landlord on a monthly or other periodic basis selected by Landlord. Tenant shall pay the amount of such Share to Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.4, within thirty (30) days after receipt of a statement from Landlord.

6.2 **Tenant's Share.** Tenant's **"Share"** is the percentage or proportion of the various components of Additional Rent and certain other charges for which Tenant is responsible under this Lease. Tenant's Share for each such component shall be Tenant's Pro Rata Share as stated in Section 1.7, unless Landlord determines that another percentage or proportion would be equitable based on factors such as Tenant's use of such in excess of its Pro Rata Share, such component of Additional Rent applies to some but not all of the Center, or factors set forth elsewhere in this Lease. Tenant's Pro Rata Share represents the approximate current ratio of the Rentable Square Footage of the Premises (identified in Section 1.2) to the total Rentable Square Footage of the Center, as determined by Landlord from time to time. Changes in Rentable Square Footage shall be effective on the first day of the first calendar month following the change.

6.3 **Operating Costs.** **"Operating Costs"** includes all costs of operating, managing, repairing and maintaining the Common Facilities, including without limitation: gardening and landscaping; the cost of public liability, property damage and other insurance applicable to the Common Facilities, including any deductibles thereunder; Real Property Taxes applicable to the Common Facilities; utilities; line painting and parking lot repairs; roof repairs; lighting; trash and refuse removal; supplies; equipment; exterior painting; capital improvements (including without limitation the costs of roof, parking lot and underground utilities replacements) (subject to phrase (xv) below); reasonable reserves for repairs and replacements; the costs of altering, improving, renovating, upgrading or retrofitting any portion of the Common Facilities to comply with all laws, regulations and governmental requirements applicable to the Center (including without limitation those related to disabled persons, hazardous materials, lighting upgrades, sprinkler and energy-saving retrofits); security service; property management costs and administrative fees; bookkeeping services; labor; and the cost of personnel to implement such services and to direct parking. In lieu of including the entire amount of any such expense in Operating Costs in any one period, Landlord, at its election, may spread the inclusion of, or may amortize, any such expenses, or a reasonable reserve for anticipated expenses, in Operating Costs over such multiple periods as Landlord shall determine. Notwithstanding the foregoing, Operating Costs shall not include: (i) any ground lease rental; (ii) capital expenditures required by Landlord's failure to comply with laws prior to the Commencement Date; (iii) costs incurred by Landlord with respect to goods and services (including utilities sold and supplied to tenants of the Center) to the extent that Landlord is entitled to full reimbursement for such costs from others; (iv) costs incurred by Landlord for the repair of damage to the Center to the extent that Landlord is reimbursed by insurance proceeds; (v) costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for other tenants in the Center or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for other tenants of the Center; (vi) depreciation and amortization (except as described herein); (vii) leasing commissions, attorneys' fees, and other costs and expenses incurred in connection with negotiations or disputes with other present or prospective tenants of the Center; (viii) expenses in connection with services or other benefits for which another tenant of the Center is charged directly in full; (ix) costs incurred by Landlord due to the violation by Landlord or any other tenant of the terms and conditions of any lease of space in the Center or any violation by Landlord of the terms of any ground lease or mortgage affecting the Center; (x) overhead and profit increments paid to Landlord or to subsidiaries or affiliates of Landlord for services in the Center to the extent the same exceeds the costs of such services rendered by unaffiliated third parties on a competitive basis; (xi) interest, points and fees on debt or amortization on any mortgage or mortgages encumbering the Building; (xii) Landlord's general corporate overhead and general administrative expenses; (xiii) advertising and promotional expenditures; (xiv) electric power costs for which any other tenant directly contracts with the local public service company; (xv) the cost of any capital item of expense the cost of which exceeds $10,000, provided, however that Landlord may include in Operating Costs the amortized cost of such item spread over its useful life (no greater that the minimum number of years allowed pursuant to the United States Revenue Code) over the Lease Term, starting in the calendar year or other accounting period in which the such cost is incurred; and (xvi) management fees in excess of t four percent (4%) of the then-effective Minimum Monthly Rent.

6.4 **Common Facilities.** **"Common Facilities"** means all areas, facilities, utilities, equipment and services provided by Landlord for the common use or benefit of the occupants of the Center and their employees, agents, customers and other invitees, including without limitation, if the same exist: building lobbies, common corridors and hallways, restrooms, pedestrian walkways, driveways and access roads, access facilities for disabled persons (including elevators), truck serviceways, loading docks, garages, driveways, parking lots, landscaped areas, stairways, elevators, retaining walls, all areas required to be maintained under the conditions of governmental approvals for the Center, and other generally understood public or common areas. Landlord reserves the right to relocate, alter, improve, or adjust the size and location of any Common Facilities from time to time without liability to Tenant.

6.5 **Tenant's Limited Audit Rights.** Provided that no Event of Default then exists on the part of Tenant, Tenant shall have the right to perform, or to have its authorized representatives or accountants perform, at Tenant's sole cost an audit of Landlord's books and records that reflect Additional Rent to verify Landlord's calculation of Additional Rent for the prior calendar year or other relevant accounting period. Landlord shall maintain its books and records with respect to such accounting period for a period of at least one (1) year following the date it gives its annual statement or reconciliation of Additional Rent for such period. Such audit shall not be conducted by any person or firm whose fees are based, directly or indirectly, in whole or in part, upon a percentage of recovery or other contingency fee calculation. A complete copy of Tenant's auditor's report and the determinations set forth therein ("Tenant's Auditor's Report") shall be delivered to Landlord within fifteen (15) days of receipt by Tenant. Any such audit shall be commenced, if at all, (i) within six (6) months after the receipt of the annual statement or reconciliation of Additional Rent from Landlord, (ii) during Landlord's normal business hours, (iii) at the place where Landlord maintains its records (or such other place as Landlord shall choose to deliver the appropriate records), and (iv) only after Landlord has received fifteen (15) days' prior written notice. Tenant shall reimburse Landlord for any costs incurred by Landlord as a result of complying with the requests of Tenant's auditor. All information obtained by Tenant or Tenant's auditors as a result of any audit shall be treated as confidential except in any litigation or proceeding between Landlord and Tenant. Tenant's Auditor's Report shall be binding on Tenant. Tenant's Auditor's Report shall be binding on Landlord only if Landlord agrees with such audit; if Landlord disagrees with such audit, Landlord shall notify Tenant of such disagreement, and the matter shall thereafter be submitted to binding arbitration under Section 24.2. If Tenant's Auditor's Report reflects that Tenant paid less Additional Rent than was due for the audited calendar year, Tenant shall within twenty (20) days after receipt of such report pay to Landlord the amount of such underpayment. If Tenant's Auditor's Report is binding on Landlord and reflects that Tenant paid excess Additional Rent for the audited calendar year, Landlord shall allow Tenant a credit against the next accruing installment of Additional Rent in the amount of such overpayment (or if such credit will not be fully utilized within six months, Landlord shall refund to Tenant the amount of the adjustment that would not be so utilized). No subtenant shall have any right to conduct an audit and no assignee shall conduct an audit for any period during which such assignee was not in possession of the Premises. Notwithstanding the foregoing, no such audit shall be conducted if any other tenant has conducted an audit with respect to the time period Tenant intends to audit and Landlord furnishes to Tenant a copy of the results of such audit. Notwithstanding the foregoing, if Tenant's audit reveals that Landlord's calculation of Additional Rent for the prior calendar year exceeds, by more than five percent (5%), the actual calculation of such Additional Rent for such year or other relevant accounting period, Landlord shall pay the cost of such audit.

7. MAINTENANCE AND REPAIRS.

7.1 **Tenant's Obligations.** Except as provided in Section 7.2, Tenant, at its sole cost, shall keep the Premises in good order, condition and repair during the Lease Term, including without limitation: all nonstructural, interior and exterior areas; all heating, ventilation and air conditioning systems and equipment within the Premises or exclusively serving the Premises; all glass, glazing, windows, window moldings, partitions, doors and door hardware; all interior painting; all fixtures and appurtenances in the Premises or exclusively serving the Premises including electrical, lighting and plumbing fixtures; and all other portions of the Premises seen or unseen. If any portion or element of the Premises, or the other systems or equipment for which Tenant is responsible hereunder cannot be fully repaired, Tenant shall promptly replace the same at its sole cost and expense regardless of whether the benefit of such replacement extends beyond the Lease Term. It is the intention of Landlord and Tenant that Tenant shall maintain the Premises, at all times during the Lease Term, in an attractive, first-class and fully operative condition, at Tenant's expense. If any heating and air conditioning system or equipment exclusively serves the Premises, Tenant shall additionally obtain and keep in force a preventive

maintenance contract providing for the regular (at least quarterly) inspection and maintenance of the heating and air conditioning system (including leaks around ducts, pipes, vents, and other parts of the air conditioning) by a reputable licensed heating and air conditioning contractor acceptable to Landlord. Prior to April 1 of each calendar year, Tenant shall deliver Landlord written confirmation from such contractor verifying that such a contract has been entered into and that the required service will be provided. Notwithstanding the foregoing, Landlord shall have the right, upon written notice to Tenant, to undertake the responsibility for preventive maintenance and repair of the heating and air conditioning system, at Tenant's sole cost and expense should Tenant fail to do so.

7.2 **Landlord's Obligations.** Landlord shall repair, replace and maintain the Common Facilities, the roof, the foundations and structural portions of the Premises and the Building. Tenant shall pay (a) its Share of the costs of such maintenance, (b) the full amount of any maintenance and repairs necessitated by any act, omission, conduct or activity of, or breach of this lease by, Tenant or any of Tenant's officers, agents, customers or invitees other than normal wear and tear (plus fifteen percent (15%) of the cost thereof to reimburse Landlord for overhead), provided that Landlord shall have first notified Tenant of the need for the maintenance and repair and provided Tenant with a reasonable time to remedy the same; and (c) any maintenance and repairs necessitated by breaking and entering of the Premises. Tenant shall pay its Share of such maintenance and repair costs incurred by Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.4, within thirty (30) days after receipt of a statement from Landlord. There shall be no abatement of rent, and no liability of Landlord, by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations, or improvements to any portion of the Premises or the Center, except to the extent arising from Landlord's gross negligence or willful misconduct. Except as provided in Article 16 (Damage and Destruction) and Article 17 (Condemnation), Landlord shall have absolutely no other responsibility to repair, maintain or replace any portion of the Premises at any time. Tenant waives the right to make repairs at Landlord's expense under California Civil Code Section 1942, or under any other law, statute or ordinance now or hereafter in effect. Landlord's obligations under this Section are not intended to alter or modify in any way the provisions of Article 12.

7.3 **Performance By Landlord.** If Tenant refuses or neglects to perform its maintenance obligations hereunder to the reasonable satisfaction of Landlord, Landlord shall have the right (but not the obligation), upon ten (10) business days' prior notice to Tenant, to enter the Premises and perform such repairs and maintenance on behalf of Tenant. In addition, Landlord shall have the right (but not the obligation), to shorten the notice period described in the preceding sentence to fewer than ten (10) business days, or to no notice at all, if reasonable and necessary to prevent material damage or injury to persons or property, including entry to correct or remove any dangerous or hazardous condition, to repair the heating, ventilation, air conditioning or plumbing systems, to correct, repair or bring into legal compliance any fire or other life safety systems of the Premises, and to repair or replace any broken glass or glazing. Landlord shall not be liable to Tenant for any loss or damage to Tenant's merchandise, fixtures, or other property or to Tenant's business in connection with Landlord's performance hereunder, and Tenant shall pay Landlord's costs plus fifteen percent (15%) of such amount for overhead within thirty (30) days of presentation of a statement therefor.

8. REAL PROPERTY TAXES.

8.1 **Payment of Real Property Taxes by Tenant.** Tenant shall pay all Real Property Taxes applicable to the Premises during the Lease Term. If the Premises are not separately assessed, Tenant shall pay its Share thereof as equitably determined by Landlord based upon the Rentable Square Footage of the Premises compared to the total Rentable Square Footage covered by the tax bill, the respective valuations assigned in the assessor's worksheet, and/or or other relevant factors. Tenant shall pay its Share of Real Property Taxes to Landlord, to the extent such obligation exceeds any amount

thereof impounded under Section 4.4, within thirty (30) days after receipt of a statement from Landlord.

8.2 **Real Property Taxes Defined.** **"Real Property Taxes"** means all taxes, assessments, levies, fees and other governmental charges levied on or attributable to the Premises or any part thereof, including without limitation: (a) real property taxes and assessments levied with respect to all or a portion of the Premises, (b) assessments, charges and fees charged by governmental agencies or districts for services or facilities provided to the Premises, (c) transfer, transaction, rental, gross receipts, license or similar taxes or charges measured by rent received by Landlord, excluding any federal or state income, franchise, estate or inheritance taxes of Landlord, (d) taxes based upon a reassessment of the Premises due to a transfer or change of ownership, and (e) any assessment, charge or fee that is a substitute in whole or in part for any tax now or previously included within the definition of Real Property Taxes. If Landlord elects to contest an assessment of any Real Property Taxes, Landlord shall have the right to recover its actual costs of such contest (including attorneys' fees and costs) as part of Real Property Taxes, but only to the extent such contest has resulted in a reduction of Real Property Taxes. Tenant shall not be entitled to the benefit of any reduction, refund, rebate or credit accruing or payable to Landlord prior to the commencement of or after the expiration or other termination of the Lease Term.

8.3 **Personal Property Taxes.** Tenant shall pay prior to delinquency all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall attempt to have such personal property taxed separately from the Premises. If any such taxes on Tenant's personal property are levied against Landlord or the Premises, or if the assessed value of the Premises is increased by inclusion of a value placed upon such personal property of Tenant, then: (a) Landlord, after written notice to Tenant, shall have the right to pay the taxes levied against Landlord, or the taxes based upon such increased valuation, but under protest if so requested by Tenant in writing, and (b) Tenant shall pay to Landlord the taxes levied against Landlord, or the taxes resulting from such increased valuation, within fifteen (15) days after Tenant's receipt of a written statement from Landlord.

9. INSURANCE.

9.1 **Landlord's Insurance.** During the Lease Term, Landlord shall maintain insurance covering loss or damage to the Premises (excluding Tenant's Alterations, fixtures, equipment and personal property), insuring against any or all risks of physical loss (and including, at Landlord's option, flood and earthquake coverage), with the scope and amounts of such coverage as determined by Landlord. Said insurance shall provide for payment of loss thereunder to Landlord or to the holder of a first mortgage or deed of trust on the Premises. Landlord may also maintain during the Lease Term, as part of its casualty insurance, a policy of rental income insurance covering a period of one (1) year, with loss payable to Landlord. Landlord may also maintain (but shall not be required to maintain) liability and other insurance (including environmental insurance) as Landlord may, at its sole option, elect to maintain.

9.2 **Tenant's Insurance.**

(a) Tenant shall carry, at Tenant's sole expense, insurance against any or all risks of physical loss in an amount adequate to cover the cost of replacement of all of Tenant's Alterations, trade fixtures, equipment and personal property. Tenant acknowledges that Landlord's insurance is not intended to cover Tenant's Alterations, trade fixtures, equipment, and personal property. At Landlord's request, Tenant shall carry boiler and machinery broad form insurance in such reasonable amount as Landlord may require based upon Tenant's use of the Premises. If the Premises contains any plate glass, Tenant shall carry plate-glass insurance covering all plate glass on the Premises at full replacement cost. Any policy proceeds shall be used by Tenant for the

repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 16, in which case any insurance proceeds covering any of Tenant's Alterations, and fixtures, that Tenant is required to leave in the Premises at the expiration or earlier termination of the Lease Term under Article 20 shall be paid to Landlord. At Landlord's sole election, if Tenant fails to carry any or all of the insurance required of it under this Section, Landlord may obtain at Tenant's expense any or all of the insurance described in this Section that Tenant fails to obtain.

(b) Tenant shall carry, at Tenant's sole expense, comprehensive or commercial general liability insurance, fully covering any and all claims arising from personal injury, death, and/or property damage occurring in or about the Premises or the Center. Such liability insurance shall include without limitation bodily injury (including wrongful death), property damage, advertising injury, personal injury and contractual liability coverages (including Tenant's indemnification obligations under Article 13), independent contractors, owned, nonowned, and hired vehicle liability and, if alcoholic beverages are served, sold, consumed or obtained in the Premises, liquor-law liability. The initial limit of such insurance shall be at least $2,000,000 combined single liability limit. Such liability insurance limit shall be subject to periodic increase, at Landlord's election, based upon inflation, increased liability awards, lender requirements, the recommendations of Landlord's professional insurance advisors, and other relevant factors. Tenant shall also, at its sole cost and expense, obtain worker's compensation coverage in an amount adequate to comply with law, and employer's liability coverage with a limit of not less than $2,000,000. If Tenant's use of the Premises involves any use, generation, manufacturing, storage or disposal of any Hazardous Materials, or if any of Tenant's activities increases any risk of any liability to Tenant or Landlord under Hazardous Materials Laws, Tenant shall carry such environmental insurance as may be required by Landlord or Landlord's lender. Tenant shall, at Tenant's sole expense, maintain such other liability insurance as Tenant deems necessary to protect Tenant.

(c) Each policy of insurance required to be carried by Tenant hereunder shall (i) name Landlord, Landlord's lender and Landlord's property manager (if any) as additional insureds, (ii) contain cross-liability and contractual liability provisions, (iii) provide that no cancellation or reduction in coverage shall be effective until thirty (30) days after written notice to Landlord and Landlord's lender, (iv) be issued by an insurer licensed in California and reasonably approved by Landlord, (v) include without limitation coverage for acts of terrorism, and (vi) be primary and noncontributory to any insurance carried by Landlord, regardless of the absence of negligence or other fault of Tenant for alleged injury, death and/or property damage. The deductible or self-insured retention on any insurance required to be carried by Tenant hereunder shall not exceed, without the prior written consent of Landlord, Five Thousand Dollars ($5,000) per occurrence. Tenant shall be responsible for the payment of the full amount of any deductible or self-insured retention on its insurance. No insurance carried or required to be carried by Tenant, nor the amount or limits thereof, shall limit Tenant's liability nor relieve Tenant of any obligation under this Lease.

(d) Each policy of insurance required to be carried by Tenant hereunder shall be obtained by Tenant and maintained in full force and effect during throughout the Lease Term and any other period of Tenant's actual or constructive possession of the Premises. Prior to the Commencement Date or any earlier taking of possession of any part of the Premises, Tenant shall deliver a certificate evidencing all such insurance to Landlord, together with additional insured endorsements in favor of Landlord's lender. Tenant shall deliver a renewal or binder of each required policy, together with all required insured endorsements, at least thirty (30) days prior to expiration thereof. Tenant shall permit Landlord at all reasonable times to inspect the policies of insurance and required endorsements, and to deliver copies thereof to Landlord within ten (10) days after Landlord's request therefor. Tenant shall be in material breach of this Lease if Tenant fails to obtain the insurance required under this Section, or if Tenant obtains insurance with terms, conditions and/or exclusions that are inconsistent with the requirements and terms of this Lease.

9.3 **Payment of Insurance Costs.** Tenant shall pay directly all premiums for its liability insurance required under Section 9.2 and for all other insurance Tenant elects to carry. Tenant shall pay the insurance premiums, or, where applicable, its Share thereof, for the insurance policies carried by Landlord described in this Article (**"Insurance Costs"**). If the Lease Term expires before the expiration of any such insurance policy, Tenant's liability for premiums shall be prorated on an annual basis. Tenant shall pay its Share of Insurance Costs to Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.4 , within fifteen (15) days after receipt of a statement from Landlord. If any insurance policy maintained by Landlord covers property other than the Center (under a so-called "blanket" policy or otherwise), Landlord shall reasonably apportion the premium therefor among the properties so covered. In addition, Landlord may include in Insurance Costs any deductible amount under Landlord's insurance policies, provided that if such deductible is payable in connection with a capital repair or capital replacement to the Premises, Landlord shall only include in Insurance Costs the amortized cost of such repair or replacement spread over its useful life (no greater that the minimum number of years allowed pursuant to the United States Revenue Code) over the Lease Term, starting in the calendar year or other accounting period in which the such repair or replacement is made. Tenant's Share of any such deductible shall be equitably determined by Landlord based upon, among other factors, the Rentable Square Footage of the Premises affected compared to the Rentable Square Footage of all other affected areas in the Center, and the Replacement Costs applicable to the damage to the Premises compared to that applicable to all other affected areas.

9.4 **Waiver of Subrogation.** Each party waives all rights of recovery against the other party and its officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, for any claims for loss, damage or injury to person or property caused by or arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried or required to be carried pursuant to this Lease. Each party shall cause each insurance policy obtained by it to provide that the insurer waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by such policy. If Landlord has contracted with a third party for the management of the Center, the waiver of subrogation by Tenant herein shall also run in favor of such third party.

9.5 **Tenant's Use Not to Increase Premium.** Tenant shall not keep, use, manufacture, assemble, sell or offer for sale in or upon the Premises any article that may be prohibited by, or that might invalidate, in whole or in part, the coverage afforded by, a standard form of fire or all risk insurance policy, provided that Landlord acknowledges and agrees that Tenant may use hazardous materials in the Premises in accordance with Article 14 of this Lease. Tenant shall pay the entire amount of any increase in premiums that may be charged during the Lease Term for the insurance that may be maintained by Landlord on the Premises or the Center resulting from the type of materials or products stored, manufactured, assembled or sold by Tenant in the Premises, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant's use of the Premises, a schedule issued by the entity making the insurance rate on the Premises showing the various components of such rate shall be conclusive evidence of the items and charges that make up the fire insurance rate on the Premises.

10. UTILITIES. Tenant shall pay the cost of alt water, gas, heat, light, power, sewer, telephone, refuse disposal, and all other utilities and services supplied to the Premises. Tenant shall make payments for all separately metered utilities, when due, directly to the appropriate supplier. Landlord shall have the right to require Tenant to install, at Tenant's sole expense, separate meters (or other submeter, device or monitor for the measurement of utility usage) for any utility for which a separate meter is not installed as of the Commencement Date. If any utilities or services are not separately metered or monitored with respect to the Premises, Tenant shall pay its Share thereof to Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4,4, within thirty (30) days after receipt of a statement from Landlord. If at any time during the Lease Term, electrical

power or any other utility is available to the Premises from multiple sources, Landlord shall have the right at any time and from time to time to contract for service from any company or companies providing electrical, telecommunication, or other utility service to the Building. Tenant shall cooperate with Landlord and all providers of electrical, telecommunication, or other utility service and, as reasonably necessary, allow Landlord and such providers reasonable access to the Premises and to the electric lines, feeders, risers, wiring and any other machinery or equipment within the Premises. Landlord shall in no way be liable or responsible for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interruption, interference or defect in the supply or character of the electricity or other utilities supplied to the Premises. Landlord makes no representation or warranty as the suitability of the utility service for Tenant's requirements, and no such change, failure, defect, unavailability or unsuitability shall constitute any actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant of any of its obligations under the Lease. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service, and no such failure or interruption shall entitle Tenant to terminate this Lease or abate the rent due hereunder.

11. USE.

11.1 **Permitted Use.** The Premises shall be used and occupied only for the permitted uses specified in Section 1.8, and shall not be used or occupied for any other purposes without the prior written consent of Landlord. Should Tenant desire to change its use, Tenant shall request Landlord's consent to such change in writing, and shall provide in writing such reasonably detailed information about the proposed new use as may be requested by Landlord. Landlord shall not unreasonably withhold its consent to any requested change of use, and shall have the right to impose reasonable restrictions on such new use. Factors that Landlord may take into account in granting or withholding its consent shall include, without limitation: (i) whether the proposed use is compatible with the character and tenant mix of the Center, (ii) whether the proposed use poses any increased risk to Landlord or any other occupant of the Center, (iii) whether any proposed Alterations to accommodate such proposed use might decrease the rental or sale value of the Premises or the Center, and (iv) whether Tenant has the requisite expertise and financial ability to successfully operate in the Premises with the proposed new use.

11.2 **Compliance with Legal Requirements.** Subject to Landlord's obligations set forth in Section 25.8 below, Tenant shall at all times and at its sole expense comply with all federal, state, local and other laws, ordinances, rules, regulations, orders, requirements, and recorded covenants and restrictions applicable to the Premises and its use of the Center whether now in force or hereafter in effect (including without limitation those related to disabled persons, access, hazardous materials, lighting upgrades, energy saving, and sprinkler and seismic retrofits, and those required because of Tenant's occupancy or the conduct of Tenant's business) (collectively, **"Legal Requirements"**). Tenant shall not do or permit anything to be done in or about the Premises in conflict with any Legal Requirement. Without limiting the generality of the foregoing, Tenant shall at its sole cost take all actions, make all alterations, install all additional facilities, and perform all work required to cause the Premises (under the control of Tenant) to comply with all Legal Requirements.

11.3 **Waste, Quiet Conduct.** Tenant shall not use or permit the use of the Premises in any manner that tends to create waste or a nuisance, that will cause objectionable noise or odors, or that may disturb the quiet enjoyment of any other tenant in the Center.

11.4 **Rules and Regulations.** Tenant shall comply with the Rules and Regulations for the Center attached as **Exhibit "B"** , as the same may be amended by Landlord from time to time, upon notice to Tenant.

11.5 **Signs.** Tenant shall have the right to monument, building and lobby signage. Any such signage shall be installed at Tenant's sole expense in strict conformance with Landlord's sign criteria attached hereto as **Exhibit "C"** . Tenant shall maintain all approved signs and other items described herein in good condition and repair at all times. All signs must be fabricated by a contractor selected by Landlord. Prior to construction of any such sign, a detailed drawing of the proposed sign shall be prepared by Landlord's contractor, at the sole expense of Tenant, and submitted to Landlord and Tenant for written approval. No sign, placard, pennant, flag, awning, canopy, or advertising matter of any kind shall be placed or maintained on any exterior door, wall or window of the Premises or in any area outside the Premises, and no decoration, lettering or advertising matter shall be placed or maintained on the glass of any window or door, or that can be seen through the glass, of the Premises without first obtaining Landlord's written approval. All signs and sign cases shall be considered fixtures and improvements and shall become the property of Landlord upon expiration or termination of this Lease. Tenant has no rights to signage at the Center except as set forth in this Section. Landlord shall have the right from time to time to revise the sign criteria. Within sixty (60) days after Tenant's receipt of written notice of any new sign criteria, Tenant shall, at Tenant's expense, remove all existing exterior signs and replace the same with new signs conforming to the new sign criteria (provided, however that this sentence shall not apply during the first five (5) Lease Years).

11.6 **Parking.** Tenant shall have the nonexclusive right, in common with others, to use the parking areas of the Center; provided, however, that Tenant shall not use more than the number of parking spaces designated in Section 1.10, or if no number of such spaces is so indicated, Tenant shall not use more than its reasonable share of parking spaces, as Landlord shall determine. Landlord reserves the right, without liability to Tenant, to modify the parking areas, to designate the specific location of the parking for Tenant and Tenant's customers and employees, and to adopt reasonable rules and regulations for use of the parking areas.

11.7 **Entry by Landlord.** Tenant shall permit Landlord and Landlord's agents to enter the Premises at all reasonable times for any of the following purposes: (a) to inspect the Premises, (b) to supply any services or to perform any maintenance obligations of Landlord, including the erection and maintenance of such scaffolding, canopies, fences, and props as may be required, (c) to make such improvements, replacements or additions to the Premises or the Center as Landlord deems necessary or desirable, (d) to post notices of nonresponsibility, (e) to place any usual or ordinary "for sale" signs, or (f) within six (6) months prior to the expiration of this Lease, to place any usual or ordinary "for lease" signs. No such entry shall result in any rebate of rent or any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises. Landlord shall give reasonable notice to Tenant prior to any entry except in an emergency or unless Tenant consents at the time of entry. If Tenant is not personally present to open and permit an entry into the Premises (after applicable prior notice to Tenant), at any time when for any reason an entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the same by a master key, or may forcibly enter the same without rendering Landlord or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Premises or any part thereof, except as otherwise specifically provided herein.

11.8 **Roof Penetrations and Equipment.**

(a) Tenant shall have the right, at its sole cost and expense and subject to Landlord's reasonable approval and any approvals required by the City of San Diego, to place telecommunications equipment, satellite dish(es) and antenna(e) together with all wiring or other connections therefor (collectively, the "Roof Items"), on the roof of the Building in a location reasonably designated by Landlord. If any such installation interferes with the operations or installations of any other tenant or of Landlord installed prior to the installation of Tenant's

equipment, Tenant shall, at its sole cost and expense, at Landlord's request relocate or modify its installation to eliminate any such interference.

(b) Landlord shall, at Tenant's cost, cooperate with Tenant in the procurement of necessary permits or zoning variances for the Roof Items and execute all documents required to obtain necessary permits or zoning variances.

(c) Tenant shall follow any reasonable recommendations of Landlord's roofing contractor with respect to the installation of the Roof Items. Following the installation of the Roof Items, Landlord's roofing contractor shall inspect the same and Tenant shall conduct such repairs, maintenance or other installations as may be recommended by Landlord's roofing contractor related to such installation. All such repairs as well as the costs of Landlord's roofing contractor in conducting such inspections, shall be borne by Tenant.

(d) In the event Landlord contemplates roof repair or requires access that requires temporary removal or relocation of the Roof Items, or which may result in an interruption in Tenant's telecommunication services, Landlord shall, if practicable, notify Tenant at least thirty (30) days prior to such contemplated work in order to allow Tenant to make other arrangements for such services. The cost or removal and re-installation of any Roof Items affected thereby shall be borne by Tenant. Tenant shall not be required to relocate any of its Roof Items to accommodate the needs of any other tenant or occupant of the Building.

(e) Tenant or its agents or representatives shall be permitted use of and access to the roof for the purposes stated herein. Tenant shall give Landlord at least ten (10) days prior notice of its intention to install any additional Roof Items and shall afford Landlord a reasonable opportunity to have its representative present during such installation.

(f) Upon termination of the Lease, Tenant shall disconnect and remove such Roof Items, and fully repair and restore the roof to the same condition than prior to installation of the Roof Items, normal wear and tear excepted. Tenant's obligations with respect to the Roof Items are identical to Tenant's obligations with respect to the Premises pursuant to the Lease, including without limitation maintenance, insurance and indemnification. Provided, however, that at the sole discretion of Landlord, Tenant may leave some or all of its Roof Items in place after the expiration or earlier termination of the Lease.

(g) The Roof Items may be used solely by Tenant in connection with Tenant's own business. Tenant acknowledges and agrees that the rooftop access for antenna(e) and communications devices is a valuable asset of Landlord's, and Landlord's ability to rent such rooftop access to other companies providing telecommunications services would be severely curtailed or impaired should Tenant offer the same rooftop access to persons or entities providing the same or similar services to others. Accordingly, the Roof Items shall not be in any way used, leased or made available to anyone other than Tenant, whether for free or at a charge, except (i) in connection with Tenant's business conducted in the Premises, (ii) in the instance of other companies transmitting information in common with information being transmitted as part of Tenant's own business.

(h) All Roof Items shall be placed a sufficient distance from the front of the Center parapet such that no Roof Items are visible from pedestrians or vehicles on any public street.

12. ACCEPTANCE OF PREMISES; NONLIABILITY OF LANDLORD; DISCLAIMER.

12.1 **Acceptance of Premises.** By taking possession hereunder, Tenant acknowledges that it has examined the Premises and accepts the condition thereof, subject to the provisions of Section 25.8 below. Tenant acknowledges and agrees that, subject to the provisions of Section 25.8 below, Landlord has no obligation to improve the Premises other than as set forth specifically in this Lease, if at all. In

particular, Tenant acknowledges that any additional improvements or alterations needed to accommodate Tenant's intended use shall be made solely at Tenant's sole cost and expense, and strictly in accordance with the requirements of this Lease (including the requirement to obtain Landlord's consent thereto), unless such improvements and alterations are specifically required of Landlord. Landlord shall have no responsibility to do any work required under any building codes or other governmental requirements not in effect or applicable at the time the Premises were constructed, including without limitation any requirements related to sprinkler retrofitting, seismic structural requirements, accommodation of disabled persons, or hazardous materials. Notwithstanding anything to the contrary contained herein, Landlord hereby represents that it shall deliver the Premises and the Center to Tenant, in good condition and repair with all building systems in good working order. Landlord shall be under no obligation to provide utility, telephone or other service or access beyond that which exists at the Premises as of the date of this Lease, unless Landlord specifically agrees in writing to provide the same. If it is anticipated that Tenant will be doing any Alterations or installations prior to taking occupancy, any delays encountered by Tenant in accomplishing such work or obtaining any required permits therefor shall not delay the Commencement Date or the date that Tenant becomes liable to pay rent, or the date that Landlord may effectively deliver possession of the Premises to Tenant. By taking possession hereunder, Tenant acknowledges that it accepts the square footage of the Premises as delivered and as stated in this Lease. No discovery or alleged discovery after such acceptance of any variance in such square footage as set forth in this Lease (or in any proposal, advertisement or other description thereof) shall be grounds for any adjustment in any component of the rent payable hereunder.

12.2 **Landlord's Exemption From Liability.** Landlord shall not be liable for injury to Tenant's business or loss of income therefrom, or for personal injury or property damage that may be sustained by Tenant or any subtenant of Tenant, or their respective employees, invitees, customers, agents or contractors or any other person in or about the Premises, caused by or resulting from fire, flood, earthquake or other natural disaster, or from steam, electricity, gas, water or rain, that may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air-conditioning, lighting fixtures or computer equipment or software, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building, or from other sources, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages to property or for personal injury or loss of life arising from any use, act or failure to act of any third parties (including other occupants of the Center) occurring in, or about the Premises or in or about the Center (including without limitation the criminal acts of any third parties). Landlord shall not be liable for any latent defect in the Premises or in the Building. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only, and Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. Provided, however, that the indemnifications and waivers of Tenant set forth in this Section shall not apply to damage and liability caused (i) by the gross negligence or willful misconduct of Landlord, and (ii) through no fault of Tenant, its assignees or subtenants, or their respective agents, contractors, employees, customers, invitees or licensees.

12.3 **No Warranties or Representations.**

(a) Neither Landlord nor Landlord's agents make any warranty or representation with respect to the suitability or fitness of the space for the conduct of Tenant's business, or for any other purpose.

(b) Neither Landlord nor Landlord's agents make any warranty or representation with respect to any other tenants or users that may or may not construct improvements, occupy space or conduct business within the Center, and Tenant hereby acknowledges and agrees that it is not relying on any warranty or representation relating thereto in entering into this Lease.

(c) Landlord specifically disavows any oral representations made by or on behalf of its employees, agents and independent contractors, and Tenant hereby acknowledges and agrees that it is not relying and has not relied on any oral representations in entering into this Lease.

(d) Landlord has not made any promises or representations, expressed or implied, that it will renew, extend or modify this Lease in favor of Tenant or any permitted transferee of Tenant, except as may be specifically set forth herein or in a written instrument signed by both parties amending this Lease.

(e) Notwithstanding that the rent payable to Landlord hereunder may at times include the cost of guard service or other security measures, it is specifically understood that Landlord does not represent, guarantee or assume responsibility that Tenant will be secure from any damage, injury or loss of life because of such guard service. Landlord shall have no obligation to hire, maintain or provide such services, which may be withdrawn or changed at any time with or without notice to Tenant or any other person and without liability to Landlord. To induce Landlord to provide such service if Landlord elects in its sole discretion to do so, Tenant agrees that (i) Landlord shall not be liable for any damage, injury or loss of life related to the provision or nonprovision of such service, and (ii) Landlord shall have no responsibility to protect Tenant, or its employees or agents, from the acts of any third parties (including other occupants of the Center) occurring in or about the Premises or in or about the Center (including without limitation the criminal acts of any third parties), whether or not the same could have been prevented by any such guard service or other security measures.

12.4 **Keys.** Tenant shall re-key the Premises at its sole cost upon taking possession thereof. Tenant hereby acknowledges that various persons have had access to the keys to the Premises as keyed prior to Tenant's possession, and that Landlord disclaims all liability and responsibility for any unauthorized distribution or possession of such prior keys.

13. INDEMNIFICATION.

Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns (collectively, " **Landlord's Related Entities** "), from and against any and all claims, actions, damages, liability, costs, and expenses, including attorneys' fees and costs, arising from personal injury, death, and/or property damage and arising from: (a) Tenant's use or occupation of the Premises or any work or activity done or permitted by Tenant in or about the Premises (including without limitation any storage or display of materials or merchandise, or other activity by Tenant in the Common Facilities), (b) any activity, condition or occurrence in the Premises or other area under the control of Tenant, (c) any breach or failure to perform any obligation imposed on Tenant under this Lease, (d) any breach or failure by Tenant to cause the Premises (and any and all other areas of the Center that Tenant is required to maintain pursuant to the terms of this Lease) to comply with all Legal Requirements related to disabled persons or access, or (e) any other act or omission of Tenant or its assignees or subtenants or their respective agents, contractors, employees, customers, invitees or licensees. Tenant's obligation to indemnify, protect, hold harmless and defend shall include, but not be limited to, claims based on duties, obligations, or liabilities imposed on Landlord or Landlord's Related Entities by statute, ordinance, regulation, or other law, such as claims based on theories of peculiar risk and nondelegable duty, and to any and all other claims based on the negligent act or omission of Landlord or Landlord's Related Entities. The parties intend that this provision be interpreted as the broadest Type I indemnity

provision as defined in *McDonald & Kruse, Inc. v. San Jose Steel Co.* , 29 Cal. App. 3 rd 413 (1972), and as allowed by law between a landlord and a tenant. Upon notice from Landlord, Tenant shall, at Tenant's sole expense and by counsel satisfactory to Landlord, defend any action or proceeding brought against Landlord or Landlord's Related Entities by reason of any such claim. If Landlord or any of Landlord's Related Entities is made a party to any litigation commenced by or against Tenant, then Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's Related Entities from and against any and all claims, actions, damages, liability, costs, expenses and attorneys' fees and costs incurred or paid in connection with such litigation. Tenant, as a material part of the consideration to Landlord hereunder, assumes all risk of, and waives all claims against Landlord for, personal injury or property damage in, upon or about the Premises, from any cause whatsoever. Provided, however, that the indemnifications and waivers of Tenant set forth in this Section shall not apply to damage and liability caused (i) by the gross negligence or willful misconduct of Landlord, and (ii) through no fault of Tenant, its assignees or subtenants, or their respective agents, contractors, employees, customers, invitees or licensees.

14. HAZARDOUS MATERIALS.

14.1 **Definitions.** **"Hazardous Materials Laws"** means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et *seq*,, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*, the California Hazardous Waste Control Act, Cal. Health and Safety Code § 25100, *et seq.*, the Carpenter-Presley-Tanner Hazardous Substances Account Act, Cal. Health and Safety Code § 25300, *et seq.*, the Safe Drinking Water and Toxic Enforcement Act, Cal. Health and Safety Code § 25249.5, *et seq.*, the Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000, *et seq.*, any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations. **"Hazardous Materials"** means any chemical, compound, material, substance or other matter that: (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Materials Law, (b) is controlled or governed by any Hazardous Materials Law or gives rise to any reporting, notice or publication requirements hereunder, or gives rise to any liability, responsibility or duty on the part of Tenant or Landlord with respect to any third person hereunder; or (c) is flammable or explosive material, oil, asbestos, urea formaldehyde, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, mold, hazardous waste, toxic substance, or related injurious or potentially injurious material (by itself or in combination with other materials).

14.2 **Use of Hazardous Materials.** Tenant shall not allow any Hazardous Material to be used, generated, manufactured, released, stored or disposed of on, under or about, or transported from, the Premises, unless: (a) such use is specifically disclosed to and approved by Landlord in writing prior to such use, and (b) such use is conducted in compliance with the provisions of this Article. Attached hereto as Exhibit "D" is a list of Hazardous Materials Tenant intends to use in the Premises, the use of which Landlord hereby approves subject to the other terms and conditions of this Lease. Landlord agrees not to unreasonably withhold, delay or condition any consent to any request by Tenant for consent to use additional Hazardous Materials so long as such additional Hazardous Materials are necessary for Tenant to conduct the business described in Section 1.8, and Landlord shall not unreasonably withdraw such consent to such materials. In all other cases, Landlord's consent may be withheld in Landlord's sole discretion and, if granted, may be revoked at any time. Landlord may approve such use subject to reasonable conditions to protect the Premises and Landlord's interests. Landlord may withhold approval if Landlord determines that such proposed use involves a material risk of a release or discharge of Hazardous Materials or a violation of any Hazardous Materials Laws or

that Tenant has not provided reasonably sufficient assurances of its ability to remedy such a violation and fulfill its obligations under this Article. Notwithstanding the foregoing, Landlord hereby consents to Tenant's use, storage or disposal of products containing small quantities of Hazardous Materials that are of a type customarily found in offices and households (such as aerosol cans containing insecticides, toner for copies, paints, paint remover and the like) provided that Tenant shall handle, use, store and dispose of such Hazardous Materials in a safe and lawful manner and shall not allow such Hazardous Materials to contaminate the Premises.

14.3 **Compliance With Laws; Handling Hazardous Materials.** Tenant shall strictly comply with, and shall maintain the Premises in compliance with, all Hazardous Materials Laws. Tenant shall obtain, maintain in effect and comply with the conditions of all permits, licenses and other governmental approvals required for Tenant's operations on the Premises under any Hazardous Materials Laws, including, but not limited to, the discharge of appropriately treated Hazardous Materials into or through any sanitary sewer serving the Premises. At Landlord's request, Tenant shall deliver copies of, or allow Landlord to inspect, all such permits, licenses and approvals. All Hazardous Materials removed from the Premises shall be removed and transported by duly licensed haulers to duly licensed disposal facilities, in compliance with all Hazardous Materials Laws. Tenant shall perform any monitoring, testing, investigation, clean-up, removal, detoxification, preparation of closure or other required plans and any other remedial work required by any governmental agency or lender, or recommended by Landlord's environmental consultants, as a result of any release or discharge or threatened release or discharge of Hazardous Materials affecting the Premises or the Center or any violation or threatened violation of Hazardous Materials Laws by Tenant or any assignee or subtenant of Tenant or their respective agents, contractors, employees, licensees or invitees (collectively, **"Remedial Work"**). Landlord shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, and to approve performance of the work, in order to protect Landlord's interests. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to Hazardous Materials without notifying Landlord and providing ample opportunity for Landlord to intervene. Tenant shall additionally comply with the recommendations of Landlord's and Tenant's insurers based upon National Fire Protection Association standards or other applicable guidelines regarding the management and handling of Hazardous Materials. If any present or future law imposes any requirement of reporting, survey, investigation or other compliance upon Landlord, Tenant, or the Premises, and if such requirement is precipitated by a transaction to which Tenant is a party, including without limitation any Transfer (as defined in Section 18.1) of this Lease by Tenant, then Tenant shall fully comply with and pay all costs of compliance with such requirement, including Landlord's attorneys' fees and costs.

14.4 **Notice; Reporting; Health and Safety Code Section 25359.7.** Tenant shall notify Landlord, in writing, within three (3) days after any of the following: (a) Tenant has knowledge, or has reasonable cause to believe, that any Hazardous Material has been released, discharged or is located on, under or about the Premises in violation of law or this Lease, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency, (b) Tenant receives any order of a governmental agency requiring any Remedial Work pursuant to any Hazardous Materials Laws, (c) Tenant receives any warning, notice of inspection, notice of violation or alleged violation or Tenant receives notice or knowledge of any proceeding, investigation or enforcement action, pursuant to any Hazardous Materials Laws; or (d) Tenant receives notice or knowledge of any claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from Hazardous Materials. If the potential risk of any of the foregoing events is material, Tenant shall deliver immediate verbal notice to Landlord, in addition to written notice as set forth above. Tenant shall deliver to Landlord copies of all test results, reports and business or management plans required to be filed with any governmental agency pursuant to any Hazardous Materials Laws. Landlord hereby notifies Tenant, and Tenant hereby acknowledges that, prior to the leasing of the Premises pursuant to this Lease, Tenant has been notified, pursuant to California Health and Safety Code Section 25359.7

(or any successor statue), that Landlord knows, or has reasonable cause to believe, that certain hazardous substances (as such term is used in such Section 25359.7) may have come to be located in, on or beneath the Premises. Tenant acknowledges that the Premises were previously used under California Health and Human Services Agency, License No. 6288-37, issued by the California Health and Human Services Agency, Radiologic Health Branch. Tenant acknowledges that it has reviewed Amendment No. 12 to such license (terminating the same), together with the "Certificate of Disposition" with attachments dated April 20, 2004, referred to in such Amendment No. 12.

14.5 **Indemnity.** Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any and all liabilities, claims, suits, judgments, actions, investigations, proceedings, costs and expenses (including attorneys' fees and costs) arising out of or in connection with any breach of any provisions of this Article by Tenant or directly or indirectly arising out of the use, generation, storage, release, disposal or transportation of Hazardous Materials by Tenant, or any assignee or subtenant of Tenant, or their respective agents, contractors, employees, licensees, or invitees, on, under or about the Premises during the Lease Term or any other period of Tenant's actual or constructive occupancy of the Premises, including, but not limited to, all foreseeable and unforeseeable consequential damages and the cost of any Remedial Work. Any defense of Landlord pursuant to this Section shall be by counsel acceptable to Landlord. Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor the strict compliance with all Hazardous Materials Laws shall excuse Tenant from Tenant's indemnification obligations pursuant to this Article. The foregoing indemnity shall be in addition to and not a limitation of the indemnification provisions of Article 13 of this Lease. Tenant's obligations pursuant to this Article shall survive the termination or expiration of this Lease.

14.6 **Entry and Inspection; Cure.** Landlord and its agents, employees and contractors, shall have the right (but not the obligation) to enter the Premises, upon ten (10) business days' prior notice to Tenant, to inspect the Premises and Tenant's compliance with the terms and conditions of this Article, or to conduct investigations and tests. Landlord shall have the right (but not the obligation), to shorten the notice period described in the preceding sentence to fewer than ten (10) business days, or to no notice at all, if reasonable and necessary, in the event of an emergency, or if Landlord has reasonable cause to believe that violations of this Article have occurred, or if Tenant consents at the time of entry. Landlord shall have the right (but not the obligation) to remedy any violation by Tenant of the provisions of this Article pursuant to Section 22.3 of this Lease or to perform any Remedial Work, provided that Landlord shall first notify Tenant of the need for Remedial Work and provide Tenant with a reasonable opportunity to perform such Remedial Work prior to Landlord exercising its rights in accordance with the foregoing. Tenant shall pay, upon demand, all costs incurred by Landlord in investigating any such violations or potential violations or performing Remedial Work, plus interest thereon at the rate specified in this Lease from the date of demand until the date paid by Tenant.

14.7 **Termination; Expiration.** Upon termination or expiration of this Lease, Tenant shall, at Tenant's cost, remove any equipment, improvements or storage facilities utilized in connection with any Hazardous Materials and shall clean up, detoxify, repair and otherwise restore the Premises to either (i) a condition free of hazardous materials, or (ii) a condition that (A) under applicable Hazardous Materials laws, is sufficient to obtain relevant clearance, no action or other approvals and permits from applicable government agencies, and (B) is such that the Premises is re-leaseable to the general public without further remediation. In no event shall Tenant be liable for any Hazardous Materials in the Premises or the Center not caused by Tenant or any assignee or subtenant of Tenant or their respective agents, contractors, employees, licensees or invitees.

14.8 **Exit Assessment.** No later than ten (10) days after the expiration or earlier termination of this Lease, Tenant shall cause to be performed, at its sole expense, an environmental assessment (the

"Exit Assessment") of the Premises. Landlord agrees to allow Tenant access to the Premises for such purpose. The Exit Assessment must be performed by a qualified environmental consultant acceptable to Landlord, and shall include without limitation the following, as applicable to the Premises and Tenant's activities: (a) inspection of all floors, walls, ceiling tiles, benches, cabinet interiors, sinks, the roof and other surfaces for signs of contamination and/or deterioration related to Hazardous Materials, (b) inspection of any and all ducts, hoods and exhaust systems for signs of contamination, deterioration and/or leakage related or potentially related to Hazardous Materials, (c) inspection of all readily accessible drain lines and other discharge piping for signs of deterioration, loss of integrity and leakage, (d) Tenant interviews and review of appropriate Tenant records to determine the uses to which Tenant has put the Premises that involve or may have involved Hazardous Materials, and to determine if any known discharges to the Premises or ground or soils from Tenant's activities have occurred, (e) documentation in detail of all observations, including dated photographs, (f) if applicable a certification that all areas inspected are clean and free of any Hazardous Materials and that the investigation conducted by the consultant does indicate that any release of any Hazardous Materials has occurred in the Premises or the Center as a result of Tenant's activities, (g) if applicable, a detailed description of Hazardous Materials remaining in the Premises and of any contamination, deterioration and/or leakage observed, together with detailed recommendations for the removal, repair or abatement of the same, and (h) if applicable, a detailed description of evidence of possible or past releases of Hazardous Materials, together with detailed recommendations for the prevention of the same in the future. Landlord shall have the right to require additional evaluations or work in connection with the Exit Assessment based upon Tenant's use of the Premises, any actual or suspected Hazardous Materials issues, or other reasonable factors. The original of the Exit Assessment shall be addressed to Landlord and shall be provided to Landlord within twenty (20) days of the expiration or earlier termination of this Lease. In addition to Tenant's obligations under Section 14.7, Tenant agrees to fully implement and address all recommended actions contained in the Exit Assessment, at its sole cost, within thirty (30) days of the date thereof, to the extent such recommended actions are to remedy conditions caused by Tenant or any assignee or subtenant of Tenant or their respective agents, contractors, employees, licensees or invitees.

14.9 **Event of Default.** The release or discharge of any Hazardous Material or the violation of any Hazardous Materials Law by Tenant or any assignee or subtenant of Tenant shall be a material Event of Default by Tenant under this Lease. In addition to or in lieu of the remedies available under this Lease as a result of such Event of Default, Landlord shall have the right, without terminating this Lease, to require Tenant to suspend its operations and activities on the Premises until Landlord is satisfied that appropriate Remedial Work has been or is being adequately performed; Landlord's election of this remedy shall not constitute a waiver of Landlord's right thereafter to declare an Event of Default and pursue any other available remedy.

15. ALTERATIONS; LIENS.

15.1 **Alterations by Tenant.** Tenant shall not make any alterations, additions or improvements (**"Alterations"**) to the Premises without Landlord's prior written consent, except for nonstructural Alterations that cost $25,000 or less and are not visible from the exterior of the Premises. All Alterations installed by Tenant shall be new or completely reconditioned. Landlord shall have the right to reasonably approve the contractor, the method of payment of the contractor, and the plans and specifications for all proposed Alterations. Tenant shall obtain Landlord's consent to all proposed Alterations requiring Landlord's consent prior to the commencement of any such Alterations. Tenant's request for consent shall be accompanied by information identifying the contractor and method of payment and two (2) copies of the proposed plans and specifications. All Alterations of whatever kind and nature shall become at once a part of the realty and shall be surrendered with the Premises upon expiration or earlier termination of the Lease Term, unless Landlord requires Tenant to remove the same as provided in Article 20. At the time Tenant requests Landlord's consent to any Alteration,

Tenant shall have the right to request that Landlord waive its right to remove all or a portion of such requested Alterations under Article 20; provided, however, that if Landlord does not waive the same, all of Landlord's rights under Article 20 shall remain unaffected. If Tenant demolishes or removes any then-existing tenant improvements or other portions of the Premises or the Building (including without limitation any previously-installed Alterations), Tenant shall promptly commence and diligently pursue to completion all Alterations then underway; provided, however, that if Tenant fails to do so, at the election of Landlord, Tenant shall restore the Premises and the Building to its condition and state of improvement prior to such demolition or removal. During the Lease Term, Tenant agrees to provide, at Tenant's expense, a policy of insurance covering loss or damage to Alterations made by Tenant, in an amount adequate to repair or replace the same, naming Landlord and Landlord's property manager (if any) as additional insureds. Provided, however, Tenant may install movable furniture, trade fixtures, machinery or equipment in conformance with applicable governmental rules or ordinances and remove the same upon expiration or earlier termination of this Lease as provided in Article 20.

15.2 **Permits and Governmental Requirements.** Tenant shall obtain, at Tenant's sole cost and expense, all building permits and other permits of every kind and nature required by any governmental agency having jurisdiction in connection with the Alterations. Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any and all claims, actions, damages, liability, costs, and expenses, including attorneys' fees and costs, arising out of any failure by Tenant or Tenant's contractor or agents to obtain all required permits, regardless of when such failure is discovered. Subject to Landlord's representations and warranties set forth in this Lease and except as set forth in the attached Construction Addendum to Standard Industrial Net Lease (in particular, Section 25.8), Tenant shall do any and all additional construction, alterations, improvements and retrofittings required to be made to the Premises and/or the Center, as a result of, or as may be triggered by, Tenant's Alterations. Landlord shall have the right to do such construction itself subject to Tenant's approval of the cost thereof; but in all instances Tenant shall pay all costs directly or indirectly related to such work and shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any and all claims, actions, damages, liability, costs, and expenses, including attorneys' fees and costs, arising out of any such additionally required work. An payment and indemnification obligations under this Section shall survive the expiration or earlier termination of the Lease Term.

15.3 **Liens.** Tenant shall pay when due all claims for any work performed, materials furnished or obligations incurred by or for Tenant, and Tenant shall keep the Premises free from any liens arising with respect thereto. If Tenant fails to cause any such lien to be released within fifteen (15) days after imposition, by payment or posting of a proper bond, Landlord shall have the right (but not the obligation) to cause such release by such means as Landlord deems proper. Tenant shall pay Landlord upon demand for all costs incurred by Landlord in connection therewith (including attorneys' fees and costs), with interest at the rate specified in Section 22.4 from the date of payment by Landlord to the date of payment by Tenant. Tenant will notify Landlord in writing thirty (30) days prior to commencing any alterations, additions, improvements or repairs in order to allow Landlord time to file a notice of nonresponsibility.

15.4 **Remodel.** Landlord may in the future remodel, renovate or refurbish (**"remodel"**) all or any portion of the Center, outside of the Premises. The remodeling will be done in accordance with design specifications prepared by the project architect and reviewed and approved by Landlord. Copies of such specifications will be made available to Tenant. Tenant shall not, through any act or omission on the part of Tenant, in any way impede, delay or prevent the completion of such remodeling in a timely manner, provided that remodeling shall not unreasonably interfere with Tenant's use of the Premises and the parking areas.

16. DAMAGE AND DESTRUCTION.

16.1 **Partial Damage.** If, during the Lease Term, the Premises are damaged or destroyed, or if the Building is damaged or destroyed and such damage or destruction affects Tenant's use of the Premises (collectively, **"Premises Damage"**), Landlord shall perform the necessary repairs (other than to Tenant's Alterations, trade fixtures, equipment, and personal property, the repair of which Tenant shall be solely responsible), and this Lease shall continue in full force and effect. Provided, however, that Landlord may, at its option, elect to terminate this Lease if (i) Landlord's estimate is such that the required repairs cannot reasonably be completed within one hundred eighty (180) days after the date of the Premises Damage in accordance with applicable laws and regulations, or (ii) the Replacement Cost (defined below) exceeds six (6) months' Minimum Monthly Rent, or (iii) Landlord does not receive sufficient insurance proceeds to pay the full Replacement Cost and the shortfall exceeds one (1) month's Minimum Monthly Rent. Provided, further, however, that Tenant may, at its option, elect to terminate this Lease if Landlord's estimate is such that the required repairs cannot reasonably be completed within one hundred eighty (180) days after the date of the Premises Damage in accordance with applicable laws and regulations. As used herein, **"Replacement Cost"** shall mean the cost to repair or rebuild the Premises, Building or Center (other than Tenant's Alterations, equipment, trade fixtures, and personal property) at the time of the damage or destruction to their condition existing immediately prior thereto, including without limitation all costs of demolition, debris removal, permits, fees and other governmental requirements, and upgrading the Premises, Building or Center as required by law or other requirements, without deduction for depreciation.

16.2 **Total Destruction.** Notwithstanding any other provisions of this Lease, a total destruction (including any destruction required by any authorized public authority) of either the Premises or the Building shall, at the election of either Landlord or Tenant, terminate this Lease as of the date of such destruction.

16.3 **Partial Destruction of Center or Building.** Notwithstanding any other provision of this Lease, if fifty percent (50%) or more of the rentable area of the Building or the Center is damaged or destroyed, notwithstanding that the Premises may be unaffected, Landlord shall have the right to terminate this Lease.

16.4 **Insurance Deductible.** If Landlord is required or elects to repair any Premises Damage caused by an insured casualty as provided in Section 16.1, Landlord may include in Insurance Costs any deductible amount under Landlord's insurance policies, provided that if such deductible is payable in connection with a capital repair or capital replacement to the Premises, Landlord shall only include in Insurance Costs the amortized cost of such repair or replacement spread over its useful life (no greater that the minimum number of years allowed pursuant to the United States Revenue Code) over the Lease Term, starting in the calendar year or other accounting period in which the such repair or replacement is made.

16.5 **Damage Near End of Term.** If at any time during the last twelve (12) months of the Lease Term there is Premises Damage for which Replacement Cost exceeds one (1) month's Minimum Monthly Rent, Landlord may, at its option, elect to terminate this Lease.

16.6 **Landlord's Termination Notice; Effective Date; Relocation.** If Landlord elects to terminate this Lease under any applicable provision of this Article 16, Landlord shall give notice of such election within forty-five (45) days of the date of the damage or destruction. In the case of a total destruction (Section 16.2) or Premises Damage that prevents Tenant from occupying the Premises for its permitted use, the effective date of such termination shall be the date of such Premises Damage; otherwise the effective date of termination shall be a date selected by Landlord not earlier than thirty (30) days from the date of Landlord's notice.

16.7 **Rent Abatement.** If Landlord repairs the Premises or the Building after a Premises Damage as described in this Article 16, Minimum Monthly Rent and Additional Rent shall be equitably reduced from the date of the Premises Damage until the repairs are completed, based upon the extent to which such repairs interfere with the business carried on by Tenant in the Premises, but only to the extent Landlord receives proceeds from the rental income insurance described in Section 9.1. Landlord agrees to take reasonable steps to make a claim for and collect any rental income insurance proceeds that might be available.

16.8 **Tenant's Obligations.** Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of, any of Alterations, equipment, trade fixtures, and personal property owned, placed or installed in or about the Premises by or on behalf of Tenant. Unless this Lease is terminated pursuant to this Article, Tenant shall promptly repair, restore or replace the same in the event of any damage thereto. If all or any portion of the Premises, Building or Center is damaged or destroyed by reason of any act or omission of Tenant, except as provided in Section 9.4 (Waiver of Subrogation), Tenant shall either make the necessary repairs at Tenant's expense or pay to Landlord Replacement Cost, regardless of whether this Lease is terminated. Nothing contained in this Article shall be construed as a limitation on Tenant's liability for any damage or destruction if such liability otherwise exists.

16.9 **Waiver of Inconsistent Statutes.** The parties' rights and obligations in the event of damage or destruction shall be governed by the provisions of this Lease; accordingly, Tenant waives the provisions of California Civil Code Sections 1932(2) and 1933(4), and any other statute, code or judicial decisions that grants a tenant a right to terminate a lease in the event of damage or destruction of a leased premises.

17. CONDEMNATION.

17.1 **Effect on Lease.** If all of the Premises, or so much thereof that the remaining portion of the Premises is insufficient for Tenant to occupy for its permitted use, is taken under the power of eminent domain or sold under the threat of the exercise of such power (collectively **"Condemnation"**), this Lease shall terminate as of the date title vests in the condemnor. In all other cases, Landlord may terminate this Lease as of the date title vests in the condemnor if (i) the Condemnation affects any material portion of the Premises or the Building, (ii) Landlord receives insufficient funds from the condemnor to complete the restoration of the Premises described in this Section, or (iii) if the Condemnation affects such a substantial portion of the Center, the parking areas or Common Facilities that it is no longer economically appropriate in Landlord's business judgment to lease the Premises on the terms and conditions of this Lease. Tenant may terminate this Lease in the event Tenant's use of the Premises is permanently and materially impaired or reduced by more than 15%. Notwithstanding the foregoing, Landlord may prevent a termination of this Lease by exercising, within forty-five days of the Condemnation, any right to relocate Tenant to new Premises in the Center provided in Section 24.24 of this Lease. If this Lease remains in effect, (a) this Lease shall terminate as to the portion (if any) of the Premises taken as of the date title vests in the condemnor, (b) the Minimum Monthly Rent shall be equitably adjusted based upon the value of the Premises remaining after the Condemnation compared to the value of the Premises prior to Condemnation, (c) Tenant's Pro Rata Share shall be adjusted based on any changes in the Rentable Square Footage of the Premises and/or the Center, and (d) Landlord shall, within a reasonable period of time, undertake such construction or restoration as may be reasonably necessary to place the remaining Premises in a useable condition (provided that the cost of such construction or restoration does not exceed the amount awarded to Landlord by the condemnor for such purpose). Landlord shall not be responsible to restore or replace any of Tenant's Alterations, fixtures, equipment or personal property, except as provided in Section 24.24 if Landlord exercises its rights thereunder.

17.2 **Condemnation Award.** All compensation awarded upon any partial or total Condemnation shall be paid to Landlord, and Tenant shall have no claim thereto. Tenant hereby irrevocably assigns and transfers to Landlord any right to compensation or damages by reason of any such Condemnation; provided, however, that Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any damage to Tenant's business by reason of the Condemnation and on account of any cost that Tenant may incur in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment. If this Lease is terminated in whole or in part in accordance with this Article, Tenant shall have no claim for the value of any unexpired term of this Lease.

18. ASSIGNMENT AND SUBLETTING.

18.1 **Landlord's Consent Required.**

(a) Tenant shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer all or any portion of the Premises or its interest in this Lease (collectively, **"Transfer"**) without Landlord's prior written consent, which consent Landlord shall not unreasonably withhold or delay. Landlord may withhold its consent until Tenant has complied with the provisions of Sections 18.2 and 18.3. Any attempted Transfer without Landlord's written consent shall be void and shall constitute a noncurable Event of Default under this Lease. If Tenant is a corporation, any cumulative Transfer of more than twenty percent (20%) of the voting stock of such corporation shall constitute a Transfer requiring Landlord's consent hereunder; provided, however, that this sentence shall not apply to any corporation whose stock is publicly traded. If Tenant is a partnership, limited liability company, trust or other entity, any cumulative Transfer of more than twenty percent (20%) of the partnership, membership, beneficial or other ownership interests therein shall constitute a Transfer requiring Landlord's consent hereunder. Tenant shall not have the right to consummate a Transfer or to request Landlord's consent to any Transfer if any Event of Default has occurred and is continuing or if Tenant or any affiliate of Tenant is in default under any lease of any other real property owned or managed (in whole or in part) by Landlord or any affiliate of Landlord.

(b) Notwithstanding anything to the contrary set forth herein, so long as no Event of Default has occurred and is continuing, Tenant shall be entitled to sublease the Premises without Landlord's consent, provided that (i) the space subject to the sublease shall not exceed twenty-five percent (25%) of the Rentable Square Footage of the Premises, (ii) Tenant shall provide at least thirty (30) days advance written notice to Landlord of such sublease, which notice shall include the name and contact information for the sublessee and a copy of the document memorializing the sublease agreement between the parties, and (iii) Tenant shall comply with the provisions of Sections 18.3 (other than the $500.00 transfer fee), 18.4 and 18.5 and such Sections as shall continue to apply notwithstanding such permitted sublease.

18.2 **Landlord's Election.** Tenant's request for consent to any Transfer shall be accompanied by a written statement setting forth the details of the proposed Transfer, including the name, business and financial condition of the prospective Transferee, financial details of the proposed Transfer (e.g., the term and the rent and security deposit payable), and any other related information that Landlord may reasonably require. Landlord shall have the right: (a) to withhold consent to the Transfer, if reasonable, (b) to grant consent, (c) if the Transfer is an assignment of the lease, or a sublease for substantially the remaining term of the Lease, to terminate this Lease as to the portion of the Premises affected by any such proposed Transfer, in which event Landlord may enter into a lease directly with the proposed Transferee, or (d) to consent on the condition that Landlord be paid fifty percent (50%) of all subrent or other consideration to be paid to Tenant under the terms of the Transfer (after deduction for all of Tenant's costs in negotiating such Transfer, including leasing commissions, tenant improvements, and

other out-of-pocket concessions) in excess of the total rent due hereunder (including, if such Transfer is an assignment or if such Transfer is to occur directly or indirectly in connection with the sale of any assets of Tenant, fifty percent (50%) of the amount of the consideration attributable to the Transfer, as reasonably determined by Landlord). Landlord may require any permitted subtenant to make rental payments directly to Landlord, in the amount of rent due hereunder. The grounds on which Landlord may reasonably withhold its consent to any requested Transfer include, without limitation, that: (i) the proposed Transferee's contemplated use of the Premises following the proposed Transfer is not reasonably similar to the use of the Premises permitted hereunder, (ii) in Landlord's reasonable business judgment, the proposed Transferee lacks sufficient business reputation or experience to operate a successful business of the type and quality permitted under this Lease, (iii) in Landlord's reasonable business judgment, the proposed Transferee lacks sufficient net worth, working capital, anticipated cash flow and other indications of financial strength to meet all of its obligations under this Lease, (iv) the proposed Transfer would breach any covenant of Landlord respecting a radius restriction, location, use or exclusivity in any other lease, financing agreement, or other agreement relating to the Center, and (v) in Landlord's reasonable business judgment, the possibility of a release of Hazardous Materials is materially increased as a result of the Transfer or if Landlord does not receive sufficient assurances that the proposed Transferee has the experience and financial ability to remedy a violation of Hazardous Materials and to fulfill its obligations under Articles 13 and 14. In connection with any such Transfer, Landlord shall have the right to require Tenant, at Tenant's sole cost, to cause environmental testing meeting the requirements of an Exit Assessment described in Section 14.8 to be performed. Landlord need only respond to any request by Tenant hereunder within a reasonable time of not less than ten (10) business days after receipt of all information and other submission required in connection with such request.

18.3 **Costs; Transfer Fee.** Tenant shall pay all costs and expenses in connection with any permitted Transfer, including any real estate brokerage commissions due with respect to the Transfer. Tenant shall pay all attorneys' fees and costs incurred by Landlord and a fee of $500 to reimburse Landlord for costs and expenses incurred in connection with any request by Tenant for Landlord's consent to a Transfer. Such fee shall be delivered to Landlord concurrently with Tenant's request for consent, and shall be earned by Landlord upon receipt, regardless of whether Landlord ultimately grants or denies Tenant's request.

18.4 **Assumption; No Release of Tenant.** Any permitted assignee shall assume in writing all obligations of Tenant under this Lease, utilizing a form of assumption agreement approved by Landlord, and an executed copy of such assumption agreement shall be delivered to Landlord within fifteen (15) days after the effective date of the Transfer. The taking of possession of all or any part of the Premises by any such permitted assignee or subtenant shall constitute an agreement by such person or entity to assume without limitation or qualification all of the obligations of Tenant under this Lease, notwithstanding any failure by such person to execute the assumption agreement required in the immediately preceding sentence. No permitted Transfer shall release or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article or a consent to any Transfer. Consent to one Transfer shall not constitute a consent to any subsequent Transfer. If any transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent Transfers or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent, and such action shall not relieve Tenant of its liability under this Lease.

18.5 **No Merger.** No merger shall result from any Transfer pursuant to this Article, any surrender by Tenant of its interest under this Lease, or any termination hereof in any other manner. In any such event, Landlord may either terminate any or all subleases or succeed to the interest of Tenant thereunder.

18.6 **Reasonable Restriction.** Tenant acknowledges that the restrictions on Transfer contained herein are reasonable restrictions for purposes of Section 22.2 of this Lease and California Civil Code Section 1951.4.

19. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATE.

19.1 **Subordination.** This Lease and al of its terms is and shall be unconditionally junior and subordinate to the lien and terms of all ground leases, mortgages, deeds of trust, and other security instruments now or hereafter affecting the real property of which the Premises are a part, and to all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. If any mortgagee, beneficiary under deed of trust or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and gives written notice thereof to Tenant, this Lease shall be deemed prior thereto. Tenant agrees to execute any documents required to effectuate such subordination or to make this Lease prior to the lien of any such mortgage, deed of trust or ground lease, as the case may be, and if Tenant fails to do so within ten (10) days after written demand, Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to do so.

19.2 **Attornment.** If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or nonjudicially, or is otherwise acquired, by a mortgagee, beneficiary under deed of trust or ground lessor, upon the request and at the sole election of Landlord's lawful successor, Tenant shall attorn to said successor. Tenant shall, upon request of Landlord, execute an attornment agreement in form and substance acceptable to Landlord agreeing in advance to such attornment to any such mortgagee, beneficiary, ground lessor or other successor. Such attornment agreement shall provide, among other things, that such mortgagee, beneficiary or ground lessor shall not be (a) bound by any prepayment of more than one (1) month's rent, (b) liable for the return of any Security Deposit or other sums not actually received by said successor, (c) bound by any act or omission of Landlord arising prior to the succession of such successor to the Landlord's interest in this lease, or be subject to any offset, defense or counter-claim that Tenant may have previously accrued against Landlord, or (d) be bound by any material amendment of this Lease made after the later of the initial effective date of this Lease, or the date that such successor's lien or interest first arose, unless the original entity to which Tenant subordinated shall have consented to such amendment in writing.

19.3 **Estoppel Certificates.** Within ten (10) days after written request from Landlord, Tenant at Tenant's sole cost shall execute, acknowledge and deliver to Landlord a written certificate in favor of Landlord and any prospective lender on or purchaser of the Center or any part thereof, (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modifications and certifying that this Lease is in full force and effect as so modified), (b) the amount of any rent paid in advance, and (c) that there are no uncured defaults on the part of Landlord, or specifying the nature of such defaults if any are claimed. In addition to the foregoing, such certificate shall include Tenant's certification to such other matters of fact, and be on such form, as Landlord or such prospective lender or purchaser shall reasonably require. Tenant's failure to deliver such certificate within said 10 day period shall constitute a conclusive acknowledgment by Tenant: (i) that this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) that not more than one month's rent has been paid in advance, and (iii) that there are no uncured defaults in Landlord's performance.

20. SURRENDER OF PREMISES.

20.1 **Condition of Premises.** Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord, broom clean and in the same condition and state of repair as at the commencement of the Lease Term, except for ordinary wear and tear that Tenant is not

otherwise obligated to remedy under the provisions of this Lease. Tenant shall deliver all keys to the Premises and the Building to Landlord. Upon Tenant's vacation of the Premises, Tenant shall remove all portable furniture, trade fixtures, machinery, equipment, signs and other items of personal property (unless prohibited from doing so under Section 20.2), and shall remove any Alterations (whether or not made with Landlord's consent) that Landlord may require Tenant to remove, subject to Section 15.1 above. Tenant shall repair all damage to the Premises caused by such removal and shall restore the Premises to its prior condition, all at Tenant's expense. Such repairs shall be performed in a manner satisfactory to Landlord and shall include, but are not limited to, the following: capping all plumbing, capping all electrical wiring, repairing all holes in walls, restoring damaged floor and/or ceiling tiles, and thorough cleaning of the Premises. If Tenant fails to remove any items that Tenant has an obligation to remove under this Section when required by Landlord or otherwise, such items shall, at Landlord's option, become the property of Landlord and Landlord shall have the right to remove and retain or dispose of the same in any manner, without any obligation to account to Tenant for the proceeds thereof. Tenant waives all claims against Landlord for any damages to Tenant resulting from Landlord's retention or disposition of such Alterations or personal property. Tenant shall be liable to Landlord for Landlord's costs of removing, storing and disposing of such items.

20.2 **Removal of Certain Alterations, Fixtures and Equipment Prohibited.**

(a) Upon termination of this Lease, all Alterations and fixtures (other than Tenant's trade fixtures), that Landlord has not required Tenant to remove under Section 20.1 shall become Landlord's property and shall be surrendered to Landlord with the Premises, regardless of who paid for the same. In particular and without limiting the foregoing, Tenant shall not remove any of the following materials or equipment without Landlord's prior written consent, regardless of who paid for the same and regardless of whether the same are permanently attached to the Premises; power wiring and power panels; piping for industrial gasses or liquids installed in the walls or ceiling of the Premises; laboratory benches, sinks, cabinets and casework (unless the same are movable or temporary items not attached to the floors or walls of the Premises); fume hoods or specialized air-handling and evacuation systems (unless the same are movable or temporary items not attached to the floors or walls of the Premises); drains or other equipment for the handling of waste water or hazardous materials (unless the same are moveable or temporary items not built into the floors or walls of the Premises); computer, telephone and telecommunications wiring in the walls or ceiling of the Premises; attached lighting fixtures; permanently attached wall coverings (such as wallpaper); drapes, blinds and other window coverings; carpets and other floor coverings; heaters, air conditioners and other heating or air conditioning equipment (unless the same are movable or temporary items not integrated into the Building systems); fencing; and tenant-owned security systems serving the Premises as a whole that are built into the Building. In no event shall Tenant remove any personal property, equipment, alterations or fixtures (whether or not trade fixtures), existing in the Premises on the Commencement Date or date of earlier occupancy of the Premises by Tenant under Section 3.3.

(b) All trade fixtures and personal property owned by Tenant that can be removed from the Building without causing significant damage thereto, or whose removal does not render any Building system significantly unusable (**"Tenant's Removable Property"**) shall be and remain the property of Tenant, and may be removed by Tenant at any time. Landlord waives any and all rights, title and interest Landlord now has, or hereafter may have, whether statutory or otherwise, in Tenant's Removable Property. As used in this Lease, "Tenant's Removable Property" includes, without limitation, all of Tenant's inventory, equipment, trade fixtures, furniture, furnishings, books and records and other personal property, including without limitation any and all vacuum pumps, uninterruptible power systems, warehouse racks, parts racks, scientific research equipment, portable cold rooms, movable unattached lunch room and office furnishings and equipment, telecommunications and data equipment (other than cabling), machine shop tools and portable

equipment, portable glass wash equipment, equipment monitoring systems, air compressors, emergency generators, and machines and equipment used to produce Tenant's products, unless any such items were present on the Premises at the time of execution of this Lease, or were later installed by Landlord at other than Tenant's cost, so long as such items can be removed from the Building without causing significant damage thereto and without rendering any Building system significantly unusable.

20.3 **Holding Over.** Tenant shall vacate the Premises upon the expiration or earlier termination of this Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord against all liabilities, damages and expenses incurred by Landlord as a result of any delay by Tenant in vacating the Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Lease Term with Landlord's written permission, Tenant's occupancy shall be a tenancy from month-to-month only, and not a renewal or extension hereof. All provisions of this Lease (other than those relating to the term) shall apply to such month-to-month tenancy, except that the Minimum Monthly Rent shall be increased to 150% of the Minimum Monthly Rent in effect during the last month of the Lease Term. No acceptance of rent, negotiation of rent checks or other act or omission of Landlord or its agents shall extend the Expiration Date of this Lease other than a writing executed by Landlord giving Tenant permission to remain in occupancy beyond the Expiration Date under the terms of the immediately preceding sentence.

21. DEFAULT BY TENANT.

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

(a) Failure to pay when due any Minimum Monthly Rent, Additional Rent or any other monetary sums required to be paid by Tenant under the terms of this Lease, within five (5) business days after written notice from Landlord. Landlord's notice described herein is intended to satisfy, and is not in addition to, any and all legal notices required prior to commencement of an unlawful detainer action, including without limitation the notice requirements of California Code of Civil Procedure Sections 1161 *et seq.*

(b) Failure to perform any other agreement or obligation of Tenant hereunder, if such failure continues for thirty (30) days after written notice by Landlord to Tenant, except if such default cannot reasonably be cured within thirty (30) days, Tenant shall have such longer time as reasonably necessary, provided Tenant commences to cure such default with in such thirty (30) day period, diligently pursues such cure to completion, and in fact cures such within ninety (90) days of Landlord's notice. Landlord's notice described herein is intended to satisfy, and is not in addition to, any and all legal notices required prior to commencement of an unlawful detainer action, including without limitation the notice requirements of California Code of Civil Procedure Sections 1161 *et seq.*

(c) Abandonment or vacation of the Premises by Tenant, or failure to occupy the Premises for a period of ten (10) consecutive days.

(d) If any of the following occurs: (i) a petition is filed for an order of relief under the federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, and such petition is not dismissed within thirty (30) days after the filing thereof; (ii) Tenant makes a general assignment for the benefit of creditors; (iii) a receiver or trustee is appointed to take possession of any substantial part of Tenant's assets, unless such appointment is vacated within thirty (30) days after the date thereof; (iv) Tenant consents to or suffers an attachment, execution or other judicial seizure of any substantial part of its assets or its interest under this Lease, unless such process is released or satisfied within thirty (30) days after the occurrence thereof; or (v) Tenant's net worth, determined

in accordance with generally accepted accounting principles consistently applied, decreases, at any time during the Lease Term, below Tenant's net worth as of the date of execution of this Lease. If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession), and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive the difference between the rent (or other consideration) paid in connection with such transfer and the rent payable by Tenant hereunder. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of the Tenant hereunder arising on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

(e) The occurrence of any other event that is deemed to be an Event of Default under any other provision of this Lease, or any other lease to which Landlord (or any affiliate of Landlord) and Tenant (or any affiliate of Tenant) are parties.

22. REMEDIES.

Upon the occurrence of any Event of Default by Tenant, Landlord shall have the following remedies, each of which shall be cumulative and in addition to any other remedies now or hereafter available at law or in equity:

22.1 **Termination of Lease.** Landlord can terminate this Lease and Tenant's right to possession of the Premises by giving written notice of termination, and then re-enter the Premises and take possession thereof. No act by Landlord other than giving written notice to Tenant of such termination shall terminate this Lease. Upon termination, Landlord has the right to recover all damages incurred by Landlord as a result of Tenant's default, including:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after the date of termination until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's default, including, but not limited to (i) expenses for cleaning, repairing or restoring the Premises, (ii) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, (iii) brokers' fees and commissions, advertising costs and other expenses of reletting the Premises, (iv) costs of carrying the Premises, such as taxes, insurance premiums, utilities and security precautions, (v) expenses in retaking possession of the Premises, (vi) attorneys' fees and costs, (vii) any unearned brokerage commissions paid in connection with this Lease, and (viii) reimbursement of any previously waived or abated Minimum Monthly Rent, Additional Rent or other charges; plus

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law. As used in paragraphs (a) and (b) above, the " **worth at the time of award** " shall be computed by allowing interest at the maximum permissible legal rate. As used in paragraph (c) above, the "worth at the time of award" shall be 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%).

22.2 **Continuation of Lease.** Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), as follows:

(a) Landlord can continue this Lease in full force and effect without terminating Tenant's right of possession, and Landlord shall have the right to collect rent and other monetary charges when due and to enforce all other obligations of Tenant hereunder. Landlord shall have the right to enter the Premises to do acts of maintenance and preservation of the Premises, to make alterations and repairs in order to relet the Premises, and/or to undertake other efforts to relet the Premises. Landlord may also remove personal property from the Premises and store the same in a public warehouse at Tenant's expense and risk. No act by Landlord permitted under this paragraph shall terminate this Lease unless a written notice of termination is given by Landlord to Tenant or unless the termination is decreed by a court of competent jurisdiction.

(b) In furtherance of the remedy set forth in this Section, Landlord may relet the Premises or any part thereof for Tenant's account, for such term (which may extend beyond the Lease Term), at such rent, and on such other terms and conditions as Landlord may deem advisable in its sole discretion. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Any rents received by Landlord from such reletting shall be applied to the payment of: (i) any indebtedness other than rent due hereunder from Tenant to Landlord, (ii) the costs of such reletting, including brokerage and attorneys' fees and costs, and the cost of any alterations and repairs to the Premises, and (iii) the payment of rent due and unpaid hereunder, including any previously waived or abated rent. Any remainder shall be held by Landlord and applied in payment of future amounts as the same become due and payable hereunder. In no event shall Tenant be entitled to any excess rent received by Landlord after an Event of Default by Tenant and the exercise of Landlord's remedies hereunder. If the rent from such reletting during any month is less than the rent payable hereunder, Tenant shall pay such deficiency to Landlord upon demand.

(c) Landlord shall not, by any re-entry or other act, be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have terminated this Lease or Tenant's right to possession of the Premises or the liability of Tenant to pay rent accruing thereafter or Tenant's liability for damages under any of the provisions hereof, unless Landlord shall have given Tenant notice in writing that it has so elected to terminate this Lease.

(d) Tenant acknowledges and agrees that the restrictions on the Transfer of this Lease set forth in Article 18 of this Lease constitute reasonable restrictions on such transfer for purposes of this Section and California Civil Code Section 1951.4.

22.3 **Performance By Landlord.** If Tenant fails to pay any sum of money or perform any other act to be performed by Tenant hereunder, and such failure continues for fifteen (15) days after notice by Landlord, Landlord shall have the right (but not the obligation) to make such payment or perform such other act without waiving or releasing Tenant from its obligations. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the rate specified in Section 22.4, shall be payable to Landlord on demand. Landlord shall have the same rights and remedies in the event of nonpayment by Tenant as in the case of default by Tenant in the payment of the rent.

22.4 **Late Charge** ; **Interest on Overdue Payments.** The parties acknowledge that late payment by Tenant of Minimum Monthly Rent, Additional Rent or other charges hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impractical to determine, including, but not limited to, processing and accounting charges, administrative expenses, and additional interest expenses or late charges that Landlord may be required to pay as a result of late payment on Landlord's obligations. Therefore, if any installment of Minimum

Monthly Rent, Additional Rent or other charges is not received by Landlord on the date due, and without regard to whether Landlord gives Tenant notice of such failure or exercises any of its remedies upon an Event of Default, Tenant shall pay a late charge equal to the greater of ten percent (10%) of the overdue amount or One Hundred Dollars ($100). The parties hereby agree that such late charge represents a fair and reasonable estimate of the damages Landlord will incur by reason of late payment by Tenant. In addition, any amount due from Tenant that is not paid when due shall bear interest at a rate equal to two percent (2%) over the then current Bank of America prime or reference rate or ten percent (10%) per annum, whichever is greater, but not in excess of the maximum permissible legal rate, from the date such payment is due until the date paid by Tenant. Landlord's acceptance of any interest or late charge shall not constitute a waiver of Tenant's default or prevent Landlord from exercising any other rights or remedies available to Landlord.

22.5 **Landlord's Right to Require Advance Payment of Rent; Cashier's Checks.** If Tenant is late in paying any component of rent more than three (3) times during the Lease Term, Landlord shall have the right, upon notice to Tenant, to require that all rent be paid three (3) months in advance. Additionally, if any of Tenant's checks are returned for nonsufficient funds, or if Landlord at any time serves upon Tenant a Three Day Notice to Pay Rent or Quit (pursuant to California Civil Code Sections 1161 *et seq.* or any successor or similar unlawful detainer statutes), Landlord may, at its option, require that all future rent (including any sums demanded in any subsequent three (3) day notice) be paid exclusively by money order or cashier's check.

23. DEFAULT BY LANDLORD.

23.1 **Notice to Landlord.** Landlord shall not be in default under this Lease unless Landlord fails to perform an obligation required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to each Mortgagee as provided in Section 23.2, specifying the nature of the alleged default; provided, however, that if the nature of the obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

23.2 **Notice to Mortgagees.** Tenant agrees to give each mortgagee or trust deed holder on the Premises or the Center ("**Mortgagee**"), by certified mail, a copy of any notice of default served upon Landlord, provided that Tenant has been previously notified in writing of the address of such Mortgagee. Tenant further agrees that if Landlord fails to cure such default within the time provided for in this Lease, then the Mortgagees shall have an additional thirty (30) days after Tenant's notice within which to cure such default, or if such default cannot reasonably be cured within that time, then such additional time as may be necessary if, within said 30-day period, any Mortgagee has commenced and is diligently pursuing the remedies necessary to cure the default (including but not limited to commencement of foreclosure proceedings if necessary to affect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

23.3 **Limitations on Remedies Against Landlord.** In the event Tenant has any claim or cause of action against Landlord: (a) Tenant's sole and exclusive remedy shall be against Landlord's interest in the Center, and neither Landlord nor any partner of Landlord nor any other property of Landlord shall be liable for any deficiency, (b) no partner of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction over Landlord), (c) no service of process shall be made against any partner of Landlord (except as may be necessary to secure jurisdiction over the partnership), and no such partner shall be required to answer or otherwise plead to any service of process, (d) no judgment shall be taken against any partner of Landlord and any judgment taken against any partner of Landlord may be vacated and set aside at any time, and (e) no writ of execution will ever be levied against the assets of any partner of Landlord. The covenants and agreements set forth in this Section shall be enforceable by Landlord and/or by any partner of Landlord. If Landlord

fails to give any consent that a court later holds Landlord was required to give under the terms of this Lease, Tenant shall be entitled solely to specific performance and such other remedies as may be specifically reserved to Tenant under this Lease, but in no event shall Landlord be responsible for monetary damages (including incidental and consequential damages) for such failure to give consent.

24. GENERAL PROVISIONS.

24.1 **[Intentionally omitted]**

24.2 **Arbitration and Mediation** ; **Waiver of Jury Trial.** Except as provided in this Section, if any dispute ensues between Landlord and Tenant arising out of or concerning this Lease, and if said dispute cannot be settled through direct discussions between the parties, the parties shall first to attempt to settle the dispute through mediation before a mutually acceptable mediator. The cost of mediation shall be divided equally between the parties. Thereafter, any remaining, unresolved disputes or claims shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to recover reasonable costs and attorneys' fees and costs as determined by the arbitrator; provided, however, that the foregoing provisions regarding mediation and arbitration shall not apply to (a) any issue or claim that might properly be adjudicated in an unlawful detainer proceeding, or (b) to any issue or claim that Landlord elects not to have resolved through arbitration and with respect to which Landlord commences an action in law or equity to determine the same. Without limiting the foregoing, Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim (including any claim of injury or damage and any emergency and other statutory remedy in respect thereof) brought by either against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises.

24.3 **Attorneys' Fees.** If either party brings any legal action or proceeding, declaratory or otherwise, arising out of this Lease, including any suit by Landlord to recover rent or possession of the Premises or to otherwise enforce this Lease, the losing party shall pay the prevailing party's costs and attorneys' fees and costs incurred in such proceeding. If Landlord issues notice(s) to pay rent, notice(s) to perform covenant, notice(s) of abandonment, or comparable documents as a result of Tenant's default under this Lease, and if Tenant cures such default, Tenant shall pay to Landlord the reasonable costs incurred by Landlord, including Landlord's attorneys' fees and costs, of preparation and delivery of same.

24.4 **Authority of Parties.**

(a) Tenant represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Tenant are the duly designated agents of Tenant and are authorized to do so. Prior to execution of this Lease, Tenant shall supply Landlord with such evidence as Landlord may request regarding the authority of Tenant to enter into this Lease. Any actual or constructive taking of possession of the Premises by Tenant shall constitute a ratification of this Lease by Tenant.

(b) Landlord represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Landlord are the duly designated agents of Landlord and are authorized to do so.

24.5 **Binding Effect.** Subject to the provisions of Article 18 restricting transfers by Tenant and subject to Section 24.28 regarding transfer of Landlord's interest, all of the provisions of this Lease

shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

24.6 **Brokers.** Each party warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this transaction except only the broker(s) set forth in Section 1.11 of the Basic Lease Provisions, and it knows of no other real estate broker or agent who is entitled to a commission in connection with this transaction. Each party agrees to indemnify, protect, hold harmless and defend the other party from and against any obligation or liability to pay any commission or compensation to any other party arising from the act or agreement of the indemnifying party. Tenant acknowledges that certain partners, affiliates or members of Landlord, or their respective officers, directors, shareholders, members or employees, may hold real estate sales person or broker licenses, and additionally may be employees of Asset Management Group and as such may have negotiated, or may have a financial interest in, this transaction.

24.7 **Construction.** The headings and captions used in this Lease are for convenience only and are not a part of the terms and provisions of this Lease. In any provision relating to the conduct, acts or omissions of Tenant, the term **"Tenant"** shall include Tenant, its subtenants and assigns and their respective agents, employees, contractors, and invitees, and any others using the Premises with Tenant's express or implied permission.

24.8 **Counterparts.** This Lease may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Lease binding on all parties after all parties have signed such a counterpart.

24.9 **Covenants and Conditions.** Each provision to be performed by Tenant shall be deemed to be both a covenant and a condition.

24.10 **Entire Agreement.** This Lease, together with any and all exhibits, schedules, riders and addenda attached or referred to herein, constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no oral or written agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes, cancels and merges any and all previous verbal or written negotiations, arrangements, representations, brochures, displays, models, photographs, renderings, floor plans, elevations, projections, estimates, agreements and understandings if any, made by or between Landlord and Tenant and their agents, with respect to the subject matter, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease and all amendments thereto is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. There are no other representations or warranties between the parties, and all reliance with respect to representations is solely based upon the representations and agreements contained in this Lease.

24.11 **Exhibits.** Any and all exhibits, schedules, riders and addenda attached or referred to herein are hereby incorporated herein by reference.

24.12 **Financial Statements.** Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as are reasonably requested by Landlord to verify the net worth of Tenant, or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any proposed or actual lender or purchaser of the Premises designated by Landlord any financial statements required by such party to facilitate the sale, financing or refinancing of the Premises, including the past three (3) years' financial statements. Tenant represents and warrants to Landlord that: (a) each such financial statement is a true and accurate statement as of the date of such statement; and (b) at all times during the Lease Term or any extension thereof, Tenant's net worth shall not be reduced below Tenant's net worth as of the date of execution of this Lease. All such financial statements shall be received in confidence and shall be used only for the purposes set forth herein. Tenant hereby irrevocably authorizes Landlord to conduct credit checks and other investigations into

Tenant's financial affairs. Provided, however that this section shall not apply so long as Tenant regularly reports its financial condition pursuant to a publicly available report filed with the Securities and Exchange Commission.

24.13 **Force Majeure.** If Landlord is delayed in performing any of its obligations hereunder due to strikes, labor problems, inability to procure utilities, materials, equipment or transportation, governmental regulations, weather conditions, riots, insurrection, or war, or other events beyond Landlord's control, then the time for performance of such obligation shall be extended to the extent reasonably necessary as a result of such event.

24.14 **Governing Law.** This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

24.15 **Joint and Several Liability.** If more than one person or entity executes this Lease as Tenant, each of them is jointly and severally liable for all of the obligations of Tenant hereunder.

24.16 **Modification.** The provisions of this Lease may not be modified or amended, except by a written instrument signed by all parties.

24.17 **Modification for Lender.** If, in connection with obtaining financing or refinancing for the Premises or the Center, Landlord's lender requests reasonable modifications to this Lease, Tenant will not unreasonably withhold or delay its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or materially and adversely affect Tenant's rights hereunder.

24.18 **Nondiscrimination.** Tenant for itself and its officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, agrees to comply fully with any and all laws and other requirements prohibiting discrimination against any person or group of persons on account of race, color, religion, creed, sex, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition, in the use occupancy or patronage of the Premises and/or of Tenant's business. Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against all damage and liability incurred by Landlord in the event of any violation of the foregoing covenant or because of any event of or practice of discrimination against any such persons or group of persons by Tenant or its officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, in accordance with the indemnification provisions of Article 13.

24.19 **Notice.** Any and all notices to either party shall be personally delivered, sent by recognized courier service (such as Federal Express or United Parcel Service), or sent by certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the address specified in Section 1.1, or at such other address as such party may from time to time designate in writing. Notice shall be deemed delivered on the date of personal delivery, one the date scheduled for delivery by such courier service, or three (3) business days after deposit in the U.S. Mail, certified, return receipt requested. Provided, however, that any notice required pursuant to California Code of Civil Procedure Sections 1161 *et seq.* may be given as provided in such sections. Any and all notices provided herein that Landlord may give setting forth or alleging any default or breach of this lease, or of any failure of Tenant to perform its obligations hereunder shall be deemed to satisfy, and shall not be in addition to, any and all legal notices required prior to the commencement of an unlawful detainer action, including without limitation the notices requirements of California Code of Civil Procedure Sections 1161 *et seq.*

24.20 **Partial Invalidity.** If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

24.21 **Quiet Enjoyment.** Landlord agrees that Tenant, upon paying the rent and performing the terms, covenants and conditions of this Lease, may quietly have, hold and enjoy the Premises from and after Landlord's delivery of the Premises to Tenant and until the end of the Lease Term; subject, however, to the lien and provisions of any mortgage or deed of trust to which this Lease is or becomes subordinate.

24.22 **Recording.** Tenant shall not record this Lease or any memorandum hereof without Landlord's prior written consent.

24.23 **Relationship of the Parties.** Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal agent, or employer employee relationship between Landlord and any other person or entity (including, without limitation, Tenant) or as causing Landlord to be responsible in any way for the debts or obligations of such other person or entity.

24.24 **[Intentionally Omitted].**

24.25 **Time of the Essence.** Time is of the essence of each and every provision of this Lease.

24.26 **Transfer of Landlord's Interest.** In the event of a sale, assignment, exchange or other disposition of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved of all obligations and liabilities accruing hereunder after the effective date of said sale, assignment, exchange or other disposition, provided that any Security Deposit or other funds then held by Landlord in which Tenant has an interest are delivered to Landlord's successor. The obligations to be performed by Landlord hereunder shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

24.27 **Waiver.** No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. A waiver of any such breach shall not be deemed a waiver of any preceding or succeeding breach of the same or any other provision. No delay or omission by Landlord in exercising any of its remedies shall impair or be construed as a waiver thereof, unless such waiver is expressly set forth in a writing signed by Landlord, The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

THE SUBMISSION OF THIS LEASE FOR EXAMINATION AND/OR SIGNATURE BY TENANT IS NOT A COMMITMENT BY LANDLORD OR ITS AGENTS TO RESERVE THE PREMISES OR TO LEASE THE PREMISES TO TENANT. THIS LEASE SHALL BECOME EFFECTIVE AND LEGALLY BINDING ONLY UPON FULL EXECUTION AND DELIVERY BY BOTH LANDLORD AND TENANT, UNTIL LANDLORD DELIVERS A FULLY EXECUTED COUNTERPART HEREOF TO TENANT, LANDLORD HAS THE RIGHT TO OFFER AND TO LEASE THE PREMISES TO ANY OTHER PERSON TO THE EXCLUSION OF TENANT.

EXECUTED , by Landlord and Tenant as of the date first written above.

TENANT: 12/6/04	**LANDLORD:**
GENETRONICS, BIOMEDICAL CORPORATION	SORRENTO CENTER Tenancy in Common
a Delaware Corporation	By: Asset Management Group Authorized Signatory
By: /s/ AVTAR DHILLON	By: /s/ WILLIAM TRIBOLET
Title: PRESIDENT & CEO	Title: V.P.
By:	By: /s/ ROBERT PETERSON
Title:	Title:

EXHIBIT "A"

FLOOR PLAN OF PREMISES

[MAP]

EXHIBIT "B"

RULES AND REGULATIONS

The following Rules and Regulations shall apply to the Center. Tenant agrees to comply with the same and to require its agents, employees, contractors, customers and invitees to comply with the same. Landlord shall have the right from time to time to amend or supplement these Rules and Regulations, and Tenant agrees to comply, and to require its agents, employees, contractors, customers and invitees to comply, with such amended or supplemented Rules and Regulations, provided that (a) notice of such amended or supplemental Rules and Regulations is given to Tenant, and (b) such amended or supplemental Rules and Regulations apply uniformly to all tenants of the Center. If Tenant or its subtenants, employees, agents, or invitees violate any of these Rules and Regulations, resulting in any damage to the Center or increased costs of maintenance of the Center, or causing Landlord to incur expenses to enforce the Rules and Regulations, Tenant shall pay all such costs to Landlord. In the event of any conflict between the Lease and these or any amended or supplemental Rules and Regulations, the provisions of the Lease shall control.

1. Tenant shall be responsible at its sole cost for the removal of all of Tenant's refuse or rubbish, All garbage and refuse shall be disposed of outside of the Premises, shall be placed in the kind of container specified by Landlord, and shall be prepared for collection in the manner and at the times and places specified by Landlord. If Landlord provides or designates a service for picking up refuse and garbage, Tenant shall use the same at Tenant's sole cost. Tenant shall not burn any trash or garbage of any kind in or about the Premises. If Landlord supplies janitorial services to the Premises, Tenant shall not, without Landlord's prior written consent, employ any person or persons other than Landlord's janitorial service to clean the Premises.

2. Intentionally Omitted.

3. No loudspeakers, televisions, phonographs, radios, or other devices shall be used in a manner so as to be heard or seen outside of the Premises without Landlord's prior written consent. Tenant shall conduct its business in a quiet and orderly manner so as not to create unnecessary or unreasonable noise. Tenant shall not cause or permit any obnoxious or foul odors that disturb the public or other occupants of the Center: If Tenant operates any machinery or mechanical equipment that causes noise or vibration that is transmitted to the structure of the Building, or to other parts of the Center, to such a degree as to be objectionable to Landlord or to any other occupant of the Center, Tenant shall install and maintain, at Tenant's expense, such vibration eliminators or other devices sufficient to eliminate the objectionable noise or vibration.

4. Tenant shall keep the outside areas immediately adjoining the Premises clean and free from dirt, rubbish, pallets and other debris to the satisfaction of Landlord, If Tenant fails to cause such outside areas to be maintained as required within twelve (12) hours after verbal notice that the same do not so comply, Tenant shall pay a fee equal to the greater of Fifty Dollars ($50.00) or the costs incurred by Landlord to clean up such outside areas.

5. Tenant shall not store any merchandise, inventory, equipment, supplies, finished or semi-finished products, raw materials, or other articles of any nature outside the Premises (or the building constructed thereon if the Premises includes any outside areas) without Landlord's prior written consent.

6. Tenant and Tenant's subtenants, employees, agents, or invitees shall park only the number of cars allowed under the Lease and only in those portions of the parking area designated for that purpose by Landlord. Upon request by Landlord, Tenant shall provide the license plate numbers of the cars of Tenant and Tenant's employees in order to facilitate enforcement of this regulation. Tenant and Tenant's employees shall not store vehicles or equipment in the parking areas, or park in such a manner as to block any of the accessways serving the Center and its occupants.

7. The Premises shall not be used for lodging, sleeping, cooking, or for any immoral or illegal purposes, or for any purpose that will damage the Premises or the reputation thereof. Landlord reserves the right to expel from the Center any person who is intoxicated or under the influence of liquor or drugs or who shall act in violation of any of these Rules and Regulations. Tenant shall not conduct or permit any sale by auction on the Premises. No video, pinball, or similar electronic game machines of any description shall be installed, maintained or operated upon the Premises without the prior written consent of Landlord.

8. Neither Tenant nor Tenant's employees or agents shall disturb, solicit, or canvas any occupant of the Center, and Tenant shall take reasonable steps to discourage others from doing the same.

9. Tenant shall not keep in, or allow to be brought into, the Premises or Center any pet, bird or other animal, other than "seeing-eye" dogs or other animals under the control of and specifically assisting any disabled person.

10. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be disposed of therein. The expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant. Tenant shall not waste or use any excessive or unusual amount of water.

11. Tenant shall use, at Tenant's cost, such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.

12. Tenant will protect the carpeting from undue wear by providing carpet protectors under chairs with casters, and by providing protective covering in carpeted areas where spillage or excessive wear may occur.

13. Tenant shall be responsible for repair of any damage caused by the moving of freight, furniture or other objects into, within, or out of the Premises or the Center. No heavy objects (such as safes, furniture, equipment, freight, etc.) shall be placed upon any floor without Landlord's prior written approval as to the adequacy of the allowable floor loading at the point where the objects are intended to be moved or stored. Landlord may specify the time of moving to minimize any inconvenience to other occupants of the Center. If the Building is equipped with a freight elevator, all deliveries to and from the Premises shall be made using the freight elevator during the time periods specified by Landlord, subject to such reasonable scheduling as Landlord in its discretion shall deem appropriate.

14. Without Landlord's prior written consent, no drapes or sunscreens of any nature shall be installed in the Premises and the sash doors, sashes, windows, glass doors, lights and skylights that reflect or admit light into the building shall not be covered or obstructed. Landlord shall have the right to specify the type of window coverings that may be installed, at Tenant's expense. Tenant shall not mark, drive nails, screw or drill into, paint, or in any way deface any surface or part of the building. Notwithstanding the foregoing, Tenant may hang pictures, blackboards, or similar objects, provided Tenant repairs and repaints any nail or screw holes, and otherwise returns the premises to the condition required under the Lease and the expiration or earlier termination of the Lease Term. The expense of repairing any breakage, stoppage, or damage resulting from a violation of this rule shall be borne by Tenant.

15. No electrical wiring, electrical apparatus, or additional electrical outlets shall be installed in the Premises without Landlord's prior written approval. Any such installation not so approved by Landlord may be removed by Landlord at Tenant's expense. Tenant may not alter any existing electrical outlets or overburden them beyond their designed capacity. Landlord reserves the right to enter the Premises, with reasonable notice to Tenant, for the purpose of installing additional electrical wiring and other utilities for the benefit of Tenant or adjoining tenants. Landlord will direct electricians as to where and how telephone and affixed wires are to be installed in the

Premises. The location of telephones, call boxes, and other equipment affixed to the Premises shall be subject to the prior written approval of Landlord.

16. If Tenant's use of the Premises involves the sale and/or preparation of food, Tenant shall at all times maintain a health department rating of "A" (or such other highest health department or similar rating as is available). Any failure by Tenant to maintain such "A" rating twice in any twelve (12) month period shall, at the election of Landlord, constitute a noncurable Event of Default under the Lease.

17. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

18. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

19. If Tenant occupies any air-conditioned space, Tenant shall keep entry doors opening onto corridors, lobby or courtyard closed at all times. All truck and loading doors shall be closed at all times when not in use.

20. Tenant shall not paint any floor of the Premises without Landlord's prior written consent. Prior to surrendering the Premises upon expiration or termination of the Lease, Tenant shall remove any paint or sealer therefrom (whether or not previously permitted by Landlord) and restore the floor to its original condition as of the Commencement Date, reasonable wear and tear excepted. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord.

/s/ AD

Tenant's Initials

EXHIBIT "C"

SIGN CRITERIA

Such signage as may be reasonably approved in advance by Landlord.

CONSTRUCTION ADDENDUM
TO STANDARD INDUSTRIAL NET LEASE
(Genetronics Biomedical Corporation)

This CONSTRUCTION ADDENDUM TO STANDARD INDUSTRIAL NET LEASE (" **Addendum** ") is attached to and made a part of that certain Standard Industrial Net Lease by and between SORRENTO CENTER (" **Landlord** "), and GENETRONICS BIOMEDICAL CORPORATION, a Delaware corporation (" **Tenant** "), dated November 12, 2004 (the " **Lease** "), for premises located at 11494 Sorrento Valley Road, San Diego, California 92121 (the " **Premises** "). Landlord and Tenant hereby agree that notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be a part of the Lease and shall supersede, to the extent appropriate, any contrary provision of the Lease. All references to the "Lease" in this Addendum shall be construed to mean the Lease, and any and all exhibits and/or other addenda thereto, as amended and supplemented by this Addendum. All capitalized terms used in this Addendum, unless specifically defined in this Addendum, shall have the same meaning as such terms have in the Lease.

25. INITIAL TENANT IMPROVEMENTS; TENANT IMPROVEMENT ALLOWANCE.

25.1 **Tenant Improvement Allowance.** Tenant intends to construct certain initial improvements in the Premises (the **"Tenant Improvements"**). Tenant shall be entitled to a one time tenant improvement allowance of up to $300,000 (the **"Allowance"**) for the costs relating to the design and construction of the Tenant Improvements. In no event shall Landlord be obligated to make disbursements pursuant to this Addendum in a total amount that exceeds the Allowance.

25.2 **Allowance Items.** Except as otherwise set forth in this Addendum, the Allowance shall be disbursed by Landlord only for the following items and costs (collectively the **"Allowance Items"**):

(a) Payment of the fees of the "Architect" and the "Engineers," as defined in Section 25.4 of this Addendum, which fees shall, notwithstanding anything to the contrary contained in this Addendum, not exceed an aggregate amount equal to five percent (5%) of the Allowance, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the "Construction Drawings," as defined in Section 25.4 of this Addendum;

(b) The payment of plan check, building permit and license fees relating to construction of the Tenant Improvements;

(c) The cost of constructing the Tenant Improvements, including, without limitation, testing and inspection costs, freight elevator usage, utility usage, parking charges and trash removal costs, and contractors' fees and general conditions;

(d) The cost of any changes in the Premises or the Building when such changes are required by the Construction Drawings;

(e) The cost of any changes to the Construction Drawings or Tenant Improvements required by applicable building code (**"Code"**);

(f) Sales and use taxes;

(g) Title 24 fees;

(h) Construction of the building facade in accordance with Section 25.12 below by Landlord; and

(i) Equipment, furniture, telephone and data cabling, modular furniture, and any improvements to be for a subtenant's occupancy of the Premises.

25.3 **Disbursement of Allowance.** During the construction of the Tenant Improvements, no more frequently than monthly, Landlord shall make disbursements of the Allowance for Allowance Items and/or shall authorize the release of monies as follows:

(a) **Periodic Disbursements.** To obtain a disbursement of the Allowance, Tenant shall deliver to Landlord: (i) a request for payment of the "Contractor," defined in Section 25.5 of this Addendum, approved by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, (ii) invoices from all of "Tenant's Construction Agents," as defined in Section 25.5(b) of this Addendum, for labor rendered and materials delivered to the Premises, (iii) executed conditional mechanic's lien releases from all of Tenant's Construction Agents; and (iv) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. Thereafter, Landlord shall deliver a check to Tenant made jointly payable to Contractor, any subcontractor, and Tenant in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this Section, less a ten percent (10%) retention (the aggregate amount of such retentions shall collectively referred to herein as the **"Final Retention"**), and (B) the balance of any remaining available portion of the Allowance (not including the Final Retention), provided that Landlord does not dispute any request for payment based on non compliance of any work with the Approved Working Drawings (defined in Section 3.4 below), or due to any substandard work, or for any other reason. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

(b) **Final Retention.** Subject to the provisions of this Addendum, a check for the Final Retention payable jointly to Contractor, any other applicable Tenants' Construction Agents, and Tenant shall be delivered by Landlord to Tenant following the completion of construction of the Tenant Improvements, provided that (i) Tenant delivers to Landlord properly executed conditional mechanics lien releases, (ii) Landlord has determined that no substandard work exists that adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life safety or other systems of the Building, the structure or exterior appearance of the Building, or any other tenant's use of such other tenant's leased premises in the Building, and (iii) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements in the Premises has been substantially completed.

(c) **Other Terms.** Landlord shall only be obligated to make disbursements from the Allowance to the extent costs are incurred by Tenant for Allowance Items.

25.4 **Construction Drawings.**

(a) **Selection of Drawings.** Tenant shall retain an architect/space planner approved by Landlord, which approval shall not be unreasonably withheld or delayed (the **"Architect"**) to prepare the Construction Drawings. If appropriate, Tenant shall retain engineering consultants approved by Landlord which approval shall not be unreasonably withheld or delayed (the **"Engineers"**) to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work in the Premises. The plans and drawings to be prepared by the Architect and the Engineers hereunder shall be referred to collectively herein as the **"Construction Drawings."** All Construction Drawings shall comply with the drawing format and specifications determined by Landlord, and shall be subject to Landlord's approval, which approval shall not be unreasonably withheld or delayed. Landlord's review of the Construction Drawings shall be for its sole purpose and shall not obligate Landlord to review the same for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and

consultants, and notwithstanding any advice or assistance that may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in Section of the Lease shall specifically apply to the Construction Drawings.

(b) **Final Space Plan.** Tenant shall supply Landlord with four (4) copies signed by Tenant of its final space plan for the Premises before any architectural working drawings or engineering drawings have been commenced. The final space plan (the **"Final Space Plan"**) shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall promptly cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require.

(c) **Final Working Drawings.** After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non standard equipment and specifications, including, without limitation, BTU calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the **"Final Working Drawings"** (as defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form that is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the **"Final Working Drawings"**) and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall advise Tenant within five (5) days after Landlord's receipt of the Final Working Drawings for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall immediately revise the Final Working Drawings in accordance with such review and any disapproval of Landlord in connection therewith.

(d) **Approved Working Drawings.** The Final Working Drawings shall be approved by Landlord (the **"Approved Working Drawings"**) prior to the commencement of construction of the Premises by Tenant. After approval by Landlord of the Final Working Drawings, Tenant may submit the same to the city and other governmental agencies having jurisdiction for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld.

25.5 **Tenant's Selection of Contractors.**

(a) **The Contractor.** A licensed general contractor (**"Contractor"**) selected by Tenant and approved by Landlord shall be retained by Tenant to construct the Tenant Improvements.

(b) **Tenant's Construction Agents.** All subcontractors, laborers, materialmen, and suppliers used by Tenant (collectively, **"Tenant's Construction Agents"**) must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. The term **"Tenants'**

Agents" shall include Contractor. If Landlord does not approve any proposed Tenants' Agents, Tenant shall submit other proposed Tenants' Agents for Landlord's written approval. Notwithstanding the foregoing, Tenant shall retain subcontractors designated by Landlord, and reasonably approved by Tenant, in connection with any structural, roof, mechanical, electrical, plumbing or heating, air conditioning or ventilation work to be performed in the Premises.

25.6 **Construction of Tenant Improvements by Tenant's Construction Agents.**

(a) **General Construction Contract; Cost Budget.** After Tenant's execution of the general construction contract and general conditions with Contractor (the **"General Contract"**), Tenant shall submit a copy of the General Contract to Landlord for its information.

(b) **Landlord's General Conditions.** Tenant's and Tenant's Construction Agents' construction of the Tenant Improvements shall comply with the following: (i) the Tenant Improvements shall be constructed in strict accordance with the Approved Working Drawings, (ii) Tenant's Construction Agents shall submit schedules of all work relating to the Tenant's Improvements to Contractor, and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Construction Agents of any changes that are necessary thereto, and Tenant's Construction Agents shall adhere to such corrected schedule, and (iii) Tenant shall abide by all rules made by Landlord with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Addendum, including, without limitation, the construction of the Tenant Improvements.

(c) **Indemnity.** Tenant's indemnity of Landlord as set forth in Article 13 of the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Construction Agents, or anyone directly or indirectly employed by any of them, or in connection with the Tenant Improvements.

(d) **Requirements of Tenant's Construction Agents.** Each of Tenant's Construction Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Construction Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Commencement Date of the Lease. The correction of such work shall include, without additional charge, all additional expenses and damage incurred in connection with such removal or replacement of all or any part of the Tenant improvements and/or the Premises or the Center and/or Common Facilities. All such warranties or guarantees as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the General Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant shall give Landlord any assignment or other assurances that may be necessary to effect such right of direct enforcement.

25.7 **Insurance Requirements.**

(a) **General Coverages.** All of Tenant's Construction Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant under the Lease.

(b) **Special Coverages.** Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other

insurance as Landlord may require. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Construction Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than $3,000,000 combined single limit, and in form and with companies as are required to be carried by Tenant under the other provisions of the Lease.

(c) **General Terms.** Certificates for all insurance carried pursuant to this Section shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days' prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Construction Agents shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section shall insure Landlord and Tenant, as their interests may appear, as well as Tenant's Construction Agents. All insurance, except Workers' Compensation, maintained by Tenant's Construction Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the Landlord and that any other insurance maintained by Landlord is excess and noncontributing with the insurance required hereunder. Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien free completion of the Tenant Improvements and naming Landlord as a co obligee.

25.8 **Governmental Compliance.** The Tenant Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications. Tenant shall be responsible for causing, at its cost (using the Allowance or Tenant's own funds), the Tenant Improvements to comply with all laws relating to disabled persons, handicap access and similar issues (including any and all upgrades, retrofits or other construction therein). Tenant shall additionally be responsible, at its cost (using the Allowance or Tenant's own funds), for any changes necessary to the Common Facilities (including the surrounding sidewalks, curbs, gutters and parking area) as may be required because of the Tenant Improvements (including the addition of new entrances, relocation of entrances, or enlargement of entrances), it being the intent that Tenant shall only be required to bring areas into compliance which are impacted or changed by the Tenant Improvements. In all other instances, Landlord shall be responsible for doing any alteration, construction, retrofitting or other work required in the remainder of the Building or the Common Facilities (including the surrounding sidewalks, curbs, gutters and parking area) to comply governmental requirements related to disabled persons, handicap access and the like (y) as a result of the Tenant Improvements is, or (z) as a result of Alterations undertaken by Tenant after the date thirty (30) months from the Commencement Date.

25.9 **Inspection by Landlord.** Landlord shall have the right to inspect the Tenant Improvements at all times, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same. Should Landlord disapprove any

portion of the Tenant Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved and the reason for disapproval, which shall be limited to failure to comply with laws or the Final Working Drawings. Any defects or deviations in, and/or disapproval by Landlord of, the Tenant Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that if Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Tenant Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life safety systems of the Building, the structure or exterior appearance of the Building or the use of the building or Center by any other occupant thereof, Landlord may take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Tenant Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

25.10 **Meetings.** During the design and construction of the Tenant Improvements, Landlord, at Landlord's election, shall hold weekly meetings with the Tenant, Architect, the Contractor and such of Tenant's Construction Agents as Landlord may reasonably require regarding the progress of the preparation of Construction Drawings and the construction of the Tenant Improvements.

25.11 **Notice of Completion; Copy of Record Set of Plans.** Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Center is located, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record set" of mylar as built drawings are true and correct, which certification shall survive the expiration or termination of the Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

25.12 **Construction of Building Exterior Facade.** Landlord shall, at its sole cost and expense, re-construct the building facade within 6 months of the Lease Commencement Date, pursuant to **[describe plan or drawing which depicts facade]** . A portion of the Allowance up to the amount of $37,500 shall be used for one-half of the cost of constructing the building exterior facade by Landlord. Such half (up to $37,500) building exterior facade portion shall be withheld by Landlord from the Allowance and disbursed by Landlord to contractors of Landlord's choosing in connection with the construction of the building exterior facade. Landlord shall be responsible for the other half of the construction costs for the building exterior facade, and for any amount by which the cost of the building exterior facade exceed $75,000.

25.13 **Miscellaneous.**

(a) **Tenant's Representative.** Tenant has designated Peter Kies as its sole representative with respect to the matters set forth in this Addendum, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Addendum.

(b) **Landlord's Representative.** Landlord has designated E. Tyler Miller as its sole representatives with respect to the matters set forth in this Addendum, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Addendum.

(c) **Time of the Essence.** Unless otherwise indicated, all references herein to a **"number of days"** shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

(d) **Tenant's Lease Default.** Notwithstanding any provision to the contrary contained in the Lease, if an Event of Default as described in Article 21 of the Lease has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Allowance and/or Landlord may cause Contractor to cease the construction of the Premises (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Addendum shall be forgiven until such time as such default is cured pursuant to the terms of the Lease (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such inaction by Landlord).

25.14 **No Other Change.** Except as specifically set forth in this Addendum, all of the terms and conditions of the Lease shall remain unchanged and in full force and effect.

TENANT:

GENETRONICS BIOMEDICAL CORPORATION
a Delaware corporation

By: /s/ AVTAR DHILLON

Print Name: AVTAR DHILLON

Title: PRESIDENT & CEO

LANDLORD:

SORRENTO CENTER Tenancy in Common
By: Asset Management Group Authorized Signatory

By: /s/ WILLIAM TRIBOLET

Print Name: William Tribolet

Title: V.P.

By: /s/ ROBERT PETERSON

Print Name: Robert Peterson

Title:

Exhibit 10.16

STANDARD INDUSTRIAL NET LEASE (Genetronics Biomedical Corporation)
EXHIBIT "A" FLOOR PLAN OF PREMISES
EXHIBIT "B" RULES AND REGULATIONS
EXHIBIT "C" SIGN CRITERIA
CONSTRUCTION ADDENDUM TO STANDARD INDUSTRIAL NET LEASE (Genetronics Biomedical Corporation)

Exhibit 10.17

LEASE AMENDMENT #3

This LEASE AMENDMENT #3 ("Amendment") is entered into as of the 21st day of January, 2005 by and between NEXUS SORRENTO GLENN LLC, a Delaware Limited Liability Company ("Landlord") and GENETRONICS, INC., a California Corporation ("Tenant").

RECITALS

A. Nexus Sorrento Glen LLC, as Landlord, and Genetronics, Inc., as Tenant, entered into that certain Lease dated as of August 26, 1999 as amended by that certain Lease Amendment #1 dated November 29th, 2001, and that certain Lease Amendment #2 dated September 10 th , 2003 (together, the "Lease"), of the certain premises located in the building commonly known as Suites A-F and 1-K of 11199 Sorrento Valley Road, and Suites E-G of 11189 Sorrento Valley Road, San Diego, California, as more particularly described therein ("Premises"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Lease.

B. Landlord and Tenant now desire to amend the Lease in order to, among other things, acknowledge Tenant's holdover and to effect a month-to-month lease for a portion of the Premises at the northeast end of 11199 Sorrento Valley Road.

NOW, THEREFORE, Landlord and Tenant acknowledge their agreement of the following:

1. *Holdover*

Tenant anticipates vacating most of the Premises on or about January 31, 2005 and will pay the Holdover rent on this space per the terms of the Lease until Tenant vacates. Landlord agrees that Tenant shall only be responsible for Rent on a per diem basis if Tenant has not completed the move out before February 1 st . Starting February 1st, however, no Holdover rent will be due on the Short Term Premises (as identified in Exhibit "A" of this Lease Amendment #3).

2. *Short Term Premises Month-to-Month Lease*

Landlord and Tenant agree that the portion of the Premises shown in Exhibit "A" (the "Short Term Premises") measuring 5,019 rentable square feet, will continued to be leased by Tenant starting February 1, 2005 through May 31, 2005 at monthly Base Rent of $7,679.00 per month ($ 1,5.3/sf) plus its pro rata share of project operating expenses. On June 1, 2005 the lease will become a "month-to-month" lease and will be subject to Termination by either Landlord or Tenant upon 30 days written notice. Landlord shall retain $5,019 of Tenant's current security deposit to serve as a security deposit for the Short Term Premises. All other terms and conditions of the Lease shall apply to the lease of the Short Term Premises.

3. *Effect*

Except as specifically amended herein, the terms and provisions of the Lease shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

LANDLORD:	TENANT:
NEXUS SORRENTO GLEN LLC, a Delaware Limited Liability Company	GENETRONICS, INC, a California corporation
By: /s/ MICHAEL J. REIDY	By: /s/ PETER KIES
Its: Manager	Its: Peter Kies, CFO

Exhibit 14.1

Code of Ethics for Senior Officers

It is the policy of Genetronics Biomedical Corporation (the "Company") that the chief executive officer, chief financial officer, principal accounting officer or controller, and/or persons performing similar functions (the "Senior Officers") observe the high standards of business and personal ethics in the conduct of their duties and responsibilities. The Senior Officers must practice honesty and integrity in every aspect of dealing with other Company employees, the public, the business community, stockholders, customers, suppliers and governmental authorities. The Senior Officers will abide by this Code of Ethics for Senior Officers (the "Code") and will adhere to the following ethical principles:

1. *Honest and Ethical Conduct.* Each Senior Officer will act with honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.

2. *Conflicts of Interest.* Each Senior Officer will avoid conflicts of interest and material transactions or relationships involving potential conflicts of interest without proper approval. Senior Officers will not receive benefits from a person doing or seeking to do business with the Company which is not in the best interests of the Company.

3. *Full, Fair, Accurate, Timely and Understandable Disclosure.* Each Senior Officer will make full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with, or submits to, the SEC and in other public communications made by the Company.

4. *Compliance with Applicable Laws.* Each Senior Officer will comply with applicable governmental laws, rules and regulations.

5. *Internal Reporting of Conflicts of Interest.* Each Senior Officer will promptly report any material transaction or relationship that reasonably could be expected to give rise to a conflict of interest to the Nomination and Corporate Governance Committee. The Nomination and Corporate Governance Committee will fully investigate and report to the Board of Directors any actual, potential or alleged violations in this Code.

6. *Consequences for non-adherence to the Code.* Any violation of this Code, whether or not material, may have repercussions which could include termination of employment.

Exhibit 21.1

List of Subsidiaries

Genetronics, Inc., a company incorporated under the laws of California

Inovio AS, a company organized under the laws of Norway

QuickLinks

Exhibit 21.1

List of Subsidiaries

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 333-120061, 333-100077, 333-58168; Form S-3 Nos. 333-116696, 333-118187, 333-111287, 333-108752 and 333-76738) of Genetronics Biomedical Corporation, of our report dated February 28, 2005, with respect to the consolidated financial statements of Genetronics Biomedical Corporation, Genetronics Biomedical Corporation management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Genetronics Biomedical Corporation, included in the Annual Report (Form 10-K) for the year ended December 31, 2004.

/s/ ERNST & YOUNG LLP

San Diego, California
March 10, 2005

QuickLinks

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 31.1

Certification of CEO Pursuant to
Securities Exchange Act Rules 13a-14(a) and 15d-14(a)
as Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Avtar Dhillon, President and Chief Executive Officer of Genetronics Biomedical Corporation, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2004 of Genetronics Biomedical Corporation;

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 annual 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-14 and 15d-14) for the registrant and we 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 controls over financial reporting, or caused such internal controls 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 in accordance with U.S. 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, 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 controls over financial reporting.

Date: March 15, 2005

/s/ AVTAR DHILLON

Avtar Dhillon
President and Chief Executive Officer

Exhibit 31.2

Certification of CFO Pursuant to
Securities Exchange Act Rules 13a-14(a) and 15d-14(d)
as Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

I, Peter Kies, Chief Financial Officer of Genetronics Biomedical Corporation, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2004 of Genetronics Biomedical Corporation;

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 annual 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-14 and 15d-14) for the registrant and we 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 controls over financial reporting, or caused such internal controls 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 in accordance with U.S. 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, 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 controls over financial reporting.

Date: March 15, 2005

/s/ PETER KIES

Peter Kies
Chief Financial Officer

Exhibit 32.1

Certification Pursuant to
18 U.S.C. Section 1350,
As Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report of Genetronics Biomedical Corporation (the "Company") on Form 10-K for the year ending December 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned, in the capacities and on the date indicated below, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

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

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

March 15, 2005

/s/ AVTAR DHILLON

Avtar Dhillon
President and Chief Executive Officer (Principal Executive Officer)

/s/ PETER KIES

Peter Kies
Chief Financial Officer (Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not filed with the Securities and Exchange Commission as part of the Form 10-K or as a separate disclosure document and is not incorporated by reference into any filing of Genetronics Biomedical Corporation under the Securities Exchange Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

QuickLinks

Exhibit 32.1

Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

End of Filing