

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

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

Date of Report (Date of earliest event reported): **March 1, 2016**

**SUNSHINE HEART, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation)

**001-35312**

(Commission File Number)

**68-0533453**

(IRS Employer  
Identification No.)

**12988 Valley View Road  
Eden Prairie, Minnesota 55344**

(Address of principal executive offices) (Zip Code)

**(952) 345-4200**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

**Appointment and Compensatory Arrangement of John L. Erb.** Effective March 1, 2016, John L. Erb was appointed as Chief Executive Officer and President of Sunshine Heart, Inc. (the "**Company**"). Mr. Erb will continue to serve as Chairman of the Board of Directors of the Company.

Mr. Erb, age 67, has served as the Company's Interim Chief Executive Officer and President since November 2015 and has been a director of the Company since September 2012 and Chairman of the Board since October 2012. He is co-founder of NuAx, Inc. (formerly Cardia Access, Inc.), a medical device company involved in developing new devices for the treatment of heart disease, a position he has held since February 2007. Previously, Mr. Erb served as executive chairman of the board (during 2007) and as chief executive officer (from 2001 to 2006) of CHF Solutions, Inc., a medical device company involved in the development, manufacturing and distribution of devices to treat congestive heart failure; as president and chief executive officer of IntraTherapeutics, Inc., a medical device company involved in the development, manufacturing and distribution of peripheral vascular stents, from 1997 to 2001; and in various positions, including most recently as vice president of worldwide operations, at Schneider, a division of Pfizer, Inc., from 1991 to 1997. Mr. Erb's prior board experience includes service as a director of SenoRx, Inc., a publicly traded company, from December 2001 to July 2010, and service as a director of CryoCath Technologies Inc., a publicly traded Canadian company, from October 2000 to December 2008. Mr. Erb currently serves as a director of NuAx, as well as Osprey Medical, Inc. (listed on the Australian Securities Exchange; serves as chairman of the compensation committee and a member of the audit committee), and Vascular Solutions, Inc. (a Nasdaq listed company; serves as chairman of the compensation and nominating and corporate governance committees). Mr. Erb received a B.A. degree in business administration, with a concentration in finance from California State University, Fullerton.

On March 1, 2016, the Company entered into an Executive Employment Agreement with Mr. Erb (the "**Executive Employment Agreement**").

*Title and Term*

Pursuant to the Executive Employment Agreement, the Company agreed to employ Mr. Erb as Chief Executive Officer and President of the Company.

The Executive Employment Agreement has an initial term (the **“Initial Term”**) of twelve (12) months beginning on March 1, 2016 and automatically renews for an additional twelve (12) month period at the end of the Initial Term and each anniversary thereafter provided that at least ninety (90) days prior to the expiration of the Initial Term or any renewal term the Board does not notify Mr. Erb of its intention not to renew the employment period.

#### *Compensation*

The Executive Employment Agreement entitles Mr. Erb to, among other benefits, the following compensation:

- An annual base salary of at least \$400,000.00, reviewed at least annually;
- A stock option for 534,000 shares of the Company’s common stock, to be granted in accordance with the terms and conditions of the Company’s Second Amended and Restated 2011 Equity Incentive Plan;
- A grant of 356,000 restricted stock units, to be granted in accordance with the terms and conditions of the Company’s Second Amended and Restated 2011 Equity Incentive Plan;
- An opportunity to receive additional annual equity awards as determined by the Compensation Committee based on Mr. Erb’s performance and commensurate with grants made to chief executive officers in the Company’s compensation peer group;

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- An opportunity for Mr. Erb to receive an annual performance bonus in an amount of up to fifty percent (50%) of Mr. Erb’s annual base salary for such fiscal year based upon achievement of certain performance goals to be established by the Board;
  - Participation in welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available generally or to other senior executive officers of the Company;
  - Prompt reimbursement for all reasonable expenses incurred by Mr. Erb in accordance with the plans, practices, policies and programs of the Company; and
  - Twenty-two (22) days paid time off (PTO), to accrue and to be used in accordance with the Company’s policies and practices in effect from time to time, as well as all recognized Company holidays.

#### *Termination Rights*

The Company is permitted to terminate Mr. Erb’s employment for the following reasons: (1) Death or disability (as defined in the Executive Employment Agreement) or (2) cause (as defined in the Executive Employment Agreement).

Mr. Erb is permitted to terminate his employment under the Executive Employment Agreement for good reason (as defined in the Executive Employment Agreement) or upon Mr. Erb’s written notice to the Company’s Board of Directors forty-five (45) days prior to the effective date of such termination.

In the event of Mr. Erb’s death during the employment period or a termination due to Mr. Erb’s disability, Mr. Erb or his beneficiaries or legal representatives shall be provided the sum of (a) any annual base salary earned, but unpaid, for services rendered to the Company on or prior to the date on which the employment period and (b) if Mr. Erb’s employment terminates due to Mr. Erb’s death or in a termination due to disability or a termination for good reason or due to the Company’s exercise of its termination right, in any case, after the end of a fiscal year, but before the annual bonus payable for services rendered in that fiscal year has been paid, the annual bonus that would have been payable to Mr. Erb for such completed fiscal year and (c) certain other benefits provided for in the Executive Employment Agreement (the **“Unconditional Entitlements”**).

In the event of Mr. Erb’s termination for cause by the Company or the termination of Mr. Erb’s employment as a result of Mr. Erb’s resignation without good reason, Mr. Erb shall be provided the Unconditional Entitlements.

In the event of a termination by Mr. Erb for good reason or the exercise by the Company of its termination rights to terminate Mr. Erb other than for cause, death or disability, Mr. Erb shall be provided the Unconditional Entitlements and, subject to Mr. Erb signing and delivering to the Company and not revoking a general release of claims in favor of the Company and certain related parties, the Company shall provide Mr. Erb a severance amount equal to (i) one times Mr. Erb’s annual base salary as of the termination date, (ii) continued medical coverage for twelve (12) months follow such termination, (iii) continued vesting of equity awards for twelve (12) months following such termination and (iv) a pro-rated annual bonus for the year in which Mr. Erb is terminated.

#### *Recoupment and Release Requirement*

The Executive Employment Agreement provides the following additional terms:

- a provision providing for the recoupment of unearned incentive compensation if the Board, or an appropriate committee thereof, determines that Mr. Erb engaged in any fraud, negligence, or intentional misconduct that caused or significantly contributed to the Company having to restate all or a portion of its financial statements, or if the Company is required to seek reimbursement by applicable laws or

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regulations; and

- a requirement that Mr. Erb sign a release and waiver of claims of the Company prior to the payment of any severance payment by the Company.

The foregoing description of the Executive Employment Agreement is not complete and is qualified in its entirety by reference to the Employment Agreement which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

In connection with the equity grant contemplated by the Executive Employment Agreement, Mr. Erb is entitled to receive an option to purchase 534,000 shares of the Company's common stock at a per share exercise price equal to the closing sales price for the Company's common stock on the date of grant, as quoted on the Nasdaq Capital Market, and an award of 356,000 restricted stock units (the "**RSU award**"). The option and RSU award will be granted pursuant to and in accordance with the terms and conditions of the Company's Second Amended and Restated 2011 Equity Incentive Plan, which was filed with the Securities and Exchange Commission (the "**SEC**") on July 27, 2012 as Appendix A to the Company's definitive proxy statement on Schedule 14A and is incorporated herein in its entirety by reference.

Also in connection with Mr. Erb's appointment as Chief Executive Officer and President of the Company, Mr. Erb and the Company entered into an indemnity agreement in the form previously filed with the SEC on September 30, 2011 as Exhibit 10.1 to the Registration Statement on Form 10 and incorporated herein in its entirety by reference. In addition, Mr. Erb and the Company entered into a change in control agreement in the form previously filed with the SEC on March 20, 2015 as Exhibit 10.16 to the Annual Report on Form 10-K for the year ended December 31, 2014 and incorporated herein in its entirety by reference.

#### **Item 7.01 Regulation FD Disclosure.**

On March 2, 2016, the Company issued a press release announcing the appointment of Mr. Erb. A copy of the press release is furnished herewith as Exhibit 99.1 hereto and incorporated herein by reference.

The information in this Item 7.01, including Exhibit 99.1 attached hereto, is being furnished and shall not be deemed "filed" for any purpose, and shall not be deemed incorporated by reference in any filing under the Securities Act or the Securities Act of 1934, as amended, except as expressly set forth by specific reference in such a filing.

#### **Item 9.01 Financial Statements and Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
10.1	Executive Employment Agreement between Sunshine Heart, Inc. and John L. Erb, dated March 1, 2016.
99.1	Press Release issued by the Company dated March 2, 2016.

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### **SIGNATURES**

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

Dated: March 2, 2016

**SUNSHINE HEART, INC.**

By: /S/ CLAUDIA DRAYTON  
Name: Claudia Drayton  
Title: Chief Financial Officer and Secretary

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### **EXHIBIT INDEX**

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**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS EXECUTIVE EMPLOYMENT AGREEMENT (this “**Agreement**”) is made effective as of the 1<sup>st</sup> day of March, 2016 (the “**Commencement Date**”), by and between SUNSHINE HEART, INC., a Delaware corporation (the “**Company**”) and JOHN L. ERB (the “**Executive**”).

**BACKGROUND**

The Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its shareholders to employ the Executive. This Agreement shall represent the entire understanding and agreement between the parties with respect to the Executive’s employment with the Company.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, the parties agree as follows:

**TERMS AND CONDITIONS**

**1. EMPLOYMENT PERIOD.** The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the Employment Period. The “**Employment Period**” shall mean the period commencing on the Commencement Date and ending on the twelve (12) month anniversary of the Commencement Date, unless previously terminated in accordance with Section 3; provided, however, that commencing on the date one year after the Commencement Date, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the “**Renewal Date**”), unless previously terminated in accordance with Section 3, the Employment Period shall be automatically extended so as to terminate twelve (12) months from such Renewal Date, unless at least ninety (90) days prior to the Renewal Date the Company shall give notice to the Executive that the Employment Period shall not be so extended.

**2. TERMS OF EMPLOYMENT.****(a) Position and Duties.**

**(i)** During the Employment Period, the Executive shall serve as the Chief Executive Officer (CEO) and President of the Company, and in such other position or positions with the Company and its subsidiaries as are consistent with the Executive’s positions as CEO and President of the Company, and shall have such duties and responsibilities as are assigned to the Executive by the Board. The Executive shall also continue to serve as a member of the Board for so long as he continues to serve as CEO. At such time as the Executive’s service as CEO terminates, he agrees to immediately resign as a member of the Board. The Company may require that the Executive travel interstate or overseas.

**(ii)** During the Employment Period, and excluding any periods of paid

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time off and leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company, to discharge the responsibilities assigned to the Executive hereunder, and to use the Executive’s reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) be employed by the Company or any of its subsidiaries or affiliates, (B) serve on corporate, civic or charitable boards or committees, (C) deliver lectures, fulfill speaking engagements or teach at educational institutions, (D) serve as a non-executive outside director on the boards of directors and any board committees (or board of managers, as the case may be) of NuAx, Inc., Osprey Medical, Inc. and Vascular Solutions, Inc. or any future non-executive outside director positions that are pre-approved by the Board and (E) manage personal investments, in each case so long as such activities do not significantly interfere with the performance of the Executive’s responsibilities as an employee of the Company in accordance with this Agreement.

**(b) Compensation.**

**(i) Base Salary.** During the Employment Period, the Executive shall receive an annual base salary (the “**Annual Base Salary**”) at least equal to Four Hundred Thousand Dollars (\$400,000.00), which shall be paid in accordance with the Company’s normal payroll practices for senior executive officers of the Company as in effect from time to time. During the Employment Period, the Annual Base Salary shall be reviewed at least annually. Any increase in the Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. The Annual Base Salary shall not be reduced after any such increase (unless otherwise agreed to by the Executive) and the term “**Annual Base Salary**” as utilized in this Agreement shall refer to the Annual Base Salary as so increased or adjusted.

**(ii) Initial Equity Awards.** On or about March 8, 2016, the Executive shall be granted the following equity awards (the “**Initial Equity Awards**”), subject in each case to the terms and conditions of the Company’s Second Amended and Restated 2011 Equity Incentive Plan, as amended from time to time (or its successor) (the “**Plan**”) and the applicable form of award agreement, execution of which shall be a condition to the award:

**(A) Stock Option.** The Executive shall be granted an option (the “**Initial Option**”) for 534,000 shares of the Company common stock. The Initial Option shall have a per share exercise price equal to the market closing price of a share of Company common stock on the grant date and the vesting terms set forth in the award agreement for the Initial Option.

**(B) Initial Restricted Stock Units.** The Executive shall be granted an award of restricted stock units (the “**Initial RSU Award**”) for 356,000 shares of Company common stock and the vesting terms set forth in the award agreement for the Initial RSU Award.

**(iii) Subsequent Equity Awards.** In addition to the Initial Equity Awards, the Executive shall be eligible to be granted additional equity awards by the Compensation Committee of the Board on an annual basis (the “**Subsequent Equity Awards**”), commencing with the first grant of annual equity awards to executive officers of the Company

generally. The Compensation Committee shall generally determine the size of Subsequent Equity Awards taking into account the Executive's performance and commensurate with grants made to chief executive officers of companies in the Company's compensation peer group.

(iv) **Annual Bonus.** In addition to the Annual Base Salary, for each fiscal year ending during the Employment Period, the Executive shall be eligible for an annual performance bonus (the "**Annual Bonus**"). The Executive's annual cash bonus shall be up to fifty percent (50%) of the Executive's Annual Base Salary for such fiscal year, and will be based upon achievement of certain performance goals (the "**Performance Goals**") to be established by the Board. Achievement of the Performance Goals for each fiscal year during the Employment Period will be determined in good faith by the Board in its sole discretion within thirty (30) days after the end of the fiscal year. Each such Annual Bonus awarded to the Executive shall be paid sometime during the first two months of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect, in compliance with Treasury Regulation 1.409A-2(a), to defer the receipt of such Annual Bonus.

(v) **Welfare Benefit Plans.** During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available generally or to other senior executive officers of the Company.

(vi) **Expenses.** During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the plans, practices, policies and programs of the Company.

(vii) **PTO & Holidays.** The Executive will be entitled to twenty-two (22) days paid time off (PTO), to accrue and to be used in accordance with the Company's policies and practices in effect from time to time, as well as all recognized Company holidays.

(c) **Recoupment of Unearned Incentive Compensation.** If (i) the Board, or an appropriate committee thereof, determines that the Executive engaged in any fraud, negligence or intentional misconduct that caused or significantly contributed to the Company having to restate all or a portion of its financial statements or (ii) the Company is required to require reimbursement by applicable laws or regulations, the Board or committee may require reimbursement of any bonus or incentive compensation paid to the Executive if and to the extent that (a) the amount of incentive compensation was calculated based upon the achievement of certain financial results that were subsequently reduced due to a restatement and (b) the amount of the bonus or incentive compensation that would have been awarded to the Executive had the financial results been properly reported would have been lower than the amount actually awarded.

### 3. TERMINATION OF EMPLOYMENT.

(a) **Early Termination of the Employment Period.** Notwithstanding Section 1, the Employment Period shall end upon the earliest to occur of (i) the Executive's death, (ii) a Termination due to Disability, (iii) a Termination for Cause, (iv) the Termination Date specified in connection with any exercise by the Company of its Termination Right or (v) a Termination for Good Reason. If the Employment Period terminates as of a date specified under this Section 3, the Executive agrees that, upon written request from the Company, the Executive shall resign from any and all positions the Executive holds with the Company and any of its subsidiaries and affiliates, effective immediately following receipt of such request from the Company (or at such later date as the Company may specify). This Agreement may be terminated by the Executive at any time upon forty-five (45) days prior written notice to the Company or upon such shorter period as may be agreed upon between the Executive and the Board.

#### (b) Benefits Payable Under Termination.

(i) In the event of the Executive's death during the Employment Period or a Termination due to Disability, the Executive or the Executive's beneficiaries or legal representatives shall be provided the Unconditional Entitlements, including, but not limited to, any such Unconditional Entitlements that are or become payable under any Company plan, policy, practice or program or any contract or agreement with the Company by reason of the Executive's death or Termination due to Disability.

(ii) In the event of the Executive's Termination for Cause or the termination of the Executive's employment as a result of the Executive's resignation without Good Reason pursuant to Section 3(a), the Executive shall be provided the Unconditional Entitlements.

(iii) In the event of a Termination for Good Reason or the exercise by the Company of its Termination Rights, the Executive shall be provided the Unconditional Entitlements and, subject to Executive signing and delivering to the Company and not revoking a general release of claims in favor of the Company and certain related parties in substantially the form of EXHIBIT A attached hereto (the "**Release**"), the Company shall provide the Executive the Conditional Benefits. Any and all amounts payable and benefits or additional rights provided to the Executive upon a termination of his employment pursuant to Section 3(b) (other than the Unconditional Entitlements) shall only be payable or provided if the Executive signs and delivers the Release within the consideration period identified in the Release and the Executive does not revoke the Release within the revocation period identified in the Release. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement, nor shall the amount of any payment hereunder be reduced by any compensation earned by the Executive as a result of employment by a subsequent employer.

(c) **Unconditional Entitlements.** For purposes of this Agreement, the "**Unconditional Entitlements**" to which the Executive may become entitled under Section 3(b) are as follows:

(i) **Earned Amounts.** The Earned Compensation shall be paid within thirty (30) days following the termination of the Executive's employment hereunder, or if any part thereof constitutes the Annual Bonus payable for services rendered for the previous fiscal year, such part shall be paid at the same time the Executive would have otherwise been paid such Annual Bonus in accordance with Section 3(b) but for such termination of employment.

(ii) **Benefits.** All benefits payable to the Executive under any employee benefit plans (including, without limitation any pension plans or 401(k) plans) of the Company or any of its affiliates applicable to the Executive at the time of termination of the Executive's employment with the Company and all amounts and benefits (other than the Conditional Benefits) which are vested or which the Executive is otherwise entitled to receive under the terms of or in accordance with any plan, policy, practice or program of, or any contract or agreement with, the Company, at or subsequent to the date of the Executive's termination without regard to the performance by the Executive of further services or the resolution of a contingency, shall be paid or provided in accordance with and subject to the terms and provisions of such plans, it being understood that all such benefits shall be determined on the basis of the actual date of termination of the Executive's employment with the Company.

(iii) **Indemnities.** Any right which the Executive may have to claim a defense and/or indemnity for liabilities to or claims asserted by third parties in connection with the Executive's activities as an officer, director or employee of the Company shall be unaffected by the Executive's termination of employment and shall remain in effect in accordance with its terms.

(iv) **Business Expenses.** The Executive shall be entitled to reimbursement, in accordance with the Company's policies regarding expense reimbursement as in effect from time to time, for all business expenses incurred by the Executive prior to the termination of the Executive's employment.

(v) **Stock Options/Equity Awards.** Except to the extent additional rights are provided upon the Executive's qualifying to receive the Conditional Benefits, the Executive's rights with respect to any stock options and/or other equity awards granted to the Executive by the Company shall be governed by the terms and provisions of the Original Award Documents.

(d) **Conditional Benefits.** For purposes of this Agreement, the "**Conditional Benefits**" to which the Executive may become entitled are as follows:

(i) **Severance Amount.** The Company shall pay the Executive a lump sum amount equal to the Severance Amount. The Severance Amount shall be paid on the Company's first regular payroll date that is more than 60 days after the Termination Date (or upon the Executive's death, if earlier).

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(ii) **Medical Coverage.** If the Executive is eligible for and properly elects to continue the Executive's and the Executive's dependents' group health, medical, dental, or vision coverage, as in place immediately prior to the Termination Date, the Company shall pay for (x) the portion of the premium costs for such coverage that the Company would pay if the Executive remained employed by the Company and (y) if permitted by law, the Company's contributions to a health savings account for Executive, each at the same level of coverage/contribution that was in effect as of the Termination Date, for a period of twelve (12) months following such termination, provided that such benefits continuation will cease if and to the extent the Executive becomes eligible for similar benefits by reason of new employment or the Executive otherwise is no longer eligible for continuation coverage pursuant to applicable laws or plans. In the event Executive becomes eligible for health benefits by reason of new employment, the Company's contributions to the health savings account shall also cease.

(iii) **Stock Options/Equity Awards.** Notwithstanding any of the provisions of the Original Award Documents, all of the Executive's stock options and/or other equity compensation awards shall vest and remain exercisable in accordance with the applicable Original Award Documents as if Executive remained an employee of the Company for a period of one year immediately after the Termination Date. Except as otherwise expressly provided herein, all stock options and/or other equity awards shall continue to be subject to the Original Award Documents.

(iv) **Pro-Rated Current Year Bonus.** The Company shall pay Executive a pro rata annual bonus for the year in which the Termination Date occurs, determined on the basis of an assumed full-year target bonus and the number of days in the applicable fiscal year occurring on or before the Termination Date. Such pro-rata current year bonus shall be paid no later than the later of (i) two and a half months after the end of the Executive's tax year in which the Termination Date occurs and (ii) two and a half months after the end of the Company's tax year in which the Termination Date occurs.

(v) **Additional Distribution Rules.** Notwithstanding any other payment date or schedule provided in this Agreement to the contrary, if the Executive is deemed on the Termination Date to be a "specified employee" within the meaning of that term under Section 409A of the Code and the regulations thereunder ("**Section 409A**"), then each of the following shall apply:

(A) With regard to any payment that is considered "nonqualified deferred compensation" under Section 409A payable on account of and within six months after a "separation from service" (within the meaning of Section 409A and as provided in Section 3(g) of this Agreement), such payment shall instead be made on the date which is the earlier of (A) the expiration of the six (6) month period measured from the date of the Executive's "separation from service," and (B) the date of the Executive's death (the "**Delay Period**") to the extent required under Section 409A. Upon the expiration of the Delay Period, all payments delayed pursuant to this Section 3(d) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid to the

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Executive in a lump sum, and all remaining payments due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein; and

(B) To the extent that benefits to be provided during the Delay Period are considered "nonqualified deferred compensation" under Section 409A provided on account of a "separation from service," the Executive shall pay the cost of such benefits during the Delay Period, and the Company shall reimburse the Executive, to the extent that such costs would otherwise have been paid or reimbursed by the Company or to the

extent that such benefits would otherwise have been provided by the Company at no cost to the Executive, for the Company's share of the cost of such benefits upon expiration of the Delay Period, and any remaining benefits shall be paid, reimbursed or provided by the Company in accordance with the procedures specified herein.

The foregoing provisions of this Section 3(d) shall not apply to any payments or benefits that are excluded from the definition of "nonqualified deferred compensation" under Section 409A, including, without limitation, payments excluded from the definition of "nonqualified deferred compensation" on account of being separation pay due to an involuntary separation from service under Treasury Regulation 1.409A-1(b)(9)(iii).

(e) **Definitions.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

(i) **"Affiliate"** means any corporation, partnership, limited liability company, trust or other entity which directly, or indirectly through one or more intermediaries, controls, is under common control with, or is controlled by, the Company, or any other entity determined to be an affiliate by regulatory agencies.

(ii) **"Code"** means the Internal Revenue Code of 1986, as amended.

(iii) **"Earned Compensation"** means the sum of (a) any Annual Base Salary earned, but unpaid, for services rendered to the Company on or prior to the date on which the Employment Period ends pursuant to Section 3(a) (but excluding any Annual Base Salary and interest accrued thereon payment of which has been deferred) and (b) if the Executive's employment terminates due to the Executive's death or in a Termination due to Disability or a Termination for Good Reason or due to the Company's exercise of its Termination Right, in any case, after the end of a fiscal year, but before the Annual Bonus payable for services rendered in that fiscal year has been paid, the Annual Bonus that would have been payable to the Executive for such completed fiscal year in accordance with Section 3(b).

(iv) **"Original Award Documents"** means, with respect to any stock option or other equity award, the terms and provisions of the award agreement related to and the plan governing, such stock option or other equity award, each as in effect on the Executive's termination date.

(v) **"Severance Amount"** means an amount equal to one times the Executive's Annual Base Salary as of the Termination Date.

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(vi) **"Termination for Cause"** means a termination of the Executive's employment by the Company due to (A) an act or acts of dishonesty undertaken by the Executive and intended to result in substantial gain or personal enrichment of the Executive at the expense of the Company, (B) unlawful conduct or gross misconduct that is willful and deliberate on the Executive's part and that, in either event, is materially injurious to the Company, (C) the conviction of the Executive of, or his entry of a no contest or *nolo contendere* plea to, a felony, (D) willful and deliberate breach by the Executive of his fiduciary obligations as an officer or director of the Company, (E) a persistent failure by the Executive to perform the duties and responsibilities of his employment hereunder, which failure is willful and deliberate on the Executive's part and is not remedied by him within 30 days after the Executive's receipt of written notice from the Company of such failure, or (F) material breach of any terms and conditions of this Agreement by Executive, which breach has not been cured by the Executive within ten days after written notice thereof to Executive from the Company. For the purposes of this Section 3(e)(vi), no act or failure to act on the Executive's part shall be considered "dishonest," "willful" or "deliberate" unless done or omitted to be done by the Executive in bad faith and without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company.

(vii) **"Termination Date"** means the earlier to occur of (i) the date the Company specifies in writing to the Executive in connection with the exercise of its Termination Right or (ii) the date the Executive specifies in writing to the Company in connection with any notice to effect a Termination for Good Reason.

(viii) **"Termination due to Disability"** means a termination of the Executive's employment by the Company because the Executive has been incapable, after reasonable accommodation, of substantially fulfilling the positions, duties, responsibilities and obligations set forth in this Agreement because of physical, mental or emotional incapacity resulting from injury, sickness or disease for a period of (i) six (6) consecutive months or (ii) an aggregate of nine (9) months (whether or not consecutive) in any twelve (12) month period. Any question as to the existence, extent or potentiality of the Executive's disability shall be determined by a qualified physician selected by the Company with the consent of the Executive, which consent shall not be unreasonably withheld. The Executive or the Executive's legal representatives or any adult member of the Executive's immediate family shall have the right to present to such physician such information and arguments as to the Executive's disability as he, she or they deem appropriate, including the opinion of the Executive's personal physician.

(ix) **"Termination for Good Reason"** means a termination of the Executive's employment by the Executive within thirty (30) days of the Company's failure to cure, in accordance with the procedures set forth below, any of the following events without the Executive's consent: (i) a reduction in any of the Executive's compensation rights hereunder (that is, the Annual Base Salary or target Annual Bonus opportunity specified in Section 2(b)(iv)); (ii) the removal of the Executive by the Company from the position of CEO and President; (iii) a material reduction in the Executive's duties and responsibilities as in effect

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immediately prior to such reduction; (iv) the relocation of the Executive's principal office to a location that is more than 50 miles outside of Eden Prairie, Minnesota; (v) a material breach of any material provision of this Agreement by the Company or (vi) if the Company (1) fails to pay its debts generally as they become due, (2) files a petition for relief under any chapter of Title 11 of the United States Code or a petition to take advantage of any insolvency under the laws of the United States of America or any state thereof, (3) makes an assignment for the benefit of its creditors, (4) consents to the appointment of a receiver of itself or of the whole or any substantial part of its property, (5) suffers the entry of an order for relief under any chapter of Title 11 of the United States Code, or (6) files a petition or answer seeking reorganization under the Federal Bankruptcy Laws or any other applicable law or statute of the United States of America or any state thereof. Notwithstanding the foregoing, a termination shall not be treated as a Termination for Good Reason (A) if the

Executive shall have consented in writing to the occurrence of the event giving rise to the claim of Termination for Good Reason, or (B) unless the Executive shall have delivered a written notice to the Board within forty-five (45) days of the Executive's having actual knowledge of the occurrence of one of such events stating that the Executive intends to terminate the Executive's employment for Good Reason and specifying the factual basis for such termination, and such event, if capable of being cured, shall not have been cured within twenty-one (21) days of the receipt of such notice.

(x) **"Termination Right"** means the right of the Company, in its sole, absolute and unfettered discretion, to terminate the Executive's employment under this Agreement for any reason or no reason whatsoever. For the avoidance of doubt, any Termination for Cause effected by the Company shall not constitute the exercise of its Termination Right.

(f) **Conflict with Plans.** As permitted under the terms of the Company's applicable stock option and equity award plans, the Company and the Executive agree that the definitions of Termination for Cause or Termination for Good Reason set forth in this Section 3 shall apply in place of any similar definition or comparable concept applicable under such plans (or any similar definition in any successor plan).

(g) **Section 409A.** It is intended that payments and benefits under this Agreement either be excluded from or comply with the requirements of Section 409A and the guidance issued thereunder and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted consistent with such intent. In the event that any provision of this Agreement is subject to but fails to comply with Section 409A, the Company may revise the terms of the provision to correct such noncompliance to the extent permitted under any guidance, procedure or other method promulgated by the Internal Revenue Service now or in the future or otherwise available that provides for such correction as a means to avoid or mitigate any taxes, interest or penalties that would otherwise be incurred by the Executive on account of such noncompliance. Provided, however, that in no event whatsoever shall the Company be liable for any additional tax, interest or penalty imposed upon or other detriment suffered by the Executive under Section 409A or damages for failing to comply with Section 409A. Solely for purposes of determining the time and form of payments due the Executive under this Agreement (including any payments due under Sections 3(b) or 5) or otherwise in connection with the Executive's termination of employment with the Company, the Executive shall not be deemed to have incurred a

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termination of employment unless and until the Executive shall incur a "separation from service" within the meaning of Section 409A. The determination of whether and when a separation from service has occurred shall be made in accordance with this subparagraph and in a manner consistent with Treasury Regulation Section 1.409A-1(h). All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during the Executive's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit. For purposes of Section 409A, the Executive's right to any installment payment under this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days following the date of termination"), the actual date of payment within the specified period shall be within the sole discretion of the Company.

4. **EXECUTIVE REMEDY.** The Executive shall be under no obligation to seek other employment or other engagement of the Executive's services. The Executive acknowledges and agrees that the payment and rights provided under Section 3 are fair and reasonable, and are the Executive's sole and exclusive remedy, in lieu of all other remedies at law or in equity, for termination of the Executive's employment by the Company upon exercise of its Termination Right pursuant to this Agreement or upon a Termination for Good Reason.

5. **CHANGE OF CONTROL.** Upon and following a Change of Control of the Company, as defined in the Change of Control Agreement between the Executive and the Company dated the date hereof, and any amendments thereto or any subsequent change of control agreement between the Executive and the Company (the **"Change of Control Agreement"**), the rights and obligations of the Executive and the Company will no longer be governed by this Agreement, but will be as provided in the Change of Control Agreement (including any rights or obligations in this Agreement that are specifically incorporated by reference therein). Upon the occurrence of a Change of Control, the term of this Agreement will end, and the provisions of this Agreement will be null and void, and of no further force and effect, except that compensation and benefit obligations accrued by the Company with respect to the Executive prior to the Change of Control and during the term of this Agreement will remain valid and enforceable, and the rights of Executive to indemnification shall remain in effect.

6. **CONFIDENTIALITY; NON-COMPETITION AND NON-SOLICITATION.**

(a) **Certain Definitions.** For purposes of this Agreement, the following terms will have the following meanings:

(i) **"Confidential Information"** means any information, knowledge or

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data of any nature and in any form (including information that is electronically transmitted or stored on any form of magnetic or electronic storage media) relating to the past, current or prospective business or operations of the Company and its subsidiaries, that at the time or times concerned is not generally known to persons engaged in businesses similar to those conducted or contemplated by the Company and its subsidiaries (other than information known by such persons through a violation of an obligation of confidentiality to the Company), whether produced by the Company and its subsidiaries or any of their consultants, agents or independent contractors or by the Executive, and whether or not marked confidential, including without limitation information relating to the Company's or its subsidiaries' products and services, business plans, business acquisitions, processes, product or service research and development ideas, methods or techniques, training methods and materials, and other operational methods or techniques, quality assurance procedures or standards, operating procedures, files, plans, specifications, proposals, drawings, charts, graphs, support data, trade secrets, supplier lists, supplier information, purchasing methods or practices, distribution and selling activities, consultants' reports, marketing and engineering or other technical studies, maintenance records, employment or personnel data, marketing data, strategies or techniques, financial reports, budgets, projections, cost analyses, price lists, formulae and analyses, employee lists, customer records, customer lists, customer source lists, proprietary computer software, and internal notes and memoranda relating to any of the foregoing.

(ii) **“Competitive Business”** means any business or activity which is involved in the research, development, sale, distribution and/or marketing of counter-pulsation technology for the treatment of Class III heart failure.

(b) **Nondisclosure of Confidential Information.** The Executive will hold in a fiduciary capacity for the benefit of the Company all Confidential Information obtained by the Executive during the Executive’s employment (whether prior to or after the Commencement Date) and will use such Confidential Information solely within the scope of his employment with and for the exclusive benefit of the Company. For a period of five (5) years after the Termination Date, the Executive agrees (a) not to communicate, divulge or make available to any person or entity (other than the Company) any such Confidential Information, except upon the prior written authorization of the Company or as may be required by law or legal process, and (b) to deliver promptly to the Company any Confidential Information in his possession, including any duplicates thereof and any notes or other records the Executive has prepared with respect thereto. In the event that the provisions of any applicable law or the order of any court would require the Executive to disclose or otherwise make available any Confidential Information, the Executive will give the Company prompt prior written notice of such required disclosure and an opportunity to contest the requirement of such disclosure or apply for a protective order with respect to such Confidential Information by appropriate proceedings.

(c) **Limited Covenant Not to Compete.** During the Employment Period and for a period of twelve (12) consecutive months immediately following the termination of the Executive’s employment for any reason, whether such termination is at the initiative of the Executive or the Company, the Executive agrees that, with respect to each jurisdiction, or specified portions thereof, in which the Executive regularly (a) makes contact with customers of the Company or any of its subsidiaries, (b) conducts the business of the Company or any of its

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subsidaries, or (c) supervises the activities of other employees of the Company or any of its subsidiaries, and in which the Company or any of its subsidiaries engages in Competitive Business as of the Termination Date (collectively, the **“Subject Areas”**), the Executive will restrict his activities within the Subject Areas as follows:

(i) The Executive will not, directly or indirectly, for himself or others, own, manage, operate, control, be employed in an executive, managerial or supervisory capacity by, consult with, assist or otherwise engage or participate in or allow his skill, knowledge, experience or reputation to be used in connection with, the ownership, management, operation or control of, any company or other business enterprise engaged in the Competitive Business within any of the Subject Areas; provided, however, that nothing contained herein will prohibit the Executive from making passive investments as long as the Executive does not beneficially own more than 2% of the equity interests of a business enterprise engaged in the Competitive Business within any of the Subject Areas. For purposes of this paragraph, “beneficially own” will have the same meaning ascribed to that term in Rule 13d-3 under the Exchange Act;

(ii) The Executive will not call upon any customer of the Company or its subsidiaries for the purpose of soliciting, diverting or enticing away the business of such person or entity, or otherwise disrupting any previously established relationship existing between such person or entity and the Company or its subsidiaries;

(iii) The Executive will not solicit, induce, influence or attempt to influence any supplier, lessor, lessee, licensor, partner, joint venturer, potential acquiree or any other person who has a business relationship with the Company or its subsidiaries, or who on the Termination Date is engaged in discussions or negotiations to enter into a business relationship with the Company or its subsidiaries, to discontinue or reduce or limit the extent of such relationship with the Company or its subsidiaries; and

(iv) Without the consent of the Company, the Executive will not make contact with any of the employees of the Company or its subsidiaries with whom he had contact during the course of his employment with the Company for the purpose of soliciting such employee for hire, whether as an employee or independent contractor, or otherwise disrupting such employee’s relationship with the Company or its subsidiaries.

(d) **Company Property.** Promptly following the Executive’s termination of employment, the Executive shall return to the Company all property of the Company, and all copies thereof in the Executive’s possession or under the Executive’s control, except that the Executive may retain the Executive’s personal notes, diaries, rolodexes, mobile devices, calendars and correspondence of a personal nature.

(e) **Equitable Remedies.** The Executive acknowledges that the Company would be irreparably injured by a violation of Section 6 and the Executive agrees that the Company, in addition to any other remedies available to it for such breach or threatened breach, on meeting the standards required by law, shall be entitled to a preliminary injunction, temporary restraining order, or other equivalent relief, restraining the Executive from any actual or threatened breach of Section 6. If a bond is required to be posted in order for the Company to

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secure an injunction or other equitable remedy, the parties agree that said bond need not be more than a nominal sum.

(f) **Employee Proprietary Information and Inventions Assignment.** The terms of that certain Employee Proprietary Information, Inventions Assignment and Non-Competition Agreement between the Executive and the Company dated March 1, 2016 are hereby incorporated by reference (the **“Invention Assignment Agreement”**). To the extent that there are any conflicts between the terms and conditions of the Invention Assignment Agreement and this Agreement, the terms and conditions of this Agreement shall control. All non-conflicting terms of the Invention Assignment Agreement are hereby expressly preserved.

(g) **Severability; Blue Pencil.** The Executive acknowledges and agrees that the Executive has had the opportunity to seek advice of counsel in connection with this Agreement and the restrictive covenants contained herein are reasonable in geographical scope temporal duration and in all other respects. If it is determined that any provision of this Section 6 is invalid or unenforceable, the remainder of the provisions of this Section 6 shall not thereby be affected and shall be given full effect, without regard to the invalid portions. If any court or other decision-maker of competent jurisdiction determines that any of the covenants in this Section 6 is unenforceable because of the duration or geographic scope of such provision, then after such

determination becomes final and unappealable, the duration or scope of such provision, as the case may be, shall be reduced so that such provision becomes enforceable, and in its reduced form, such provision shall be enforced.

## 7. SUCCESSORS.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns and any party acting in the form of a receiver or trustee capacity.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

## 8. MISCELLANEOUS.

(a) This Agreement shall be construed in accordance with, and governed by, the laws of the State of Minnesota, without regard to the conflicts of law rules of such state. Each of the parties hereto (a) consents to submit itself to the personal jurisdiction of the courts of the

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State of Minnesota or any federal court with subject matter jurisdiction located in the State of Minnesota (and any appeals court therefrom) in the event any dispute arises out of this Agreement or any transaction contemplated hereby, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action relating to this Agreement or any transaction contemplated hereby in any court other than such courts. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive: to his last address provided in the Company's records

If to the Company: Sunshine Heart, Inc.  
Attn: Chief Financial Officer  
12988 Valley View Road  
Eden Prairie, Minnesota 55344  
Facsimile: 952.224.0181

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company hereby agrees to indemnify the Executive and hold the Employee harmless to the extent provided under Certificate of Incorporation and the By-Laws of the Company and that certain Indemnity Agreement, dated the date hereof, between the Company and the Executive (the "**Indemnity Agreement**") against and in respect of any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney's fees), losses, and damages resulting from the Executive's good faith performance of the Executive's duties and obligations with the Company. This obligation shall survive the termination of the Executive's employment with the Company.

(e) From and after the Commencement Date, the Company shall cover the Executive under directors' and officers' liability insurance both during and, while potential liability exists, after the Employment Period in the same amount and to the same extent as the Company covers its other executive officers and directors.

(f) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

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(g) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the executive to effect a Termination for Good Reason shall not be deemed to be a waiver of such provision of right or any other provision or right of this Agreement.

(h) Other than in connection with a Change of Control (as defined in the Change of Control Agreement, and in which case this Agreement will be superseded by the Change of Control Agreement), the Company will require any successor to or assignee of (whether direct or indirect, by purchase, merger, consolidation or otherwise) all or substantially all of the assets of the Company (i) to assume unconditionally and expressly this Agreement and (ii) to agree to perform all of the obligations under this Agreement in the same manner and to the same extent as would have been required of the

Company had no assignment or succession occurred, such assumption to be set forth in a writing reasonably satisfactory to the Executive. In the event of any such assignment or succession, the term "Company" as used in this Agreement will refer also to such successor or assign.

(i) This Agreement, and all agreements, documents, instruments, schedules, exhibits or certificates prepared in connection herewith together with the Change of Control Agreement, the Invention Assignment Agreement and the Indemnity Agreement, represent the entire understanding and agreement between the parties with respect to the subject matter hereof, supersede all prior agreements or negotiations between such parties and may be amended, supplemented or changed only by an agreement in writing which makes specific reference to this Agreement or the agreement or document delivered pursuant hereto, as the case may be, and which is signed by the party against whom enforcement of any such amendment, supplement or modification is sought.

SIGNATURES ON THE FOLLOWING PAGE

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IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date first above written.

THE EXECUTIVE:

THE COMPANY:

SUNSHINE HEART, INC.

/s/ JOHN L. ERB

JOHN L. ERB

By: /s/ PAUL BUCKMAN

Name: Paul Buckman

Title: Lead Independent Director and  
Chairman of the Compensation  
Committee

SIGNATURE PAGE TO EXECUTIVE EMPLOYMENT AGREEMENT

EXHIBIT A

RELEASE AND WAIVER OF CLAIMS

TO BE SIGNED ON OR FOLLOWING THE TERMINATION DATE

In consideration of the payments and other benefits set forth in the Executive Employment Agreement of March 1, 2016 (the "**Executive Employment Agreement**"), I, **JOHN L. ERB**, hereby furnish **SUNSHINE HEART, INC.**, a Delaware corporation (the "**Company**"), with the following release and waiver ("**Release and Waiver**").

In exchange for the consideration provided to me by the Executive Employment Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its current and former directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively, the "**Released Parties**") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to or on the date that I sign this Agreement (collectively, the "**Released Claims**"). The Released Claims include, but are not limited to: (a) all claims arising out of or in any way related to my employment with the Company, or the termination of that employment; (b) all claims related to my compensation or benefits from the Company including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all U.S. federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, misclassification, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) (the "**ADEA**"), the Family and Medical Leave Act, the Workers' Adjustment and Retraining Notification, the Employee Retirement Income Security Act of 1974, and the Minnesota Human Rights Act. Notwithstanding the foregoing, the following are not included in the Released Claims (the "**Excluded Claims**"): (a) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with the Company to which I am a party, the charter, bylaws, or operating agreements of the Company, or under applicable law; (b) any rights or claims to unemployment compensation, funds accrued in my 401k account, or any vested equity incentives; (c) any rights that are not waivable as a matter of law; or (d) any claims arising after the day on which I sign this Release and Waiver. I hereby represent and warrant that, other than the Excluded Claims, I am not aware of any claims I have or might have against any of the Released Parties that are not included in the Released Claims.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. I further acknowledge that I have been advised, that: (a) the release and waiver granted herein does not relate to claims which may arise after this

Exhibit A-1

Release and Waiver is executed; (b) I should consult with an attorney prior to executing this Release and Waiver; and (c) I have twenty-one (21) days from the date of termination of my employment with the Company or the date on which I received this Release and Waiver, whichever is later and not including such date (as applicable) in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have

fifteen (15) days following the execution of this Release and Waiver, not counting the day on which I sign this Release and Waiver, to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the fifteen (15) day revocation period has expired without my having previously revoked this Release and Waiver. Any revocation must be personally delivered to the Company or, if mailed, postmarked, no later than the last day of the 15-day revocation period. The address for delivery of any such revocation shall be the Company's address identified in Section 8(b) of the Executive Employment Agreement.

I acknowledge my continuing obligations under the Executive Employment Agreement. Pursuant to the Executive Employment Agreement I understand that among other things, I must not use or disclose any confidential or proprietary information of the Company and I must immediately return all Company property and documents (including all embodiments of proprietary information) and all copies thereof in my possession or control. I understand and agree that my right to the severance pay I am receiving in exchange for my agreement to the terms of this Release and Waiver is contingent upon my continued compliance with the Executive Employment Agreement.

This Release and Waiver constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated herein. This Release and Waiver may only be modified by a writing signed by both me and a duly authorized officer of the Company.

Dated: \_\_\_\_\_

**JOHN L. ERB**

Exhibit A-2

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## Sunshine Heart Announces the Appointment of John Erb as its Chief Executive Officer

**EDEN PRAIRIE, MN, Mar. 2, 2016 (GLOBE NEWSWIRE)** — Sunshine Heart, Inc. (Nasdaq:SSH) announced today the appointment of John Erb as its fulltime Chief Executive Officer (CEO) and President, effective immediately. Mr. Erb assumes the role of CEO following three months as interim-CEO and President and will remain Chairman of the Board of Directors.

Mr. Erb brings more than 40 years' experience in medical devices, executive leadership, and financial management to Sunshine Heart. His extensive knowledge and background in the Heart Failure market and a successful track-record of guiding early stage medical device companies to develop and execute successful strategies, will benefit Sunshine Heart in pursuing the most effective and efficient business strategy going forward.

Mr. Erb has served as a director of Sunshine Heart since September 2012 and was appointed Chairman of the Board in October 2012. He is co-founder of NuAx, Inc. (formerly Cardia Access, Inc.), a medical device company involved in developing new devices for the treatment of heart disease. From 2001 through 2006, Mr. Erb was Chief Executive Officer of CHF Solutions, Inc., a medical device company focused on the treatment of congestive heart failure. CHF Solutions, Inc. was acquired by Gambro. From 1997 through 2001, Mr. Erb was President and Chief Executive Officer of IntraTherapeutics, Inc., a medical device company involved in the development, manufacturing and distribution of peripheral vascular stents. IntraTherapeutics, Inc. was acquired by Sulzer Medica. Prior to that, Mr. Erb was Vice President of Operations for Schneider Worldwide, a division of Pfizer, Inc. Mr. Erb also spent 10 years with Johnson & Johnson's Iolab Division and started his career with American Hospital Supply Corporation. Mr. Erb has also served on several public company boards, including CryoCath Technologies, which was purchased by Medtronic, and SenoRx, which was purchased by C.R. Bard.

"I am excited at the opportunity to lead Sunshine Heart, especially at this critical time for the company," Mr. Erb said. During my brief time as interim CEO, I have rolled up my sleeves and built a broader and deeper understanding of the state of affairs here at Sunshine Heart. I am impressed by the management team and employees at Sunshine. They are talented, passionate, and driven by the opportunity to help heart failure patients. I am also convinced that counter pulsation therapy holds real promise for benefitting heart failure patients and represents a very large market opportunity. While we have near-term challenges in front of us, I am confident that Sunshine Heart has the technology and the know-how to execute a strategy that benefits heart failure patients and creates shareholder value."

Commenting on the appointment, Paul Buckman, the Company's Lead Independent Director said, "the Board of Directors is pleased that someone as qualified as John will be leading the company. John has the leadership skills and proven track-record that make him an excellent fit for Sunshine Heart's growth and strategic plans."

### About Sunshine® Heart

Sunshine Heart, Inc. (Nasdaq:SSH) is an early-stage medical device company focused on developing, manufacturing and commercializing the C-Pulse System for treatment of Class III and ambulatory Class IV heart failure. Sunshine Heart has completed an approved U.S. Food and Drug Administration (FDA) feasibility clinical study of the C-Pulse System and presented the results in November 2011. In March 2012, the FDA notified the Company that it could move forward with an investigational device exemption (IDE) application. Sunshine Heart received unconditional approval from the FDA in November 2012 to initiate its pivotal study. In July 2012, Sunshine Heart received CE Mark approval for its C-Pulse System in Europe. Sunshine Heart is a Delaware corporation headquartered in Minneapolis with wholly owned subsidiaries in Australia and Ireland. The Company has been listed on the NASDAQ Capital Market since February 2012.

### Forward-Looking Statements

Certain statements in this release are forward-looking statements that are based on management's beliefs, assumptions, expectations, and information currently available to management. All statements that address future operating performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements, including without limitation, clinical and pre-clinical study designs and activities, research and development activities, ultimate clinical outcomes and benefits of our products to patients, design and development of future studies, site activations, patient enrollment in studies, timing of regulatory filings and approvals, regulatory acceptance of our filings, our expectations with respect to product development and commercialization efforts, market and physician acceptance of our products, intellectual property protection, and potentially competitive product offerings. The risk factors described in our filings with the SEC could cause actual events to adversely differ from the expectations indicated in these forward-looking statements. Management believes that these forward-looking statements are reasonable as and when made. However, you should not place undue reliance on forward-looking statements because they speak only as of the date when made. Sunshine Heart does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Sunshine Heart may not actually achieve the plans, projections or expectations disclosed in forward-looking statements, and actual results, developments or events could differ materially from those disclosed in the forward-looking statements. Forward-looking statements are subject to a number of risks and uncertainties, including without limitation, the possibility that regulatory authorities do not accept our applications or approve the marketing of the C-Pulse System, the possibility we may be unable to raise the funds necessary for the development and commercialization of the C-Pulse System, and other risks and uncertainties described in our filings with the SEC. We do not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

For further information, please contact:

Claudia Drayton  
Chief Financial Officer  
Sunshine Heart, Inc.  
T: +1-952-345-4205

Investor Relations  
ir@sunshineheart.com

