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

AMENDMENT NO. 1 TO

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES
PURSUANT TO SECTION 12(b) or (g) OF THE SECURITIES EXCHANGE ACT OF 1934

SUNSHINE HEART, INC.
(Exact name of registrant as specified in its charter)

Delaware	**68-0533453**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
7651 Anagram Drive **Eden Prairie, Minnesota**	**55344**
(Address of principal executive offices)	(zip code)

(952) 345-4200
(Issuer's telephone number, including area code)

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

Title of each class to be so registered	**Name of each exchange on which each class is to be registered**
Common stock, par value $0.0001 per share	The NASDAQ Stock Market LLC

Securities to be registered under Section 12(g) of the Act:

None
(Title of Class)

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

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

Cautionary Note Regarding Forward-Looking Statements

This registration statement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. In some cases, you can identify forward-looking statements by the following words: "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "ongoing," "plan," "potential," "predict," "project," "should," "will," "would," or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. Forward-looking statements are not a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Forward-looking statements are based on information available at the time the statements are made and involve known and unknown risks, uncertainties and other factors that may cause our results, levels of activity, performance or achievements to be materially different from the information expressed or implied by the forward-looking statements in this registration statement. These factors include:

- our ability to obtain additional financing;
- the cost, timing and results of our clinical trials, regulatory submissions and approvals;
- our ability to develop sales, marketing and distribution capabilities;
- continued manufacturing services and supplies of critical components from our business partners;
- the rate of market acceptance of our C-Pulse System;

- our ability to obtain adequate reimbursement from third party payers;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights or that our product is defective;
- our ability to protect and enforce our intellectual property rights;
- our ability to effectively manage our growth;
- our estimates regarding our capital requirements and our need for additional financing; and
- other risk factors included under “Risk Factors” in this registration statement.

You should read the matters described in “Risk Factors” and the other cautionary statements made in this registration statement as being applicable to all related forward-looking statements wherever they appear in this registration statement. We cannot assure you that the forward-looking statements in this registration statement will prove to be accurate and therefore you are encouraged not to place undue reliance on forward-looking statements. You should read this registration statement completely. Other than as required by law, we undertake no obligation to update or revise these forward-looking statements, even though our situation may change in the future.

Trademarks

C-Pulse® and Sunshine Heart™ and other trademarks or service marks of Sunshine Heart appearing in this registration statement are the property of Sunshine Heart, Inc. Trade names, trademarks and service marks of other companies appearing in this registration statement are the property of the respective owners.

Market Data

We obtained industry and market data used throughout this registration statement through our research, surveys and studies conducted by third parties and industry and general publications. We have not independently verified market and industry data from third-party sources.

Reverse Stock Split

We intend to effect a reverse stock split of our common stock ranging from 250 for 1 to 100 for 1 prior to the effective date of this registration statement. Except as otherwise indicated, none of the share or per share information referenced throughout this registration statement has been adjusted to reflect this reverse stock split.

Fiscal Year

Historically, our fiscal years have consisted of 12-month periods ending June 30. In September 2011, we changed our fiscal year to coincide with the calendar year. As a result, June 30, 2011 was our last fiscal year that will end on June 30, we will have a six-month fiscal year that began on July 1, 2011 and will end on December 31, 2011, and all future fiscal years will begin on January 1 and end on December 31 of that year. Except as otherwise indicated, all references in this registration statement to “fiscal 2010” or “2010” refer to the 12-month period ended December 31, 2010 and all references to a year or fiscal year prior to 2010 refer to the 12-month period ended on December 31 of the year referenced.

Currency

Unless otherwise indicated in this registration statement, all references to AUD or A$ are to Australian Dollars, the lawful currency of the Commonwealth of Australia, and all references to $ or dollars are to U.S. Dollars.

Other Information

In this registration statement, we, our, us and company refer to Sunshine Heart, Inc. and its subsidiary, except where the context otherwise requires.

The information in this registration statement speaks only as of the date it is filed with the U.S. Securities and Exchange Commission unless the information specifically indicates that another date applies.

ITEM 1 — BUSINESS

Overview

We are an early stage medical device company focused on developing, manufacturing and commercializing our C-Pulse Heart Assist System, for treatment of Class III and ambulatory Class IV heart failure. The C-Pulse Heart Assist System utilizes the scientific principles of intra-aortic balloon counter-pulsation applied in an extra-aortic approach to assist the left ventricle by reducing the workload required to pump blood throughout the body, while increasing blood flow to the coronary arteries.

We are conducting clinical trials of our C-Pulse System in the U.S., which we expect to extend into 2016 before we will have a determination if it can be marketed in the U.S. We completed enrollment of the feasibility phase of our clinical trial in the first half of 2011. In November 2011, we obtained the results of the six-month follow-up period for the feasibility phase and we submitted the test data to the United States Food and Drug Administration, or FDA.

We believe the results of the six-month follow up demonstrate the feasibility and preliminary safety and efficacy of the C-Pulse System in patients with moderate to severe heart failure and we expect to submit an investigational device exemption, or IDE, application to the FDA in early 2012 for approval of our pivotal trial.

We are seeking CE Mark for the C-Pulse and anticipate that we will obtain approval in the first half of 2012. We have taken initial steps to evaluate the market potential for our product in targeted countries that accept the CE Mark in anticipation of commencing commercial sales of the C-Pulse in Europe following CE Mark approval.

We incurred net losses of $7.6 million and $5.3 million in the years ended December 31, 2010 and 2009, respectively, and $11.0 million for the nine months ended September 30, 2011. We expect to continue to incur net losses as we complete our clinical trials.

The Heart Failure Market

Heart failure is a progressive disease caused by impairment in the heart's ability to pump blood to the various organs of the body. Patients with heart failure commonly experience shortness of breath, fatigue, difficulty exercising and swelling of the legs. The heart becomes weak or stiff and enlarges over time making it harder to pump the blood needed for the body to function properly.

Heart failure is one of the leading causes of death in the U.S. and other developed countries. The American Heart Association estimates that 5.7 million people in the U.S. age 20 and over are affected by heart failure, with an estimated 670,000 new cases diagnosed each year. Nearly 30% of heart failure patients are below the age of 60, and congestive heart failure is the highest U.S. chronic healthcare expense category. In addition, the Journal of Cardiac Failure reported in January 2011 that a recent analysis of all Medicare fees for service readmission to hospitals showed heart failure is the number one cause of rehospitalization in the U.S.

The severity of heart failure depends on how well a person's heart is able to pump blood throughout the body. A common measure of heart failure severity is New York Heart Association, or NYHA, Class guideline. Patients are classified as follows based on their symptoms and functional limitations.

- *Class I (Mild)* — Patients have no limits to daily activities and are able to do all normal daily activities without becoming tired, short of breath or having heart palpitations.
- *Class II (Mild)* — Patients have some limits to daily activities. Patients are comfortable at rest, but normal activities may cause them to be tired, short of breath or have heart palpitations.
- *Class III (Moderate)* — Patients' daily activities are significantly limited. Patients are comfortable at rest, but are unable to do daily activities without becoming tired, short of breath or having heart palpitations.
- *Class IV (Severe)* — Patients are unable to do any physical activity without discomfort. Patients become tired, short of breath and possibly have heart palpitations even when they are at rest. Any physical activity makes discomfort worse.

Our C-Pulse Heart Assist System targets Class III and ambulatory Class IV patients as defined by the NYHA. It is estimated that approximately 1.5 million heart failure patients in the U.S. fall into this classification range, and we believe approximately 5 million worldwide are similarly affected. In addition to the symptoms described above, patients with Class III and ambulatory Class IV heart failure typically experience dizziness, low blood pressure and fluid retention.

Treatment alternatives currently available for Class III heart failure patients in the U.S. consist primarily of pharmacological therapies and pacing devices that are designed to stimulate the heart. Although these devices have shown to provide symptomatic relief and prolong the life of patients, these treatments do not always halt the progression of congestive heart failure. Circulatory assist devices, specifically left ventricular assist devices, or LVADs, have been used to treat Class IV patients in the U.S., and recently one product received FDA approval in the U.S. for Class IIIb patients. These devices are designed to take over some or all of the pumping function of the heart by mechanically pumping blood into the aorta. Although such devices are effective in increasing blood flow, these devices are implanted in the patient's body and by design are in contact with the patient's bloodstream, increasing the risk of adverse events, including thrombosis, bleeding and neurologic events.

Our Product

The C-Pulse Heart Assist System utilizes the scientific principles of intra-aortic balloon counter-pulsation applied in an extra-aortic approach to assist the left ventricle by reducing the workload required to pump blood throughout the body, while increasing blood flow to the coronary arteries. Combined, these potential benefits may help reverse the heart failure process or maintain the patient's current condition, thereby potentially preventing the need for later stage heart failure devices, such as LVADs, artificial hearts or transplants.

We initially implanted the C-Pulse System in patients via a full sternotomy. We have developed tools to allow the C-Pulse to be implanted via a small pacemaker-like incision between the patient's ribs and sternum rather than a full sternotomy, and we completed our first implant using this less invasive procedure in 2010. Patients implanted via our minimally invasive procedure typically require a hospital stay of three to four days in connection with implantation of the C-Pulse System, after which they return home. This less invasive procedure can reduce procedural time, hospital stays, overall cost and patient risk as compared to treatment options that require a full sternotomy.

Once implanted, the C-Pulse cuff is positioned on the outside of the patient's ascending aorta above the aortic valve. An electrocardiogram sensing lead is then attached to the heart to determine timing for cuff inflation and deflation in synchronization with the heartbeat. As the heart fills with blood, the C-Pulse cuff inflates to push blood from the aorta to the rest of the body and to the heart muscle and to the coronary arteries. Just before the heart pumps, the C-Pulse cuff deflates to open up the aorta and reduce the heart's workload, allowing the heart to pump with less effort. The C-Pulse cuff and electrical leads are connected to a single line that is run through the abdomen wall to connect to a power driver outside the body. The system's driver can be placed inside a carrying bag.

The C-Pulse System distinguishes itself from other mechanical heart failure therapies because it is not inserted into a patient's vascular system. The C-Pulse cuff is placed outside a patient's ascending aorta and assists the heart's normal pumping function, rather than being inserted into the vascular system

and replacing heart function in a manner similar to other devices such as LVADs. Because the C-Pulse System remains outside the vascular system, there is potentially less risk of complications such as blood clots, stroke and thrombosis in comparison to other mechanical devices that reside or function inside the vascular system.

The C-Pulse System is an earlier intervention than other mechanical therapies, such as LVADs. This device may be turned on or off at any time allowing the patient intervals of freedom to perform certain activities such as bathing. Patients are advised to keep the C-Pulse System on for at least 80% of each day to experience maximum benefit from the product. Patients might experience a return of their heart failure symptoms if the C-Pulse System is turned off for a significant time.

Clinical Development

The feasibility phase of our clinical trial is primarily designed to assess safety and provide indications of performance of the C-Pulse System in moderate to severe heart failure patients who suffer from symptoms such as shortness of breath and reduced mobility. We completed enrollment and implantation of 20 patients in the North American feasibility phase of our trial in the first half of 2011. In April 2011, the FDA approved an expansion protocol to allow us to implant up to 20 additional patients and add two additional centers to our feasibility study, and as of December 9, 2011 we had not implanted any additional patients permitted by this expansion.

In November 2011, we obtained the results of the six-month follow-up period for the feasibility phase of our clinical trial. The table below summarizes results from the six-month follow up:

Measure	Responders	Non-Responders	Indeterminant(7)
NYHA Class Ranking	12(1)	0(2)	8
Minnesota Living with Heart Failure Quality of Life Score (MLHF score)	13(3)	1(4)	6
Six-Minute Hall Walk Test Distance	5(5)	1(6)	14

(1) For purposes of this measure, responders were deemed to include any patient whose NYHA class at the six-month follow-up decreased by at least one class relative to the patient's NYHA class prior to implantation of the C-Pulse.

(2) For purposes of this measure, non-responders were deemed to include any patient whose NYHA class at the six-month follow-up increased by at least one class relative to the patient's NYHA class prior to implantation of the C-Pulse.

(3) The MLHF score is derived from a questionnaire that asks each patient to indicate, using a six-point scale (zero to five), how much each of 21 facets prevents the patient from living as desired. For purposes of this measure, responders were deemed to include any patient whose aggregate MLHF score decreased by at least seven points at the six-month follow-up relative to the patient's MLHF score prior to implantation of the C-Pulse.

(4) For purposes of this measure, non-responders were deemed to include any patient whose aggregate MLHF score increased by at least seven points at the six-month follow-up relative to the patient's MLHF score prior to implantation of the C-Pulse.

(5) For purposes of this measure, responders were deemed to include any patient whose six-minute hall walk distance at the six-month follow-up increased by at least 50 meters relative to the patient's distance for this measure prior to implantation of the C-Pulse.

(6) For purposes of this measure, non-responders were deemed to include any patient whose six-minute hall walk distance at the six-month follow-up decreased by at least 50 meters relative to the patient's distance for this measure prior to implantation of the C-Pulse.

(7) For each measure, patients that were neither responders nor non-responders were classified as indeterminant.

As of the end of the six-month follow up period, nine patients reported a major infection in connection with the implantation and use of the C-Pulse System and there was one death of a patient enrolled in the trial resulting from infection related to implantation of our device. Two other patients participating in the feasibility trial died prior to the end of the six-month follow up period due to causes determined to be unrelated to the implantation or use of our product. These two patients were classified as "responders," "non-responders" or "indeterminant" in the data above based on the results from their most recent follow up prior to death. We believe the results of the six-month follow up demonstrates the feasibility and provides indications of safety and performance of the C-Pulse in patients with moderate to severe heart failure.

We expect to submit an IDE application to the FDA for approval of our pivotal trial in early 2012. Once the IDE application has been filed with the FDA, the FDA, following its review, will notify us that the IDE application is unconditionally approved, approved with certain conditions, or that there exist deficiencies in the application that must be addressed prior to approval. If the FDA identifies deficiencies, we will be provided the opportunity to submit additional information to the FDA to respond to the filing deficiencies. It is common for the FDA to require additional information before approving an IDE, and thus final FDA approval on a submission commonly extends beyond the initial 30 days. We anticipate that we will have pivotal study IDE approval in the first half of 2012 and begin enrollment thereafter.

We are seeking CE Mark for the C-Pulse System. We have engaged a notified body and received documentation from our notified body that data from our 20-patient North American feasibility clinical trial could support approval of CE Mark for the product. We expect to submit data from our feasibility clinical trial and documentation relating to the design and manufacturing of our product to our notified body in December 2011. We anticipate that we will obtain CE Mark approval in the first half of 2012.

Research and Development

Our research and development expense in the years ended December 31, 2010 and 2009 totaled $6.2 million and $3.4 million, respectively, and was $7.9 million and $3.9 million for the nine months ended September 30, 2011 and 2010, respectively. Research and development costs include activities related to research, development, design, testing and manufacturing of prototypes of our products as well as costs associated with certain clinical and regulatory activities.

In June 2011 we completed an initial animal study of a next-generation, fully implantable C-Pulse System. This next-generation system would be powered by a wireless, external battery unit, with the power driver and cuff implanted in the patient's body. A fully implantable system would eliminate the need for wires to breach the patient's skin, reducing the risk of infection and increasing the patient's comfort. The study resulted in an increase to the animal's heart function. While we continue to focus on commercializing our current C-Pulse System, we believe development of a next-generation, fully implantable C-Pulse System would benefit our business and prospects.

We expect our research and development expenses to increase as we continue to conduct clinical trials and perform research and develop on improvements to our C-Pulse Heart Assist System, such as the development of a fully implantable system.

Sales and Marketing

Our C-Pulse Heart Assist System is not approved for sale in any jurisdiction. To date, all of our sales of the C-Pulse System have been to U.S. hospitals and clinics under contract in conjunction with our clinical trials. We have solicited hospitals and clinics for our trials through our employees, selecting hospitals and clinics for participation in our trials based on our assessment of their expertise in the area of moderate and severe heart failure and their understanding of our product. Enrollment in our feasibility clinical trial was completed in the first half of 2011 and we did not generate any revenue from sales of our product during the nine months ended September 30, 2011.

We expect to commence the pivotal clinical trial in the first half of 2012, which is projected to extend into 2015. We do not expect to market our product in the U.S. prior to 2016.

We have retained consultants to analyze the conditions in various European countries for potential reimbursement for our product and the capabilities of existing hospitals and clinics to implant the C-Pulse System properly and understand the potential benefits of our product. We have not identified the European countries in which we initially will sell our product following CE Mark approval and we have not obtained approval for reimbursement from any European third party payors. If we obtain CE Mark approval, we intend to market our product initially in targeted accounts with the potential to expand our sales in the same geographic region. We plan to sell the C-Pulse System in Europe through a direct sales force or through experienced distributors in countries where our product is approved for reimbursement. We also intend to leverage the CE Mark approval to enter other targeted markets throughout the world.

Manufacturers and Suppliers

Our products currently are utilized only in connection with clinical trials. We outsource the manufacture of our products to suppliers with our activities directed toward supply chain management and distribution of our products to clinics and hospitals. A number of critical components of our C-Pulse System, including the driver unit, cuff and interface lead are provided by outside suppliers and tested by us in-house. Our suppliers include large and small U.S.-based manufacturers of medical device components. The components for our product do not require significant customization for use in our product or necessitate any raw materials for which we believe our suppliers could not readily find alternative sources. We purchase from our suppliers primarily on a purchase order basis and do not have any material long-term agreements with any of our suppliers. If we obtain regulatory approvals necessary to commercialize our C-Pulse Heart Assist System, our outsourced manufacturers will need to increase their production of our product or we will need to develop capabilities to manufacture the product ourselves.

Intellectual Property

We have established an intellectual property portfolio through which we seek to protect our products and technology. As of December 9, 2011, our portfolio consisted of 28 issued patents, of which 11 were issued in the U.S. and 17 were issued in other countries including Australia, Canada, India, Japan and Mexico. We also have 30 patent applications pending, including 10 in the United States. and the remaining in the countries previously listed as well as in China, the European Union and the United Kingdom. Our patents and patent applications cover various aspects of both the methodology as well as the design of the C-Pulse Heart Assist System device and related components.

We have developed technical knowledge that although non-patentable, we consider to be significant in enabling us to compete. It is our policy to enter into confidentiality agreements with each of our employees and consultants prohibiting the disclosure of any confidential information or trade secrets. In addition, these agreements provide that any inventions or discoveries by employees and consultants relating to our business will be assigned to us and become our sole property.

Despite our patent rights and policies with regard to confidential information, trade secrets and inventions, we may be subject to challenges to the validity of our patents, claims that our products allegedly infringe the patent rights of others and the disclosure of our confidential information or trade secrets. These and other risks are described more fully under the heading "Risks Relating to our Intellectual Property" in the "Risks Factors" section of this registration statement.

At this time we are not a party to any material legal proceedings that relate to patents or proprietary rights.

Competition

Competition from medical device and medical device divisions of healthcare companies, pharmaceutical companies and gene- and cell-based therapies is intense and is expected to increase. The vast majority of Class III and Class IV heart failure patients still receive pharmacological treatment and a smaller percentage are treated with LVADs and other medical devices. We are not aware of any direct competitors that offer devices residing outside the vascular system for treatment of Class III and Class IV heart failure, and therefore we continue to expect new competitors both from the pharmacological and the medical device space. Among the medical device competitors are Thoratec Corporation, HeartWare International Inc., CircuLite, Inc., and to a lesser extent, AbioMed, Inc., Jarvik Heart, Inc., MicroMed Technology, Inc., SynCardia Systems, Inc., Terumo Heart, Inc. and WorldHeart Corporation in the U.S. and Europe and Berlin Heart GmbH in Europe, and a range of other small, specialized medical device companies with devices at varying stages of development. Some of these competitors are larger than we are and have greater financial resources and name recognition than we do. Our product is not approved for sale in any jurisdiction and the efficacy and potential competitive advantages of the C-Pulse System are not fully known at this time.

If approved for sale, we believe that key competitive factors of the C-Pulse will be the following:

- the C-Pulse's lower risk profile resulting from its position outside a patient's vascular system;
- the ability to disconnect the C-Pulse without harm to the patient, which is not possible with later stage approved circulatory support heart failure treatments, and which we believe improves patients' quality of life and the convenience of using our device as compared to many other devices; and
- the minimally invasive manner in which the C-Pulse can be implanted, which involves only small incisions to the chest rather than a full sternotomy.

Third-Party Reimbursement

If approved in the U.S., the C-Pulse is expected to be purchased primarily by customers, such as hospitals, who then would bill various third party payers for the services provided to the patients. These payers, which include Medicare, Medicaid, private health insurance companies and managed care organizations, would then reimburse our customers based on established payment formulas that take into account part or all of the cost associated with these devices and the related procedures performed.

The agency responsible for administering the Medicare program, the Centers for Medicare & Medicaid Services, and a majority of private insurers have approved reimbursement for our C-Pulse in clinical trials. The FDA has assigned the C-Pulse System to a Category B designation under IDE number G070096. By assigning the C-Pulse System a Category B designation, the FDA determined that the C-Pulse System is non-experimental/investigational. A non-experimental/investigational device refers to a device believed to be in Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval for that device type.

With an IDE number assigned, providers are allowed to seek coverage and reimbursement for the C-Pulse System under the Medicare program from their Medicare fiscal intermediary for hospital services, carrier for physician services, or Medicare Administrative Contractor, for both services. We cannot be assured, however, that fiscal intermediaries will make payment.

We are analyzing the potential for third party reimbursement in various European countries in anticipation of receiving CE Mark approval in early 2012. Third party reimbursement requirements vary from country to country in Europe and we are not approved for reimbursement by any European third party payors at this time. Healthcare laws in the U.S. and other countries are subject to ongoing changes, including changes to the amount of reimbursement for hospital services. Legislative proposals can substantially change the way healthcare is financed by both governmental and private insurers and may negatively impact payment rates for our products. Also, from time to time there are a number of legislative, regulatory and other proposals both at the federal and state levels; it remains uncertain whether there will be any future changes that will be proposed or finalized and what effect, if any, such legislation or regulations would have on our business. However, in the U.S. and international markets, we expect that both government and third-party payors will continue to attempt to contain or reduce the costs of healthcare by challenging the prices charged for healthcare products and services.

Government Regulations

Regulation by governmental authorities in the U.S. and foreign countries is a significant factor in the manufacture and marketing of our current and future products and in our ongoing product research and development activities. All of our proposed products will require regulatory approval prior to commercialization. In particular, medical devices are subject to rigorous pre-clinical testing as a condition of approval by the FDA and by similar authorities in foreign countries.

United States

In the U.S., the FDA regulates the design, manufacture, distribution and promotion of medical devices pursuant to the Federal Food, Drug, and Cosmetic Act, or FDCA, and its regulations. Our C-Pulse Heart Assist System is regulated as a medical device. To obtain FDA approval to market the C-Pulse, the FDA requires proof of safety and efficacy in human clinical trials performed under an IDE. An IDE application must contain pre-clinical test data supporting the safety of the product for human investigational use, information on manufacturing processes and procedures, proposed clinical protocols and other information. If the IDE application is approved, human clinical trials may begin. The trials must be conducted in compliance with FDA regulations and with the approval of institutional review boards. Clinical trials are subject to central registration requirements. The results obtained from these trials are submitted to the FDA in support of a PMA application.

Products must be manufactured in registered establishments and must be manufactured in accordance with Quality System Regulations, or QSR. Furthermore, the FDA may at any time inspect our facilities to determine whether we have adequate compliance with FDA regulations, including the QSR, which requires manufacturers to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process.

We are also subject to regulation by various state authorities, which may inspect our facilities and manufacturing processes and enforce state regulations. Failure to comply with applicable state regulations may result in seizures, injunctions or other types of enforcement actions.

Healthcare Regulation

Our business is subject to extensive federal and state government regulation. This includes the federal Anti-Kickback Law and similar state anti-kickback laws, the federal False Claims Act, and the Health Insurance Portability and Accountability Act of 1996, or HIPAA, and similar state laws

addressing privacy and security. Although we believe that our operations materially comply with the laws governing our industry, it is possible that non-compliance with existing laws or the adoption of new laws or interpretations of existing laws could adversely affect our financial performance.

Fraud and Abuse Laws

The healthcare industry is subject to extensive federal and state regulation. In particular, the federal Anti-Kickback Law prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. The definition of "remuneration" has been broadly interpreted to include anything of value, including for example gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests, and providing anything at less than its fair market value. In addition, there is no one generally accepted definition of intent for purposes of finding a violation of the Anti-Kickback Law. For instance, one court has stated that an arrangement will violate the Anti-Kickback Law where any party has the intent to unlawfully induce referrals. In contrast, another court has opined that a party must engage in the proscribed conduct with the specific intent to disobey the law in order to be found in violation of the Anti-Kickback Law. The lack of uniform interpretation of the Anti-Kickback Law makes compliance with the law difficult. The penalties for violating the Anti-Kickback Law can be severe. These sanctions include criminal penalties and civil sanctions, including fines, imprisonment and possible exclusion from the Medicare and Medicaid programs.

The Anti-Kickback Law is broad, and it prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Recognizing that the Anti-Kickback Law is broad and may technically prohibit many innocuous or beneficial arrangements within the healthcare industry, the U.S. Department of Health and Human Services issued regulations in July of 1991, which the Department has referred to as "safe harbors." These safe harbor regulations set forth certain provisions which, if met in form and substance, will assure healthcare providers and other parties that they will not be prosecuted under the federal Anti-Kickback Law. Additional safe harbor provisions providing similar protections have been published intermittently since 1991. Our arrangements with physicians, physician practice groups, hospitals and other persons or entities who are in a position to refer may not fully meet the stringent criteria specified in the various safe harbors. Although full compliance with these provisions ensures against prosecution under the federal Anti-Kickback Law, the failure of a transaction or arrangement to fit within a specific safe harbor does not necessarily mean that the transaction or arrangement is illegal or that prosecution under the federal Anti-Kickback Law will be pursued. Conduct and business arrangements that do not fully satisfy one of these safe harbor provisions may result in increased scrutiny by government enforcement authorities such as the U.S. Department of Health and Human Services Office of Inspector General.

Many states have adopted laws similar to the federal Anti-Kickback Law. Some of these state prohibitions apply to referral of patients for healthcare services reimbursed by any source, not only the Medicare and Medicaid programs. Although we believe that we comply with both federal and state anti-kickback laws, any finding of a violation of these laws could subject us to criminal and civil penalties or possible exclusion from federal or state healthcare programs. Such penalties would adversely affect our financial performance and our ability to operate our business.

HIPAA created new federal statutes to prevent healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private payors. A violation of this statute is a felony and may result in fines, imprisonment or exclusion from government sponsored programs such as the Medicare and Medicaid programs. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. A violation of this statute is a felony and may result in fines or imprisonment or exclusion from government sponsored programs. Both federal and state government agencies are continuing

heightened and coordinated civil and criminal enforcement efforts. As part of announced enforcement agency work plans, the federal government will continue to scrutinize, among other things, the billing practices of hospitals and other providers of healthcare services. The federal government also has increased funding to fight healthcare fraud, and it is coordinating its enforcement efforts among various agencies, such as the U.S. Department of Justice, the Office of Inspector General and state Medicaid fraud control units. We believe that the healthcare industry will continue to be subject to increased government scrutiny and investigations.

Federal False Claims Act

Another trend affecting the healthcare industry is the increased use of the federal False Claims Act and, in particular, actions under the False Claims Act's "whistleblower" provisions. Those provisions allow a private individual to bring actions on behalf of the government alleging that the defendant has defrauded the federal government. After the individual has initiated the lawsuit, the government must decide whether to intervene in the lawsuit and to become the primary prosecutor. If the government declines to join the lawsuit, then the individual may choose to pursue the case alone, in which case the individual's counsel will have primary control over the prosecution, although the government must be kept apprised of the progress of the lawsuit. Whether or not the federal government intervenes in the case, it will receive the majority of any recovery. If the litigation is successful, the individual is entitled to no less than 15%, but no more than 30%, of whatever amount the government recovers. The percentage of the individual's recovery varies, depending on whether the government intervened in the case and other factors. Recently, the number of suits brought against healthcare providers by private individuals has increased dramatically. In addition, various states are considering or have enacted laws modeled after the federal False Claims Act. Under the Deficit Reduction Act of 2005 states are being encouraged to adopt false claims acts similar to the federal False Claims Act, which establish liability for submission of fraudulent claims to the State Medicaid program and contain whistleblower provisions. Even in instances when a whistleblower action is dismissed with no judgment or settlement, we may incur substantial legal fees and other costs relating to an investigation. Future actions under the False Claims Act may result in significant fines and legal fees, which would adversely affect our financial performance and our ability to operate our business.

Further, on May 20, 2009, President Obama signed into law the Fraud Enforcement and Recovery Act of 2009, which greatly expanded the types of entities and conduct subject to the False Claims Act. We strive to ensure that we meet applicable billing requirements. However, the costs of defending claims under the False Claims Act, as well as sanctions imposed under the Act, could significantly affect our financial performance.

Health Insurance Portability and Accountability Act of 1996

In addition to creating the new federal statutes discussed above, HIPAA also establishes uniform standards governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of individually identifiable health information maintained or transmitted by healthcare providers, health plans and healthcare clearinghouses. Three standards have been promulgated under HIPAA with which we currently are required

to comply. We must comply with the Standards for Privacy of Individually Identifiable Health Information, or Privacy Standards, which restrict our use and disclosure of certain individually identifiable health information. We have been required to comply with the Privacy Standards since April 14, 2003.

The American Recovery and Reinvestment Act of 2009, signed into law on February 17, 2009, dramatically expanded, among other things, (1) the scope of HIPAA to also include "business associates," or independent contractors who receive or obtain protected health information in connection with providing a service to the covered entity, (2) substantive security and privacy obligations, including new federal security breach notification requirements to affected individuals and Department of Health and Human Services and potentially media outlets, (3) restrictions on marketing communications and a prohibition on covered entities or business associates from receiving remuneration in exchange for protected health information, and (4) the civil and criminal penalties that may be imposed for HIPAA violations, increasing the annual cap in penalties from $25,000 to $1.5 million per year. We believe that we are not generally a business associate under HIPAA and we believe that we are in compliance with all of the applicable HIPAA standards, rules and regulations. However, if we fail to comply with these standards, we could be subject to criminal penalties and civil sanctions. In addition to federal regulations issued under HIPAA, some states have enacted privacy and security statutes or regulations that, in some cases, are more stringent than those issued under HIPAA. In those cases it may be necessary to modify our operations and procedures to comply with the more stringent state laws, which may entail significant and costly changes for us. We

believe that we are in compliance with such state laws and regulations. However, if we fail to comply with applicable state laws and regulations, we could be subject to additional sanctions.

International Regulations

We are also subject to regulation in each of the foreign countries where we intend to distribute the C-Pulse. These regulations relate to product standards, packaging and labeling requirements, import restrictions, tariff regulations, duties and tax requirements. Many of the regulations applicable to our products in these countries are similar to those of the FDA. The national health or social security organizations of certain countries require our products to be qualified before they can be marketed in those countries.

The primary regulatory environment in Europe is that of the European Union, which consists of 27 member states in Europe. The European Union has adopted two directives that cover medical devices—Directive 93/42/EEC covering medical devices and Directive 90/385/EEC for active implantable medical devices, as well as numerous standards that govern and harmonize the national laws and standards regulating the design, manufacture, clinical trials, labeling, adverse event reporting and post market surveillance activities for medical devices that are marketed in member states. Medical devices that comply with the requirements of the national law of the member state in which they are first marketed will be entitled to bear CE Marking, indicating that the device conforms to applicable regulatory requirements, and, accordingly, can be commercially marketed within EU states and other countries that recognize this mark for regulatory purposes. We are currently seeking CE Marking for the C-Pulse Heart Assist System which we have targeted to be complete in early 2012.

Other Regulations

We are also subject to various federal, state and local laws and regulations relating to such matters as safe working conditions, laboratory and manufacturing practices and the use, handling and disposal of hazardous or potentially hazardous substances used in connection with our research and development and manufacturing activities. Specifically, the manufacture of our biomaterials is subject to compliance with federal environmental regulations and by various state and local agencies. Although we believe we are in compliance with these laws and regulations in all material respects, we cannot provide assurance that we will not be required to incur significant costs to comply with environmental laws or regulations in the future.

Employees

As of September 30, 2011, we had 24 employees, consisting of 21 full-time and 3 part-time employees. 17 employees, including all but one of our executive officers, are located at our offices in Eden Prairie, Minnesota, or are otherwise based in the U.S. The remainder, mostly research and development personnel, are located in our Australia office or are otherwise based outside of the U.S. None of our employees are covered by a collective bargaining agreement. We consider relations with our employees to be good.

Corporate Information

Sunshine Heart, Inc. was incorporated in Delaware on August 22, 2002. We began operating our business through Sunshine Heart Company Pty Ltd, which currently is a wholly owned Australian subsidiary of Sunshine Heart, Inc., in November 1999. Since September 2004, Chess Depositary Instruments, or CDIs, representing beneficial ownership of our common stock have been have traded on the Australian Securities Exchange, or ASX, under the symbol "SHC". Each CDI represents one share of our common stock, although we anticipate adjusting this ratio in connection with a reverse stock split we plan to effect prior to effectiveness of this registration statement.

Our principal executive offices are located at 7651 Anagram Drive, Eden Prairie, Minnesota 55344, and our telephone number is (952) 345-4200. Our website address is www.sunshineheart.com. The information on, or that may be accessed through, our website is not incorporated by reference into and should not be considered a part of this registration statement.

Legal Proceedings

We are not currently involved in any material legal proceedings.

ITEM 1A — RISK FACTORS

Our business faces many risks. We believe the risks described below are the material risks we face. However, the risks described below may not be the only risks we face. Additional unknown risks or risks that we currently consider immaterial may also impair our business operations. If any of the events or circumstances described below actually occurs, our business, financial condition or results of operations could suffer, and the trading price of our shares of common stock could decline significantly. Investors should consider the specific risk factors discussed below, together with the "Cautionary Note Regarding Forward-Looking Statements" and the other information contained in this Form 10 and the other documents that we will file from time to time with the Securities and Exchange Commission.

Risks Relating to Our Business

We have incurred operating losses since our inception and anticipate that we will continue to incur operating losses for the foreseeable future.

We are an early stage company with a history of incurring net losses. We have incurred net losses since our inception, including net losses of $7.6 million and $5.3 million for the years ended December 31, 2010 and 2009, respectively, and $11.0 million for the nine months ended September 30, 2011. As of September 30, 2011, our accumulated deficit was $60.0 million. We do not have any products that have been approved for marketing, and we continue to incur research and development and general and administrative expenses related to our operations. We expect to continue to incur significant and increasing operating losses for the foreseeable future as we incur costs associated with the conduct of clinical trials, continue our product research and development programs, seek regulatory approvals, expand our sales and marketing capabilities, increase manufacturing of our products and comply with the requirements related to being a U.S. public company listed on the ASX and, if our listing application is approved, the Nasdaq Capital Market. To become and remain profitable, we must succeed in developing and commercializing products with significant market potential. This will require us to succeed in a range of challenging activities, including conducting clinical trials, obtaining regulatory approvals, manufacturing products and marketing and selling commercial products. We may never succeed in these activities, and we may never generate revenues sufficient to achieve profitability. If we do achieve profitability, we may not be able to sustain it.

We will need additional funding to continue operations, which may not be available to us on favorable terms or at all.

Currently, we have no products available for commercial sale, and to date we have generated only limited product revenue from our feasibility study. We believe our cash and cash equivalents on hand will not be sufficient to fund our operations beyond the first half of 2012. In addition, the report of our independent registered public accounting firm contains a going concern opinion in connection with its audit of our financial statements for the fiscal year ended December 31, 2010. Our continued operations are dependent on our ability to obtain additional funding during 2012. However, additional funding may not be available on terms favorable to us, or at all, and concern about our ability to continue as a going concern may place additional constraints on operations and make it more difficult for us to meet our obligations or adversely affect the terms of possible funding. If we raise additional funding through the issuance of equity securities, our stockholders may suffer dilution and our ability to use our net operating losses to offset future income may be limited. If we raise additional funding through debt financing, we may be required to accept terms that restrict our ability to incur additional indebtedness, force us to maintain specified liquidity or other ratios or restrict our ability to pay dividends or make acquisitions. If we are unable to secure additional funding, our product development programs and our commercialization efforts would be delayed, reduced or eliminated.

We have limited sales, marketing and distribution experience.

To develop and increase internal sales, distribution and marketing capabilities, we would have to invest significant amounts of financial and management resources. In developing these sales, marketing and distribution functions ourselves, we could face a number of risks, including:

- we may not be able to attract and build a significant marketing or sales force;
- the cost of establishing, training and providing regulatory oversight for a marketing or sales force may be substantial; and
- there are significant legal and regulatory risks in medical device marketing and sales that we have never faced, and any failure to comply with all legal and regulatory requirements for sales, marketing and distribution could result in enforcement action by the European countries, the FDA or other authorities that could jeopardize our ability to market the product or could subject us to substantial liability.

We plan to commercialize our products outside of the United States, which will expose us to risks associated with international operations.

We plan to commercialize our products outside of the United States and expect to commence clinical trials in certain European countries in addition to the U.S. and Canada. Conducting international operations subjects us to risks, including:

- costs of complying with varying regulatory requirements and potential, unexpected changes to those requirements;
- fluctuations in currency exchange rates;
- potentially adverse tax consequences, including the complexities of foreign value added tax systems and restrictions on the repatriation of earnings;
- government-imposed pricing controls on sales of our products;
- longer payment cycles and difficulties in collecting accounts receivable;
- difficulties in managing and staffing international operations;
- increased financial accounting and reporting burdens and complexities; and
- reduced or varied protection for intellectual property rights in some countries.

The occurrence of any one of these risks could negatively affect our international operations. Additionally, operating in international markets also requires significant management attention and financial resources. We cannot be certain that our operations in other countries will produce desired levels of

revenues or profitability.

We depend on a limited number of manufacturers and suppliers of various critical components for our C-Pulse System. The loss of any of these manufacturer or supplier relationships could delay future clinical trials or prevent or delay commercialization of our C-Pulse System.

We rely entirely on third parties to manufacture our C-Pulse System and to supply us with all of the critical components of our C-Pulse System, including the driver, cuff and interface lead. We do not have any material long-term agreements with any of our suppliers and primarily purchase our components and products on a purchase order basis. If any of our existing suppliers were unable or unwilling to meet our demand for product components, or if the components or finished products that they supply do not meet quality and other specifications, clinical trials or commercialization of our product could be delayed and increase our expenses. Alternatively, if we have to switch to a replacement manufacturer or replacement supplier for any of our product components, we may face additional regulatory delays, and the manufacture and delivery of our C-Pulse System could be interrupted for an extended period of time and become significantly more

expensive, which could delay completion of future clinical trials or commercialization of our C-Pulse System and adversely affect our results of operations. In addition, we may be required to use different suppliers or components to obtain regulatory approval from the FDA.

If our manufacturers or our suppliers are unable to provide an adequate supply of our product following the start of commercialization, our growth could be limited and our business could be harmed.

In order to produce our C-Pulse System in the quantities that we anticipate will be required to meet market demand, we will need our manufacturers to increase, or scale-up, the production process by a significant factor over the current level of production. There are technical challenges to scaling-up manufacturing capacity and developing commercial-scale manufacturing facilities that may require the investment of substantial additional funds by our manufacturers and hiring and retaining additional management and technical personnel who have the necessary manufacturing experience. If our manufacturers are unable to do so, we may not be able to meet the requirements for the launch of the product or to meet future demand, if at all. We also may represent only a small portion of our supplier's or manufacturer's business and if they become capacity constrained they may choose to allocate their available resources to other customers that represent a larger portion of their business. We currently anticipate that we will continue to rely on third-party manufacturers and suppliers for the production of our C-Pulse System following commercialization. If we develop and obtain regulatory approval for our product and are unable to obtain a sufficient supply of our product, our revenue, business and financial prospects would be adversely affected.

If we are unable to manage our expected growth, we may not be able to commercialize our products.

We have expanded, and expect to continue to expand, our operations and grow our research and development, product development, regulatory, manufacturing, sales, marketing and administrative operations. This expansion has placed, and is expected to continue to place, a significant strain on our management and operational and financial resources. To manage any further growth and to commercialize our products, we will be required to improve existing and implement new operational and financial systems, procedures and controls and expand, train and manage our growing employee base. In addition, we will need to manage relationships with various manufacturers, suppliers and other organizations. Our ability to manage our operations and growth will require us to improve our operational, financial and management controls, as well as our internal reporting systems and controls. We may not be able to implement such improvements to our management information and internal control systems in an efficient and timely manner and may discover deficiencies in existing systems and controls. Our failure to accomplish any of these tasks could materially harm our business.

We compete against companies that have longer operating histories, more established products and greater resources than we do, which may prevent us from achieving further market penetration or improving operating results.

Competition in the medical device industry is intense. Our products will compete against current therapies, including pharmacological therapies, as well as products offered by public companies, such as Thoratec Corporation and HeartWare International, Inc., and several smaller specialized private companies, such as CircuLite, Inc. Some of these competitors have significantly greater financial and human resources than we do and have established reputations, as well as worldwide distribution channels and sales and marketing capabilities that are larger and more established than ours. Additional competitors may enter the market, and we are likely to compete with new companies in the future. We also face competition from other medical therapies which may focus on our target market as well as competition from manufacturers of pharmaceutical and other devices that have not yet been developed. Competition from these companies could adversely affect our business.

Our ability to compete effectively depends upon our ability to distinguish our company and our products from our competitors and their products. Factors affecting our competitive position include:

- financial resources;
- product performance and design;
- product safety;

- sales, marketing and distribution capabilities;
- manufacturing and assembly costs;
- success and timing of new product development and introductions;
- regulatory approvals; and

- intellectual property protection.

The competition for qualified personnel is particularly intense in our industry. If we are unable to retain or hire key personnel, we may not be able to sustain or grow our business.

Our ability to operate successfully and manage our potential future growth depends significantly upon our ability to attract, retain and motivate highly skilled and qualified research, technical, clinical, regulatory, sales, marketing, managerial and financial personnel. We face intense competition for such personnel, and we may not be able to attract, retain and motivate these individuals. We compete for talent with numerous companies, as well as universities and nonprofit research organizations. Our future success also depends on the personal efforts and abilities of the principal members of our senior management and scientific staff to provide strategic direction, manage our operations and maintain a cohesive and stable environment. We do not maintain key man life insurance on the lives of any of the members of our senior management. The loss of key personnel for any reason or our inability to hire, retain and motivate additional qualified personnel in the future could prevent us from sustaining or growing our business.

Product defects could adversely affect the results of our operations.

The design, manufacture and marketing of medical devices involve certain inherent risks. Manufacturing or design defects, unanticipated use of our products, or inadequate disclosure of risks relating to the use of the product can lead to injury or other adverse events. These events could lead to recalls or safety alerts relating to our products (either voluntary or required by the FDA or similar governmental authorities in other countries), and could result, in certain cases, in the removal of a product from the market. Any recall could result in significant costs, as well as negative publicity and damage to our reputation that could reduce demand for our products. Personal injuries relating to the use of our products can also result in product liability claims being brought against us. In some circumstances, such adverse events could also cause delays in new product approvals.

We may be sued for product liability, which could adversely affect our business.

The design, manufacture and marketing of medical devices carries a significant risk of product liability claims. Our products treat Class III and ambulatory Class IV heart failure for patients who typically have serious medical issues. As a result, our exposure to product liability claims may be heightened because the people who use our products have a high risk of suffering adverse outcomes, regardless of the safety or efficacy of our products.

We may be held liable if any product we develop and commercialize causes injury or is found otherwise unsuitable during product testing, manufacturing, marketing, sale or consumer use. The safety studies we must perform and the regulatory approvals required to commercialize our medical safety products will not protect us from any such liability. We carry product liability insurance with a $10 million aggregate limit. However, if there were to be product liability claims against us, our insurance may be insufficient to cover the expense of defending against such claims, or may be insufficient to pay or settle such claims. Furthermore, we may be unable to obtain adequate product liability insurance coverage for commercial sales of any of our approved products. If such insurance is insufficient to protect us, our results of operations will suffer. If any product liability claim is made against us, our reputation and future sales will be damaged, even if we have adequate insurance coverage. Even if a product liability claim against us is without merit or if we are not found liable for any damages, a product liability claim could result in decreased demand for our products, injury to our reputation, diversion of management's attention from operation or our business, withdrawal of clinical trial participants, significant costs of related litigation, loss of revenue or the inability to commercialize our products under development.

Risks Relating to Regulation

We have no products approved for commercial sale, and our success will depend heavily on the success of our feasibility trials and a subsequent pivotal trial for our C-Pulse System. If we are unable to complete our feasibility trials, commence and complete our pivotal trial, or experience significant delays in either trial, or if the results of a trial do not meet its safety and efficacy endpoints, our ability to obtain regulatory approval to commercialize our product and to generate revenues will be harmed.

Our device, the C-Pulse System, is currently undergoing feasibility clinical trials at sites in the United States and Canada. Our United States feasibility clinical trial protocol requires us to obtain clinical data from at least 20 patients to assess device safety and potential efficacy from data collected. Upon completion of the six-month follow-up period for our feasibility trials, we submitted the test data to the FDA on November 29, 2011 and we expect to submit an IDE application to the FDA for approval of a pivotal trial in the first quarter of 2012.

Completion of either trial could be delayed or adverse events during the trial could cause us to modify the existing design, repeat or terminate the trial. If a clinical trial is delayed, if it must be repeated or if it is terminated, our costs associated with the trial will increase, and it will take us longer to obtain regulatory approvals and commercialize the product. Our clinical trials may also be suspended or terminated at any time by regulatory authorities or by us. FDA scrutiny of IDE applications has intensified in recent years, increasing the risk of delay.

Even if we commence and complete a pivotal clinical trial, it must demonstrate the safety and efficacy of the C-Pulse System by meeting the trial's endpoints before we can commercial the C-Pulse System. The inability to achieve the safety or efficacy endpoints in a pivotal trial could delay our timeline for obtaining regulatory approval to commercialize our products.

In addition to successfully completing our clinical trials, we will need to receive approval from regulatory agencies in each country in which we seek to sell our products. Approval procedures vary among countries and can involve additional product testing and additional administrative review periods. The time required to obtain approval varies from country to country and approval in one country does not ensure regulatory approval in another. In addition, a failure or delay in obtaining regulatory approval in one country may negatively impact the regulatory process in others. We cannot assure you when, or if, we will be able to commence sales in any jurisdiction within or outside the United States.

Any failure or significant delay in successfully completing clinical trials for our products or obtaining regulatory approvals could harm our financial results and our prospects and cause us to seek additional funding.

Even if our feasibility clinical trial is successful and we obtain foreign regulatory approvals, we will need to obtain FDA approval to commercialize our product in the United States, which will require us to receive FDA approval to conduct clinical trials in the United States and to complete those trials successfully. If we fail to obtain approval from the FDA, we will not be able to market and sell our products in the United States.

We do not have the necessary regulatory approvals to commercialize our C-Pulse System in the United States, which we believe is the largest potential market for our C-Pulse System. We intend to use the data from our North American feasibility trial to support an IDE application for FDA approval of a pivotal trial the C-Pulse System, but we can offer no assurance that our IDE application will be approved or that we will ever obtain FDA approval of the C-Pulse System or any future products.

In order to obtain FDA approval for our C-Pulse System, we will be required to receive a PMA from the FDA. A PMA must be supported by pre-clinical and clinical trials to demonstrate safety and efficacy. A clinical trial will be required to support an application for a PMA, and we will be seeking FDA approval of our IDE that will allow us to commence a clinical trial in the United States. We intend to commence our U.S. pivotal trial in the first half of 2012, but there can be no assurance that our U.S. pivotal trial will begin or be completed on schedule or at all. Even if completed, we do not know if this trial will produce clinically meaningful results sufficient to show the safety and efficacy of our products so as to support an application for a PMA.

The process of obtaining a PMA from the FDA for our C-Pulse System, or any future products or enhancements or modifications to any products, could:

- take a significant period of time;
- require the expenditure of substantial resources;
- involve rigorous pre-clinical and clinical testing;
- require changes to our products; and
- result in limitations on the indicated uses of the products.

In addition, recent, widely-publicized events concerning the safety of certain drug, food and medical device products have raised concerns among members of Congress, medical professionals, and the public regarding the FDA's handling of these events and its perceived lack of oversight over regulated products. The increased attention to safety and oversight issues could result in a more cautious approach by the FDA to approvals for devices such as ours, which could delay or prevent FDA approval of our C-Pulse System.

There can be no assurance that we will receive the required approvals from the FDA or if we do receive the required approvals, that we will receive them on a timely basis. The failure to receive product approval by the FDA could have a material adverse effect on our business, financial condition or results of operations.

We may be unable to enroll and complete our planned U.S. pivotal trial for the C-Pulse System or other clinical trials, which could prevent or delay regulatory approval of the C-Pulse System and impair our financial position.

We intend to commence our U.S. pivotal trial in the first half of 2012. The trial is designed to be a randomized trial that includes 270 patents and is expected to involve more than 20 locations. Conducting a clinical trial of this size is a complex and uncertain process.

The commencement of our trial could be delayed for a variety of reasons, including:

- reaching agreement on acceptable terms with prospective clinical trial sites;
- manufacturing sufficient quantities of our C-Pulse System;
- obtaining institutional review board approval to conduct the trial at a prospective site; and
- obtaining sufficient patient enrollment, which is a function of many factors, including the size of the patient population, the nature of the protocol, the proximity of patients to clinical sites and the eligibility criteria for the trial.

Once the trial has begun, the completion of the trial, and our other ongoing clinical trials, could be delayed, suspended or terminated for several reasons, including:

- ongoing discussions with regulatory authorities regarding the scope or design of our preclinical results or clinical trial or requests for supplemental information with respect to our preclinical results or clinical trial results;
- our failure or inability to conduct the clinical trials in accordance with regulatory requirements;
- sites currently participating in the trial may drop out of the trial, which may require us to engage new sites or petition the FDA for an expansion of the number of sites that are permitted to be involved in the trial;
- patients may not remain in or complete, clinical trials at the rates we expect;

- patients may experience serious adverse events or side effects during the trial, which, whether or not related to our product, could cause the FDA or other regulatory authorities to place the clinical trial on hold; and

- clinical investigators may not perform our clinical trials on our anticipated schedule or consistent with the clinical trial protocol and good clinical practice requirements.

If our clinical trials are delayed it will take us longer to ultimately commercialize a product or the delay could result in our being unable to do so. Moreover, our development costs will increase if we have material delays in our clinical trials or if we need to perform more or larger clinical trials than planned. Any of the foregoing could harm our financial results and our prospects and cause us to seek additional funding.

We depend on clinical investigators and clinical sites to enroll patients in our clinical trials, and on other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays that are outside of our control.

We have and plan to continue to rely on clinical investigators and clinical sites to enroll patients in our clinical trials, including our planned U.S. pivotal trial, and other third parties to manage the trials and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites may devote to our clinical trials. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials, to ensure compliance by patients with clinical protocols or comply with regulatory requirements, we will be unable to complete these trials, which could prevent us from obtaining regulatory approvals for our product. Our agreements with clinical investigators and clinical trial sites for clinical testing place substantial responsibilities on these parties and, if these parties fail to perform as expected, our trials could be delayed or terminated. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, or the clinical data may be rejected by the FDA, and we may be unable to obtain regulatory approval for, or successfully commercialize, our product.

Our manufacturers and suppliers might not meet regulatory quality standards applicable to manufacturing and quality processes, which could have an adverse effect on our financial results and prospects.

Even after products have received marketing approval or clearance, product approvals and clearances by the FDA can be withdrawn due to failure to comply with regulatory standards. We rely entirely on third parties to manufacture our C-Pulse System and those manufacturers are required to demonstrate and maintain compliance with the FDA's Quality System Regulation, or QSR. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. The FDA enforces the QSR through periodic unannounced inspections. Compliance with applicable regulatory requirements is subject to continual review and is rigorously monitored through periodic inspections by the FDA. A failure by our manufacturers to comply with the QSR or to take satisfactory corrective action in response to an adverse QSR inspection could cause a significant delay in our ability to have our product manufactured and to complete our clinical trials, which would harm our financial results and our prospects. In addition, suppliers of components of, and products used to manufacture, our products must also comply with FDA and foreign regulatory requirements, which often require significant time, money and record-keeping and quality assurance efforts and subject us and our suppliers to potential regulatory inspections and stoppages.

We plan to operate in multiple regulatory environments that require costly and time consuming approvals.

Even if we obtain regulatory approvals to commercialize the C-Pulse System or any other product that we may develop, sales of our products in other jurisdictions will be subject to regulatory requirements that vary from country to country. The time and cost required to obtain approvals from these countries may be longer or shorter than that required for FDA approval, and requirements for licensing may differ from those of the FDA. Laws and regulations regarding the manufacture and sale of our products are subject to future changes, as are administrative interpretations and policies of regulatory agencies. If we fail to comply with applicable foreign, federal, state or local market laws or regulations, we could be subject to enforcement actions. Enforcement actions could include

product seizures, recalls, withdrawal of clearances or approvals, and civil and criminal penalties, which in each case would harm our business.

The C-Pulse System may never achieve market acceptance even if we obtain regulatory approvals.

Even if we obtain regulatory approvals to commercialize the C-Pulse System or any other product that we may develop, our products may not gain market acceptance among physicians, patients, health care payers or the medical community. The degree of market acceptance of any of the devices that we may develop will depend on a number of factors, including:

- the perceived effectiveness of the product;
- the prevalence and severity of any side effects;
- potential advantages over alternative treatments;
- the strength of marketing and distribution support; and
- sufficient third party coverage or reimbursement.

If our C-Pulse System, or any other product that we may develop, is approved but does not achieve an adequate level of acceptance by physicians, patients, health care payers and the medical community, we may not generate product revenue and we may not become profitable or be able to sustain profitability.

If we fail to obtain an adequate level of reimbursement for our product by third party payers, there may be no commercially viable markets for our product or the markets may be much smaller than expected.

The availability and levels of reimbursement by governmental and other third party payers affect the market for our product. The FDA has assigned the C-Pulse System to a Category B designation under IDE number G070096. By assigning the C-Pulse System a Category B designation, the FDA determined that the C-Pulse System is non-experimental/investigational. A non-experimental/investigational device refers to a device believed to be in

Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval for that device type.

Reimbursement and health care payment systems in international markets vary significantly by country, and include both government sponsored health care and private insurance. To obtain reimbursement or pricing approval in some countries, we may be required to produce clinical data, which may involve one or more clinical trials, that compares the cost-effectiveness of our products to other available therapies. We may not obtain international reimbursement or pricing approvals in a timely manner, if at all. Our failure to receive international reimbursement or pricing approvals would negatively impact market acceptance of our products in the international markets in which those approvals are sought.

We believe that future reimbursement may be subject to increased restrictions both in the United States and in international markets. Future legislation, regulation or reimbursement policies of third party payers may adversely affect the demand for our products currently under development and limit our ability to sell the C-Pulse System or any future products on a profitable basis. In addition, third party payers continually attempt to contain or reduce the costs of health care by challenging the prices charged for health care products and services. If reimbursement for our products is unavailable in any market or limited in scope or amount or if pricing is set at unsatisfactory levels, market acceptance of our products would be impaired and our future revenues, if any, would be adversely affected.

We may be subject, directly or indirectly, to U.S. federal and state healthcare fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to, or have not fully complied with such laws, we could face substantial penalties.

If we are successful in achieving regulatory approval to market our C-Pulse System, our operations will be directly, or indirectly through our customers, subject to various state and federal fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and federal False Claims Act. These laws may impact, among other things, our proposed sales, marketing and education programs.

The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback Statute is broad and, despite a series of narrow safe harbors, prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. Many states have also adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs.

The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. Suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individuals, commonly known as "whistleblowers," may share in any amounts paid by the entity to the government in fines or settlement. The frequency of filing qui tam actions has increased significantly in recent years, causing greater numbers of medical device, pharmaceutical and healthcare companies to have to defend a False Claim Act action. When an entity is determined to have violated the federal False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states have also enacted laws modeled after the federal False Claims Act.

We are unable to predict whether we could be subject to actions under any of these laws, or the impact of such actions. If we are found to be in violation of any of the laws described above and other applicable state and federal fraud and abuse laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our operations.

We will incur increased costs as a result of being a U.S. reporting company and we have no experience as a U.S. reporting company.

Upon the effectiveness of this registration statement, we will become subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Although we have been listed on the ASX for several years and have been required to file financial information and make certain other filings with the ASX, our status as a U.S. reporting company under the Exchange Act will cause us to incur additional legal, accounting and other expenses that we have not previously incurred, including costs related to compliance with the requirements of the Sarbanes-Oxley Act of 2002. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. We also expect these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified individuals to serve on our board of directors or as executive officers. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

Risks Relating to our Intellectual Property

We may not be able to protect our intellectual property rights effectively, which could have an adverse effect on our business, financial condition or results of operations.

Our success depends in part on our ability to obtain and maintain protection in the United States and other countries of the intellectual property relating to or incorporated into our technology and products. As of December 9, 2011, we owned 11 issued patents in the United States and 10 patent applications in the United States, as well as 17 issued patents and 20 patent applications in foreign jurisdictions. We estimate that the U.S. patents expire between June 9, 2020 and October 28, 2024. Our pending and future patent applications may not issue as patents or, if issued, may not issue in a form that

will provide us any competitive advantage. Even if issued, existing or future patents may be challenged, narrowed, invalidated or circumvented, which could limit our ability to stop competitors from marketing similar products or limit the length of terms of patent protection we may have for our products. Changes in patent laws or their interpretation in the United States and other countries could also diminish the value of our intellectual property or narrow the scope of our patent protection. In addition, the legal systems of certain countries do not favor the aggressive enforcement of patents, and the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours. In order to preserve and enforce our patent and other intellectual property rights, we may need to make claims or file lawsuits against third parties. This can entail significant costs to us and divert our management's attention from developing and commercializing our products.

Intellectual property litigation could be costly and disruptive to us.

In recent years, there has been significant litigation involving medical device patents and other intellectual property rights. From time to time, third parties may assert patent, copyright, trademark and other intellectual property rights to technologies used in our business. Any claims, with or without merit, could be time-consuming, result in costly litigation, divert the efforts of our technical and management personnel or require us to pay substantial damages. If we are unsuccessful in defending ourselves against these types of claims, we may be required to do one or more of the following:

- stop our ongoing or planned clinical trials or delay or abandon commercialization of the product that is the subject of the suit;
- attempt to obtain a license to sell or use the relevant technology or substitute technology, which license may not be available on reasonable terms or at all; or
- redesign those products that use the relevant technology.

In the event a claim against us was successful and we could not obtain a license to the relevant technology on acceptable terms or license a substitute technology or redesign our products to avoid infringement, our business would be significantly harmed.

If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.

In addition to patented technology, we rely on our unpatented proprietary technology, trade secrets, processes and know-how. We generally seek to protect this information by confidentiality agreements with our employees, consultants, scientific advisors and third parties. These agreements may be breached, and we may not have adequate remedies for any such breach. In addition, our trade secrets may otherwise become known or be independently developed by competitors. To the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

Risk Factors Related to Ownership of Our Common Stock

An active trading market for our shares of common stock in the United States may not develop and the trading price of our shares of common stock may fluctuate significantly.

Prior to the effective date of this registration statement, our shares have not been listed on any U.S. securities exchange and we have not registered any of our shares of common stock for sale in the United States. Our common stock has been listed on the ASX in the form of CDIs since 2004 and has experienced limited trading volume. The reported average daily trading volume in our common stock on the ASX (in the form of CDIs) for the three month period ended September 30, 2011, was approximately 811,000 shares. All of our shares of common stock that we have sold have been sold in reliance on exemptions from registration under the Securities Act of 1933, as amended, which we refer to as the Securities Act. As of December 9, 2011,

- 235,829,580 shares of our common stock in the form of CDIs were held by persons or entity other than our directors, officers and other affiliates and were eligible for sale in the public market;
- 400,947,831 shares of our common stock in the form of CDIs were held by persons or entity other than our directors, officers and other affiliates and were subject to re-sale restrictions of Rule 144 under the Securities Act; and
- 567,105,833 shares of our common stock in the form of CDIs were held by our directors, officers and other affiliates and were subject to re-sale restrictions of Rule 144 under the Securities Act.

Although we have applied to list our shares of common stock on Nasdaq Capital Market and intend to file with the SEC registration statements on Form S-8 covering approximately 205 million shares of our common stock issuable under our equity plans, there can be no assurance that a liquid public market for our shares will develop in the United States. If an active trading market does not develop in the United States, the market price and liquidity of our shares may be adversely affected.

The price of our common stock may fluctuate significantly.

Our common stock in the form of CDIs has been traded on the ASX in the form of CDIs since 2004. The price of our CDIs has been, and is likely to continue to be, volatile, which means that it could decline substantially within a short period of time. For example, our closing per CDI price ranged from A$0.023 to A$0.063 for the 12 months ended September 30, 2011. The price of our common stock could fluctuate significantly for many reasons, including the following:

- future announcements concerning us or our competitors;
- regulatory developments, enforcement actions bearing on advertising, marketing or sales, and disclosure regarding completed, ongoing or future clinical trials;

- quarterly variations in operating results, which we have experienced in the past and expect to experience in the future;
- introduction of new products;
- acquisition or loss of significant manufacturers, distributors or suppliers;

- business acquisitions or divestitures;
- changes in third party reimbursement practices;
- fluctuations of investor interest in the medical device sector; and
- fluctuations in the economy, world political events or general market conditions.

In addition, stock markets in general and the market for shares of health care stocks in particular, have experienced extreme price and volume fluctuations in recent years, fluctuations that frequently have been unrelated to the operating performance of the affected companies. These broad market fluctuations may adversely affect the market price of our common stock. The market price of our common stock could decline below its current price and the market price of our shares may fluctuate significantly in the future. These fluctuations may be unrelated to our performance.

Our directors and executive officers hold substantial control over us and could limit your ability to influence the outcome of key transactions, including changes of control.

As of December 9, 2011, our executive officers and directors and entities affiliated with them beneficially owned, in the aggregate (including options or warrants exercisable currently or within 60 days of December 9, 2011), approximately 53.1% of our outstanding common stock. Our executive officers, directors and affiliated entities, if acting together, would be able to influence significantly all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other significant corporate transactions. The concentration of ownership of our common stock may have the effect of delaying, preventing or deterring a change of control of our company, could deprive our stockholders and CDI holders of an opportunity to receive a premium for their common stock and CDIs as part of a sale of our company and may affect the market price of our common stock and CDIs. This significant concentration of stock ownership may adversely affect the trading price of our common stock and CDIs due to investors' perception that conflicts of interest may exist or arise.

If there are substantial sales of shares of our common stock, our share price could decline.

If our existing stockholders sell a large number of shares of our common stock or CDIs if the public market, should one develop, perceives that existing stockholders might sell a large number of shares or CDIs the price at which our common stock or CDIs trade could decline significantly. Sales of substantial amounts of our common stock by stockholders in the public market, or even the potential for such sales, are likely to adversely affect the market price of our common stock and CDIs.

In general, beginning 90 days after the effective date of this registration statement, under Rule 144 a person who is not one of our directors, officers or other affiliates at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months, would be entitled to sell an unlimited number of shares of our common stock that currently are restricted from being sold in the public market, provided current public information about us is available. Beginning 90 days after the effective date of this registration statement, our directors, officers and other affiliates who have beneficially owned shares of our common stock for at least six months will be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of our common stock then outstanding; and
- the average weekly trading volume of our common stock on all national securities exchanges and/or reported through the automated quotation system of a registered securities exchange during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale, or if no such notice is required, the date of receipt of the order to execute the sale.

We do not intend to pay cash dividends on our common stock in the foreseeable future.

We have never declared or paid any cash dividends on our common stock, and we currently do not anticipate paying any cash dividends in the foreseeable future. We intend to retain any earnings to finance the development and expansion of our products and business. Accordingly, our stockholders and CDI holders will not realize a return on their investment unless the trading price of our common stock and CDIs appreciate.

We may be subject to arbitrage risks.

Investors may seek to profit by exploiting the difference, if any, between the price of our CDIs on the ASX and the price of our shares available for sale in the U.S., whether such sales would take place on a U.S. securities exchange or in the over-the-counter market or otherwise. Such arbitrage activities could cause our share price in the market with the higher value to decrease to the price set by the market with the lower value.

Investors could lose confidence in our financial reports, and the value of our common stock may be adversely affected, if our internal controls over financial reporting are found not to be effective by management or by an independent registered public accounting firm or if we make disclosure of existing or potential significant deficiencies or material weaknesses in those controls.

In connection with becoming a company required to file reports with the SEC, we will be required to comply with the internal control evaluation and certification requirements of Section 404 of the Sarbanes-Oxley Act of 2002. We continue to evaluate our existing internal controls over financial reporting against the standards adopted by the Public Company Accounting Oversight Board. During the course of our ongoing evaluation of the internal controls, we may identify areas requiring improvement, and may have to design enhanced processes and controls to address issues identified through this review. Remediating any deficiencies, significant deficiencies or material weaknesses that we or our independent registered public accounting firm may identify may require us to incur significant costs and expend significant time and management resources. We cannot assure you that any of the measures we implement to remedy any such deficiencies will effectively mitigate or remedy such deficiencies. The existence of one or more material weaknesses could affect the accuracy and timing of our financial reporting. Investors could lose confidence in our financial reports, and the value of our common stock and CDIs may be adversely affected, if our internal controls over financial reporting are found not to be effective by management or by an independent registered public accounting firm or if we make disclosure of existing or potential significant deficiencies or material weaknesses in those controls.

Our certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with the Company.

Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any other action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to the provisions described above. This forum selection provision may limit our stockholders' ability to obtain a judicial forum that they find favorable for disputes with us or our directors, officers or other employees or stockholders.

Our certificate of incorporation, bylaws, and the Delaware General Corporation Law may delay or deter a change of control transaction.

Certain provisions of our certificate of incorporation and bylaws may have the effect of deterring takeovers, such as those provisions authorizing our board of directors to issue, from time to time, any series of preferred stock and fix the designation, powers, preferences and rights of the shares of such series of preferred stock; prohibiting stockholders from acting by written consent in lieu of a meeting; requiring advance notice of stockholder intention to put forth director nominees or bring up other business at a stockholders' meeting; prohibiting stockholders from

calling a special meeting of stockholders; requiring a 66 $^{2}/_{3}$% majority stockholder approval in order for stockholders to amend certain provisions of our certificate of incorporation or bylaws or adopt new bylaws; providing that, subject to the rights of preferred shares, the directors will be divided into three classes and the number of directors is to be fixed exclusively by our board of directors; and providing that none of our directors may be removed without cause. Section 203 of the Delaware General Corporation Law, from which we did not elect to opt out, provides that if a holder acquires 15% or more of our stock without prior approval of our board of directors, that holder will be subject to certain restrictions on its ability to acquire us within three years. These provisions may delay or deter a change of control of us, and could limit the price that investors might be willing to pay in the future for shares of our common stock.

It may be difficult to effect service of U.S. process and enforce U.S. legal process against our directors.

Five of our eight directors reside outside of the United States, principally in the Commonwealth of Australia. A substantial portion of the assets of our directors also are located outside of the United States. Therefore, it may not be possible to effect service of process within the United States upon these persons in order to enforce judgments of U.S. courts against these persons based on the civil liability provisions of the U.S. federal securities laws. In addition, there is doubt as to the enforceability in Australia, in original actions or in actions to enforce judgments of U.S. courts, of claims predicated solely upon U.S. federal securities laws.

ITEM 2 — FINANCIAL INFORMATION

Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated and condensed financial statements and related notes appearing elsewhere in this registration statement. This discussion and analysis includes certain forward-looking statements that involve risks, uncertainties and assumptions. You should review the "Risk Factors" section of this registration statement for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by such forward-looking statements. See "Cautionary Note Regarding Forward-Looking Statements" at the beginning of this registration statement.

Overview

We are an early stage medical device company focused on developing, manufacturing and commercializing our C-Pulse Heart Assist System, for treatment of Class III and ambulatory Class IV heart failure. The C-Pulse Heart Assist System utilizes the scientific principles of intra-aortic balloon counter-pulsation applied in an extra-aortic approach to assist the left ventricle by reducing the workload required to pump blood throughout the body, while increasing blood flow to the coronary arteries.

We are conducting clinical trials of our C-Pulse System in the U.S., which we expect to extend into 2016 before we will have a determination if it can be marketed in the U.S. We completed enrollment of the feasibility phase of our clinical trial in the first half of 2011. In November 2011, we obtained the results of the six-month follow-up period for the feasibility phase and we submitted the test data to the FDA. We believe the results of the six-month follow up demonstrate the feasibility and assessment of safety and indications of performance of the C-Pulse System in patients with moderate to severe heart failure and we expect to submit an IDE application to the FDA in early 2012 for approval of our pivotal trial.

We are seeking CE Mark for the C-Pulse and anticipate that we will obtain approval early in 2012. We have taken initial steps to evaluate the potential market for our product in targeted countries in Europe in anticipation of commencing commercial sales of the C-Pulse in Europe following CE Mark approval.

Critical Accounting Policies and Estimates

Revenue Recognition: We recognize revenue when (i) persuasive evidence of a customer arrangement exists; (ii) the price is fixed or determinable and free of contingencies or uncertainties; (iii) collectability is reasonably assured; and (iv) product delivery has occurred, which is when product title transfers to the customer, or services have been rendered. Sales are not conditional based on customer acceptance provisions or installation

obligations. Our C-Pulse Heart Assist System is not approved for commercial sale. Our revenue consists solely of sales of the C-Pulse to hospitals and clinics under contract in conjunction with our clinical trials. For clinical trial implant revenue, the product title generally transfers on the date the product is implanted. We do not charge hospitals and clinics for shipping. We expense shipping costs at the time we report the related revenue and record such costs in cost of sales.

Foreign Currency Translation and Transactions: Foreign denominated monetary assets and liabilities are translated at the rate of exchange prevailing at the balance sheet date. Results of operations are translated using the average rates prevailing during the reporting period. Our Australian subsidiary's functional currency is the Australian Dollar. Translation adjustments result from translating the subsidiary's financial statements into our reporting currency, the U.S. Dollar. The translation adjustment has not been included in determining our net loss, but has been reported separately and is accumulated in a separate component of equity.

Effective January 1, 2011, we concluded that the functional currency of our U.S. based parent company is the U.S. Dollar. We have concluded that the functional currency of the Australian subsidiary remains the Australian Dollar.

Comprehensive Income (Loss): The components of comprehensive income (loss) include net income (loss) and the effects of foreign currency translation adjustments.

Stock-Based Compensation: We recognize all share-based payments, including grants of stock options in the income statement as an operating expense based on their fair value over the requisite service period.

We compute the estimated fair values of stock options using the Black-Scholes option pricing model. No tax benefit has been recorded due to the full valuation allowance on deferred tax assets that we have recorded.

Stock-based compensation expense is based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Equity instruments issued to non-employees, and for services and goods are shares of our common stock, warrants or options to purchase shares of our common stock. These shares, warrants or options are either fully-vested and exercisable at the date of grant or vest over a certain period during which services are provided. We expense the fair market value of these securities over the period in which the related services are received.

Going Concern: Our financial statements have been prepared and presented on a basis assuming we continue as a going concern.

During the years ended December 31, 2010 and 2009, and the nine months ended September 30, 2011, we incurred losses from operations and net cash outflows from operating activities as disclosed in the consolidated statements of operations and cash flows, respectively.

Our ability to continue as a going concern is dependent on our ability to raise additional capital based on the achievement of existing milestones as and when required. Our directors, after due consideration, believe that we will be able to raise new equity capital as required to fund our business plan. Should the future capital raising not be successful, we may not be able to continue as a going concern. Furthermore, our ability to continue as a going concern is subject to our ability to develop and successfully commercialize the product being developed. If we are unable to obtain such funding of an amount and timing necessary to meet our future operational plans, or to successfully commercialize our intellectual property, we may be unable to continue as a going concern. No adjustments have been made relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should we not continue as a going concern.

Recent Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board, or FASB, issued additional guidance for the presentation of comprehensive income. The new guidance changes the way other comprehensive income ("OCI")

appears within the financial statements. Companies will be required to show net income, OCI and total comprehensive income in one continuous statement or in two separate but consecutive statements. Components of OCI may no longer be presented solely in the statement of changes in shareholders' equity. Any reclassification between OCI and net income will be presented on the face of the financial statements. The new guidance is effective for our company beginning January 1, 2012. The adoption of the new guidance will not impact the measurement of net income or other comprehensive income.

In January 2010, FASB issued Accounting Standards Update, or ASU, 2010-06, *Improving Disclosure about Fair Value Measurements*. ASU 2010-06 revises two disclosure requirements concerning fair value measurements and clarifies two others. It requires separate presentation of significant transfers into and out of Levels 1 and 2 of the fair value hierarchy and disclosure of the reasons for such transfers. It also requires the presentation of purchases, sales, issuances and settlements within Level 3 on a gross basis rather than a net basis. The amendments also clarify that disclosures should be disaggregated by class of asset or liability and that disclosures about inputs and valuation techniques should be provided for both recurring and non-recurring fair value measurements. ASU 2010-06 is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective for reporting periods beginning after December 15, 2010.

In May 2011, FASB issued ASU 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS.* This accounting update generally aligns the principles for fair value measurements and the related disclosure requirements under U.S. GAAP and International Financial Reporting Standards. From a U.S. GAAP perspective, the amendments are largely clarifications, but some could have a significant effect on certain companies. A number of new disclosures also are required. Except for certain disclosures, the guidance applies to public and nonpublic companies and is to be applied prospectively. For public companies and nonpublic companies, the amendments are effective during interim and annual periods beginning after December 15, 2011. Early adoption by public companies is not permitted. Nonpublic companies may apply the amendments early, but no earlier than for interim periods beginning after December 15, 2011.

Financial Overview

We are an early stage medical device company focused on developing, manufacturing and commercializing our C-Pulse Heart Assist System, for treatment of Class III and ambulatory Class IV heart failure. Our activities since inception have consisted principally of raising capital, performing research and development and conducting preclinical and clinical trials. At September 30, 2011, we had an accumulated deficit of $60.0 million and we expect to incur losses for the foreseeable future. To date, we have been funded by private and public equity financings. Although we believe that we will be able to successfully fund our operations, there can be no assurance that we will be able to do so or that we will ever operate profitably.

Results of Operations

Comparison of Nine Months Ended September 30, 2011 to Nine Months Ended September 30, 2010

Revenue

Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2010	Increase (Decrease)	% Change
$ —	$ 354,000	$ (354,000)	N/A

Our decrease in revenue for the nine months ended September 30, 2011 compared to the same period in 2010 was primarily caused by completion of enrollment in our feasibility clinical trial in March 2011, after which we had no reimbursable implants. Our revenue during the nine months ended September 30, 2010 consisted solely of sales of the C-Pulse System to hospitals and clinics under contract in conjunction with our feasibility trial. We expect our revenue will be minimal until we begin enrolling patients in our pivotal clinical trials, expected to commence in the first half of 2012.

Research and Development Expense

Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2010	Increase (Decrease)	% Change
$ 7,939,000	$ 3,851,000	$ 4,088,000	106.2%

Our increase in research and development expense for the nine months ended September 30, 2011 compared to the same period in 2010 was primarily caused by increased development activities related to our C-Pulse device and the accelerated development of a fully implantable model. We also increased regulatory and clinical personnel to support the completion of our feasibility clinical trial and to prepare for our pivotal clinical trial. We expect our research and development expense will increase in future periods as we add personnel to support our pivotal clinical trial and pursue our development efforts.

Selling, General and Administrative Expense

Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2010	Increase (Decrease)	% Change
$ 3,250,000	$ 1,537,000	$ 1,713,000	111.5%

Our increase in selling, general and administrative expense for the nine months ended September 30, 2011 compared to the same period in 2010 was primarily caused by increased stock-based compensation expense resulting from current year stock option grants, and increased professional fees and personnel costs as we develop our infrastructure and prepare for our pivotal clinical and Nasdaq listing. We expect our selling, general and administrative expense will increase in future periods as we further develop our infrastructure, invest in developing a sales force in Europe and incur professional fees and expenses associated with being listed on both the Nasdaq Capital Market and the ASX.

Interest Income

Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2010	Increase (Decrease)	% Change
$ 228,000	$ 113,000	$ 115,000	101.8%

Our increase in other income for the nine months ended September 30, 2011 compared to the same period in 2010 was primarily caused by increased interest income earned from our increased cash balances following the completion of our financing in September 2010.

Income Tax Expense/(Benefit)

Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2010	Increase (Decrease)	% Change
—	$ (670,000)	$ (670,000)	N/A

Our income tax benefit for the nine months ended September 30, 2010 resulted from a research and development tax credit in Australia. We have not completed the tax return for our Australian subsidiary for the year ended June 30, 2011 and cannot be sure that the research and development expenditures of our subsidiary during that period will be less than the A$2 million threshold that results in a tax refund rather than a tax credit, for which we would maintain a full valuation allowance. We therefore did not recognize a tax benefit for the nine months ended September 30, 2011. During 2011, Australian authorities amended the applicable law relating to research and development tax credits and, assuming no further changes to the applicable law, we expect to receive tax refunds in the future in amounts that vary based on research and development expenditures in Australia.

Comparison of Year Ended December 31, 2010 to Year Ended December 31, 2009

Revenue

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 407,000	$ 224,000	$ 183,000	81.7%

Our increase in revenue for the year ended December 31, 2010 compared to the prior year was primarily caused by increased enrollments in our feasibility clinical trial during 2010. All of our revenue during 2009 and 2010 was derived solely from sales of the C-Pulse System to hospitals and clinics under contract in conjunction with our feasibility trial.

Research and Development Expense

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 6,229,000	$ 3,425,000	$ 2,804,000	81.9%

Our increase in research and development expense for the year ended December 31, 2010 compared to the prior year was primarily caused by increased development activities related to our C-Pulse device and the recruitment of research and development, regulatory and clinical personnel, including executive level positions, to support the completion of our feasibility clinical trial and to prepare for our pivotal clinical trial.

Selling, General and Administrative Expense

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 2,598,000	$ 2,232,000	$ 366,000	16.4%

Our increase in selling, general and administrative expense for the year ended December 31, 2010 compared to the prior year was primarily caused by increased professional fees and personnel costs as we developed our infrastructure and transitioned our headquarter operations from California to Minnesota.

Interest Income

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 150,000	$ 91,000	$ 59,000	64.8%

Our increase in other income for the year ended December 31, 2010 compared to the prior year was primarily caused by increased interest income earned from our increased cash balances following the completion of our financing in September 2010.

Income Tax Benefit

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 670,000	—	$ 670,000	N/A

Our income tax benefit increased for the year ended December 31, 2010 compared to the prior year was primarily due to a research and development tax credit in Australia that we received in 2010 that we did not receive in the prior year period.

Liquidity and Capital Resources

Sources of Liquidity

We have funded our operations primarily through a series of equity issuances, including the issuance of common shares in the form of CDIs for net proceeds of $11.9 million in 2010 and $7.4 million through the first nine months of 2011. As of September 30, 2011 and December 31, 2010 and 2009, cash and cash equivalents were $10.3 million, $12.4 million and $7.0 million, respectively. We believe that our cash on hand will be sufficient to fund our operations through substantially all of the first half of 2012 as we prepare for the pivotal clinical trial, but that we will require additional financing within the next 12 months to sufficiently fund our operations. We expect to obtain additional financing as needed through sales of our common stock or other securities. Although we have successfully financed our operations through the issuance of common stock to date, we cannot be assured that we will be able to continue to be successful in financing our operations in the future.

Cash Flows from Operating Activities

Net cash used in operating activities was $7.2 million in 2010, $5.8 million in 2009, and $9.7 million and $5.1 million in the nine months ended September 30, 2011 and 2010, respectively. The net cash used in each of these periods primarily reflects the net loss for those periods, offset in part by depreciation, non-cash stock-based compensation and the effects of changes in operating assets and liabilities.

Cash Flows from Investing Activities

Net cash used in investing activities was $7,000 in 2010, $3,000 in 2009, and $34,000 and $3,000 for the nine months ended September 30, 2011 and 2010, respectively. Cash used in investing activities is related to purchases of property and equipment.

Cash Flows from Financing Activities

Net cash provided by financing activities was $11.9 million in 2010, $8.0 million in 2009, and $7.6 million and $0 in the nine months ended September 30, 2011 and 2010, respectively. Net cash provided by financing activities was primarily attributable to proceeds from sales of our common stock.

Capital Resource Requirements

As of December 30, 2010, we did not have any material commitments for capital expenditures.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

ITEM 3 — PROPERTIES

We currently lease a 10,000 square foot facility in Eden Prairie, Minnesota that houses our corporate headquarters and substantially all of our functional areas, with the exception of a portion of our research and development activities. The lease expires September 30, 2012 and requires a monthly payment of approximately $11,000. We also lease approximately 2,000 square feet of office space in an office complex in St Leonards, New South Wales, Australia, for certain research and development activities. The lease extends on a month-to-month basis through January 31, 2012. Monthly rent and electricity for this facility total approximately $14,000. Upon termination of the lease, we plan to transfer substantially all of the research and development activities to our corporate headquarters.

On October 21, 2011 we entered into a lease for a 23,000 square foot facility in Eden Prairie, Minnesota. The lease period commenced December 1, 2011 and extends through March 31, 2016. This facility will house substantially all of our functional areas and will replace our current corporate headquarters. We expect to move our operations to this facility in late December 2011. Monthly rent and electricity for this facility total approximately $21,000.

ITEM 4 — SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table shows the number of shares and percentage ownership of our common stock that were beneficially owned as of December 9, 2011 by each of our directors, by each of our executive officers named in the Summary Compensation Table under the heading “Item 6. Executive Compensation” below and by all of our

directors and executive officers as a group. Unless otherwise noted, the persons listed in the table have sole voting and investment power with respect to the shares owned by them.

Beneficial Ownership of Directors and Executive Officers

The following table sets forth certain information with respect to the beneficial ownership of our outstanding common stock as of December 9, 2011 by (i) each of our named executive officers listed in the Summary Compensation Table below; (ii) each of our directors; and (iii) all of our executive officers and directors as a group. Beneficial ownership is determined in accordance with the rules of the SEC. To our knowledge and subject to applicable community property laws, each of the holders of stock listed below has sole voting and investment power as to the stock owned unless otherwise noted. The address for each of our directors and named executive officers is c/o Sunshine Heart, Inc., 7651 Anagram Drive, Eden Prairie, Minnesota 55344.

Name of Beneficial Owner	Number of Shares	Percent(1)
Dr. Geoffrey Brooke	291,697,290(2)	23.2%
Paul Buckman	486,875(3)	*
Nicholas Callinan	10,219,262(4)	*
Dr. Mark Harvey	368,246,778(5)	29.0%
Debra Kridner	2,223,145(6)	*
Donal O’Dwyer	12,362,478(7)	1.0%
Dr. William Peters	16,244,565(8)	1.3%
David Rosa	14,135,417(9)	1.1%
Gregory Waller	—	—
All directors, director nominees, named executive officers and other executive officers as a group (12 persons)	719,450,684(10)	53.1%

* Less than 1%.

(1) Based on 1,203,883,244 shares outstanding as of December 9, 2011.

(2) Includes 238,951,964 shares owned by GBS Bioventures II A/C and GBS Bioventures III A/C, which we collectively refer to as GBS; 563,667 shares subject to outstanding options exercisable within 60 days of December 9, 2011; 49,781,659 shares subject to outstanding options held by GBS exercisable within 60 days of December 9, 2011; and 2,400,000 shares acquirable upon exercise of outstanding warrants held by GBS exercisable within 60 days of December 9, 2011. Dr. Brooke is the managing director of GBS Venture Partners Pty Ltd, which manages each of GBS Bioventures II A/C and GBS Bioventures III A/C. Dr. Brooke disclaims beneficial ownership of the shares held by GBS except to the extent of his pecuniary interest therein.

(3) Includes 486,875 shares subject to outstanding options exercisable within 60 days of December 9, 2011.

(4) Includes 5,919,054 shares owned by Beraleigh Pty Ltd. and 4,300,208 shares subject to outstanding options exercisable within 60 days of December 9, 2011. Mr. Callinan is a director of Beraleigh Pty Ltd.
(5) Includes 150,000 shares owned by Dr. Harvey's pension fund, for which he has the power to make investment and voting decisions; 300,142,260 shares owned by venture capital funds affiliated with CM Capital; 67,857,143 shares subject to outstanding options owned by CM Capital and its affiliated funds exercisable within 60 days of December 9, 2011; and 97,375 shares subject to outstanding options exercisable within 60 days of December 9, 2011. Dr. Harvey disclaims beneficial ownership of the shares held by CM Capital and its affiliates except to the extent of his pecuniary interest therein.
(6) Includes 1,825,417 shares subject to outstanding options exercisable within 60 days of December 9, 2011.
(7) Includes 1,629,144 shares held by a family trust, for which Mr. O'Dwyer serves as a trustee, 7,758,095 shares held by a pension fund for which Mr. O'Dwyer and his wife jointly have the power to make investment and voting decisions, and 2,393,667 subject to outstanding options exercisable within 60 days of December 9, 2011.
(8) Includes 1,450,000 shares owned by Dr. William Peters and Szigetvary Trustee Services Ltd as trustees to Peters JAM Trust; 490,000 shares owned by Szigetvary Trustee Services Ltd; 7,000 shares owned by Dr. William Peters for the benefit of Ava Peters; 7,000 shares owned by Dr. William Peters for the benefit of Michael Peters; 10,464 owned by Dr. William Peters for the benefit of James Peters; 6,686,552 owned by Dr. William Peters and Apollo Trustees No. 1 Limited as trustees to Peters Apollo Trust; 280,000 shares acquirable upon exercise of outstanding warrants exercisable within 60 days of December 9, 2011; and 7,313,549 shares subject to outstanding options exercisable within 60 days of December 9, 2011.
(9) Includes 13,935,417 shares subject to outstanding options exercisable within 60 days of December 9, 2011.

(10) Consists of (i) 567,255,833 shares beneficially owned by the current directors and executive officers; and (ii) 152,194,851 shares issuable upon exercise of outstanding options or warrants that are exercisable within 60 days of December 9, 2011.

Beneficial Owners of More than Five Percent of Our Common Stock

Based on information filed with the ASX and provided to us by certain of our directors, the following table sets forth certain information with respect to the beneficial ownership of persons known by us to be beneficial owners of more than 5% of our common stock as of December 9, 2011. Beneficial ownership is determined in accordance with the rules of the SEC.

Name of Beneficial Owner	Number of Shares	Percent(1)
GBS Venture Partners Pty Ltd	291,133,623(2)	23.2%
Funds affiliated with CM Capital	367,999,403(3)	28.9%
Funds affiliated with Straus & Partners	114,361,344(4)	9.2%
New Emerging Medical Opportunities Fund LP	81,250,000(5)	6.6%

(1) Based on 1,203,883,244 shares outstanding as of December 9, 2011.
(2) Includes 49,781,659 shares subject to outstanding options exercisable within 60 days of December 9, 2011 and 2,400,000 shares acquirable upon exercise of outstanding warrants exercisable within 60 days of December 9, 2011. Dr. Geoff Brooke and Brigitte Smith of GBS Venture Partners Pty Ltd. hold voting and investment power with respect to these shares. The address for GBS Venture Partners Pty Ltd is Harley House, Level 5, 71 Collins Street, Melbourne Vic 3000, Australia.
(3) Includes 67,857,143 shares subject to outstanding options exercisable within 60 days of December 9, 2011. Michel Begun, Andy Jane, Carrie Hillyard, Mark Gill and Dr. Mark Harvey are the partners of CM Capital Investments Pty Ltd and hold voting investment power with respect to these shares. The address for CM Capital is Level 9, 545 Queen Street, Brisbane QLD 4000, Australia.
(4) Based upon share registry provided to us by our transfer agent, Link Market Services. Includes 38,120,488 shares subject to outstanding warrants held by Straus Healthcare Partners, L.P. and 38,120,488 shares subject to outstanding warrants held by Straus Partners LLP. Ravinder Holder and Melville Straus, Partner and Managing Prinicipal, respectively, of Straus Capital Management LLC share voting and investment power over the shares due to their affiliate relationships. The address for Straus & Partners is 767 Third Avenue, 21st Floor, New York, NY 10017.
(5) Based upon share registry provided to us by our transfer agent, Link Market Services. Includes 18,750,000 shares subject to outstanding warrants. Jérôme G.P Fund, Director and CEO of Sectoral Asset Management holds investment and voting power over these shares as investment manager for New Emerging Medical Opportunities Fund LP. The address for New Emerging Medical Opportunities Fund LP is 1000 Sherbrooke St. West, #2120, Montreal, QC Canada H3A 3G4.

ITEM 5 — DIRECTORS AND EXECUTIVE OFFICERS

Directors and Executive Officers

Our directors and executive officers are as follows:

Name	Age	Position
Kevin Bassett	44	Vice President Research, Development & Quality Assurance
Debra Kridner	59	Vice President Research & Regulatory Affairs
Jim Yearick	49	Vice President Marketing & Sales
Jeffrey Mathiesen	51	Chief Financial Officer and Secretary
Paul Buckman	56	Director
Dr. Geoffrey Brooke	56	Director
Nicholas Callinan	65	Chairman of the Board, Director
Dr. Mark Harvey	46	Director
Dr. William Peters	46	Director; Chief Technology Officer & Medical Director
Donal O'Dwyer	58	Director
David Rosa	47	Director; Chief Executive Officer
Gregory Waller	62	Director

The principal occupation and business experience of each officer, director and key employee of the Company is as follows:

Executive Officers

Kevin Bassett: Mr. Basset is our Vice President of Research, Development and Quality Assurance, a position he has held since October 2010. From 2006 to 2010, Mr. Bassett served as the Senior Vice President of Research and Development, Operations, and Quality Assurance at Acorn Cardiovascular, a medical device company that develops treatments for patients with heart failure.

Debra Kridner: Ms. Kridner is our Vice President of Clinical Research and Regulatory Affairs, a position she has held since November 2009 on a consultant basis and since March 2010 as an employee of our company. From 2008 to 2009, Ms. Kridner worked as a consultant for her company Kridner Consulting LLC, which performed consulting services for medical device companies. From 2004 to 2008, Ms. Kridner served as the Vice President of Clinical Research and Regulatory Affairs for St. Jude Medical's Cardiac Surgery and Interventional Cardiology for the Cardiovascular Division.

Jeffrey Mathiesen: Since March 2011, Mr. Mathiesen has served as our Chief Financial Officer and Secretary. From December 2005 through April 2010, Mr. Mathiesen served as Vice President and Chief Financial Officer for Zareba Systems, Inc., a manufacturer and marketer of medical products, perimeter fencing and security systems. Zareba was a publicly traded company that was purchased by Woodstream Corporation in April 2010. Previous positions held by Mr. Mathiesen include Vice President and Chief Financial Officer for Delphax Technologies, Inc., a print solutions provider, from July 2004 to December 2005.

Jim Yearick: Since September 2011, Mr. Yearick has served as our Vice President of Marketing and Sales. From 2008 to September 2011, Mr. Yearick served as Vice President of Global Product Marketing for Medtronic's Cardiac Rhythm Management division. Previously, from 2005 to 2008, Mr. Yearick served as Vice President — Asia for Medtronic's Cardiac Rhythm Management division.

Directors

Dr. Geoff Brooke: Director since September 2003. Dr. Brooke is a managing director of GBS Venture Partners Pty Ltd., an Australian venture capital firm that seeks out investments in life sciences companies. Dr. Brooke co-founded the venture capital firm in October 1996.

Dr. Brooke's qualifications to serve on our board of directors include his experience in financial matters and fund raising as a fund manager and his experience with clinical medicine.

Paul Buckman: Director since February 2011. Mr. Buckman has served as Chief Executive Officer and Director of Pathway Medical Technologies, Inc., a medical device company focused on treatment of peripheral arterial disease, since September 2008. From December 2006 until September 2008, Mr. Buckman served as Chief Executive Officer of Devax, Inc., a developer and manufacturer of drug eluting stents, while also serving as Chairman of the Board of Directors for Pathway Medical Technologies, Inc. From August 2004 to December 2006, Mr. Buckman served as President of the Cardiology Division of St. Jude Medical, Inc., a diversified medical products company. Prior to joining St. Jude Medical, Mr. Buckman served as Chairman of the Board of Directors and Chief Executive Officer of ev3, LLC, a Minnesota-based medical device company focused on endovascular therapies that Mr. Buckman founded and developed into an $80 million business, from January 2001 to January 2004. Mr. Buckman has worked in the medical device industry for over 30 years, including 10 years at Scimed Life Systems, Inc. and Boston Scientific Corporation, where he held several executive positions before becoming President of the Cardiology Division of Boston Scientific in January 2000. In addition to Pathway Medical Technologies, Inc., Mr. Buckman also currently serves as a Director for SentreHeart, Inc., Conventus, and also as a Business Advisory Board member for Bio Star Ventures. In the past, Mr. Buckman has served on the boards of Velocimed, Inc., where he was a co-founder, EndiCor, Inc., Microvena, Inc., and Micro Therapeutics, Inc.

Mr. Buckman's qualifications to serve on our board of directors include his extensive experience in the management of medical device companies, including his collective eleven years of experience as a Chief Executive Officer for Pathway Medical and Devax, Inc.

Nicholas Callinan: Director since October 2008. Mr. Callinan is the chairman of our board of directors. Since 2004, he has served as Principal at Collins Hill Pty Ltd., a private equity advisory and consulting firm. From 2001 to 2003, Mr. Callinan served as the Senior Vice President and Chief Executive of SIV for Shell Internet Ventures, a company that invested in information technology companies worldwide. Previously, Mr. Callinan served as the Managing Director and Chief Executive of Central and Eastern European funds for Advent International Corporation, a company focused on private equity and venture capital fund management and investment.

Mr. Callinan's qualifications to serve on our board of directors include his experience as a Chief Executive Officer, a fund manager, and a board member for private companies throughout the world. In these roles, Mr. Callinan has aided numerous companies in developing their governance structure.

Dr. Mark Harvey: Director since September 2011. Since 2006, Dr. Harvey has served as a partner of CM Capital, an Australian venture capital firm that focuses on life sciences, telecommunications, information technology, and renewable energy ventures. In this role, Dr. Harvey has gained extensive experience in the formation, fund raising, and management of numerous life science companies.

Dr. Harvey's qualifications to serve on our board of directors include his extensive experience in the life sciences industry and general business experience due to his board service for other medical technology companies such as Osprey Medical Inc. since June 2007, and Pathway Therapeutics Ltd. since July 2010.

Donal O'Dwyer: Director since July 2004. Mr. O'Dwyer retired as worldwide President of Cordis Cardiology, the cardiology division of the Johnson & Johnson subsidiary, in 2003. Cordis is a developer and manufacturer of breakthrough stents, catheters and guidewires for interventional medicine, minimally invasive computer-based imaging, and electrophysiology. Prior to joining Cordis, Mr. O'Dwyer served as President of the Cardiovascular Group, Europe of Baxter International Inc., a global healthcare company that uses its expertise in medical devices, pharmaceuticals and biotechnology to create products that advance patient care worldwide.

Mr. O'Dwyer's qualifications to serve on our board of directors include his extensive experience in the medical technology industry and general business experience due to his board service for other medical technology companies such as Angioblast Systems Inc. from November 2004 to January 2011, Atcor Medical Holdings Ltd since July 2004, Cochlear Limited since August 2005, and Mesoblast Ltd. since November 2004.

Dr. William Peters: Director since August 2002. Since 2002, Dr. Peters has served as our Chief Technical Officer and Medical Director. In addition to his role within our company, Dr. Peters is an honorary clinical research fellow with the Green Lane Cardiothoracic Surgical Unit at Auckland City Hospital in New Zealand.

Dr. Peters' qualifications to serve on our board of directors include his extensive experience with and expertise in cardiac medical technology, including his invention and development of devices and methods to achieve minimally cardiac surgery and his recognition in our industry gained from his authorship of numerous published articles regarding cardiac surgery and heart failure.

David Rosa: Director since July 2010. Mr. Rosa is our Chief Executive Officer, a position he has held since November 2009. From 2008 to November 2009, Mr. Rosa served as the Chief Executive Officer of Milksmart, Inc., a medical device company that specializes in medical devices for animals. From 2004 to 2008, Mr. Rosa served as the Vice President of Global Marketing for cardiac surgery and cardiology for St. Jude Medical.

Mr. Rosa's qualifications to serve on our board of directors include his experience in the medical device industry and his previous leadership experiences within medical device companies.

Gregory Waller: Director since August 2011. From 2006 to 2011, Mr. Waller was the Chief Financial Officer and Treasurer of Universal Building Products, Inc., which was a manufacturer of concrete forms and accessories for the residential and commercial projects in North America. Mr. Waller previously served as the Vice President of Finance, Chief Financial Officer, and Treasurer for Sybron Dental Specialties, Inc., a manufacturer of high technology dental, dental implant, and infection prevention products, from 1980 to 2005. Mr. Waller has served on the board of directors of Endologix Inc. since 2003. Mr. Waller also served on the board of directors of Clarient, Inc. and SenoRx, Inc. from 2006 until 2010. From 2006 to 2009, Mr. Waller served as a member of the board of directors of Alsius, Inc., and from 2009 to 2010, he served as a member of the board of directors of Biolase, Inc.

Mr. Waller's qualifications to serve on our board of directors include his 35 years of financial and management experience, including his experiences as a Chief Financial Officer for Universal Building Products, Inc. and Sybron Dental Specialties, Inc., and his familiarity with public company board functions from his services on the boards of other public companies.

As described above, Mr. Waller was the Chief Financial Officer and Treasurer of Universal Building Products from 2006 to 2011. Universal Building Products filed a voluntary petition for bankruptcy on August 4, 2010. Except as described in the preceding sentence, no other event has occurred during the past ten years requiring disclosure pursuant to Item 401(f) of Regulation S-K.

Director Classification

Our board of directors is divided into three classes with staggered three-year terms. At each annual general meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time

of election and qualification until the third annual meeting following election. Our directors are divided among the three classes as follows:

- The Class II directors are Dr. Brooke and Mr. Rosa and their terms expire at the annual meeting of stockholders to be held in 2012;
- The Class III directors are Messrs. Callinan, O'Dwyer and Waller and their terms expire at the annual meeting of stockholders to be held in 2013; and
- The Class I directors are Dr. Peters, Mr. Buckman and Dr. Harvey and their terms expire at the annual meeting of stockholders to be held in 2014;

Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors.

There is no family relationship between any director, executive officer or person nominated to become a director or executive officer.

Director Compensation

The following table sets forth certain information regarding compensation of person who served as one of our non-employee directors during the year ended June 30, 2011. During the year ended June 30, 2011, we did not provide any separate compensation to our directors who were also employees.

Name	Fees Earned or Paid in Cash ($)	Total ($)
John Brennan(1)	—	—
Paul Buckman	19,542	19,542
Geoffrey Brooke, MD	—	—
Nicholas Callinan	103,234	103,234
Crispin Marsh	50,853	50,853
Donal O'Dwyer	49,941	49,941

(1) Mr. Brennan resigned from our board of director in May 2011.

All amounts in the table above were converted from Australian Dollars to U.S. Dollars using the conversion rate in effect on the date of invoices submitted by the directors.

Pursuant to our director compensation policy approved by our stockholders in 2004, our non-employee directors were collectively entitled to receive a maximum of A$250,000 (approximately $247,500 based on a conversion rate of AUD1 to $0.99) in cash compensation for their service on our board of directors during the year ended June 30, 2011. Our board of directors had the authority to allocate up to the maximum aggregate compensation among the directors in its discretion. For the year ended June 30, 2011, our board of directors paid each of our directors other than our Chairman and our directors affiliated with venture capital funds A$50,000 in equally quarterly installments. Our Chairman was paid A$100,000 annually in equal quarterly installments. We historically have not provided compensation to our directors affiliated with venture capital funds in connection with their service on our board. Our board may grant directors stock options or equity awards from time to time, but we

do not have a policy of regularly granting of equity or equity-based awards to our directors. All equity compensation awarded to our directors requires approval by our stockholders pursuant to the ASX Listing Rules.

As of June 30, 2011, each director listed in the table above held options to purchase up to the aggregate number of shares of common stock indicated below. Messrs. Brennan and Buckman did not hold any outstanding equity awards as of June 30, 2011.

- Dr. Brooke — 97,000 shares, all of which were vested;
- Mr. Callinan — 2,000,000 shares, 148,556 shares of which were unvested;
- Mr. Marsh — 1,106,665 shares, all of which were vested; and
- Mr. O'Dwyer — 97,000 shares, all of which were vested.

In August 2011, in accordance with the ASX Listing Rules, our stockholders approved an increase to the maximum aggregate cash amount payable to our directors to $500,000 per fiscal year. We do not plan to change the method by which we compensate our directors described above.

ITEM 6 — EXECUTIVE COMPENSATION

Summary Compensation Table

The following table sets forth certain information regarding compensation for the year ended June 30, 2011, provided to our Chief Executive Officer and the two other most highly compensated executive officers who received remuneration exceeding $100,000 during the year ended June 30, 2011, who we refer to as our named executive officers.

Name and Principal Position	Year	Salary ($)	Option Awards ($)(3)	Non-Equity Incentive Plan Compensation ($)	Total ($)
David Rosa *Chief Executive Officer*	2011	280,000	47,146	70,000	397,146
William Peters, MD (1) *Medical Director and Chief Technical Officer*	2011	275,433(2)	—	—	275,433(2)
Debra Kridner *Vice President, Clinical Research and Regulatory Affairs*	2011	211,575	—	22,500	234,075

(1) All amounts were paid to WSP Trading Limited, an entity that Dr. Peters owns.
(2) Amounts paid have been converted from Australian Dollars to U.S. Dollars using a conversion rate of AUD1.00 to $0.99, using the average daily bid rates during the period.
(3) Represents the grant date fair value of the awards granted during the period computed in accordance with FASB ASC Topic 718. For a discussion of the relevant assumptions used to determine the valuation of our option awards for accounting purposes please refer to Note 3 to the Notes to Consolidated Financial Statements filed with this registration statement.

We have an employment agreement with David Rosa, our Chief Executive Officer, which provides we will pay him an annual salary of $250,000, subject annual review by our board of directors. The agreement also provides

that Mr. Rosa will be eligible to participate in our short-term incentive bonus scheme with a maximum of up to 25% of his annual salary. The amount of the bonus is determined by our board of directors based on goals agreed upon by Mr. Rosa and our board. Mr. Rosa's goals for the year ended June 30, 2011 related to development projects, relocation of our headquarters to Eden Prairie, Minnesota, development of a minimally invasive procedure to implant our product, and staff development. Our board determined that Mr. Rosa achieved all of these goals and awarded him the maximum cash incentive payment provided in his employment agreement for the year. Mr. Rosa also is entitled to participate in the benefit plans available to our employees generally. The agreement is terminable (i) by either party for any reason with one month's notice, by mutual agreement of the Company and Mr. Rosa; (ii) by mutual

agreement between us and Mr. Rosa; (iii) immediately by us for "cause" (as defined in the agreement) if Mr. Rosa has not cured the conduct giving rise to a termination for "cause"; (iv) by us for Mr. Rosa's disability (as defined in the agreement); or (v) immediately by Mr. Rosa for "good reason" (as defined in the agreement) if we have not cured the conduct giving rise to a termination for "good reason." The agreement also provides that, for one year following his termination, Mr. Rosa will not compete with us during the term of his employment with us and he will not solicit any person who was one of our employees during the term of his employment.

For the year ended June 30, 2011, our board determined the salaries for Dr. Peters and Ms. Kridner primarily based on the salary recommendation provided by our Chief Executive Officer. At the beginning of each year, our Chief Executive Officer evaluates three primary factors when recommending salaries for the other named executive officers for the year. Those factors are an evaluation of:

- salaries of persons occupying similar positions at other small medical device companies;
- the overall performance of our company for the prior year; and
- the individual's contributions to our results for the prior year.

Our Chief Executive Officer's evaluation of salaries for persons occupying similar positions at other small medical device companies is based on his general industry knowledge and consultation of certain publicly available information. Our Chief Executive Officer uses this market information as a general reference point for recommending salaries for the other named executive officers and historically has not targeted compensation at a specified point relative to the market information he has gathered. In the past, he has not used studies or compilations of information prepared by any third parties to evaluate salaries paid by our competitors.

Our Chief Executive Officer's evaluation of our Company's performance is a subjective evaluation of our progress toward commercializing our product and meeting our business plan. The completion of enrollment of our feasibility clinical trial, commencement of exploration of possibilities to commercialize the C-Pulse System in Europe and commencement of preparations for our pivotal trial all favorably impacted our Chief Executive Officer's and board's evaluation of our performance during the year ended June 30, 2011.

Our Chief Executive Officer evaluates the contribution of the other named executive officers for the year by examining our progress in that officer's functional area. For the year ended June 30, 2011, Ms. Kridner's contributions were significant in light of the completion of enrollment of our feasibility clinical trial and preparations for our pivotal trial. Dr. Peters' contributions for the same period were significant in light of the development of a minimally invasive procedure to implant our product and progress made on developing a next-generation fully implantable device.

Based on the foregoing, our Chief Executive Officer recommended the salaries paid to Dr. Peters and Ms. Kridner for the year ended June 30, 2011, and our board agreed with Mr. Rosa's evaluation of the factors described and approved those salaries. Historically, our board has approved the salaries for other named executive officer's recommended by the Chief Executive Officer without material modification.

Ms. Kridner's non-equity incentive plan compensation award for the year ended June 30, 2011 provided for a payment of up to 20% of her annual salary, based on goals agreed upon by Ms. Kridner and our Chief Executive Officer. Ms. Kridner's goals were tied to completion of enrollment of our feasibility trial, obtaining CE Mark approval, and preparation for our pivotal trial. While we completed enrollment of our feasibility trial and began preparations for our pivotal trial, we are still seeking to obtain CE Mark approval. As a result, our board awarded Ms. Kridner an incentive payment of $22,500 for the year, approximately half of the maximum amount she could have earned.

The following table sets forth certain information concerning equity awards held by our named executive officers that were outstanding as of June 30, 2011.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option Awards			
Name	Number of Securities Underlying Unexercisd Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)(1)	Option Expiration Date
David Rosa	5,000,000(2)	5,000,000	$ 0.049	11/29/20
William Peters, MD	797,881(3)	—	$ 0.0152	1/30/13
	776,000(3)	—	$ 0.0245	7/5/14
	440,000(3)	—	$ 0.176	11/1/16
	56,000(3)	—	$ 0.294	1/31/17
	600,000(3)	—	$ 0.294	4/18/17
	97,500(3)	—	$ 0.196	7/9/18
	675,165(4)	269,936	$ 0.078	8/20/18
Debra Kridner	—	—	n/a	n/a

(1) Amount converted from AUD to U.S. Dollars using a conversion rate of AUD1.00 to $0.98 U.S Dollar based upon bid rate on September 23, 2011.
(2) This option vested as to 50% of the shares on November 29, 2010, the date of grant, and 25% on November 1, 2011, and the remaining 25% will vest on November 1, 2012.
(3) Option fully vested as of June 30, 2011.
(4) This option vests as to 25% of the shares on the first anniversary of the date of grant, and 1/48 per month thereafter until fully vested.

Change in Control Agreements

We have entered into change in control agreements with each of our named executive officers that will require us to provide compensation to them in the event of a change in control of our company. Each agreement has a term that runs from its effective date through the later of (i) the five-year anniversary of the effective date or (ii) if a "change in control" occurs on or prior to the five-year anniversary, the one-year anniversary of the effective date

of the change in control. The agreements will be automatically extended for successive two-year periods until notice of non-renewal is given by either party at least 60 days prior to the end of the then-effective term.

Under the change in control agreements, "change in control" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events: (i) subject to certain exceptions, any person or group's acquisition, directly or indirectly, of more than 50% of the combined voting power of our outstanding securities other than by virtue of a merger, consolidation or similar transaction; (ii) the consummation of a merger, consolidation, or similar transaction involving our company and immediately after the consummation of such merger, consolidation or similar transaction, our stockholders immediately prior thereto do not directly own or beneficially own, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction; or (B) more than 50% of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their ownership of our outstanding voting securities immediately prior to such transaction; (iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of our company, other than a sale, lease, license or other disposition of all or substantially all of our consolidated assets to an entity, more than 50% of the combined voting power of the voting securities of which are owned by our stockholders in substantially the same proportions as their ownership of our outstanding voting securities immediately prior to such transaction; or (iv) individuals who, on March 17, 2011, were members of our board of directors cease to constitute at least a majority of the members of our board, provided that if the appointment, election or nomination for election of any new board member was approved or recommended by a majority of the members of the board as of March 17, 2011, the board member will be treated as being a board member as of March 17, 2011. Notwithstanding the foregoing, the term "change in control" will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing our domicile.

Our change in control agreement with David Rosa, our Chief Executive Officer, provides that, if a change in control occurs during the term of his agreement and if Mr. Rosa's employment terminates anytime during the one year period after the effective date of the change in control and if such termination is involuntary at our initiative without cause or is due to a voluntary resignation for good reason, we will (1) pay in a lump sum his salary for 18 months and any other earned but unpaid compensation; (2) pay in a lump sum an amount equal to the incentive bonus payment received by Mr. Rosa for the fiscal year immediately preceding the fiscal year in which the termination occurs; and (3) provide healthcare benefits to him and his family for the shorter of (i) 18 months after his termination; or (ii) until the date Mr. Rosa is and/or Mr. Rosa's covered dependents are eligible to receive group medical and/or dental insurance coverage by a subsequent employer.

We have also entered into change in control agreements with each of our named executive officers other than Mr. Rosa, which provide that if a change in control occurs during the term of the officer's agreement and if the officer's employment terminates anytime during the one year period after the effective date of the change in control and if such termination is involuntary at our initiative without cause or is due to a voluntary resignation for good reason, we will (1) pay in a lump sum such officer's salary for 12 months and any other earned but unpaid compensation; (2) pay in a lump sum an amount equal to the incentive bonus payment received by such officer for the fiscal year immediately preceding the fiscal year in which the termination occurs; and (3) provide healthcare benefits to such officer and such officer's family for the shorter of (i) 12 months after the termination; or (ii) until the date the officer is and/or the officer's covered dependents are eligible to receive group medical and/or dental insurance coverage by a subsequent employer.

Additionally, if any named executive officer terminates employment with us (i) during the term of the officer's change in control agreement due to a voluntary resignation for good reason or due to an involuntary termination of an officer's employment by us without cause prior to a change in control and the expiration of the agreement's term (provided that the officer reasonably demonstrates that such termination arose in connection with or in anticipation of a change in control); (ii) a change in control occurs within 90 days after the officer's termination; and (iii) a change in control occurs within 90 days after the termination and occurs during the term of the officer's change in control agreement, then we will provide our named executive officers the applicable payments and health benefits described above.

Under the change in control agreements "cause" for termination exists upon the occurrence of any of the following events, if such event results in a demonstrably harmful impact on our business or reputation: (i) such officer's commission of any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) such officer's attempted commission of, or participation in, a fraud or act of dishonesty against us; (iii) such officer's intentional, material violation of any contract or agreement between us and such officer or of any statutory duty owed to us; (iv) such officer's unauthorized use or disclosure of our confidential information or trade secrets; or (v) such officer's gross misconduct.

Each named executive officer may tender resignation for "good reason" after any of the following are undertaken without such officer's written consent: (i) a significant diminution in officer's employment role with us as in effect immediately prior to the effective date of the change in control; (ii) a greater than 5% aggregate reduction by us in the officer's annual base salary, as in effect on the effective date of the change in control or as increased thereafter unless the reduction is pursuant to an across-the-board proportionate salary reduction for all officers, management-level and other salaried employees due to our financial condition, a greater than 10% aggregate reduction by us of the officer's annual base salary will be required for "good reason" to exist; (iii) any failure by us to continue in effect any benefit plan or program, including fringe benefits, incentive plans and plans with respect to the receipt of our securities, in which the officer is participating immediately prior to the effective date of the change in control, or any action by us that would adversely affect the officer's participation in or reduce his benefits under those benefit plans unless we offer a range of benefit plans and programs that, taken as a whole, is comparable to the benefit plans in effect in which the officer is participating immediately prior to the change in control; or (iv) a non-temporary relocation of the officer's business office to a location more than 50 miles from the location at which the officer performs duties as of the effective date of the change in control, except for required travel by officer on our business to an extent substantially consistent with the officer's business travel obligations prior to the change in control.

In addition to the payments described above, the change in control agreements with the named executive officers provide that if a change in control occurs while such officer is actively employed by us, such change in control will cause the immediate acceleration of the vesting of 100% of any unvested portion of any stock option awards held by the officer on the effective date of such change in control.

We will not make any of the payments described above unless: (i) the named executive officer signs a full release of any and all claims in favor of us; (ii) all applicable consideration periods and rescission periods have expired; and (iii) as of the dates we provide any payments to the named executive officer, the officer is in strict compliance with the terms of the applicable change in control agreement and any proprietary information agreement the officer has entered into with us.

Compensation Committee Interlocks and Insider Participation

The board members who served on our Remuneration and Nomination Committee during the year ended June 30, 2011 were Dr. Geoffrey Brooke and Paul Buckman. During the year ended June 30, 2011, no person who served as a member of our Remuneration and Nomination Committee was, during such period, an officer or employee of our company, or has ever been one of our officers, and no such person had any transaction with us required to be disclosed in "Item 7 — Certain Relationships and Related Transactions" below. During the year ended June 30, 2011, (i) none of our executive officers served as a member of the compensation committee of another entity, one of whose executive officers served on our Remuneration and Nomination Committee; (ii) none of our executive officers served as a director of another entity, one of whose executive officers served on our Remuneration and Nomination Committee; and (iii) none of our executive officers served as a member of the compensation committee of another entity, one of whose executive officers served as one of our directors.

ITEM 7 — CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Director Independence

Our board of directors currently consists of eight directors. Our board of directors has determined that six of our eight directors are independent directors, as defined under the applicable rules of the Nasdaq Capital Market.

The independent directors are Dr. Geoffrey Brooke, Paul Buckman, Nicholas Callinan, Dr. Mark Harvey, Donal O'Dwyer, and Gregory Waller.

We are also subject to the corporate governance requirements of the ASX, which include guidelines for the determination of whether a director should be considered independent. Under these guidelines, in order for a director to be independent, the board should consider, among other things, whether the director is a "substantial shareholder" or an officer of, or otherwise directly associated with, a "substantial shareholder". The holdings of a shareholder are typically considered substantial if they exceed 5% of the voting securities. As a result, Dr. Geoffrey Brooke and Dr. Mark Harvey may not be considered independent for ASX purposes. However, our board has determined that these directors are independent notwithstanding their association with certain stockholders.

Related Party Transactions

Since July 1, 2008, we have entered into the following transactions with our directors, executive officers, holders of more than five percent of our voting securities, and affiliates of our directors, executive officers and five percent stockholders:

In September 2011, we sold 2,875,000 shares of our common stock to Jeffrey Mathiesen, our Chief Financial Officer, at the price of A$0.04 per share as part of a private placement.

In August, 2011, we entered into indemnification agreements with each of our directors and executive officers that provide, in general, that we will indemnify them to the fullest extent permitted by law in connection with their service to us or on our behalf.

We are party to an agreement with WSP Trading Limited pursuant to which WSP Trading Limited performs technical and medical advisory services for us and we pay WSP A$278,400 annually. This agreement requires that Dr. William Peters serve as our Medical Director and Chief Technical Officer. We make payments to WSP rather than to Dr. Peters directly for Dr. Peters' services to our company as Medical Director and Chief Technical Officer. Dr. Peters is a director of our company and WSP, and Dr. Peters owns all of the equity of WSP.

ITEM 8 — LEGAL PROCEEDINGS

We are not party to any material pending legal proceedings.

ITEM 9 — MARKET PRICE OF AND DIVIDENDS ON THE COMPANY'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS

Market Information

Since September 2004, our shares of common stock have traded on the ASX in the form of CDIs under the symbol "SHC."

The following table sets forth, for the periods indicated, the high and low closing prices for our CDIs as reported on the ASX, in Australian dollars and as converted into United States dollars. All currency conversions are based on the prevailing Australian dollar to the U.S. Dollar rate on the last day of each respective quarter.

Period	High (A$)	Low (A$)	High (US$)	Low (US$)
Year Ending December 31, 2011:				
First Quarter	0.045	0.030	0.047	0.031
Second Quarter	0.063	0.039	0.068	0.042
Third Quarter	0.055	0.035	0.054	0.034
Fourth Quarter (through December 9, 2011)	0.047	0.034	0.046	0.033
Year Ended December 31, 2010:				
First Quarter	0.041	0.031	0.040	0.030
Second Quarter	0.037	0.029	0.031	0.024
Third Quarter	0.036	0.023	0.035	0.022
Fourth Quarter	0.039	0.023	0.040	0.024
Year Ended December 31, 2009:				
First Quarter	0.059	0.032	0.041	0.022

Second Quarter	0.068	0.042	0.055	0.034
Third Quarter	0.102	0.042	0.090	0.037
Fourth Quarter	0.052	0.033	0.047	0.030

As of December 9, 2011, we had 1,203,833,244 shares of common stock issued and outstanding, and there was one holder of record of our common stock, which was Chess Depositary Nominees, or CDN. CDN held shares of our common stock on behalf of approximately 1,200 CDI holders. As of December 9, 2011, there were outstanding options to purchase 418,750,471 shares of our common stock and warrants to purchase 60,624,227 shares of our common stock.

After this registration statement becomes effective, we intend to file with the SEC registration statements on Form S-8 covering approximately 205 million shares of our common stock.

We have not registered any of our outstanding shares of common stock under U.S. federal or state securities laws and all of our outstanding shares are restricted securities for purposes of Rule 144 under the Securities Act. As of December 9, 2011, 235,829,580 shares of our common stock could be sold by our existing stockholders who are not affiliates of our company without restrictions under U.S. federal securities laws pursuant to Rule 144. In addition, beginning 90 days after the effective date of this registration statement, under Rule 144 as in effect on the date this registration statement is filed with the SEC, a person who is not one of our affiliates at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months, would be entitled to sell an unlimited number of shares of our common stock provided current public information about us is available and, after owning such shares for at least one year, would be entitled to sell an unlimited number of shares of our common stock without restriction. Beginning 90 days after the date of this effective date of this registration statement, under Rule 144 as in effect on the date this registration statement is filed with the SEC, our affiliates who have beneficially owned shares of our common stock for at least six months would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of our common stock then outstanding; and
- the average weekly trading volume of our common stock on all national securities exchanges and/or reported through the automated quotation system of a registered securities exchange during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale, or if no such notice is required, the date of receipt of the order to execute the sale.

Sales under Rule 144 by our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

We cannot estimate the number of shares of our common stock that our existing stockholders will elect to sell under Rule 144.

We have submitted a listing application to the Nasdaq Capital Market for listing of our common stock. There can be no assurance that the listing application will be approved or that a U.S. trading market for our common stock will develop.

Dividends

We currently intend to retain any earnings to finance research and development and the operation and expansion of our business and do not anticipate paying any cash dividends for the foreseeable future. The declaration and payment of any dividends in the future by us will be subject to the sole discretion of our board of directors and will depend upon many factors, including our financial condition, earnings, capital requirements of our

operating subsidiaries, covenants associated with any debt obligations, legal requirements, regulatory constraints and other factors deemed relevant by our board of directors. Moreover, if we determine to pay any dividend in the future, there can be no assurance that we will continue to pay such dividends.

Equity Compensation Plan Information

The following table provides information as of June 30, 2011 with respect to our equity compensation plans. See Note 3 to our consolidated financial statements included elsewhere is this registration statement for further information.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)
Equity compensation plans approved by security holders	24,125,719	$ 0.013	—
Equity compensation plans not approved by security holders	—	n/a	152,000,000
Total	24,125,719	n/a	152,000,000

As of June 30, 2011, the maximum number of shares of our common stock that could be granted under our Amended and Restated 2002 Stock Plan, which we refer to as our 2002 Plan, was 12,037,306. As of that date, we had issued or had outstanding options to purchase 24,125,719 shares of our common stock under the 2002 Plan. A copy of the 2002 Plan is included as Exhibit 10.2 to this registration statement. Each outstanding option in excess of the authorized shares under the 2002 Plan incorporates by reference the terms of the 2002 Plan. In September 2011, our board amended the 2002 Plan to increase the number of shares issuable thereunder to 25,000,000.

In August 2011, our stockholders approved our 2011 Equity Incentive Plan, which we refer to as the 2011 Plan. A copy of the 2011 Plan is included as Exhibit 10.4 of this registration statement. The 2011 Plan became effective in March 2011 when it was adopted by our board of directors, but no award under the 2011 Plan could be exercised (or, in the case of a restricted stock award, restricted stock unit award, or other award of stock, no such award could be granted) unless and until the 2011 Plan was approved by our stockholders. Our board and stockholders subsequently approved an amendment and restatement of the 2011 Plan to increase the number of shares issuable thereunder to 180,000,000. Below is a description of the material features of the 2011 Plan.

General

Our board may terminate or suspend the 2011 Plan at any time, and incentive stock options may not be granted more than 10 years after the effective date of the plan.

Share Reserve

Subject to the provisions of the plan and applicable stock exchange rules, the aggregate number of shares that may be issued under the 2011 Plan is a total of 180,000,000 million shares plus the number of any shares underlying outstanding stock awards granted under the 2002 Plan that expire or terminate for any reason prior to exercise or settlement or are forfeited because of the failure to meet a contingency or condition required to vest such shares. The aggregate maximum number of shares of common stock that may be issued pursuant to the exercise of incentive stock options is 180,000,000 shares. The maximum number of shares that may be granted to any participant in a calendar year attributable to performance stock awards must not exceed 37,500,000 shares of common stock.

If an award expires or otherwise terminates without all of the shares covered by such award having been issued, or if the award is settled in cash, such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares that may be available for issue under the 2011 Plan. Similarly, if any shares issued pursuant to an award are forfeited back to our company because of the failure to meet a contingency or condition required to vest such shares in the participant, then the shares that are forfeited will revert to and again become available for issue under the 2011 Plan.

Administration

The 2011 Plan is administered by our board, which may delegate some or all of the administration of the 2011 Plan to a committee or committees. Subject to the terms of the plan, the board has the authority to, among other things, determine which of the persons eligible under the plan will be granted awards, determine when and how each award will be granted, determine the number and type of stock awards to be granted, determine the provisions of each award granted, accelerate the time of exercisability and vesting of awards, suspend or terminate the plan at any time, and subject to any necessary stockholder approval, amend the plan as it deems necessary or advisable.

To the extent permitted by law, our board may also determine that the delivery of shares or the payment of cash upon the exercise, vesting or settlement of an award may be deferred.

Eligibility

Our employees, directors, and certain consultants are eligible to receive awards under the 2011 Plan. However, incentive stock options may be granted only to our employees. Further, no incentive stock option may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our company's total combined voting power or that of any affiliate unless the following conditions are satisfied: (i) the option exercise price must be at least 110% of the fair market value of the stock subject to the option on the date of grant; and (ii) the term of any incentive stock option award must not exceed five years from the date of grant.

Awards

Pursuant to the 2011 Plan, we may grant an eligible person incentive stock options, stock appreciation rights, performance stock awards, performance cash awards, and other stock awards. Other than as expressly set out in the 2011 Plan or as permitted under applicable stock exchange rules, a stock award does not give a participant any right to vote, receive dividends or participate in any new issue of shares. A stock award does not grant a participant any other rights as a stockholder of our company until such time as the participant has satisfied all requirements for the exercise of the award and (if applicable) the issuance of shares subject to the award has been entered into the books and records of our company. Unless otherwise provided in the stock award agreement, if our company is dissolved or liquidated, all outstanding stock awards (except those consisting of vested and outstanding shares not subject to a forfeiture condition or a right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares subject to our company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by our company. The Board may, however, cause some or all stock awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture before the dissolution or liquidation is completed, but contingent on its completion. The following is a summary of awards that can be granted under the 2011 Plan:

- *Stock Options.* Stock options permit the holder to purchase a specified number of shares of our common stock at a set price. Options granted under the plan may be either incentive or nonstatutory stock options. Subject to the provisions of the plan, the term of each option granted under the 2011 Plan will be exercisable for a period of 10 years from the date of grant or such shorter period as specified in the award agreement. If the option is not exercised within the specified period, the option will terminate. The exercise price of options granted under the 2011 Plan may be no less than 100% of the fair market value of the shares subject to the option on the date the option is granted, unless an option is granted pursuant to an

assumption of or substitution for another option pursuant to a corporate transaction. The total number of shares subject to an option may vest and become exercisable in periodic instalments. If the aggregate fair market value (as determined at the time of grant) of shares with respect to which incentive stock options are exercisable for the first time by any optionholder during any calendar year exceeds $100,000,

the options that exceed such limit will be treated as nonstatutory stock options. Our board may further determine the terms and conditions of options granted under the plan, including the exercise price and vesting and exercisability terms.

- *SARS.* Stock appreciation rights, or SARs, provide for payment to the holder for all or a portion of the excess of the fair market value of a specified number of shares of our common stock on the date of exercise over a specified exercise price. Subject to the provisions of the plan, the term of each SAR granted under the 2011 Plan will be exercisable for a period of 10 years from the date of grant or such shorter period as specified in the award agreement. If the SAR is not exercised within the specified period, the SAR will terminate. The exercise price of each SAR may be no less than 100% of the fair market value of the shares subject to SAR on the date SAR is granted, unless an option is granted pursuant to an assumption of or substitution for another SAR pursuant to a corporate transaction. The total number of shares subject to a SAR may vest and become exercisable in periodic instalments. The SARs may be subject to other terms and conditions on the time or times when it may be exercised as deemed appropriate by our board.

- *Performance Awards.* Performance awards under the 2011 Plan may be performance stock awards or performance cash awards. A performance stock award is a stock award that may vest or may be exercised contingent upon the attainment of certain goals during a performance period and may require the completion of a specified period of continuous service as determined by our board. A performance cash award is a cash award, the payment of which may be contingent upon the attainment of certain performance goals during a performance period, and may also require the completion of a specified period of continuous service as determined by our board. Our board may specify the form of payment of a performance cash award, which may be cash or other property.

- *Other.* Other forms of stock awards valued in whole or in part with reference to shares may be granted under the 2011 Plan at the sole discretion of our board.

Transferability

Our board may impose restrictions on the transferability of options and SARs. Otherwise, an option or SAR may be transferred only by will or pursuant to a domestic relations order. In any event, however, an optionholder may designate a beneficiary who may exercise the option following the optionholder's death.

Termination of Service

Unless otherwise provided in a participant's award or other agreement, upon termination of an award recipient's service for cause with our company, all options or SAR will terminate on the date of such participant's termination of continuous service and the participant will be prohibited from exercising his or her option or SAR from and after the time of such termination. If an award recipient's service with our company terminates other than for cause or upon the participant's death or disability, then the participant may exercise his or her option or SAR, to the extent he or she was entitled to exercise such award as of the date of termination, by no later than the earlier of three months following the date of termination of service or the expiration of the term of option or SAR. If an award recipient's service with our company terminates as a result of the participant's disability, then the participant may exercise his or her option or SAR, to the extent he or she was entitled to exercise such award as of the date of termination, by no later than the earlier of the date 12 months following such termination or the expiration of the term of the option or SAR. If an award recipient's service with our company terminates as a result of the participant's death, then the option or SAR may be exercised to the extent the participant was entitled to exercise such award as of the date of death by the participant's designated beneficiary or representative. The option or SAR must be exercised by no later than the earlier of 18 months following the date of death or the expiration of the term of the option or SAR.

Change in Control; Corporate Transaction

In the event of a change in control, disposition of all or substantially all of our assets, consummation of a disposition of at least 90% of our outstanding securities or consummation of a merger, consolidation or similar transaction following which we are not the surviving corporation or we are the surviving corporation but our shares of common stock are converted or exchanged into other property, a stock award will be subject to additional acceleration of vesting and exercisability as provided in the relevant stock award agreement or provided in any other written agreement between our company or any affiliate and the participant. In the absence of such a provision, no acceleration of vesting or exercisability will occur. In the event of such a corporate transaction, unless otherwise provided by our board or otherwise specified in the agreement evidencing the award, our board must take one or more of the following actions with respect to a stock award, contingent upon the closing or completion of the contemplated transaction, including: arrange for the acquiring corporation to assume or continue the stock award (or substitute a similar stock award), arrange for the assignment of any reacquisition or repurchase rights held by our company in respect of shares issued pursuant to the stock award to the acquiring corporation, accelerate the vesting of the stock award to a date prior to the effective time of such corporate transaction as determined by our board, arrange for a lapse of any reacquisition or repurchase rights held by our company with respect to the stock award, cancel or arrange for the cancellation of the stock award to the extent not vested or exercised prior to the

effective time of the corporate transaction, or make a payment, in such form as determined by our board, equal to the excess (if any) of the value of the property the participant would have received on the exercise of the stock award over any exercise price payable by such holder in connection with such exercise.

Adjustment of Awards

In the event that there is a specified type of change in our company's capital structure not involving the receipt of consideration by our company, such as a stock split or stock dividend, the number of shares reserved under the 2011 Plan and the number of shares and exercise price or strike price, if applicable, of all outstanding stock awards will be appropriately adjusted by our board.

Amendment and Termination

Our board has the authority to amend or terminate the 2011 Plan. No amendment or termination of the 2011 Plan will adversely affect any rights under awards already granted to a participant under the 2011 Plan unless agreed to by the affected participant. Our Board will obtain stockholder approval of any amendment to the 2011 Plan as required by applicable law or stock exchange requirements. Suspension or termination of the 2011 Plan will not impair the rights and obligations of any award granted while the 2011 Plan is in effect, except with the written consent of the affected participant.

ITEM 10 — RECENT SALES OF UNREGISTERED SECURITIES

In the three years preceding the filing of this registration statement, we issued the securities indicated below that were not registered under the Securities Act.

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Institutional and high net worth Australian investors	Common Stock	245,358,998	Aug.-Sept. 2009	N/A	A$9,810,200
Institutional and high net worth Australian investors	Common Stock upon exercise of options	1,994,923	12/3/09	$A0.017 per share purchase price for Common Stock	A$34,019
Accredited Investors party to Securities Purchase Agreement dated 9/15/10	Common Stock and Warrants to purchase Common Stock	133,420,518 Common Shares 66,710,259 Warrants	11/15/10	A$0.028 per share purchase price for Common Stock A$0.032 per share exercise price for Warrants	A$3,735,774
Summer Street Research Partners	Warrants to purchase Common Stock	3,994,760 Warrants	11/13/10	A$0.028	N/A

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Matthew Dormer	Warrants to Purchase Common Stock	704,958 Warrants	11/13/10	A$0.028	N/A
Institutional and high net worth Australian investors	Common Stock	340,294,600 Common Shares 170,147,300 Warrants	12/8/10	A$0.028	A$9,528,249
Institutional and high net worth Australian investors	Common Stock	3,571,429 Common Shares	1/25/11	N/A	A$100,000
Institutional and high net worth Australian investors	Common Stock	23,716 Common Shares	1/25/11	N/A	A$759
Institutional and high net worth Australian investors	Common Stock	27,840 Common Shares	2/22/11	N/A	A$891

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Institutional and high net worth Australian investors	Common Stock	1,379,921 Common Shares	5/9/11	N/A	A$44,157
Institutional and high net worth Australian investors	Common Stock	1,000,000 Common Shares	5/23/11	N/A	A$32,000
Institutional and high net worth Australian investors	Common Stock	10,536 Common Shares	6/6/11	N/A	A$335
Malcolm Legget	Common Stock	38,800 Common	6/22/11	N/A	A$586

		Shares			
Accredited Investors party to Securities Purchase Agreement dated 7/25/11	Common Stock and Warrants to purchase Common Stock	114,444,346 Common Shares 34,333,306 Warrants	7/27/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for Warrants	A$4,577,774

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Summer Street Research Partners	Warrants to purchase Common Stock	1,818,052 Warrants	7/27/11	A$0.04	N/A
Institutional and high net worth Australian investors	Common Stock and Warrants to purchase Common Stock	30,806,000 Common Shares 9,241,800 Warrants	9/9/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for Warrants	A$1,232,240
Accredited Investors party to Securities Purchase Agreement dated 7/25/11	Common Stock and Warrants to purchase Common Stock	25,000,000 Common Shares 7,500,000 Warrants	9/13/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for Warrants	A$1,000,000

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Accredited Investors party to Securities Purchase Agreement dated 7/25/11	Common Stock and Warrants to purchase Common Stock	14,082,730 Common Shares 4,224,819 Warrants	9/16/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for Warrants	A$563,309
Summer Street Research Partners	Warrants to Purchase Common Stock	306,250 Warrants	9/16/11	A$0.04	N/A
Institutional and high net worth Australian Investors	Common Stock	516,064	9/23/11	N/A	A$16,514
Australian Investor under employee stock option agreement	Common Stock	53,084	9/23/11	N/A	A$1,858
Institutional and high net worth Australian Investors	Common Stock	17,143 Common Shares	11/2/11	N/A	A$549
Australian Investor under employee stock option agreement	Common Stock	118,167 Common Shares	11/2/11	N/A	A$4,136

Shares of our common stock indicated in the table above were issued in the form of CDIs.

No underwriters were used in connection with the transactions described above. Summer Street Research Partners and Matthew Dormer were the placement agents for the November 15, 2010 and July 27, 2011 transactions. The securities issued to the placement agents were made in reliance upon Section 4(2) of the Securities Act because no public offering of the securities was made and the placement agents are sophisticated persons with adequate information about us and the securities were not acquired with a view to any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in such sales. All other sales other than to the placement agents were for cash.

The transactions described above that occurred on November 15, 2010, July 27, 2011, September 13, 2011 and September 16, 2011 were made in reliance upon the exemption from registration requirements of the Securities Act available under Section 4(2) of the Securities Act and Rule 506 of Regulation D. The purchasers of the securities in these transactions made in reliance upon Section 4(2) of the Securities Act and Rule 506 of Regulation D represented that they were sophisticated persons and that they intended to acquire the securities for investment only and not with a view to, or for sale in connection with, any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in such sales. We believe that these purchasers either received adequate information about us or had adequate access, through their relationships with us, to such information.

The transactions described above that occurred during August and September 2009 and on each of December 3, 2009, December 8, 2010, January 25, 2010, February 22, 2011, May 9, 2011, May 23, 2011, June 6, 2011, June 22, 2011, September 9, 2011 September 23, 2011 and November 2, 2011 were made in reliance upon the exemption from registration requirements of the Securities Act available under Rule 903 of Regulation S. The purchasers of the securities in these transactions represented that they were outside of the United States when each such person originated its buy order for the securities, no offers were made to persons in the United States, the Company implemented the offering restrictions required by Regulation S, the purchasers agreed offer or sell the securities acquired only in compliance with the restrictions and conditions imposed by Regulation S during the applicable distribution compliance period and we agreed to refuse to register any transfer of the securities not made in accordance with Regulation S, pursuant to registration under the Securities Act, or pursuant to an available exemption from registration.

All other sales of common stock described above were made pursuant to the exercise of stock options granted under the 2002 Plan to our officers, directors, employees and consultants in reliance upon an available exemption from the registration requirements of the Securities Act, including those contained in Rule 701 promulgated under Section 3(b) of the Securities Act. Among other things, we relied on the fact that, under Rule 701, companies that are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act are exempt from registration under the Securities Act with respect to certain offers and sales of securities pursuant to “compensatory benefit plans” as defined under that rule. We believe that the 2002 Plan qualifies as a “compensatory benefit plan” under Rule 701.

The following table sets forth information on the stock options issued by us to our officers, directors, employees and consultants during the three years preceding the filing of this registration statement.

Date of Issuance	Number of Options Granted	Exercise Price per Share
11/29/10	10,000,000	A$0.05
8/18/11	116,118,000	A$0.035
8/18/11	2,337,000	A$0.048
8/18/11	3,000,000	A$0.052
8/19/11	5,842,000	A$0.064
11/2/11	18,451,000	A$0.041
11/29/11	13,274,000	A$0.041

No consideration was paid to us by any recipient of any of the foregoing options for the grant of such options. All of the stock options described above were granted under the 2002 Plan or our 2011 Plan to our officers, directors, employees and consultants in reliance upon an available exemption from the registration requirements of the Securities Act, including those contained in Rule 701 promulgated under Section 3(b) of the Securities Act. Among other things, we relied on the fact that, under Rule 701, companies that are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act are exempt from registration under the Securities Act with respect to certain offers and sales of securities pursuant to “compensatory benefit plans” as defined under that rule. We believe that our 2001 Stock Option Plan and our 2011 Plan qualify as a compensatory benefit plans.

ITEM 11 — DESCRIPTION OF SECURITIES TO BE REGISTERED

General

The following description of our capital stock is a summary only and is qualified in its entirety by reference to our certificate of incorporation, as amended, and amended and restated bylaws, which are included as Exhibits 3.1 and 3.2 of this registration statement.

As of December 9, 2011, we had outstanding 1,203,833,244 shares of our common stock held by one holder of record, which was CDN. CDN held shares of our common stock on behalf of approximately 1,200 CDI holders. As of December 9, 2011, we also had outstanding options to acquire 418,750,471 shares of common stock held by employees, directors and consultants and warrants to purchase 60,624,227 shares of common stock.

Common Stock

We are authorized to issue up to 1,960,000,000 shares of common stock, with a par value of $0.0001 per share.

Holders of our common stock are entitled to receive dividends when and as declared by our board of directors out of funds legally available.

Holders of our common stock are entitled to one vote for each share on each matter properly submitted to our stockholders for their vote; provided however, that except as otherwise required by law, holders of our common stock will not be entitled to vote on any amendment to our certificate of incorporation (including any certificate of designation filed with respect to any series of preferred stock) that relates solely to the terms of a series of outstanding preferred stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to our certificate of incorporation (including any certificate of designation filed with respect to any series of preferred stock).

Subject to the voting restrictions described above, holders of our common stock may adopt, amend or repeal our bylaws and/or alter certain provisions of our certificate of incorporation with the affirmative vote of the stockholders of at least 66 $^{2}/_{3}$% of the voting power of all of the then-outstanding shares of our capital stock entitled to vote generally in the election of directors, voting together as a single class, in addition to any vote of the holders of a class or series of our stock required by law or our certificate of incorporation. The provisions of our certificate of incorporation that may be altered only by the super-majority vote described above relate to:

- the number of directors on our board of directors, the classification of our board of directors and the term of the members of our board of directors;
- the limitations on removal of any of our directors described below under "—Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws";
- the ability of our directors to fill any vacancy on our board of directors by the affirmative vote of a majority of the directors then in office under certain circumstances;
- the ability of our board of directors to adopt, amend or repeal our bylaws and the super-majority vote of our stockholders required to adopt, amend or repeal our bylaws described above;
- the limitation on action of our stockholders by written action described below under "—Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws";
- the choice of forum provision described below under "—Choice of Forum";

- the limitations on director liability and indemnification described below under the heading "Item 12. Indemnification of Directors and Officers"; and
- the super-majority voting requirement to amend our certificate of incorporation described above.

Holders of our common stock do not have any conversion, redemption or preemptive rights pursuant to our organizational documents. In the event of our dissolution, liquidation or winding up, holders of our common stock are entitled to share ratably in any assets remaining after the satisfaction in full of the prior rights of creditors and the aggregate of any liquidation preference pursuant to the terms of any certificate of designation filed with respect to any series of preferred stock. The rights, preferences, and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

All outstanding shares of our common stock are fully paid and non-assessable.

Preferred Stock

We are authorized to issue up to 40,000,000 shares of preferred stock, with a par value of $0.0001 per share. We may issue any class of preferred stock in any series. Our board of directors has the authority to establish and designate series, and to fix the number of shares included in each such series and to determine or alter for each such series, such voting powers, designation, preferences, and relative participating, optional, or other rights and such qualifications, limitations or restrictions thereof. Our board of directors is not restricted in repurchasing or redeeming such stock while there is any arrearage in the payment of dividends or sinking fund installments. Our board of directors is authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. The number of authorized shares of preferred stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the common stock, without a vote of the holders of the preferred stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of preferred stock.

CDIs

In order for our shares of common stock in the form of CDIs to trade electronically on the ASX, we participate in the electronic transfer system known as the Clearing House Electronic Subregister System, or CHESS, operated by ASX Settlement and Transfer Corporation Pty Limited, or ASTC. ASTC provides settlement services for ASX markets to assist participants and issuers to understand the operation of the rules and procedures governing settlement facilities. The ASX Settlement Operating Rules form part of the overall listing and market rules which we are required to comply with as an entity listed on ASX.

CHESS is an electronic system which manages the settlement of transactions executed on ASX and facilitates the paperless transfer of legal title to ASX quoted securities. CHESS cannot be used directly for the transfer of securities of companies domiciled in certain jurisdictions outside of Australia, such as the United States. Accordingly, to enable our shares of common stock to be cleared and settled electronically through CHESS, we have issued and will continue to issue depositary interests called CDIs.

CDIs confer the beneficial ownership in the shares of common stock on the CDI holder, with the legal title to such shares held by CDN, a subsidiary of ASX, to act as our Australian depositary and issue CDIs.

A holder of CDIs who does not wish to have their trades settled in CDIs may request that their CDIs be converted into shares of common stock, in which case legal title to the shares of common stock will be transferred to the holder of CDIs and stock certificates representing the shares of common stock will be issued.

Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws

Certificate of Incorporation and Bylaws

Certain provisions of our certificate of incorporation and bylaws may be considered as having an anti-takeover effect, such as those provisions:

- providing for our board of directors to be divided into three classes with staggered three-year terms, with only one class of directors being elected at each annual meeting of our stockholders and the other classes continuing for the remainder of their respective three-year terms;
- authorizing our board of directors to issue from time to time any series of preferred stock and fix the voting powers, designation, powers, preferences and rights of the shares of such series of preferred stock;
- prohibiting stockholders from acting by written consent in lieu of a meeting;
- requiring advance notice of stockholder intention to put forth director nominees or bring up other business at a stockholders' meeting;
- prohibiting stockholders from calling a special meeting of stockholders;
- requiring a 66 $^{2}/_{3}$% super-majority stockholder approval in order for stockholders to alter, amend or repeal certain provisions of our certificate of incorporation;

- requiring a 66 $^{2}/_{3}$% super-majority stockholder approval in order for stockholders to adopt, amend or repeal our bylaws;
- providing that, subject to the rights of the holders of any series of preferred stock to elect additional directors under specified circumstances, neither the board of directors nor any individual director may be removed without cause;
- creating the possibility that our board of directors could prevent a coercive takeover of the Company due to the significant amount of authorized, but unissued shares of our common stock and preferred stock;
- providing that, subject to the rights of the holders of any series of preferred stock, the number of directors shall be fixed from time to time exclusively by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and
- providing that any vacancies on our board of directors under certain circumstances will be filled only by a majority of our board of directors then in office, even less than a quorum, and not by the stockholders.

Delaware Law

We are also subject to Section 203 of the Delaware General Corporation Law, which in general prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless:

- prior to that date, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to that date, the business combination is approved by our board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 $^{2}/_{3}$% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines an interested stockholder as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

The above-summarized provisions of the Delaware General Corporation Law and our certificate of incorporation and bylaws could make it more difficult to acquire us by means of a tender offer, a proxy contest or otherwise, or to remove incumbent officers and directors. These provisions are expected to discourage certain types of coercive takeover practices and takeover bids that our board of directors may consider inadequate and to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of increased protection of our ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging takeover or acquisition proposals because, among other things, negotiation of these proposals could result in an improvement of their terms.

Preemptive Right Pursuant to Securities Purchase Agreement

Pursuant to a securities purchase agreement, dated July 21, 2011, between us and the purchasers party thereto, the purchasers have a preemptive right to purchase equity or equity-based securities we offer after the date of the agreement through July 25, 2012. Prior to our offering any equity or equity-based securities during this time, or within 30 days after the closing of any sale of such securities, we must offer to issue to the purchasers, on the terms we are offering the securities to third parties, an aggregate of 25% of the securities we are offering. The number of offered securities which each purchaser will have a right to subscribe for will be based on the purchaser's pro rata portion of the aggregate number of common shares purchased under the securities purchase agreement by all purchasers party thereto. If a purchaser fails to purchase its pro rata share of the securities subject to the preemptive right, then such holder

will no longer have preemptive rights pursuant to the securities purchase agreement for any subsequent placement of our securities. The preemptive right provided by the securities purchase agreement is subject to certain exceptions, including for securities issued pursuant to convertible securities issued prior to the date of the securities purchase agreement, securities issued pursuant to certain commercial arrangements and securities issued under the 2002 Plan and the 2011 Plan.

Choice of Forum

Our certificate of incorporation provides that, unless we consent in writing otherwise, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any (i) derivative action or proceeding brought on our behalf; (ii) action asserting a breach of fiduciary duty owed by any of our directors, officers or other employees or any of our stockholders; (iii) action asserting a claim pursuant to the Delaware General Corporation Law; or (iv) action asserting a claim that is governed by the internal affairs doctrine.

Listing

We have applied to list our common stock on the Nasdaq Capital Market under the symbol of "SSH". Our shares of common stock in the form of CDIs are listed on the ASX under the symbol "SHC".

Transfer Agent and Registrar

The transfer agent and registrar for our common stock and CDIs is Link Market Services Limited. The transfer agent's address is Level 12, 680 George Street, Sydney NSW 2000, Australia, and the telephone number is +61 2 8280 7111. If our application to list on the Nasdaq Capital Market is approved, we will appoint a transfer agent registered with the SEC.

ITEM 12 — INDEMNIFICATION OF DIRECTORS AND OFFICERS

Our certificate of incorporation limits the liability of our directors to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for any:

- breach of their duty of loyalty to us or our stockholders;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares as provided in Section 174 of the Delaware General Corporation Law; or
- transaction from which the directors derived an improper personal benefit.

These limitations of liability do not apply to liabilities arising under federal securities laws and do not affect the availability of equitable remedies such as injunctive relief or rescission.

Our bylaws provide that we will indemnify and advance expenses to our directors and officers to the fullest extent permitted by law or, if applicable, pursuant to indemnification agreements. They further provide that we may choose to indemnify our other employees or agents from time to time. Subject to certain exceptions and procedures,

our bylaws also require us to advance to any person who was or is a party, or is threatened to be made a party, to any proceeding by reason of the person's service as one of our directors or officers all expenses incurred by the person in connection with such proceeding.

Section 145(g) of the Delaware General Corporation Law and our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in connection with their services to us, regardless of whether our bylaws permit indemnification. We maintain a directors' and officers' liability insurance policy.

We entered into indemnification agreements with each of our directors and executive officers that provide, in general, that we will indemnify them to the fullest extent permitted by law in connection with their service to us or on our behalf and, subject to certain exceptions and procedures, that we will advance to them all expenses that they incur in connection with any proceeding to which they are, or are threatened to be, a party.

At present, there is no pending litigation or proceeding involving any of our directors or officers as to which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

ITEM 13 — FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See our consolidated financial statements beginning on page F-1.

ITEM 14 — CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 15 — FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial Statements

See our consolidated financial statements beginning on page F-1.

(b) Exhibits

Refer to the Exhibit Index immediately following the signature page of this report, which is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this amendment no. 1 to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

SUNSHINE HEART, INC.

Date: December 16, 2011

By: /s/ Jeffrey Mathiesen
Name: Jeffrey Mathiesen
Title: Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
3.1	Certificate of Incorporation, as amended.+
3.2	Amended and Restated Bylaws.+
4.1	Specimen stock certificate.+
10.1	Form of Indemnity Agreement between the registrant and each of its officers and directors.*+
10.2	Sunshine Heart, Inc. Amended and Restated 2002 Stock Plan.*
10.3	Form of Notice of Stock Option Grant and Option Agreement for Amended and Restated 2002 Stock Plan.*+
10.4	Amended and Restated Sunshine Heart, Inc. 2011 Equity Incentive Plan.*
10.5	Form of Stock Option Grant Notice and Option Agreement for 2011 Equity Incentive Plan.*+
10.6	Form of Senior Management Stock Option Grant Notice and Option Agreement for 2011 Equity Incentive Plan.*+
10.7	Form of Change in Control Agreement for the registrant's executive officers.*
10.8	Form of Warrant to Purchase Common Stock issued to investors pursuant to Securities Purchase Agreement dated September 15, 2010.+
10.9	Form of Warrant to Purchase Common Stock issued to Summer Street Research Partners.+
10.10	Form of Securities Purchase Agreement, dated July 21, 2011, between the registrant and the purchasers party thereto.+
10.11	First Amendment to Securities Purchase Agreement dated July 21, 2011.+
10.12	Form of Warrant to Purchase Common Stock issued to investors pursuant to Securities Purchase Agreement dated July 21, 2011.+
10.13	Form of Warrant to Purchase Common Stock issued to Matthew Dormer and Summer Street Research Partners.+
10.14	Employment Agreement, dated November 1, 2009, by and between the registrant and David A. Rosa.*+
10.15	Letter Agreement, dated August 3, 2004, between the registrant and WSP Trading Limited.*+
10.16	Lease Agreement, dated September 15, 2010, by and between the registrant and CSM Properties, Inc.
10.17	Sublease Agreement, dated February 19, 2010 by and between the registrant and Australian Surgical Design & Manufacture Pty, Limited.
10.18	Lease Agreement, dated October 21, 2011, by and between the registrant and Silver Prairie Crossroads, LLC.
21	Subsidiaries of the registrant.+

* Indicates management contract or compensatory plan or arrangement.
+ Previously filed.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
Sunshine Heart, Inc.

We have audited the accompanying consolidated balance sheets of Sunshine Heart, Inc. and subsidiary as of December 31, 2010 and 2009, and the related statements of operations, stockholders' equity, and cash flows for each of the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunshine Heart, Inc. at December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company's recurring losses from operations and projected future capital requirements raise substantial doubt about its ability to continue as a going concern. The financial statements do not contain any adjustments that might result from the outcome of this uncertainty.

/s/ Ernst & Young LLP

Minneapolis, Minnesota
September 30, 2011

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Balance Sheets

Dollars in thousands, except per share amounts	Dec 31, 2010	Dec 31, 2009	September 30, 2011 (unaudited)
Current assets			
Cash and cash equivalents	$ 12,350	$ 7,028	$ 10,344
Accounts receivable, net	247	124	—
Other current assets	182	88	191
Total current assets	**12,779**	**7,240**	**10,535**
Property, plant and equipment	**120**	**145**	**121**
TOTAL ASSETS	**$ 12,899**	**$ 7,385**	**$ 10,656**
Current liabilities			
Accounts payable	$ 696	$ 230	$ 968
Accrued salaries, wages, and other compensation	114	84	310
Total current liabilities	**810**	**314**	**1,278**
Total liabilities	**810**	**314**	**1,278**
Stockholders' equity			
Preferred stock as of September 30, 2011, December 31, 2010 and December 31, 2009, $0.0001 par value per share; authorized 40,000,000 shares	—	—	—
Common stock as of September 30, 2011, December 31, 2010 and December 31, 2009, par value $0.0001 per share; authorized 1,960,000,000 shares; issued and outstanding 1,203,747,934, 1,012,793,468, and 539,078,350, respectively	924	455	931
Additional paid-in capital	59,163	47,637	67,361
Accumulated other comprehensive income:			
Foreign currency translation adjustment	995	372	1,040
Accumulated deficit	(48,993)	(41,393)	(59,954)
Total stockholders' equity	**12,089**	**7,071**	**9,378**
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	**$ 12,899**	**$ 7,385**	**$ 10,656**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Statements of Operations

In thousands, except per share amounts	Year ended Dec 31, 2010	Year ended Dec 31, 2009	Nine months ended September 30, 2011	Nine months ended September 30, 2010 (unaudited)
Net sales	**$ 407**	**$ 224**	**$ —**	**$ 354**
Operating expenses				
Selling, general and administrative	2,598	2,232	3,250	1,537
Research and development	6,229	3,425	7,939	3,851
Total operating expenses	8,827	5,657	11,189	5,388
Loss from operations	**(8,420)**	**(5,433)**	**(11,189)**	**(5,034)**
Interest income	150	91	228	113
Loss before income taxes	**(8,270)**	**(5,342)**	**(10,961)**	**(4,921)**
Income tax expense/(benefit)	**(670)**	**—**	**—**	**(670)**

Net loss	**$ (7,600)**	**$ (5,342)**	**$ (10,961)**	**$ (4,251)**
Basic and diluted loss per share	**$ (0.01)**	**$ (0.01)**	**$ (0.01)**	**$ (0.01)**
Weighted average shares outstanding - basic and diluted	**577,024**	**359,686**	**1,049,888**	**539,078**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Statements of Stockholders' Equity

(In thousands)	Outstanding Shares	Common Stock	Additional Paid in Capital	Accumulated Other Comprehensive Income Foreign Currency Translation Adjustment	Accumulated Deficit	Stockholders' Equity
Balance December 31, 2008	**291,724**	**$ 242**	**$ 39,772**	**$ (477)**	**$ (36,051)**	**$ 3,486**
Comprehensive loss:						
Net loss					(5,342)	(5,342)
Foreign currency translation adjustment				849		849
Total comprehensive loss						(4,493)
Stock based compensation			128			128
Issuance of common stock, net	247,354	213	7,737			7,950
Balance December 31, 2009	**539,078**	**455**	**47,637**	**372**	**(41,393)**	**7,071**
Comprehensive loss:						
Net loss					(7,600)	(7,600)
Foreign currency translation adjustment				623		623
Total comprehensive loss						(6,977)
Stock based compensation			78			78
Issuance of common stock, net	473,715	469	11,448			11,917
Balance December 31, 2010	**1,012,793**	**924**	**59,163**	**995**	**(48,993)**	**12,089**
Comprehensive loss:						
Net loss					(10,961)	(10,961)
Foreign currency translation adjustment				45		45
Total comprehensive loss						(10,916)
Stock based compensation			555			555
Issuance of common stock, net	190,955	7	7,643			7,650
Balance September 30, 2011 (unaudited)	**1,203,748**	**$ 931**	**$ 67,361**	**$ 1,040**	**$ (59,954)**	**$ 9,378**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Statements of Cash Flows

(In thousands)	Year ended Dec 31, 2010	Year ended Dec 31, 2009	Nine months ended September 30, 2011 (unaudited)	Nine months ended September 30, 2010 (unaudited)
Reconciliation of net loss to net cash provided by (used in) operations				
Net loss	$ (7,600)	$ (5,342)	$ (10,961)	$ (4,251)
Adjustments to reconcile net loss to cash flows from operating activities:				
Depreciation and amortization	32	11	25	35
Loss on disposal of equipment	—	—	6	—
Stock based compensation expense	78	128	555	42
Changes in asset and liabilities:				
Accounts receivable	(123)	(118)	259	(211)
Other current assets	(94)	(12)	(24)	(785)
Accounts payable and accrued expenses	496	(477)	480	67
Net cash used in operations	**(7,210)**	**(5,810)**	**(9,660)**	**(5,103)**
Cash flows used in investing activities:				

Purchase of property and equipment	(7)	(3)	(34)	(3)
Net cash used in investing activities	**(7)**	**(3)**	**(34)**	**(3)**
Cash flows provided by financing activites:				
Net proceeds from the sale of common stock	11,917	7,950	7,650	—
Net cash provided by financing activities	**11,917**	**7,950**	**7,650**	**—**
Effect of exchange rate changes on cash	623	849	38	139
Net increase (decrease) in cash and cash equivalents	5,322	2,986	(2,006)	(4,967)
Cash and cash equivalents - beginning of period	7,028	4,042	12,350	7,028
Cash and cash equivalents - end of period	**$ 12,350**	**$ 7,028**	**$ 10,344**	**$ 2,061**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements
(in thousands, except share and per share data)

Note 1 - Nature of Business and Significant Accounting Policies

Nature of Business: Sunshine Heart (the "Company") was founded in November 1999 and incorporated in Delaware in August 2002. We are headquartered in Eden Prairie, MN and have a wholly owned subsidiary, Sunshine Heart Company Pty Ltd, located in St Leonards, New South Wales, Australia. We are a medical device company developing innovative technologies for cardiac and coronary disease. The company's primary product, the C-Pulse® Heart Assist System, is an implantable, non-blood contacting, heart assist therapy for the treatment of moderate to severe heart failure which can be implanted using a minimally invasive procedure. C-Pulse is designed to relieve the symptoms of heart failure through the use of counter-pulsation technology by enabling an increase in cardiac output, an increase in coronary blood flow, and a reduction in the heart's pumping load. The Company has received approval from the U.S. Food and Drug Administration to conduct a U.S. feasibility clinical trial with the C-Pulse System. Our shares of common stock in the form of CHESS Depositary Interests (CDIs) have been publicly traded in Australia on the Australian Securities Exchange (ASX) since September 2004.

Going Concern: The Company's financial statements have been prepared and presented on a basis assuming it continues as a going concern.

During the years ended December 31, 2010 and 2009, and the nine months ended September 30, 2011, the Company incurred losses from operations and net cash outflows from operating activities as disclosed in the consolidated statements of operations and cash flows, respectively. At September 30, 2011, we had an accumulated deficit of $60.0 million and we expect to incur losses for the foreseeable future. To date, we have been funded by private and public equity financings. Although we believe that we will be able to successfully fund our operations, there can be no assurance that we will be able to do so or that we will ever operate profitably.

The Company's ability to continue as a going concern is dependent on the Company's ability to raise additional capital based on the achievement of existing milestones as and when required. Should the future capital raising not be successful, the Company may not be able to continue as a going concern. Furthermore, the ability of the Company to continue as a going concern is subject to the ability of the Company to develop and successfully commercialize the product being developed. If the Company is unable to obtain such funding of an amount and timing necessary to meet its future operational plans, or to successfully commercialize its intellectual property, the Company may be unable to continue as a going concern. No adjustments have been made relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company not continue as a going concern.

Basis of Presentation: The accompanying consolidated financial statements include the accounts of Sunshine Heart, Inc. and its wholly-owned subsidiary, Sunshine Heart Company Pty Ltd. (collectively, "Sunshine Heart" or the "Company"). All inter-company accounts and transactions between consolidated entities have been eliminated.

Unaudited Interim Consolidated Financial Information: The interim balance sheet as of September 30, 2011, statements of operations and cash flows for the nine months ended September 30, 2011 and 2010 and stockholders' equity (deficit) for the nine months ended September 30, 2011 and related interim information contained in the notes to these financial statements are unaudited. In the opinion of management, such unaudited interim consolidated information has been prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") and includes all adjustments consisting of normal recurring accruals necessary for the fair presentation of this interim information when read in conjunction with the audited financial statements and notes thereto. Results for the nine months ended September 30, 2011 are not necessarily indicative of the results that may be expected for the year ending December 31, 2011 or any other interim period or for any other future year.

Use of Estimates: The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosures in the consolidated financial statements and accompanying notes. Actual results

could differ from those estimates.

Fair Value of Financial Instruments: Our financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities. We believe that the carrying amounts of the financial instruments approximate their respective current fair values due to their relatively short maturities.

Pursuant to the requirements of the Fair Value Measurements and Disclosures Topic of the FASB Codification, the Company's financial assets and liabilities measured at fair value on a recurring basis are classified and disclosed in one of the following three categories:

Level 1: Financial instruments with unadjusted quoted prices listed on active market exchanges.

Level 2: Financial instruments lacking unadjusted, quoted prices from active market exchanges, including over the counter traded financial instruments. The prices for the financial instruments are determined using prices for recently traded financial instruments with similar underlying terms as well as directly or indirectly observable inputs, such as interest rates and yield curves that are observable at commonly quoted intervals.

Level 3: Financial instruments that are not actively traded on a market exchange. This category includes situations where there is little, if any, market activity for the financial instrument. The prices are determined using significant unobservable inputs or valuation techniques.

All cash and cash equivalents are considered Level 1 measurements for all periods presented. We do not have any financial instruments classified as Level 2 or Level 3 and there were no movements between these categories.

Cash and Cash Equivalents: Cash and cash equivalents consist of cash, money market funds and term deposits with original maturities of three months or less. The carrying value of these instruments approximates fair value. The balances, at times, may exceed federally insured limits. We have not experienced any losses on our cash and cash equivalents.

Accounts Receivable: Accounts receivable are unsecured, are recorded at net realizable value, and do not bear interest. We make judgments as to our ability to collect outstanding receivables based upon significant patterns of uncollectiblity, historical experience, and managements' evaluation of specific accounts and will provide an allowance for credit losses when collection becomes doubtful. The Company performs credit evaluations of its customers' financial condition on an as-needed basis. Payment is generally due 30 days from the invoice date and accounts past 30 days are individually analyzed for collectability. When all collection efforts have been exhausted, the account is written off against the related allowance. No allowance for doubtful accounts was considered necessary as of September 30, 2011, December 31, 2010 or December 31, 2009.

Other Current Assets: Other current assets represent prepayments and deposits made by the Company.

Property, Plant and Equipment: Property and equipment is stated at cost less accumulated depreciation. Depreciation is computed based upon the estimated useful lives of the respective assets. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the assets. Repairs and maintenance costs are expensed as incurred. Major betterments and improvements, which extend the useful life of the item, are capitalized and depreciated. The cost and accumulated depreciation of property, plant and equipment retired or otherwise disposed of are removed from the related accounts, and any residual values are charged or credited to expenses. Depreciation expense has been calculated using the following estimated useful lives:

Office furniture and equipment	10-15 years
Computer equipment	3-4 years
Laboratory and research equipment	3-15 years

Depreciation expense was $32, $11, $25, and $35 for the years ended December 31, 2010 and 2009, and for the nine months ended September 30, 2011 and 2010, respectively.

Impairment of Long-lived Assets: Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If the impairment tests indicate that the carrying value of the asset is greater than the expected undiscounted cash flows to be generated by such asset, an impairment loss would be recognized. The impairment loss is determined as the amount by which the carrying value of such asset exceeds its fair value. We generally measure fair value by considering sale prices for similar assets or by discounting estimated future cash flows from such assets using an appropriate discount rate. Assets to be disposed of are carried at the lower of their carrying value or fair value less costs to sell. Considerable management judgment is necessary to estimate the fair value of assets, and accordingly, actual results could vary significantly from such estimates. There have been no impairment losses for long-lived assets, for the years ended December 31, 2010 and 2009, or for the nine months ended September 30, 2011.

Revenue Recognition: We recognize revenue when (i) persuasive evidence of a customer arrangement exists; (ii) the price is fixed or determinable and free of contingencies or uncertainties; (iii) collectability is reasonably assured; and (iv) product delivery has occurred, which is when product title transfers to the customer, or services have been rendered. Sales are not conditional based on customer acceptance provisions or installation obligations. Our C-Pulse Heart Assist System is not approved for commercial sale. Our revenue consists solely of sales of the C-Pulse to hospitals and clinics under contract in conjunction with our clinical trials. For clinical trial implant revenue, the product title generally transfers on the date the product is implanted. We do not charge hospitals and clinics for

shipping. We expense shipping costs at the time we report the related revenue and record them in cost of sales.

Foreign Currency Translation and Transactions: Foreign denominated monetary assets and liabilities are translated at the rate of exchange prevailing at the balance sheet date. Results of operations are translated using the average rates prevailing during the reporting period. The translation adjustment has not been included in determining the Company's net loss, but has been reported separately and is accumulated in a separate component of equity. Effective January 1, 2011, we concluded that the functional currency of our US based parent company is the US dollar. Prior to that date the functional currency of both the US based parent company and the Company's Australian subsidiary was the Australian dollar. For financial reporting purposes, the reporting currency of the company is the US dollar. When a transaction is denominated in a currency other than the entity's functional currency, the Company recognizes a transaction gain or loss in net earnings.

Comprehensive Income (Loss): The components of comprehensive income (loss) include net income (loss) and the effects of foreign currency translation adjustments.

Stock-Based Compensation: The Company recognizes all share-based payments, including grants of stock options, to in the income statement as an operating expense, based on their fair value over the requisite service period.

The Company computes the estimated fair values of stock options using the Black-Scholes option pricing model. No tax benefit has been recorded due to the full valuation allowance on deferred tax assets that the Company has recorded.

Stock-based compensation expense is based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Equity instruments issued to non-employees, and for services and goods are shares of the Company's common stock, warrants or options to purchase shares of the Company's common stock. These shares, warrants or options are either fully-vested and exercisable at the date of grant or vest over a certain period during which services are provided. The Company expenses the fair market value of these securities over the period in which the related services are received.

See Note 3 for further information regarding the assumptions used to calculate the fair value of share-based compensation.

Income Taxes: Deferred income taxes are provided on a liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carry forwards. Deferred tax liabilities are recognized for taxable temporary differences, which are the differences between the reported amounts of assets and liabilities and their tax basis. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Net Loss per Share: Basic net loss attributable to common stockholders, on a per share basis, is computed by dividing income available to common stockholders (the numerator) by the weighted-average number of common shares outstanding (the denominator) during the period. Shares issued during the period and shares reacquired during the period are weighted for the portion of the period that they were outstanding. The computation of diluted earnings per share, or EPS, is similar to the computation of basic EPS except that the denominator is increased to include the number of additional common shares that would have been outstanding if the dilutive potential common shares had been issued and computed in accordance with the treasury stock method. In addition, in computing the dilutive effect of convertible securities, the numerator is adjusted to add back the after-tax amount of interest recognized in the period associated with any convertible debt. Shares reserved for outstanding stock warrants and options totaling 262,197,208, 15,757,816, 443,322,951 and 34,957,816 for the years ended December 31, 2010 and 2009 and the nine months ended September 30, 2011 and 2010, respectively, were excluded from the computation of loss per share as their effect was antidilutive due to the Company's net loss in each of those years.

Research and Development: Research and development expenses consist primarily of development personnel and non-employee contractor costs related to the development of new products and services, enhancement of existing products and services, quality assurance and testing. The Company incurred research and development expenses of $6,229, $3,425, $7,939, and $3,851 for the years ended December 31, 2010 and 2009, and for the nine months ended September 30, 2011 and 2010, respectively.

Subsequent Events: The Company evaluates events through the date the financial statements are filed for events requiring adjustment to or disclosure in the financial statements.

New Accounting Pronouncements: In June 2011, the FASB issued additional guidance for the presentation of comprehensive income. The new guidance changes the way other comprehensive income ("OCI") appears within the financial statements. Companies will be required to show net income, OCI and total comprehensive income in one continuous statement or in two separate but consecutive statements. Components of OCI may no longer be presented solely in the statement of changes in shareholders' equity. Any reclassification between OCI and net income will be presented on the face of the financial statements. The new guidance is effective for the Company beginning January 1, 2012. The adoption of the new guidance will not impact the measurement of net income or other comprehensive income.

In January 2010, FASB issued Accounting Standards Update, or ASU, 2010-06, *Improving Disclosure about Fair Value Measurements*, or ASU 2010-06. ASU 2010-06 revises two disclosure requirements concerning fair value measurements and clarifies two others. It requires separate presentation of significant transfers into and out of Levels 1 and 2 of the fair value hierarchy and disclosure of the reasons for such transfers. It also requires the presentation of purchases, sales, issuances and settlements within Level 3 on a gross basis rather than a net basis. The amendments also clarify that disclosures should be disaggregated by class of asset or liability and that disclosures about inputs and valuation techniques should be provided for both recurring and non-recurring fair value measurements. ASU 2010-06 is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective or reporting periods beginning after December 15, 2010.

In May 2011, FASB issued ASU 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS.* This accounting update generally aligns the principles for fair value measurements and the related disclosure requirements under U.S. GAAP and International Financial Reporting Standards. From a U.S. GAAP perspective, the amendments are largely clarifications, but some could have a significant effect on certain companies. A number of new disclosures also are required. Except for certain disclosures, the guidance applies to public and nonpublic companies and is to be applied prospectively. For public companies and nonpublic companies, the amendments are effective during interim and annual periods beginning after December 15, 2011. Early adoption by public companies is not permitted. Nonpublic companies may apply the amendments early, but no earlier than for interim periods beginning after December 15, 2011.

Note 2 - Balance Sheet Information

Property, Plant and Equipment

Property, plant and equipment were as follows:

	Dec. 31, 2010	Dec. 31, 2009	September 30, 2011 (unaudited)
Library	$ 1	$ 1	$ 1
Office Furniture & Fixtures	90	79	91
Leasehold Improvements	78	69	76
Software	28	25	35
Production Equipment	179	157	173
Computer Equipment	65	51	84
Total	$ 441	$ 382	$ 460
Accumulated Depreciation	(321)	(237)	(339)
	$ 120	$ 145	$ 121

Note 3 - Equity

Private Placement

In August and September 2009, the Company placed 245,164,998 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $7,915.

In November and December, 2010, the Company placed 473,715,118 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $11,917.

In January 2011, the Company placed 3,571,429 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $99.

In July 2011, the Company placed 114,444,346 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $4,597.

In September 2011, the Company placed 69,888,730 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $2,838.

Stock Options

The Company recognized share-based compensation expense related to stock options and grants of common stock to employees, directors and consultants of $78, and $128 during the years ended December 31, 2010 and 2009, respectively, and $555 and $42 during the nine month periods ended September 30, 2011 and 2010, respectively. The following table summarizes the stock-based compensation expense which was recognized in the Consolidated Statements of Operations for the years ended December 31, 2010 and 2009 and the nine months ended September 30, 2011 and 2010:

	Dec 31, 2010	Dec 31, 2009	September 30, 2011	September 30, 2010 (unaudited)
Selling, general and administrative	$ 55	$ 96	$ 385	$ 25
Research and development	23	32	170	17
Total	$ 78	$ 128	$ 555	$ 42

As of September 30, 2011 and December 31, 2010 the total compensation cost related to all nonvested awards not yet recognized was $3,552 and $94, respectively. This amount is expected to be recognized over the remaining weighted-average period of 1.11 years as of September 30, 2011 and 1.19 years as of December 31, 2010.

The Company has granted stock options to certain employees and directors under the Amended and Restated 2002 Stock Plan and its 2011 Equity Incentive Plan (collectively the “Plans”). The Plans are designed to assist in the motivation and retention of employees and to recognize the importance of employees to the long-term performance and success of the Company. The Company has also granted stock options to certain consultants outside of the Plans. The majority of the options to purchase common stock vest on the anniversary of the date of grant, which ranges from one to four years. Additionally, certain stock options vest upon the closing price of the Company’s common stock reaching certain minimum levels, as defined in the agreements. Finally, certain other stock options vest upon the meeting of certain Company milestones such as the signing of specific agreements and the completion of the Company’s anticipated listing on a U.S. stock exchange. As of September 30, 2011, the Company expects that all such market and performance conditions will be met. Share-based compensation expense related to these awards is recognized on a straight-line basis over the related vesting term. It is the Company’s policy to issue new shares upon the exercise of options.

The following is a summary of the Plan and non-Plan stock option activity during the year ended December 31, 2010 and 2009, and for the nine months ended September 30, 2011.

	Options Outstanding	Weighted Average Exercise price	Remaining Average Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding, December 31, 2008	29,448,121	$ 0.20		
2009 Grants	—	—		
2009 Exercises	2,188,923	0.02		
2009 Forfeitures/expiration	11,501,382	0.25		
Outstanding, December 31, 2009	15,757,816	0.19		
2010 Grants	10,000,000	0.05		
2010 Exercises	—	—		
2010 Forfeitures/expiration	418,167	0.18		

Outstanding, December 31, 2010	25,339,649	0.14	7.26	$ 819
Exercisable at December 31, 2010	18,085,236	0.16	6.54	819
2011 Grants (unaudited)	122,118,000	0.03		
2011 Exercises (unaudited)	193,601	0.03		
2011 Forfeitures/expiration (unaudited)	5,646,162	0.06		
Outstanding, September 30, 2011 (unaudited)	141,617,886	$ 0.05	1.11	$ 1,485
Exercisable at September 30, 2011 (unaudited)	28,745,607	$ 0.10	3.44	$ 161

The aggregate intrinsic value is defined as the difference between the market value of the Company's common stock (based on the trading price of the Company's CDIs on ASX) as of the end of the period and the exercise price of the in-the-money stock options. The total intrinsic value of stock options exercised during the years ended December 31, 2010 and 2009 and for the nine months ended September 30, 2011 and 2010 was $0, $48, $4 and $0, respectively. Of the 112,872,279 non vested options, 11,130 are held by consultants, the majority of which vest in 2012. Total cash proceeds from exercised options were $0, $34, $1, and $0 for the years ended December 31, 2010 and 2009 and the nine months ended September 30, 2011 and 2010, respectively.

The weighted-average fair value of stock options granted during the year December 31, 2010 was $0.01. No options were issued during 2009. During the nine months ended September 30, 2011, the weighted-average fair value of stock options granted was $0.03.

The fair value of each stock option is estimated at the grant date using the Black-Scholes option pricing model. The Company has not historically paid dividends to its shareholders, and, as a result assumed a dividend yield of 0%. The risk free interest rate is based upon the rates of Australian bonds with a term equal to the expected term of the option. The expected volatility is based upon the historical price of the Company's CDIs. The expected term of the stock options to purchase common stock is based upon the outstanding contractual term of the stock option on the date of grant. The Company used the following weighted-average assumptions in calculating the fair value of options granted during the years ended December 31 , 2010 and 2009, and for the nine months ended September 30, 2011 and 2010.

	Year ended December 31		Nine Months ended September 30,	
	2010	2009	2011	2010
Expected dividend yield	0%	N/A	0%	N/A
Risk-free interest rate	4.97%	N/A	1.43%	N/A
Expected volatility	65%	N/A	100%	N/A
Expected life (in years)	5	N/A	6.5	N/A

Warrants

On November 10, 2010, the Company issued 71,409,997 warrants at an exercise price of $0.03 and a term of 4 years as part of the private placements previously described.

Attached to these warrants is a requirement to file a Form 10-12G registering the Company's common stock with the Securities and Exchange Commission and file an application to list on a US exchange by September 30, 2011. In the event the Company does not satisfy these requirements, the number of warrants issued in the placement will increase by 10%.

Also, as part of the private placements completed during 2010, the Company issued 170,147,300 warrants to purchase common stock at an exercise price of $0.03 per share. The warrants have a stated life of four years.

As part of the private placement completed during 2011, the Company issued 2,124,302 warrants to purchase common stock at an exercise price of $0.04 per share and 55,299,925 warrants to purchase common stock at an exercise price of $0.05 per share. The warrants have a stated life of four years.

Additional warrants to purchase common stock were issued in connection with the issuance of $800 convertible promissory notes in June 2004, which were issued as a bridging loan prior to the initial public offering of the Company's CDIs on the ASX. These warrants were issued to related party entities affiliated with certain directors of the Company and to one unrelated party. The warrants entitle the holders to receive 3,200,000 shares at an exercise price of AU$0.25. The warrants have an exercise period of ten years and expire in June 2014. No warrants were exercised during the year.

During the nine months ended September 30, 2011, 2,856,360 warrants were exercised at a price of $0.03 for total proceeds of $99.

Note 4 - Income Taxes

The components of income tax expense for the years ended December 31, 2010 and 2009, and the nine months ended September 30, 2011, consist of the following:

	December 31, 2010	December 31, 2009	September 30, 2011 (unaudited)
Income tax provision:			
Current:			
U.S. and state	—	—	—
Foreign	(670)	—	—
Deferred:			
U.S. and state	—	—	—
Foreign	—	—	—
Total income tax expense	(670)	—	—

Actual income tax expense differs from statutory federal income tax benefit for the years ended December 31, 2010 and 2009 and the nine months ended September 30, 2011 as follows:

	December 31, 2010	December 31, 2009	September 30, 2011 (unaudited)
Statutory federal income tax benefit	(2,812)	(1,816)	(3,726)
State tax benefit, net of federal taxes	(417)	(259)	(595)
Foreign tax	225	199	147
R&D tax credit rebate	(670)	—	—
Nondeductible expenses	—	—	(4)
Valuation allowance increase	3,033	1,787	3,999
Other	(29)	89	179
Total income tax expense	(670)	—	—

Deferred taxes as of December 31, 2010 and 2009, and September 30, 2011, consist of the following:

	December 31, 2010	December 31, 2009	September 30, 2011 (unaudited)
Deferred tax assets (liabilities):			
Accrued expenses	120	84	153
Stock based compensation	385	332	487
Capitalized patent costs	140	132	130
Other	7	7	8
Net operating losses	16,210	11,852	20,644
	16,862	12,407	21,422
Less: valuation allowance	(16,862)	(12,407)	(21,422)
	—	—	—

As of September 30, 2011, we had U.S. net operating loss (NOL) carryforwards of approximately $11,004 for U.S. income tax purposes, which expire in 2023 through 2031, and NOLs in the Commonwealth of Australia of approximately $52,670 which we can carry forward indefinitely. U.S. net operating loss carryforwards cannot be used to offset taxable income in foreign jurisdictions. In addition, future utilization of net operating loss carryforwards in the U.S. may be subject to certain limitations under Section 382 of the Internal Revenue Code. This section generally relates to a 50 percent change in ownership of a company over a three-year period. No formal study has been prepared as of the balance sheet date to determine any applicable limitations on the utilization of the U.S. net operating losses.

We received a $670 fully refundable research and development tax credit in 2010, determined as a combined average of 44% of qualified research and development expenditures of our Australian subsidiary for its tax period ended June 30, 2010. The Australian research and development tax credit is paid as a refundable credit to small and medium enterprises for tax years ending on or before June 30, 2011, when total research and development expenses of the Australian subsidiary are less than A$2 million for the tax period. If total eligible research and development expenses exceed A$2 million, the tax credit is instead applied as a carryforward reduction against future income taxes. We have not completed the Australian tax return for the period ended June 30, 2011, and cannot be assured that our total eligible research and development expenses will be less than A$2 million. Therefore, we have reflected $0 net benefit related to the research and development credit for 2011.

We provide for a valuation allowance when it is more likely than not that we will not realize a portion of the deferred tax assets. We have established a valuation allowance for U.S. and foreign deferred tax assets due to the uncertainty that enough taxable income will be generated in those taxing jurisdictions to utilize the assets. Therefore, we have not reflected any benefit of such deferred tax assets in the accompanying financial statements. For the years ended December 31, 2010 and 2009, and the nine months ended September 30, 2011, the valuation allowance increased by $4,455, $4,663 and $4,560, respectively. Changes in the valuation allowance do not equal the amounts reflected in the statutory rate reconciliation due to fluctuating currency exchange rates.

The Company has adopted accounting guidance related to uncertain tax positions. This accounting guidance prescribes a recognition threshold and measurement attribute for recognition and measurement of a tax position taken or expected to be taken in a tax return. It also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. The adoption of uncertain tax position guidance did not have a material impact on the Company’s consolidated financial statements. Additionally, the adoption of the guidance had no impact on retained earnings. The Company had no material uncertain tax positions as of September 30, 2011, December 31, 2010 or December 31, 2009.

We recognize interest and penalties on unrecognized tax benefits as well as interest received from favorable tax settlements within income tax expense. Upon adoption of this guidance, we recognized no interest or penalties related to uncertain tax positions. During the years ended December 31, 2010 and 2009, and the nine months ended September 30, 2011, we recorded no accrued interest or penalties related to uncertain tax positions.

The fiscal tax years ended June 30, 2007 through June 30, 2011 remain open to examination by the Internal Revenue Service. For the states of California and Minnesota, the fiscal tax year ended June 30, 2006 is also still open to examination. Additionally, the returns of the Company’s Australian subsidiary are subject to examination by Australian tax authorities for the fiscal tax years ended June 30, 2007 through June 30, 2011.

Note 5 — Commitments and Contingencies

Leases

We lease office space under non-cancelable operating leases that expire at various times through September 2012. Rent expense related to operating leases was approximately $186, $151, $176 and $129 for the years ended December 31, 2010 and 2009, and the nine months ended September 30, 2011 and 2010, respectively. Future minimum lease payments under non-cancelable operating leases as of September 30, 2011 were approximately $59 through December 31, 2011, and $99 for the year ending December 31, 2012. At September 30, 2011 we did not have any significant lease obligation beyond 2012. See Note 7 for additional discussion.

Employee Benefits

All Australian employees are entitled to varying levels of benefits on retirement, disability or death. The superannuation plans provide accumulated benefits. Employees contribute to the plans at various percentages of their wages and salaries. Contributions by the Company of up to 9% of employees' wages and salaries are legally enforceable in Australia. For the years ended December 31, 2010 and 2009, and for the nine months ended September 30, 2011 and 2010, the Company incurred expense of $64, $57, $64, and $44, respectively.

Note 6 — Related Party Transaction

During the year ended December 31, 2010 and 2009, and the nine month periods ended September 30, 2011 and 2010, we paid $4, $5, $0, and $4 to SCP Technology and Growth Pty Limited, a company controlled by a director of our Australian subsidiary, for the provision of intellectual property and patent services. There were no amounts outstanding to this entity at September 30, 2011 or December 31, 2010. At December 31, 2009, we had outstanding accounts payable of $5 due to the related party. In September 2011, we sold 2,875,000 shares of our common stock to Jeffrey Mathiesen, our Chief Financial Officer, at the price of A$0.04 per share as part of a private placement.

Note 7 — Subsequent Event

On October 21, 2011 we entered into a lease for a 23,000 square foot facility in Eden Prairie, Minnesota. The lease period commenced December 1, 2011 and extends through March 31, 2016. This facility will house substantially all of our functional areas and will replace our current corporate headquarters. We expect to move our operations to this facility in late December 2011. Monthly rent and electricity for this facility total approximately $21,000.

Note 8 — Segment and Geographic Information

The Company has one reportable segment, cardiac and coronary disease products. The Company's geographic regions include the United States and Australia.

Revenue earned relating to reimbursement of clinical trials is earned primarily in the United States. Interest income is primarily earned in Australia.

Long-lived assets are located primarily in Australia.

SUNSHINE HEART, INC.

AMENDED AND RESTATED 2002 STOCK PLAN
Amended August 28, 2011 (California time)

1. **Purposes of the Plan.** The purposes of this 2002 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an option and subject to the applicable provisions of Section 422 of the Code and the regulations and interpretations promulgated thereunder. Stock purchase rights may also be granted under the Plan.

2. **Definitions.** As used herein, the following definitions shall apply:

(a) **"Administrator"** means the Board or its Committee appointed pursuant to Section 4 of the Plan.

(b) **"Affiliate"** means an entity other than a Subsidiary (as defined below) which, together with the Company, is under common control of a third person or entity.

(c) **"Applicable Laws"** means the legal requirements relating to the administration of stock option and restricted stock purchase plans under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, the Code, the Listing Rules, any other Stock Exchange rules or regulations and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

(cc) "**ASX**" means Australian Stock Exchange Limited ABN 98 008 624 691 or any successor body.

(d) **"Board"** means the Board of Directors of the Company.

(e) **"Cause**" for termination of a Participant's Continuous Service Status will exist if the Participant is terminated by the Company for any of the following reasons: (i) Participant's willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (ii) Participant's commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (iii) unauthorized use or disclosure by Participant of any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (iv) Participant's willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Participant is being terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company's ability to terminate a Participant's employment or consulting relationship at any time as provided

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in Section 5(d) below, and the term "Company" will be interpreted to include any Subsidiary, Parent or Affiliate, as appropriate.

(f) "**Change of Control**" means any: (i) sale of all or substantially all of the Company's assets, or any (ii) merger, consolidation or other transaction or series of related transactions, in each case in which the Company's stockholders immediately prior thereto own less than fifty percent (50%) of the voting stock of the Company (or its successor or parent) immediately thereafter, provided however that none of the following shall be considered a Change of Control: (i) a merger effected exclusively for the purpose of changing the domicile of the Company or (ii) an equity financing in which the Company is the surviving corporation.

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

(h) **"Committee"** means one or more committees or subcommittees of the Board appointed by the Board to administer the Plan in accordance with Section 4 below.

(i) **"Common Stock"** means the Common Stock of the Company.

(j) **"Company"** means Sunshine Heart, Inc., a Delaware corporation.

(k) **"Consultant"** means any person, including an advisor, who is engaged by the Company or any Parent, Subsidiary or Affiliate to render services and is compensated for such services, and any director of the Company whether compensated for such services or not.unshi

(l) **"Continuous Service Status"** means the absence of any interruption or termination of service as an Employee or Consultant. Continuous Service Status as an Employee or Consultant shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Parents, Subsidiaries, Affiliates or their respective successors. A change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Service Status.

(m) **"Corporate Transaction"** means a sale of all or substantially all of the Company's assets, or a merger, consolidation or other capital reorganization of the Company with or into another corporation, entity or person, and includes a Change of Control.

(n) **"Director"** means a member of the Board.

(o) **"Employee"** means any person employed by the Company or any Parent, Subsidiary or Affiliate, with the status of employment determined based upon such factors as are deemed appropriate by the Administrator in its discretion, subject to any requirements of the Code or the

Applicable Laws. The payment by the Company of a director's fee to a Director shall not be sufficient to constitute "employment" of such Director by the Company.

(p) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

(q) **"Fair Market Value"** means, as of any date, the fair market value of the Common Stock, as determined by the Administrator in good faith on such basis as it deems appropriate and applied consistently with respect to Participants. Whenever possible, the determination of Fair Market Value shall be based upon the closing price for the Shares on the ASX or as reported in the Wall Street Journal, as applicable, for the relevant date.

(r) **"Incentive Stock Option"** means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.

(rr) "**Listed**" means having been admitted to the Official List of ASX and at the relevant time still being so admitted.

(s) "**Listed Security**" means any security of the Company that is listed or approved for listing on a national securities exchange in the United States or designated or approved for designation as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.

(ss) "**Listing Rules**" means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

(t) **"Named Executive"** means any individual who, on the last day of the Company's fiscal year, is the chief executive officer of the Company (or is acting in such capacity) or among the four most highly compensated officers of the Company (other than the chief executive officer). Such officer status shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act.

(u) **"Nonstatutory Stock Option"** means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.

(uu) "**Official List**" has the meaning given in the Listing Rules.

(v) **"Option"** means a stock option granted pursuant to the Plan.

(w) **"Option Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.

(x) **"Optioned Stock"** means the Common Stock subject to an Option.

(y) **"Optionee"** means an Employee or Consultant who receives an Option.

(z) **"Parent"** means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.

(aa) **"Participant"** means any holder of one or more Options or Stock Purchase Rights, or the Shares issuable or issued upon exercise of such awards, under the Plan.

(bb) **"Plan"** means this 2002 Stock Plan.

(cc) **"Reporting Person"** means an officer, Director, or greater than ten percent stockholder of the Company within the meaning of Rule 16a-2 under the Exchange Act, who is required to file reports pursuant to Rule 16a-3 under the Exchange Act.

(dd) **"Restricted Stock"** means Shares of Common Stock acquired pursuant to a grant of a Stock Purchase Right under Section 11 below.

(ee) **"Restricted Stock Purchase Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of a Stock Purchase Right granted under the Plan and includes any documents attached to such agreement.

(ff) **"Rule 16b-3"** means Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision.

(gg) **"Share"** means a share of the Common Stock, as adjusted in accordance with Section 13 of the Plan.

(hh) **"Stock Exchange"** means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time and includes ASX.

(ii) **"Stock Purchase Right"** means the right to purchase Common Stock pursuant to Section 11 below.

(jj) **"Subsidiary"** means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

(kk) **"Ten Percent Holder"** means a person who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 13 of the Plan, and at all times to the maximum number of Options which are permitted to be subject to the Plan under the Listing Rules or any class order applicable to the Plan made by the Australian Securities and Investments Commission, the maximum aggregate number of Shares that may be sold under the Plan is 25,000,000 Shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without

having been exercised in full, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall not be available for future grant under the Plan.

4. **Administration of the Plan**.

(a) **General.** The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Participants and, if permitted by the Applicable Laws, the Board may authorize one or more officers to make awards under the Plan.

(b) **Committee Composition.** If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan in accordance with the requirements of Rule 16b-3 or Section 162(m) of the Code, to the extent permitted or required by such provisions.

(c) **Powers of the Administrator.** Subject to the Listing Rules, the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(q) of the Plan, provided that such determination shall be applied consistently with respect to Participants under the Plan;

(ii) to select the Employees and Consultants to whom Plan awards may from time to time be granted;

(iii) to determine whether and to what extent Plan awards are granted;

(iv) to determine the number of Shares of Common Stock to be covered by each award granted;

(v) to approve the form(s) of agreement(s) used under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when awards may be exercised

(which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, any pro rata adjustments to vesting as a result of a Participant's transitioning from full- to part-time service (or vice versa), and any restriction or limitation regarding any Option, Optioned Stock, Stock Purchase Right or Restricted Stock, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to determine whether and under what circumstances an Option may be settled in cash under Section 9(c)instead of Common Stock;

(viii)

(xiii) to adjust the vesting of an Option held by an Employee or Consultant as a result of a change in the terms or conditions under which such person is providing services to the Company;

(ix) to construe and interpret the terms of the Plan and awards granted under the Plan, which constructions, interpretations and decisions shall be final and binding on all Participants; and

(x) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Options or Stock Purchase Rights to Participants who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs.

5. **Eligibility**.

(a) **Recipients of Grants.** Nonstatutory Stock Options and Stock Purchase Rights may be granted to Employees and Consultants. Incentive Stock Options may be granted only to Employees, provided that Employees of Affiliates shall not be eligible to receive Incentive Stock Options.

(b) **Type of Option.** Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option.

(c) **ISO $100,000 Limitation.** Notwithstanding any designation under Section 5(b), to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(c), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.

(d) **No Employment Rights.** The Plan shall not confer upon any Participant any right with respect to continuation of an employment or consulting relationship with the Company, nor shall it interfere in any way with such Participant's right or the Company's right to terminate the employment or consulting relationship at any time for any reason.

6. **Term of Plan.** The Plan shall become effective upon its adoption by the Board of Directors. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 16 of the Plan.

7. **Term of Option.** The term of each Option shall be the term stated in the Option Agreement; provided that the term shall be no more than ten years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to a person who at the time of such grant is a Ten Percent Holder, the term of the Option shall be five years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

8. **Option Exercise Price and Consideration**.

(a) **Exercise Price.** The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Administrator and set forth in the Option Agreement, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option

(A) granted on any date on which the Common Stock is not a Listed Security to a person who is at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator;

(B) granted on any date on which the Common Stock is not a Listed Security to any other eligible person, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator; or

(C) granted on any date on which the Common Stock is a Listed Security to any eligible person, the per share Exercise Price shall be such price as determined by the Administrator provided that if such eligible person is, at the time of the grant of such Option, a Named Executive of the Company, the per share Exercise Price shall be no less than 100% of the Fair Market Value on the date of grant if such Option is intended to qualify as performance-based compensation under Section 162(m) of the Code.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) **Permissible Consideration.** The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator at the time of grant and as allowed by Applicable Laws.. .

9. **Exercise of Option**.

(a) **General.**

(i) **Exercisability.** Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the term of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company and/or the Optionee; provided however that, if required by the Applicable Laws, any Option granted on a date on which the Common Stock is not a Listed Security shall become exercisable at the rate of at least 20% per year over five years from the date the Option is granted. In the event that any of the Shares issued upon exercise of an Option (which exercise occurs on a date on which the Common Stock is not a Listed Security) should be subject to a right of repurchase in the Company's favor, such repurchase right shall, if required by the Applicable Laws, lapse at the rate of at least 20% per year over five years from the date the Option is granted. Notwithstanding the above, in the case of an Option granted to an officer, Director or Consultant of

the Company or any Parent, Subsidiary or Affiliate of the Company, the Option may become fully exercisable, or a repurchase right, if any, in favor of the Company shall lapse, at any time or during any period established by the Administrator.

(ii) **Leave of Absence.** The Administrator shall have the discretion to determine whether and to what extent the vesting of Options shall be tolled during any unpaid leave of absence. In the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Options to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) **Minimum Exercise Requirements.** An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent an Optionee from exercising the full number of Shares as to which the Option is then exercisable.

(iv) **Procedures for and Results of Exercise.** An Option shall be deemed exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised.

Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 9(b) of the Plan, provided that the Administrator may, in its sole discretion, refuse to accept any form of consideration at the time of any Option exercise.

Exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(v) **Rights as Stockholder.** Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or to participate in any new issues of Shares, or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 13 of the Plan.

(b) **Termination of Employment or Consulting Relationship.** Except as otherwise set forth in this Section 10(b), the Administrator shall establish and set forth in the applicable Option Agreement the terms and conditions upon which an Option shall remain exercisable, if at all, following termination of an Optionee's Continuous Service Status, which provisions may be waived or modified by the Administrator at any time. Unless the Administrator otherwise provides in the Option Agreement, to the extent that the Optionee is not vested in Optioned Stock at the date of termination of his or her Continuous Service Status, or if the Optionee (or other person entitled to exercise the Option) does not exercise the Option to the extent so entitled within the time specified in the Option Agreement or below (as applicable), the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan. In no event may any Option be exercised after the expiration of the Option term as set forth in the Option Agreement (and subject to Section 7).

The following provisions (1) shall apply to the extent an Option Agreement does not specify the terms and conditions upon which an Option shall terminate upon termination of an Optionee's Continuous Service Status, and (2) establish the minimum post-termination exercise periods that may be set forth in an Option Agreement:

(i) **Termination other than Upon Disability or Death or for Cause.** In the event of termination of an Optionee's Continuous Service Status, such Optionee may exercise an Option for 30 days following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination. No termination shall be deemed to occur and this Section 10(b)(i) shall not apply if (i) the Optionee is a Consultant who becomes an Employee, or (ii) the Optionee is an Employee who becomes a Consultant.

(ii) **Disability of Optionee.** In the event of termination of an Optionee's Continuous Service Status as a result of his or her disability (including a disability within the meaning of Section 22(e)(3) of the Code), such Optionee may exercise an Option at any time within six months following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination.

(iii) **Death of Optionee.** In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of the Option, or within thirty days following termination of Optionee's Continuous Service Status, the Option may be exercised by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance at any time within twelve months following the date of death, but only to the extent the Optionee was vested in the Optioned Stock as of the date of death or, if earlier, the date the Optionee's Continuous Service Status terminated.

(c) **Buyout Provisions.** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option previously granted under the Plan based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

10. **Stock Purchase Rights**.

(a) **Rights to Purchase.** When the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. In the case of a Stock Purchase Right granted prior to the date, if any, on which the Common Stock becomes a Listed Security and if required by the Applicable Laws at that time, the purchase price of Shares subject to such Stock Purchase Rights shall not be less than 85% of the Fair Market Value of the Shares as of the date of the offer, or, in the case of a Ten Percent Holder, the price

shall not be less than 100% of the Fair Market Value of the Shares as of the date of the offer. If the Applicable Laws do not impose the requirements set forth in the preceding sentence and with respect to any Stock Purchase Rights granted after the date, if any, on which the Common Stock becomes a Listed Security, the purchase price of Shares subject to Stock Purchase Rights shall be as determined by the Administrator. The offer to purchase Shares subject to Stock Purchase Rights shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) **Repurchase Option**.

(i) **General.** Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original purchase price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine, provided that with respect to a Stock Purchase Right granted prior to the date, if any, on which the Common Stock becomes a Listed Security to a purchaser who is not an officer, Director or Consultant of the Company or of any Parent or Subsidiary of the Company, it shall lapse at a minimum rate of 20% per year if required by the Applicable Laws.

(ii) **Leave of Absence.** The Administrator shall have the discretion to determine whether and to what extent the lapsing of Company repurchase rights shall be tolled during any unpaid leave of absence. In the event of military leave, the lapsing of Company repurchase rights shall toll during any unpaid portion of such leave, provided that, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given "vesting" credit with respect to Shares purchased pursuant to the Restricted Stock Purchase Agreement to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) **Termination for Cause.** In the event of termination of a Participant's Continuous Service Status for Cause, the Company shall have the right to repurchase from the Participant vested Shares issued upon exercise of a Stock Purchase Right granted to any person other than an officer, Director or Consultant prior to the date, if any, upon which the Common Stock becomes a Listed Security upon the following terms: (A) the repurchase must be made within 90 days of termination of the Participant's Continuous Service Status for Cause at the Fair Market Value of the Shares as of the date of termination, (B) consideration for the repurchase consists of cash or cancellation of purchase money indebtedness, and (C) the repurchase right terminates upon the effective date of the Company's initial public offering of its Common Stock. With respect to vested Shares issued upon exercise of a Stock Purchase Right granted to any officer, Director or Consultant, the Company's right to repurchase such Shares upon termination of such Participant's Continuous Service Status for Cause shall be made at the Participant's original cost for the Shares and shall be effected pursuant to such terms and conditions, and at such time, as the Administrator shall determine. Nothing in this Section 11(b)(iii) shall in any way limit the Company's right to purchase unvested Shares as set forth in the applicable Restricted Stock Purchase Agreement.

(c) **Other Provisions.** The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Purchase Agreements need not be the same with respect to each purchaser.

(d) **Rights as a Stockholder.** Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 13 of the Plan.

11. **Taxes**.

(a) As a condition of the exercise of an Option or Stock Purchase Right granted under the Plan, the Participant (or in the case of the Participant's death, the person exercising the Option or Stock Purchase Right) shall make such arrangements as the Administrator may require for the satisfaction of any applicable federal, state, local or foreign

withholding tax obligations that may arise in connection with the exercise of the Option or Stock Purchase Right and the issuance of Shares. The Company shall not be required to issue any Shares under the Plan until such obligations are satisfied. If the Administrator allows the withholding or surrender of Shares to satisfy a Participant's tax withholding obligations under this Section 12 (whether pursuant to Section 12(c), (d) or (e), or otherwise), the Administrator shall not allow Shares to be withheld in an amount that exceeds the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes.

(b) In the case of an Employee and in the absence of any other arrangement, the Employee shall be deemed to have directed the Company to withhold or collect from his or her compensation an amount sufficient to satisfy such tax obligations from the next payroll payment otherwise payable after the date of an exercise of the Option or Stock Purchase Right.

(c) This Section 12(c) shall apply only after the date, if any, upon which the Common Stock becomes a Listed Security. In the case of Participant other than an Employee (or in the case of an Employee where the next payroll payment is not sufficient to satisfy such tax obligations, with respect to any remaining tax obligations), in the absence of any other arrangement and to the extent permitted under the Applicable Laws, the Participant shall be deemed to have elected to have the Company withhold from the Shares to be issued upon exercise of the Option or Stock Purchase Right that number of Shares having a Fair Market Value determined as of the applicable Tax Date (as defined below) equal to the amount required to be withheld. For purposes of this Section 12, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined under the Applicable Laws (the "Tax Date").

(d) If permitted by the Administrator, in its discretion, a Participant may satisfy his or her tax withholding obligations upon exercise of an Option or Stock Purchase Right by surrendering to the Company Shares that have a Fair Market Value determined as of the applicable Tax Date equal to the amount required to be withheld. In the case of shares previously acquired from the Company that are surrendered under this Section 12(d), such Shares

must have been owned by the Participant for more than six (6) months on the date of surrender (or such other period of time as is required for the Company to avoid adverse accounting charges).

(e) Any election or deemed election by a Participant to have Shares withheld to satisfy tax withholding obligations under Section 12(c) or (d) above shall be irrevocable as to the particular Shares as to which the election is made and shall be subject to the consent or disapproval of the Administrator. Any election by a Participant under Section 12(d) above must be made on or prior to the applicable Tax Date.

(f) In the event an election to have Shares withheld is made by a Participant and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Participant shall receive the full number of Shares with respect to which the Option or Stock Purchase Right is exercised but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

12. **Non-Transferability of Options and Stock Purchase Rights.**

(a) **General.** Except as set forth in this Section 12, Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution. The designation of a beneficiary by an Optionee will not constitute a transfer. An Option or Stock Purchase Right may be exercised, during the lifetime of the holder of an Option or Stock Purchase Right, only by such holder or a transferee permitted by this Section 12.

(b) **Limited Transferability Rights.** Notwithstanding anything else in this Section 12, the Administrator may in its discretion grant Nonstatutory Stock Options that may be transferred by instrument to an inter vivos or testamentary trust in which the Options are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift or pursuant to domestic relations orders to "Immediate Family Members" (as defined below) of the Optionee. "Immediate Family" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships), a trust in which these persons have more than fifty percent of the beneficial interest, a foundation in which these persons (or the Optionee) control the management of assets, and any other entity in which these persons (or the Optionee) own more than fifty percent of the voting interests.

13. **Adjustments Upon Changes in Capitalization, Merger or Certain Other Transactions**.

(a) **Changes in Capitalization.** Subject to any Applicable Laws and any action required under those Applicable Laws by the stockholders of the Company, the number of Shares of Common Stock covered by each outstanding award, the numbers of Shares set forth in Sections 3, and the number of Shares of Common Stock that have been authorized for issuance under the Plan but as to which no awards have yet been granted or that have been returned to the Plan upon cancellation or expiration of an award, as well as the price per Share of Common Stock covered by each such outstanding award and any other rights of an Optionee, shall be proportionately adjusted, and otherwise changed to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the relevant time, for any increase or decrease in the number of issued Shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, bonus issue of Shares, combination, recapitalization or reclassification of the Common Stock, or any other increase or decrease in the number of issued Shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." If the Company makes a bonus issue of Shares or other securities pro rata to holders of Shares (other than an issue in lieu of dividends or by way of dividend reinvestment) and no Shares have been allotted in respect of an Option before the books closing date for determining entitlements to the bonus issue then that Option, if exercised, will entitle the Optionee to receive the bonus issue in respect of the Shares resulting from exercise of the Option as if the Option had been exercised and the Shares allotted before the books closing date. If the Company undertakes a rights issue the exercise price of the Options will be adjusted in accordance with the formula contained in the Listing Rules. Such adjustment

shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock subject to an award.

(b) **Dissolution or Liquidation.** In the event of the dissolution or liquidation of the Company, each Option and Stock Purchase Right will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) **Corporate Transaction.** In the event of a Corporate Transaction, subject to any Listing Rules requirements, each outstanding Option or Stock Purchase Right shall be assumed or an equivalent option or right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation (the "Successor Corporation"), unless the Successor Corporation does not agree to assume the award or to substitute an equivalent option or right, in which case such Option or Stock Purchase Right shall terminate upon the consummation of the transaction.

For purposes of this Section 13(c), an Option or a Stock Purchase Right shall be considered assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction or a Change of Control, as the case may be, each holder of an Option or Stock Purchase Right would be entitled to receive upon exercise of the award the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to such transaction, the holder of the number of Shares of Common Stock covered by the award at such time (after giving effect to any adjustments in the number of Shares covered by the Option or Stock Purchase Right as provided for in this Section 13); provided that if such consideration received in the transaction is not solely common stock of the Successor Corporation, the Administrator may, with the consent of the Successor Corporation, provide for the consideration to be received upon exercise of the award to be solely common stock of the Successor Corporation equal to the Fair Market Value of the per Share consideration received by holders of Common Stock in the transaction adjusted to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the relevant time.

(d) **Certain Distributions.** In the event of any distribution to the Company's stockholders of securities of any other entity or other assets (other than dividends payable in cash or stock of the Company) without receipt of consideration by the Company, the Administrator shall appropriately adjust the price per Share of Common Stock covered by each outstanding Option or Stock Purchase Right to reflect the effect of such distribution to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the relevant time.

14. **Time of Granting Options and Stock Purchase Rights.** The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the

grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee's employment relationship with the Company. Notice of the determination shall be given to each Employee or Consultant to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

15. **Amendment and Termination of the Plan**.

(a) **Authority to Amend or Terminate.** The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation (other than an adjustment pursuant to Section 13 above) shall be made in breach of the Listing Rules or that would otherwise materially and adversely affect the rights of any Optionee or holder of Stock Purchase Rights under any outstanding grant, without his or her consent. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) **Effect of Amendment or Termination.** Except as to amendments which the Administrator has the authority under the Plan to make unilaterally, no amendment or termination of the Plan shall materially and adversely affect Options or Stock Purchase Rights already granted, unless mutually agreed otherwise between the Optionee or holder of the Stock Purchase Rights and the Administrator, which agreement must be in writing and signed by the Optionee or holder and the Company.

16. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. As a condition to the exercise of an Option or Stock Purchase Right, the Company may require the person exercising the award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law.

17. **Reservation of Shares.** The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. **Agreements.** Options and Stock Purchase Rights shall be evidenced by Option Agreements and Restricted Stock Purchase Agreements, respectively, in such form(s) as the Administrator shall from time to time approve.

19. **Stockholder Approval.** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws.

20. **Information and Documents to Optionees and Purchasers.** Prior to the date, if any, upon which the Common Stock becomes a Listed Security and if required by the Applicable Laws, the Company shall provide financial statements at least annually to each Optionee and to each individual who acquired Shares pursuant to the Plan, during the period such Optionee or purchaser has one or more Options or Stock Purchase Rights outstanding, and in the case of an individual who acquired Shares pursuant to the Plan, during the period such individual owns such Shares. The Company shall not be required to provide such information if the issuance of Options or Stock Purchase Rights under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information.

SUNSHINE HEART, INC.
AMENDED AND RESTATED 2011 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: March 17, 2011
AMENDED BY THE BOARD OF DIRECTORS: May 20, 2011
APPROVED BY THE STOCKHOLDERS: August 18, 2011

AMENDMENT AND RESTATEMENT APPROVED BY BOARD OF DIRECTORS: November 2, 2011
AMENDMENT AND RESTATEMENT APPROVED BY THE STOCKHOLDERS: November 29, 2011

1. GENERAL.

(a) Successor to and Continuation of Prior Plan. The Plan is intended as the successor to and continuation of the Sunshine Heart, Inc. Amended and Restated 2002 Stock Plan (the ***"Prior Plan"***). Following the Effective Date, no additional stock awards shall be granted under the Prior Plan. From and after the Effective Date, all outstanding stock awards granted under the Prior Plan shall remain subject to the terms of the Prior Plan; provided, however, any shares underlying outstanding stock awards granted under the Prior Plan that expire or terminate for any reason prior to exercise or settlement or are forfeited because of the failure to meet a contingency or condition required to vest such shares (the ***"Returning Shares"***) shall become available for issuance pursuant to Awards granted hereunder. All Awards granted on or after the Effective Date of this Plan shall be subject to the terms of this Plan.

(b) Eligible Award Recipients. The persons eligible to receive Awards are Employees, Directors and Consultants.

(c) Available Awards. The Plan provides for the grant of the following Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights, (iv) Performance Stock Awards, (v) Performance Cash Awards, and (vi) Other Stock Awards.

(d) Purpose. The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Awards as set forth in Section 1(b), to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

(e) Listing Rules. Notwithstanding any other provision of this Plan, while the Company is admitted to the official list of ASX, the provisions of this Plan are subject to the Listing Rules and this Plan is deemed to include any provisions necessary to comply with the Listing Rules.

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2. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time (A) which of the persons eligible under the Plan shall be granted Awards; (B) when and how each Award shall be granted; (C) what type or combination of types of Award shall be granted; (D) the provisions of each Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Awards granted under the Plan, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement or in the written terms of a Performance Cash Award, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Award stating the time at which it may first be exercised or the time during which it will vest.

(v) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant or to the extent necessary to maintain compliance with applicable law or stock exchange rules.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. However, except as provided in Section 9(a) relating to Capitalization Adjustments, to the extent required by applicable law or listing requirements, stockholder approval shall be required for any amendment of the Plan that either (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (D) materially extends the term of the Plan, or (E) expands the types of Awards available for

issuance under the Plan. Except as provided above, rights under any Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant and such Participant consents in writing or (2) such amendment is necessary to maintain compliance with applicable law or stock exchange rules.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 162(m) of the Code regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, (B) Section 422 of the Code regarding "incentive stock options" or (C) Rule 16b-3.

(viii) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; provided, however, that except with respect to amendments that disqualify or impair the status of an Incentive Stock Option, a Participant's rights under any Award shall not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Awards without the affected Participant's consent if necessary to maintain the qualified status of the Award as an Incentive Stock Option, to bring the Award into compliance with Section 409A of the Code or to the extent necessary to maintain compliance with applicable law or stock exchange rules.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

(xi) Subject to the Listing Rules, to effect, at any time and from time to time, with the consent of any adversely affected Participant, (A) the reduction of the exercise price (or strike price) of any outstanding Option or SAR under the Plan; (B) the cancellation of any outstanding Option or SAR under the Plan and the grant in substitution therefor of (1) a new Option or SAR under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, (2) an Other Stock Award, (3) cash and/or (4) other valuable consideration (as determined by the Board, in its sole discretion); or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee.

(i) General. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee shall have, in connection with the administration of the

Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(ii) Section 162(m) and Rule 16b-3 Compliance. The Committee may consist solely of two (2) or more Outside Directors, in accordance with Section 162(m) of the Code, or solely of two (2) or more Non-Employee Directors, in accordance with Rule 16b-3.

(d) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to Section 9(a) relating to Capitalization Adjustments and the Listing Rules, the aggregate number of shares of Common Stock of the Company that may be issued pursuant to Stock Awards after the Effective Date shall not exceed 180,000,000 shares plus the number of the Returning Shares. For clarity, the limitation in this Section 3(a) is a limitation in the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a). Shares may be issued in connection with a merger or acquisition as permitted by, as applicable, NASDAQ Listing Rule 5635(c)(3), NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable stock exchange rules, and such issuance shall not reduce the number of shares available for issuance under the Plan. Furthermore, if a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (i.e., the Participant receives cash rather than stock), such expiration, termination or settlement shall not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan.

(b) Reversion of Shares to the Share Reserve. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited shall revert to and again become available for issuance under the Plan. Any shares reacquired, withheld, or not issued by the Company pursuant to Section 8(g) or as consideration for the exercise of an Option shall again become available for issuance under the Plan. For the avoidance of doubt, if an appreciation distribution in respect of a Stock Appreciation Right is paid in shares of Common Stock, the number of shares subject to the Stock Award that are not delivered to the Participant shall remain available for subsequent issuance under the Plan.

(c) Incentive Stock Option Limit. Notwithstanding anything to the contrary in this Section 3 and, subject to the provisions of Section 9(a) relating to Capitalization

Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be 180,000,000 shares of Common Stock.

(d) Source of Shares. Subject to the provisions of the Listing Rules and any law, regulation and agreement governing the Company, the stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and (f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; provided, however, that Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405, unless the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code because the Stock Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS. Each Option or SAR shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; provided, however, that each Option Agreement or Stock Appreciation Right Agreement shall conform to (through incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise price (or strike price) of each Option or SAR shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Option or SAR is granted. Notwithstanding the foregoing, an

Option or SAR may be granted with an exercise price (or strike price) lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR if such Option or SAR is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) Purchase Price for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. Subject to the provisions of the Listing Rules and any law, regulation and agreement governing the Company, the permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if the Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided, further, that shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are reduced to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board.

(d) Exercise and Payment of a SAR. To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate

Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) the strike price that will be determined by the Board at the time of grant of the Stock Appreciation Right. The appreciation distribution in respect to a Stock Appreciation Right may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs shall apply:

(i) Restrictions on Transfer. An Option or SAR shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant; provided, however, that the Board may, in its sole discretion, permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request. Except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Notwithstanding the foregoing, an Option or SAR may be transferred pursuant to a domestic relations order; provided, however, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Notwithstanding the foregoing, the Participant may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect Option exercises, designate a third party who, in the event of the death of the Participant, shall thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant's estate shall be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) Termination of Continuous Service. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company,

if a Participant's Continuous Service terminates (other than for Cause or upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Award Agreement), or (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Award Agreement (as applicable), the Option or SAR shall terminate.

(h) Extension of Termination Date. If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause or upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR shall terminate on the earlier of (i) the expiration of a total period of three (3) months (that need not be consecutive) after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR shall terminate on the earlier of (i) the expiration of a period equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), or (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Award Agreement (as applicable), the Option or SAR (as applicable) shall terminate.

(j) Death of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement during which an Option or SAR may be exercised after the termination of the Participant's Continuous Service for a reason other than death, then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest

or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Award Agreement), or (ii) the expiration of the term of such Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the time specified herein or in the Award Agreement (as applicable), the Option or SAR shall terminate.

(k) Termination for Cause. Except as explicitly provided otherwise in a Participant's Award Agreement, if a Participant's Continuous Service is terminated for Cause, the Option or SAR shall terminate upon the date of such Participant's termination of Continuous Service, and the Participant shall be prohibited from exercising his or her Option or SAR from and after the time of such termination of Continuous Service.

(l) Non-Exempt Employees. No Option or SAR granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six (6) months following the date of grant of the Option or SAR. Notwithstanding the foregoing, consistent with the provisions of the Worker Economic Opportunity Act, (i) in the event of the Participant's death or Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement or in another applicable agreement or in accordance with the Company's then current employment policies and guidelines), any such vested Options and SARs may be exercised earlier than six (6) months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARS.

(a) Performance Awards.

(i) Performance Stock Awards. A Performance Stock Award is a Stock Award that may vest or may be exercised contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not, require the completion of a specified period of Continuous Service. The length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained shall be conclusively determined by the Committee, in its sole discretion. The maximum number of shares that may be granted to any Participant in a calendar year attributable to Stock Awards described in this Section 6(a)(i) shall not exceed 37,500,000 shares of Common Stock. The Board may provide for or, subject to such terms and conditions as the Board may specify, may permit a Participant to elect for, the payment of any Performance Stock Award to be deferred to a specified date or event. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

(ii) Performance Cash Awards. A Performance Cash Award is a cash award that may be paid contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Cash Award may also require the completion of a specified period of Continuous Service. At the time of grant of a Performance Cash Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained shall be conclusively determined by the Committee, in its sole discretion. The maximum value that may be granted to any Participant in a calendar year attributable to cash awards described in this Section 6(a)(ii) shall not exceed two million dollars ($2,000,000). The Board may provide for or, subject to such terms and conditions as the Board may specify, may permit a Participant to elect for, the payment of any Performance Cash Award to be deferred to a specified date or event. The Committee may specify the form of payment of Performance Cash Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Performance Cash Award, or such portion thereof as the Board may specify, to be paid in whole or in part in cash or other property.

(iii) Section 162(m) Compliance. Unless otherwise permitted in compliance with the requirements of Section 162(m) of the Code with respect to an Award intended to qualify as "performance-based compensation" thereunder, the Committee shall establish the Performance Goals applicable to, and the formula for calculating the amount payable under, the Award no later than the earlier of (A) the date ninety (90) days after the commencement of the applicable Performance Period, or (B) the date on which twenty-five percent (25%) of the Performance Period has elapsed, and in any event at a time when the achievement of the applicable Performance Goals remains substantially uncertain. Prior to the payment of any compensation under an Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code, the Committee shall certify the extent to which any Performance Goals and any other material terms under such Award have been satisfied (other than in cases where such relate solely to the increase in the value of the Common Stock). Notwithstanding satisfaction of any completion of any Performance Goals, to the extent specified at the time of grant of an Award to "covered employees" within the meaning of Section 162(m) of the Code, the number of Shares, Options, cash or other benefits granted, issued, retainable and/or vested under an Award on account of satisfaction of such Performance Goals may be reduced by the Committee on the basis of such further considerations as the Committee, in its sole discretion, shall determine.

(b) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than one hundred percent (100%) of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board shall have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

(a) Availability of Shares. During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock reasonably required to satisfy such Stock Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant shall not be eligible for the grant of a Stock Award or the subsequent issuance of Common Stock pursuant to the Stock Award if such grant or issuance would be in violation of any applicable securities law.

(c) No Obligation to Notify or Minimize Taxes. The Company shall have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

8. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting a grant by the Company of a Stock Award to any Participant shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant.

(c) Stockholder Rights. Other than as expressly set out in this Plan or as permitted under the Listing Rules, a Stock Award does not give a Participant any right to vote, receive dividends, participate in issues of new shares of Common Stock or grant any other rights to the Participant as a shareholder of the Company unless and until (i) such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Stock Award has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds One Hundred Thousand Dollars ($100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(f) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(g) Withholding Obligations. Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for

financial accounting purposes); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

(h) Electronic Delivery. Any reference herein to a "written" agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

(i) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(j) Compliance With Section 409A. To the extent that the Board determines that any Award granted hereunder is subject to Section 409A of the Code, the Award Agreement evidencing such Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Award Agreements shall be interpreted in accordance with Section 409A of the Code. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the Shares are publicly traded and a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount shall be made upon a "separation from service" before a date that is six (6) months following the date of such Participant's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant's death.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of, and upon, a Capitalization Adjustment or other reorganization of capital, the rights of the holder of a Stock Award will be changed to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the time of the reorganization. The Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c) and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

(b) Pro Rata Issues and Bonus Issues. In the case of a pro-rata issue (other than a bonus issue), the exercise price of a Stock Award will be adjusted in accordance with the formula set out for making such an adjustment in the Listing Rules. In the case of a bonus issue, the number of securities over which the Stock Award is exercisable will, in accordance with the Listing Rules, be increased by the number of securities which the Participant would have received if the Stock Award had been exercised before the record date for the bonus issue. Such adjustments shall be made by the Board, whose determination in that respect shall be final, binding and conclusive.

(c) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service; provided, however, that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(d) Corporate Transaction. The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the holder of the Stock Award or unless otherwise expressly provided by the Board at the time of grant of a Stock Award or as provided in the Listing Rules. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board shall take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction),

with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

(iv) arrange for the lapse of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration, if any, as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants.

(e) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

10. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time; provided, however that Incentive Stock Options may no longer be granted under the Plan after the day before the tenth (10th) anniversary of the Effective Date. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

11. EFFECTIVE DATE OF THE PLAN. This Plan shall become effective on the Effective Date.

12. CHOICE OF LAW. The law of the state of Minnesota shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. DEFINITIONS. As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) ***"Affiliate"*** means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The

Board shall have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) ***"ASX"*** means ASX Limited ABN 98 008 624 691.

(c) ***"Award"*** means a Stock Award or a Performance Cash Award.

(d) ***"Award Agreement"*** means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

(e) ***"Board"*** means the Board of Directors of the Company.

(f) ***"Capitalization Adjustment"*** means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards No. 123 (revised). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a Capitalization Adjustment.

(g) ***"Cause"*** shall have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term shall mean with respect to a Participant, the occurrence of any of the following events, if such event results in a demonstrably harmful impact on the Company's business or reputation, or that of any of its Subsidiaries: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause shall be made by the Company in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated by reason of dismissal without Cause for the purposes of outstanding Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(h) ***"Change in Control"*** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company

directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the ***"Subject Person"***) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting

securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the ***"Incumbent Board"***) cease for any reason to constitute at least a majority of the members of the Board; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(i) ***"Code"*** means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(j) ***"Committee"*** means a committee of one (1) or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(k) ***"Common Stock"*** means the common stock of the Company.

(l) ***"Company"*** means Sunshine Heart, Inc., a Delaware corporation.

(m) ***"Consultant"*** means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

(n) ***"Continuous Service"*** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, shall not terminate a Participant's Continuous Service; provided, however, if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant's Continuous Service shall be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of (i) any leave of absence approved by the Board or Chief Executive Officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(o) ***"Corporate Transaction"*** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) the consummation of a sale or other disposition in a single transaction or in a series of related transactions of securities of the Company representing at least ninety percent (90%) of the combined voting power of the Company's then outstanding securities;

(iii) the consummation of a merger, consolidation or similar transaction involving the Company following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction involving the Company following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(p) ***"Covered Employee"*** shall have the meaning provided in Section 162(m)(3) of the Code.

(q) ***"Director"*** means a member of the Board.

(r) ***"Disability"*** means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and shall be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(s) ***"Effective Date"*** means the effective date of this Plan document, which is the date this Plan is first approved by the Company's stockholders.

(t) ***"Employee"*** means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

(u) ***"Entity"*** means a corporation, partnership, limited liability company or other entity.

(v) ***"Exchange Act"*** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(w) ***"Exchange Act Person"*** means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act

Person" shall not include (i) the Company or any Subsidiary of the Company; (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company; (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities; (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities.

(x) ***"Fair Market Value"*** means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(y) ***"Incentive Stock Option"*** means an option granted pursuant to Section 5 of the Plan that is intended to be, and qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(z) ***"Listing Rules"*** means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

(aa) ***"Non-Employee Director"*** means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (***"Regulation S-K"***)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(bb) ***"Nonstatutory Stock Option"*** means any option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(cc) ***"Officer"*** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(dd) ***"Option"*** means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(ee) ***"Option Agreement"*** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(ff) ***"Optionholder"*** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(gg) ***"Other Stock Award"*** means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(hh) ***"Other Stock Award Agreement"*** means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ii) ***"Outside Director"*** means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of Treasury Regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an "affiliated corporation," and does not receive remuneration from the Company or an "affiliated corporation," either directly or indirectly, in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(jj) ***"Own"***, ***"Owned"***, ***"Owner"***, ***"Ownership"*** A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting or dispositive power, which includes the power to vote or to direct the voting or dispose of or direct the disposition of, with respect to such securities.

(kk) ***"Participant"*** means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ll) ***"Performance Cash Award"*** means an award of cash granted pursuant to the terms and conditions of Section 6(a)(ii).

(mm) ***"Performance Criteria"*** means the one or more criteria that the Board shall select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that shall be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization; (iv) total stockholder return; (v) return on equity or average stockholder's equity; (vi) return on assets, investment, or capital employed; (vii) stock price; (viii) margin (including gross margin); (ix) income (before or after taxes); (x) operating income; (xi) operating income after taxes; (xii) pre-tax profit; (xiii) operating cash flow; (xiv) sales or revenue targets; (xv) increases in revenue or product revenue; (xvi) expenses and cost reduction goals; (xvii) improvement in or attainment of working capital levels; (xiii) economic value added (or an equivalent metric); (xix) market share; (xx) cash flow; (xxi) cash flow per share; (xxii) share price performance; (xxiii) debt reduction; (xxiv) implementation or completion of projects or processes; (xxv) customer satisfaction; (xxvi) stockholders' equity; (xxvii) capital expenditures; (xxiii) debt levels; (xxix) operating profit or net operating profit; (xxx) workforce diversity; (xxxi) growth of net income or operating income; (xxxii) billings; and (xxxiii) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board.

(nn) ***"Performance Goals"*** means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board shall appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (A) to exclude restructuring and/or other nonrecurring charges; (B) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated Performance Goals; (C) to exclude the effects of changes to generally accepted accounting principles; (D) to exclude the effects of any statutory adjustments to corporate tax rates; and (E) to exclude the effects of any "extraordinary items" as determined under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

(oo) ***"Performance Period"*** means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(pp) ***"Performance Stock Award"*** means a Stock Award granted under the terms and conditions of Section 6(a)(i).

(qq) ***"Plan"*** means this Sunshine Heart, Inc. Amended and Restated 2011 Equity Incentive Plan.

(rr) ***"Rule 16b-3"*** means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(ss) ***"Securities Act"*** means the Securities Act of 1933, as amended.

(tt) ***"Stock Appreciation Right"*** or ***"SAR"*** means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(uu) ***"Stock Appreciation Right Agreement"*** means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

(vv) ***"Stock Award"*** means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Stock Appreciation Right, a Performance Stock Award or any Other Stock Award.

(ww) ***"Stock Award Agreement"*** means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(xx) ***"Subsidiary"*** means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(yy) **"Ten Percent Stockholder"** means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.

Exhibit 10.7

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement (this "Agreement") is entered into as of , 2011 (the "Effective Date"), by and between Sunshine Heart, Inc., a Delaware corporation (the "Company"), and , a resident of ***[Minnesota/Auckland, New Zealand]** ("Executive").

Background

WHEREAS, Executive is a key member of the management of the Company and has heretofore devoted substantial skill and effort to the affairs of the Company; and

WHEREAS, it is desirable and in the best interests of the Company and its shareholders to continue to obtain the benefits of Executive's services and attention to the affairs of the Company; and

WHEREAS, it is desirable and in the best interests of the Company and its shareholders to provide inducement for Executive (A) to remain in the service of the Company in the event of any proposed or anticipated Change in Control (as defined below) and (B) to remain in the service of the Company in order to facilitate an orderly transition if a Change in Control occurs, without regard to the effect such Change in Control may have on Executive's employment with the Company; and

WHEREAS, it is desirable and in the best interests of the Company and its shareholders that Executive be in a position to make judgments and advise the Company with respect to any proposed Change in Control; and

WHEREAS, for the reasons set forth above, the Company and Executive desire to enter into this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Company and Executive agree as follows:

1. Definitions. Capitalized terms used in the Agreement shall have their defined meaning throughout the Agreement. The following terms shall have the meanings set forth below.

(a) **"Board"** means the Board of Directors of the Company.

(b) **"Cause"** shall have the meaning ascribed to that term under Section 13(g) of the Equity Incentive Plan, replacing "Participant" with "Executive" for purposes of this Agreement.

(c) **"Code"** means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes a reference to such provision as it may be amended from time to time and to any successor provision.

(d) **"Change in Control"** shall have the meaning ascribed to that term under Section 13(h) of the Equity Incentive Plan.

(e) **"Disability"** shall have the meaning ascribed to that term under Section 13(r) of the Equity Incentive Plan, replacing "Participant" with "Executive" for purposes of this Agreement.

(f) **"Equity Incentive Plan"** means the Sunshine Heart, Inc. 2011 Equity Incentive Plan, as amended from time to time.

(g) **"Health Benefits"** means if Executive (and/or Executive's covered dependents) is eligible for and properly elects to continue group medical and/or dental insurance coverage, as in place immediately prior to the Termination Date, the Company's continued payment of the Company's portion of any premiums or costs of such coverage until the earlier of (i) ***[eighteen (18) CEO/twelve (12) executive officers other than CEO]** months after the Termination Date, or (ii) the date Executive (and/or Executive's covered dependants, as applicable) is eligible to receive group medical and/or dental insurance coverage by a subsequent employer, in either case provided Executive remains eligible for continuation coverage and timely pays Executive's portion, if any, of such coverage. All such Company-provided medical and/or dental insurance premiums, or costs of coverage, will be paid directly to the insurance carrier or other provider by the Company and Executive will make arrangements with the Company to pay Executive's portion of such coverage in an amount equal to such portion that Executive would pay if Executive was actively employed by the Company during such period.

(h) **"Letter Agreement"** means the Employment Terms letter from the Company to Executive dated , 2011, and countersigned by Executive on , 2011.

(i) **"Monthly Base Salary"** means Executive's monthly base salary as of the Termination Date, provided, however, if Executive's monthly base salary has been reduced and such reduction has triggered Executive's Resignation for Good Reason, then "Monthly Base Salary" shall mean Executive's monthly base salary immediately prior to such reduction.

(j) **"Notice of Termination"** means a written notice which shall indicate the specific termination provisions in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide the basis for such termination.

(k) **"Option Agreement"** means Senior Management Stock Option Grant Notice and the related Option Agreement for Senior Management between Executive and the Company dated , 2011.

(l) **"Preliminary Event"** shall mean an involuntary termination of the Executive's employment by the Company without Cause prior to a Change in Control and the expiration of the Term; provided that Executive reasonably demonstrates that such termination (i) was requested by a party other than the Board that has taken other steps reasonably calculated to result in a Change in Control or (ii) otherwise arose in connection with or in anticipation of a Change in Control.

(m) **"Proprietary Information Agreement"** means the Employee Proprietary Information, Inventions, Assignment and Non-Competition Agreement between Executive and the Company dated , 2011.

(n) **"Resignation for Good Reason"** has the meaning ascribed to that term under Section 9(b) the Option Agreement, replacing "you" or "your" with "Executive" or "Executive's", as appropriate, for purposes of this Agreement; provided, however, that the following additional language shall be added to the end of such definition for the purposes of this Agreement:

> provided, however, that a ***"Resignation for Good Reason"*** shall not exist unless you have first provided Notice of Termination to the Company of the occurrence of one or more of the conditions under (i) — (iv) above within 30 days of the condition's occurrence, *and* such condition is not fully remedied by the Company within 30 days after the Company's receipt of written notice from you, and your Date of Termination as a result of such event occurs within 180 days after the initial occurrence of such event.

(o) **"Successor"** means any successor to all or substantially all of the Company's business by merger, consolidation, purchase of assets or otherwise.

(p) **"Term"** means the period from the Effective Date through the later of (i) the five-year anniversary of the Effective Date, provided that such period shall be automatically extended for successive two-year periods thereafter until notice of non-renewal is given by the Company or Executive to the other party hereto at least sixty (60) days prior to the five-year anniversary of the Effective Date or the end of the two-year extension period then in effect, as the case may be, or (ii) if a Change in Control occurs on or prior to the five-year anniversary of the Effective Date (or prior to the end of the two-year extension period then in effect as provided for in clause (i) hereof), the one-year anniversary of the effective date of the Change in Control.

(q) **"Termination Date"** means the date of Executive's "separation from service" with the Company within the meaning of Section 409A(a)(2)(A)(i) of the Code.

(r) **"Termination Payments"** means the Company's payment to Executive of (i) an amount equal to ***[eighteen (18) CEO/twelve (12) executive officers other than CEO]**

months of Executive's Monthly Base Salary, less applicable withholdings, plus (ii) an amount equal to the incentive bonus payment received by Executive for the fiscal year immediately preceding the fiscal year in which the Termination Date occurs, less applicable withholdings, both payable in a lump sum on the Company's first regular payroll date after expiration of the release described in Section 7.

(s) **"Transition Period"** means the period commencing on the effective date of the Change in Control and ending on the date that is one year thereafter.

2. Option Acceleration Upon a Change in Control. Subject to Section 8, a Change in Control while Executive is actively employed by the Company during the Term shall cause the immediate acceleration of the vesting of 100% of any unvested portion of any stock option awards held by Executive on the effective date of such Change in Control, including without limitation any options granted under the Equity Incentive Plan, which acceleration shall be in addition to any other rights Executive may have under the terms of any such stock option or restricted stock award. Any such acceleration shall not, however, detract from the authority of the Board or any committee thereof under the Equity Incentive Plan or otherwise to cancel any such stock option award, to the extent not exercised prior to the effective time of the Change in Control, in exchange for consideration, in such form as may be determined by the Board or such committee, in an amount equal to the excess, if any, of (A) the fair market value (as determined in good faith by the Board or such committee) immediately prior to the effective time of the Change in Control of the number of shares of the Company's common stock remaining subject to the stock option award, over (B) the aggregate exercise price of such number of shares remaining subject to the stock option award.

3. Termination of Employment. Executive shall at all times be an employee at will, and the Company may terminate Executive's employment with or without Cause at any time or Executive may resign (whether through a Resignation for Good Reason or otherwise) at any time, subject to any notice requirements or other obligations of the parties under this Agreement.

4. Payments Upon Termination of Employment After a Change in Control. If a Change in Control occurs during the Term, and if Executive's employment terminates such that the Termination Date occurs during or after the Transition Period, then Executive shall be entitled to payments and benefits on the terms and conditions specified in this Section 4.

(a) Payment Upon Involuntary Termination Without Cause or Voluntary Resignation for Good Reason During the Transition Period. If Executive's Termination Date occurs during the Transition Period, and if such termination is involuntary at the initiative of the Company without Cause or due to a voluntary Resignation for Good Reason, then, in addition to such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable in accordance with the Company's regular payroll

practices and applicable plans and programs), the Company shall provide to Executive the Termination Payments and the Health Benefits, subject to the conditions in Section 7.

(b) Other Termination Following a Change in Control. If Executive's Termination Date occurs during the Transition Period or otherwise following a Change in Control, and such termination is:

(i) by reason of Executive's abandonment of or resignation from employment for any reason (other than, during the Transition Period, a Resignation for Good Reason);

(ii) by reason of termination of Executive's employment by the Company for Cause;

(iii) because of Executive's death or Disability; or

(iv) upon or following expiration of the Term,

then the Company will pay to Executive, or Executive's beneficiary or Executive's estate, as the case may be, such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable pursuant to the Company's regular payroll practices and applicable plans and programs), and Executive shall not be entitled to any additional compensation or benefits provided under this Section 4.

5. Payments Upon a Change in Control. If Executive's employment terminates during the Term due to a voluntary Resignation for Good Reason and a Change in Control occurs within ninety (90) days after the Termination Date and during the Term or a Preliminary Event occurs and a Change in Control occurs within ninety (90) days after the Termination Date and during the Term, then, in addition to such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable in accordance with the Company's regular payroll practices and applicable plans and programs), the Company shall provide to Executive the Termination Payments and the Health Benefits, subject to the conditions in Section 7. Except as provided in the preceding sentence and Section 2, Executive shall not be entitled to any payments, benefits or accelerated vesting of equity upon a Change in Control.

6. Payments Upon Termination of Employment Prior to a Change in Control or Upon or Following Expiration of the Term. If Executive's employment is terminated for any reason, whether at the initiative of the Company or Executive or due to Executive's death or Disability, and the Termination Date occurs prior to a Change in Control or upon or following expiration of the Term, then, except as provided in Section 5, the Company will pay to Executive, or Executive's beneficiary or Executive's estate, as the case may be, such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable pursuant to the Company's regular payroll practices and applicable

plans and programs), and Executive shall not be entitled to any additional compensation or benefits under this Section 6.

7. Release and Other Conditions. Notwithstanding any other provisions of this Agreement, neither the Company nor any Successor shall be obligated to provide the Termination Payments or Health Benefits under Sections 4 or 5 unless (a) Executive shall have signed a full release of any and all claims in favor of the Company (and any Successor), pursuant to a form of release acceptable to counsel to the Company, (b) all applicable consideration periods and rescission periods provided by law shall have expired, and (c) Executive is in strict compliance with the terms of this Agreement and the Proprietary Information Agreement as of the dates the Company provides any Termination Payments or Health Benefits.

8. "Parachute Payment" Adjustment. Any payment or benefit Executive is eligible to receive from the Company under this Agreement pursuant to a Change in Control shall be considered a Payment (as defined in the Option Agreement) and therefore subject to Section 9(c) of the Option Agreement.

9. Notice of Termination. Any purported termination of employment by the Company or by Executive (other than a termination by mutual agreement or Executive's death) shall be communicated by written Notice of Termination to the other party hereto.

10. Acknowledgment of Letter Agreement or the Proprietary Information Agreement. Executive acknowledges and agrees that nothing in this Agreement limits or supersedes any of the provisions contained in the Letter Agreement or the Proprietary Information Agreement, all of which remain in full force and effect between Executive and the Company and are hereby reaffirmed in all respects.

11. Miscellaneous.

(a) Tax Withholding. The Company may withhold from any amounts payable under this Agreement such federal, state and local income and employment taxes as the Company shall determine are required to be withheld pursuant to any applicable law or regulation.

(b) Section 409A. This Agreement is intended to satisfy, or be exempt from, the requirements of Section 409A(a)(2), (3) and (4) of the Code, including current and future guidance and regulations interpreting such provisions, and should be interpreted accordingly.

(c) Assignment; Successors. This Agreement is personal to Executive and without the prior written consent of the Company shall not be assignable by Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by Executive's legal representatives. The Company may, without further consent of Executive, assign this Agreement to any Successor, and this Agreement shall be binding upon and inure to the benefit of any Successor of the Company.

(d) Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, mailed by certified mail (return receipt requested) or sent by overnight delivery service, cable, telegram, facsimile transmission or telex to the Company at the Company's address or to Executive at the last address of Executive contained in the Company's records. Either party may, by notice hereunder, designate a changed address. Notice so given shall, in the case of notice so given by mail, be deemed to be given and received on the registered date or the date stamped on the certified mail receipt, in the case of notice so given by overnight delivery service, on the date of actual delivery and, in the case of notice so given by cable, telegram, facsimile transmission, telex or personal delivery, on the date of actual transmission or, as the case may be, personal delivery.

(e) Governing Law; Consent to Jurisdiction, Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota, without regard to its principles of conflicts of laws. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Minnesota and the United States District Court for the District of Minnesota for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(f) Construction. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(g) Waivers. No failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or by law.

(h) Amendment. No modification of or amendment to this Agreement nor any waiver of any rights under this Agreement shall be effective unless in a writing signed by the Company and Executive.

(i) Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and Executive relating to payments and benefits upon a Change in Control or termination of Executive's employment or other separation from service with the Company. This Agreement supersedes all prior discussions, agreements or understandings between Executive and the Company related to such subject matter.

(j) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

EXECUTIVE HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS AND ACCEPTS THE OBLIGATIONS WHICH IT IMPOSES UPON EXECUTIVE WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO EXECUTIVE TO INDUCE EXECUTIVE TO SIGN THIS AGREEMENT. EXECUTIVE SIGNS THIS AGREEMENT VOLUNTARILY AND FREELY.

THE COMPANY:	**EXECUTIVE:**
SUNSHINE HEART, INC.	
By: _____	_____
Name: Dave Rosa	***[insert Executive name]**
Title: CEO	
Date: _____	

Exhibit 10.16

LEASE AGREEMENT

This **LEASE AGREEMENT** ("Lease") is made and entered into this **15th day of September, 2010** by and between **CSM PROPERTIES, INC.**, a Minnesota corporation ("Landlord") and **SUNSHINE HEART, INC.**, a Delaware corporation ("Tenant").

SECTION 1. FUNDAMENTAL LEASE TERMS. Subject to the covenants, terms and conditions of this Lease as more particularly set forth herein, the fundamental terms of this Lease are as follows:

A. **Premises** (***Section 2***): Approximately **10,362 total square feet of rentable area** (comprised of 4,144 square feet of warehouse space and 6,218 square feet of office space) within the Building (defined herein) containing approximately 30,001 square feet of rentable area, located in the Project (defined herein) containing approximately 30,001 total square feet of rentable area and commonly known as the **EDENVALE BUSINESS CENTER PHASE III**. The rentable area of the Premises, Building and Project shall be subject to adjustment pursuant to the terms of this Lease.

B. **Initial Lease Term** (***Section 4***): **Twenty-Four (24)** full calendar months, commencing on **October 1, 2010**, and expiring on **September 30, 2012**. The Lease Term shall be subject to adjustment pursuant to the terms of this Lease, and subject to confirmation by Tenant using the most currently available BOMA standards.

C. **Base Rent** (***Section 5***):

Months	Monthly Base Rent	Per Rentable Sq. Ft.
10/01/10 — 10/31/10 *	$ 0.00	$ 0.00
11/01/10 — 09/30/11	$ 6,562.60	$ 7.60
10/01/11 - 10/31/11 *	$ 0.00	$ 0.00
11/01/11 - 09/30/12	$ 6,761.21	$ 7.83

*Base Rent and Operating Expanses shall be abated during this period.

Base Rent shall be subject to adjustment pursuant to the terms of this Lease.

D. **Proportionate Share** (***Section 7***): **Thirty-four and 54/100 percent (34.54%)** subject to adjustment pursuant to the terms of this Lease.

E. **Permitted Use** (***Section 10***): **General office and warehouse use only and for no other purpose.**

F. **Security Deposit** (***Section 24***): **Eleven Thousand Two Hundred Fifty-One and 20/100 Dollars ($11,251.20).**

G. **Address of Premises**: **7651 Anagram Drive, Eden Prairie, Minnesota 55344.**

H. **Addresses for Invoices and Payments:**

If to Landlord:

If By Electronic Transfer of Funds:

(to Landlord's bank account designated by written notice to Tenant from time to time, please call Landlord's Cash Management Department at (612) 395-7000 for bank account information)

If By Check:

CSM PROPERTIES, INC.
c/o CSM Investors, Inc.
SDS 12-1243
P.O. Box 86
Minneapolis, MN 55486-1243

If to Tenant:

Sunshine Heart, Inc.
7651 Anagram Drive
Eden Prairie, Minnesota 55344
Attn: _____
Phone: _____

I. **Addresses for Legal Notices** (***Section 19***):

If to Landlord:

CSM PROPERTIES, INC.
c/o CSM Corporation
500 Washington Ave. S., Suite 3000
Minneapolis, MN 55415-1151

Attn: V.P. Property Management

(with copy to:)

If to Tenant:

Sunshine Heart, Inc.
7651 Anagram Drive
Eden Prairie, Minnesota 55344
Attn: _____

Phone: _____

CSM Corporation
500 Washington Ave. S., Suite 3000
Minneapolis, MN 55415-1151
Attn: General Counsel

SECTION 2. PREMISES. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, in "As-Is" condition, the premises ("Premises") depicted on the site plan and floor plan attached hereto as **EXHIBIT A and EXHIBIT B**. The Premises contains approximately **10,362 total square feet of rentable area** (comprised of 4,144 square feet of warehouse space and 6,218 square feet of office space). The Premises is located within the building ("Building") depicted in the site plan attached hereto as **EXHIBIT A** containing approximately 30,001 total square feet of rentable area, inclusive of Common Building Areas. The Building, all other improvements within the area outlined on **EXHIBIT A**, Common Areas (as defined herein), and the real property underlying the same are collectively referred to herein as the "Project". The Project is commonly known as the **EDENVALE BUSINESS CENTER PHASE III**, is located at the street address of **7651 Anagram Drive**, **Eden Prairie, Minnesota 55344** and is comprised of approximately 30,001 of rentable area. For purposes of this Lease, the number of square feet of rentable area in the Premises, Building and Project (including without limitation, the Common

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Building Areas), has been and will be determined by measuring from the exterior face of exterior walls, and from the midline or centerpoint of interior or party walls.

SECTION 3. COMMON AREAS. All areas and facilities of the Building and Project that are provided and designated by Landlord from time to time for the general use and convenience of the tenants of the Project are collectively referred to herein as "Common Areas". Tenant and its employees, invitees and customers shall have the non-exclusive right to use, without charge, all Common Areas, in common with Landlord and all other tenants and occupants of the Project, and their respective employees, invitees and customers, but subject to any reasonable rules and regulations, and amendments or additions thereto, which may be adopted by Landlord from time to time. The term "Common Areas" shall include, without limitation, (i) all interior common mechanical rooms, utility rooms, restrooms, vestibules, stairways or corridors within the Building not intended to selectively serve one or more tenants (herein, "Common Building Areas"), and (ii) all exterior pedestrian walkways, patios, landscaped areas, sidewalks, service drives, plazas, malls, throughways, loading areas and parking areas not exclusively reserved to particular tenants, entrances, exits, driveways, and roads. Landlord reserves the right to make use of or grant easements over, under or across the exterior portions of the Building and Common Areas of the Project so long as such use does not materially disturb or otherwise materially interfere with Tenant's business operations in the Premises, Building signage or utilization of the Common Areas.

SECTION 4. LEASE TERM. Tenant hereby takes the Premises from Landlord, upon and subject to the covenants, terms and conditions hereinafter set forth, for the term (herein, "term of this Lease" or "Lease Term") commencing on **October 1, 2010** ("Commencement Date") and continuing through and including **September 30, 2012** ("Expiration Date"). Notwithstanding anything in this Lease to the contrary, if Landlord for any reason whatsoever (except Tenant's default) cannot deliver possession of the Premises to the Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable for any loss or damage resulting therefrom, however, (i) all Rent shall be abated until Landlord delivers possession of the Premises to Tenant, and (ii) the Commencement Date shall be the actual date Landlord delivers possession of the Premises to Tenant and the Expiration Date shall be the last day of the 24th full calendar month thereafter. Upon such delivery, Landlord and Tenant shall execute an addendum to this Lease confirming the Commencement Date and Expiration Date.

SECTION 5. RENT. Tenant agrees to pay Landlord monthly in advance, without demand, offset, abatement or deduction, except as otherwise permitted in this Lease, as base rent during the term of this Lease ("Base Rent"), the sum of money set forth in ***Section 1.C.*** of this Lease, which has been computed based upon the total rentable area of the Premises. If the amount of rentable area in the Premises changes from time to time, then Base Rent shall be equitably adjusted by Landlord based on the then current rentable area of the Premises as determined by Landlord pursuant to ***Section 2*** of this Lease. The initial monthly installment of Base Rent shall be due and payable on or before the Commencement Date and all succeeding installments of Base Rent shall be due and payable on or before the first day of each succeeding calendar month during the term of this Lease; provided, however, that if the Commencement Date is other than the first day of a calendar month, then the monthly Rent for such partial month shall be prorated based on the number of days in such partial month and paid in advance. Tenant shall also pay to Landlord, as additional rent, all other sums due under this Lease and the word "Rent", as used in this Lease, shall mean the Base Rent and the additional rent payable hereunder. All Rent shall be payable to Landlord by electronic transfer of funds at the bank account designated by Landlord by written notice to Tenant from time to time. Notwithstanding the foregoing, if Tenant has a legitimate business reason for not paying by electronic transfer of funds, then upon prior written notice to

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Landlord, Tenant may pay Rent by check to the address set forth in ***Section 1.H.*** above, or at such other address as may from time to time be designated by Landlord. If any Rent or other sum due from Tenant is not received by Landlord on or before the fifth (5th) day of the month for which the Rent or such sum is due, then a late payment charge of $250.00 per occurrence shall become due and payable to Landlord, all in addition to such amounts owed under this Lease. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided. Any sums paid to Landlord by Tenant pursuant to this Lease shall be applied to Tenant's account in the following order: first to the payment of costs of collection, including without limitation attorneys' fees and court costs; then to the payment of late charges and accrued interest due on past due amounts; then to the payment of Rent. Periodic Rent invoices that may be provided to Tenant by Landlord are provided at the discretion and will of Landlord and as a courtesy only and in no event shall the date of delivery or receipt of an invoice, or the failure to deliver an invoice, extend the time for payment of Rent or the date Rent is due and payable.

SECTION 6. SURRENDER OF POSSESSION AND HOLDING OVER. In the event that Tenant fails to surrender possession of the Premises upon the expiration or termination of this Lease, then Tenant shall be obligated to (i) vacate and deliver the Premises to Landlord immediately upon receipt of written notice to vacate from Landlord, (ii) pay Landlord as Base Rent for such holdover period, an amount equal to one and one-half (1.5) times the rate of Base Rent in effect on the date of expiration or termination of this Lease, together with all additional rent and other sums and charges as provided in this Lease, and (iii) indemnify, hold harmless and defend Landlord against all claims for liability, costs or direct damages by any other party to whom Landlord may have leased all or part of the Premises. If Tenant holds over with the prior written consent of Landlord, then Tenant's occupancy for the holdover period shall be deemed a month to month occupancy terminable by either party upon thirty (30) days written notice to the other party, and all of the terms and provisions of this Lease shall be applicable during that period, except that Tenant shall pay Landlord monthly, in advance, as Base Rent for the holdover period, an amount equal to the rate of Base Rent in effect on the date of expiration or termination of this Lease, together with all additional rent and other sums and charges as

provided in this Lease; provided, however, that Landlord shall have the right, from time to time, to adjust the Base Rent payable by Tenant during the holdover period by providing Tenant with at least thirty (30) days prior written notice of such adjustment. No holding over by Tenant, without the prior written consent of Landlord shall operate to extend the term of this Lease. Nothing contained herein shall be construed to give Tenant any right to hold over or to impair or limit any of Landlord's rights and remedies set forth in this Lease if Tenant holds over without the prior written consent of Landlord, including without limitation, the right to terminate this Lease at any time during such holdover period, to recover possession of the Premises from Tenant, or to recover damages from Tenant from such holding over.

SECTION 7. OPERATING EXPENSES.

A. Operating Expenses. Tenant shall also pay Landlord monthly in advance, without demand, offset, abatement or deduction, as additional rent during the Lease Term, Tenant's Proportionate Share of all costs which Landlord may incur in owning, maintaining, operating, and repairing (including replacements when repairs are not economically prudent in Landlord's reasonable discretion) the Building, Common Areas and all other improvements within the Project. All such costs are referred to herein as "Operating

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Expenses" and are hereby defined to include, without limitation, the following: (a) costs (including without limitation, sales and service taxes) incurred by Landlord in the management of the Project and fulfillment of its obligations under ***Section 12.A.*** herein; (b) utility charges for Common Areas of the Project and water, sewer and any other utility charges not separately metered to a particular tenant in the Building as provided in ***Section 8*** herein; (c) exterior window washing; (d) debris, snow and ice removal; (e) parking lot sweeping, patching and sealcoating; (f) maintenance, repair and replacement of landscaping, irrigation systems and retaining walls; (g) management fees, not to exceed 4% of Rent for the Project; (h) wages and benefits payable to employees of Landlord below the level of corporate property manager employed to perform maintenance, operation, repair or replacement work for the Project; (i) all services, tools, equipment, and supplies used for maintaining, operating, repairing or replacing the Project; (j) all real property taxes, installments of special assessments and governmental impositions of any kind whatsoever imposed upon Landlord by reason of its ownership, operation or management of the Premises, including without limitation the so called Minnesota "state general tax", and legal fees and administrative fees incurred in connection with actions to reduce the same; (k) dues and assessments by means of covenants, conditions, easements or restrictions of record and/or owners' associations if any, which accrue against the Project during the term of this Lease; (l) all premiums, deductibles, retentions, commissions, service fees and administrative fees for insurance coverages Landlord is required to carry pursuant to ***Section 12.B.*** herein or by its lender, or that Landlord otherwise deems reasonably necessary to carry, including without limitation, property insurance, commercial general liability insurance, and rent loss insurance; (m) maintenance, repair, monitoring and testing of fire sprinkler systems, storm sewer ponds, wetlands and ground water; (n) the yearly amortization of major non-recurring capital expenditures, costs, repairs, and replacements (including without limitation, improvements Landlord is required to make to the Project pursuant to this Lease, if any, to comply with applicable laws, and installation of any device or equipment which improves the operating efficiency of any system within the Premises or the Project) which shall be amortized over the useful life of the improvement and at an interest rate as reasonably determined by Landlord, and (o) all other expenses which would generally be regarded as operating, repair, replacement and maintenance expenses or Common Area expenses.

The foregoing notwithstanding, Operating Expenses shall not include (1) costs for any employees above the rank of building manager; (2) leasing commissions and marketing costs related to leasing or releasing of the Project; (3) payments of principal, interest, financing or refinancing costs on debt or amortization payments on any mortgage or underlying ground lease encumbering the Project; (4) Landlord's franchise or income taxes; (5) depreciation; (6) bad debts, rent loss or reserves for bad debts or rent loss; (7) repairing or replacing any damage caused by condemnation; and (8) costs reimbursed to Landlord from insurance proceeds or third parties.

B. Proportionate Share. Tenant's proportionate share of Operating Expenses ("Proportionate Share") shall be equal to a fraction, the numerator of which is the total rentable square footage of the Premises, and the denominator of which is the total rentable square footage of the Project. Landlord shall invoice Tenant for Tenant's estimated annual Proportionate Share of Operating Expenses for each calendar year, which amount shall be adjusted reasonably from time-to-time by Landlord based upon anticipated Operating Expenses, and which amount shall be due and payable at the same time Base Rent is due in twelve (12) equal monthly installments. Tenant's Proportionate Share of Operating Expenses for the years in which the Lease Term commences and terminates shall be prorated as

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equitably determined by Landlord based upon the Commencement Date and date of termination of the Lease Term. Notwithstanding anything contained herein to the contrary, during the year in which this Lease terminates, Landlord, prior to the termination date, shall have the option to invoice Tenant for Tenant's Proportionate Share of the Operating Expenses based upon the previous year's Operating Expenses.

Operating Expenses for the first year of the Term shall be $5.20 per square foot; provided that such amount is an estimate only and shall not be binding upon Landlord.

C. Exclusions. Without limiting the foregoing, if any tenant or other occupant of the Project separately maintains any part of the Building, or any part of the Common Areas, or separately pays for the cost of any utilities serving its premises, or separately insures its premises, or is separately required to pay real estate taxes on its premises or any separate tax parcel contained within its premises, then on a line item basis (i) the cost of such Building and common area maintenance, utilities, insurance and taxes shall be excluded from the definition of Operating Expenses, and (ii) the total rentable square feet of area contained within the premises of such tenant or occupant shall be excluded from the denominator of the fraction comprising Tenant's Proportionate Share of the Operating Expenses, as set forth above in the preceding paragraph, for the purpose of computing Tenant's Proportionate Share of those costs of Building and common area maintenance, utilities, insurance and taxes for the Project not separately paid as provided above.

D. Reconciliation. Within six (6) months following the close of each calendar year, Landlord shall provide Tenant an accounting showing in reasonable detail the computations of Operating Expenses due pursuant to this Section, provided, however, that Landlord's failure to timely provide any such accounting within the applicable six (6) month period shall not relieve Tenant of its obligation to pay any sums due to Landlord relative to any such reconciliation. If the accounting shows that the total of the monthly payments made by Tenant exceeds the amount of Operating Expenses due by Tenant under this Section, the accounting shall be accompanied by evidence of a credit to Tenant's account, except that if the Lease Term has expired, then the amount of the credit shall be paid to Tenant. If the accounting shows that the total of the monthly payments made by Tenant is less

than the amount of Operating Expenses due by Tenant under this Section, the accounting shall be accompanied by an invoice for the additional Operating Expenses due from Tenant and Tenant shall pay Landlord the amount set forth in the invoice within thirty (30) days following receipt of same.

E. Tenant's Right to Inspect Landlord's Books. Within ninety (90) days after receipt of Landlord's annual reconciliation statement for Operating Expenses, Tenant may inspect Landlord's books and records relative to computation of Operating Expenses referenced in said reconciliation statement. If Tenant does not perform such inspection within said ninety (90) day period, Tenant shall be deemed to have waived its right to inspect Landlord's books for the applicable reconciliation statement and charges referenced therein. Tenant may perform only one (1) such inspection in each calendar year during the Lease Term. Any such inspection shall be performed at the offices of Landlord and shall be performed at Tenant's sole cost and expense unless the amount of Operating Expenses paid by Tenant exceeded more than ten percent (10%) of the actual amounts determined by Tenant during such inspection, in which case, Landlord shall be responsible for the costs and expenses of such inspection, excluding Tenant's travel, lodging, and mean expenses.

SECTION 8. UTILITIES. Commencing on the earlier of the Commencement Date or the date Landlord delivers possession of the Premises to Tenant, Tenant shall also pay when due, without demand, offset or deduction, as additional rent during the Lease Term, all charges for utilities furnished to or for the use or benefit of Tenant or the Premises. Consumption charges for all utilities for the Premises that have been separately metered by Landlord or the utility provider shall be paid by Tenant directly to the utility provider when due. Consumption charges for any utilities not separately metered to a particular tenant in the Building shall be included within the definition of Operating Expenses and recoverable by Landlord as provided in ***Section 7*** above; provided, however, that (i) if Tenant and one or more (but less than all) other tenants of the Project share a utility meter, then Tenant shall pay Landlord monthly one-twelfth (1/12) of Tenant's annual estimated pro-rata share of consumption charges for such shared utility service as equitably determined by Landlord, and (ii) to the extent Tenant uses a disproportionate amount of water and sewer service as reasonably determined by Landlord, Landlord shall have the right to submeter Tenant's usage of water and sewer service and collect from Tenant monthly, in advance, one-twelfth ($1/12^{th}$) of the annual estimated consumption charges for such services, which amounts shall be reconciled annually together with Landlord's reconciliation of Operating Expenses. Except to the extent of Landlord's negligence (unless waived pursuant to ***Section 15.C.*** herein), Landlord shall not be liable for damages or otherwise, and Tenant shall have no right of demand, offset, abatement or deduction, if any utility provider's service to the Premises is interrupted or impaired by weather, fire, accident, riot, strike, act of God, the making of necessary repairs or improvements, or any other causes beyond the reasonable control of Landlord. If any public authorities require a reduction in energy consumption in the use or operation of the Building or Project, Tenant agrees to conform to such requirements.

Except as otherwise provided herein, Landlord shall not be liable for damages or otherwise, and Tenant shall have no right of demand, offset, abatement or deduction, if any utility provider's service to the Premises is interrupted or impaired by weather, fire, accident, riot, strike, act of God, the making of necessary repairs or improvements, or any other causes beyond the reasonable control of Landlord. Notwithstanding the foregoing, in the event (i) either (x) such interruption or impairment of service is caused by the negligence of Landlord or its contractors, agents or employees or (y) such interruption or impairment is not caused by Tenant's acts or omissions and Landlord fails to take all commercially reasonable steps to restore such service as soon as reasonably possible, (ii) the interruption or impairment of service continues for a period of three (3) consecutive business days, and (iii) as a result of such interruption or impairment of service the Premises are rendered untenantable, then in such case the payment of Rent shall equitably abate in proportion to the area of the Premises rendered untenantable by such disrupted utility beginning on the fourth (4^{th}) day and such abatement shall continue until such service is restored to the Premises, provided, however, (a) in no event shall the abatement exceed the actual amount of insurance proceeds recovered by Landlord under its rent loss insurance for the Project, (b) a condition precedent to Tenant's right of abatement is that Tenant shall cooperate with Landlord and provide such information or certifications reasonably required in order to submit a claim for such rent loss insurance, and (c) the abatement shall only apply to the extent the type of utility interrupted is either gas, electric, water or sewer.

SECTION 9. ADDITIONAL TAXES. If applicable in the jurisdiction where the Premises are located, Tenant shall pay and be liable for all rental, sales, service and use taxes or other similar taxes arising from Tenant's operation of its business within the Premises, if any, levied or imposed by any city, state, county or other governmental body having authority, and if levied upon Landlord, such payments shall be reimbursed to Landlord by Tenant as additional rent.

SECTION 10. PERMITTED USE. The Premises are leased to Tenant solely for the use and purpose set forth in ***Section 1.E.*** of this Lease ("Permitted Use"). Tenant shall not use, occupy, or permit the use or occupancy of the Premises or any portion thereof for any other use or purpose whatsoever, without obtaining the prior written consent of Landlord which consent shall not be unreasonably withheld.

SECTION 11. ADDITIONAL OBLIGATIONS OF TENANT.

A. Occupancy and Use. Tenant shall occupy the Premises, conduct its business and control its officers, directors, shareholders, members, managers, employees, agents, contractors, and invitees (collectively, "Affiliated Parties") in such a manner as is lawful, reputable and will not create a nuisance. Tenant shall not overload, damage or deface the Premises or do any act which may make void or voidable any insurance on the Premises or the Project, or which may render an increased or extra premium payable for such insurance. Tenant shall not permit any operation within the Premises which emits any noise, odor, or matter which intrudes into other portions of the Project or otherwise interferes with, annoys or disturbs any other tenant or occupant of the Project in its normal business operations or Landlord in its management of the Project. Tenant and its Affiliated Parties, customers, vendors and suppliers shall not utilize any portion of the loading dock area or the Common Areas for (i) overnight or long term parking, placement, or storage of vehicles, trailers, storage containers, or their equivalents used in whole or in part for storage of inventory, supplies, goods or the like, except with Landlord's prior written consent, or (ii) the storage of pallets, crates, boxes, refuse or rubbish other than that which is placed in rubbish containers or dumpsters provided by or approved by Landlord.

B. Signs. Tenant shall not install, place, erect, or paint any sign, marquee or awning of any type or description in or about the Premises or Project which are visible from the exterior of the Premises, except those signs submitted to and approved by Landlord in writing, which approval shall not be unreasonably withheld, and which signs are in conformance with Landlord's sign criteria attached hereto as **EXHIBIT C** and in conformance with applicable governmental laws, rules, regulations and ordinances. Landlord shall have the right to approve, which approval shall not be unreasonably withheld, the type and size, location and color of all signs which Tenant desires to use or place in or upon the exterior or windows of the Premises or the Building. Landlord may install temporary or permanent signage relating to the Project in the Common Areas that does not materially interfere with Tenant's signage as approved by Landlord hereunder.

C. Compliance With Laws, Rules and Regulations. Except as otherwise provided in this ***Section 11.C.***, from and after the Commencement Date, Tenant shall, at its sole cost and expense, cause the Premises and Tenant's use thereof to comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction over the use, condition or occupancy of the Premises. Any repairs, alterations or modifications to the exterior or structural elements of the Building or to the Common Areas of the Project necessary to comply with applicable laws shall be made by Landlord and shall be included within the definition of Operating Expenses and reimbursed to Landlord under ***Section 7*** of this Lease, provided, however, Tenant shall be solely responsible and shall reimburse Landlord for the entire cost and expense of such work if compliance is necessary due to Tenant's specific use or occupancy of the Premises or due to Tenant's acts or omissions, or as a result of any alterations, modifications or improvements to the Premises or Building constructed by or on behalf of Tenant.

Tenant will also comply with the reasonable rules and regulations of the Project adopted by Landlord. Landlord shall have the right at all times, upon thirty (30) days prior written notice to Tenant, to change and amend the rules and regulations in any reasonable manner as may be deemed advisable for the safety, care, cleanliness, preservation of good order and operation or use of the Project or the Premises. All rules and regulations of the Project, and amendments or modifications thereof, will be sent by Landlord to Tenant in writing and shall thereafter be carried out and observed by Tenant.

D. Tenant's Insurance Obligations. Tenant shall, during the term hereof, keep in full force and effect at its expense the following insurance coverages:

(1) Property insurance, including plate glass coverage, written on the Insurance Service Office's Special Perils form, or equivalent, covering the full replacement value of (a) Tenant's personal property, goods, inventory, supplies, signs, furniture, and moveable trade fixtures, equipment and machinery (collectively, "Tenant's Personal Property"), and (b) Improvements (defined herein) Tenant is required to remove at Lease expiration or termination pursuant to ***Section 11.F.*** herein;

(2) Commercial General Liability insurance in an amount of not less than $1,000,000 per "occurrence" and $2,000,000 "aggregate" for the Premises, insuring Tenant and its Affiliated Parties against liability for bodily injury, death, personal injury, and including contractual liability coverage. The amount of such liability insurance shall not limit Tenant's liability under this Lease. Such policy or policies shall name Landlord and CSM Corporation (or Landlord's other designated management agent) and upon request, Landlord's designated mortgagee, as additional insureds and shall provide that thirty (30) days' prior written notice must be given to Landlord prior to modification or cancellation of such policy of insurance.

Tenant shall furnish evidence satisfactory to Landlord at the time this Lease is executed, and thereafter from time to time within ten (10) days after written request by Landlord, that such coverages are in full force and effect. Within ten (10) days after written request by Landlord, Tenant shall also provide Landlord with a copy of such policies of insurance. All such insurance carried by Tenant shall be issued by companies having an A.M. Best Company rating B+ or better.

E. Tenant's Maintenance and Repair Obligations. Tenant shall at its sole expense and all times throughout the term of this Lease, including renewals and extensions thereof, keep and maintain the Premises and all of Tenant's signage in a clean, safe, sanitary, and working condition and in compliance with all applicable federal, state, and local laws, codes, ordinances, rules and regulations. Within ten (10) days after written request by Tenant, Landlord will assign to Tenant any warranties in Landlord's possession for items which Tenant is responsible for maintaining, repairing and replacing under this Lease. Tenant's obligations hereunder shall include, but not be limited to, the maintenance, repair and replacement, if necessary, of the following items to the extent they exclusively serve the Premises: (i) heating, ventilation and air conditioning system and equipment (including a written preventative maintenance contract, a copy of which must be provided to Landlord on an ongoing basis at Landlord's request); provided, however, if replacement of the HVAC system or equipment is necessary as reasonably determined by Landlord and is not required due to Tenant's negligent acts or omissions, then Landlord will perform the replacement work and bear the initial cost thereof, and Tenant shall reimburse Landlord,

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as additional rent on a monthly basis at the same time Base Rent is due, for the annual amortized cost of such replacement work amortized at an interest rate of ten percent (10%) per annum over the useful life of the unit as reasonably determined by Landlord, it being the understanding of the parties that in no event shall Tenant's obligation for reimbursement of such amortized amounts extend beyond the term of this Lease as it may be extended, (ii) lighting, wiring, and plumbing fixtures, piping, and equipment, (iii) water heaters, (iv) motors and machinery, (v) all interior fixtures (including without limitation, trade fixtures, walls, partitions, doors, door handles, locks, closures and frames, and windows), including the regular painting thereof, and (vi) all exterior entrances, windows, doors, door handles, locks, closures and frames, docks (including without limitation, lifts, dock levelers, awnings, dock shelters, and staircase supports, treads and railings), including the regular painting thereof and the replacement of all broken glass. When used in this provision, the term "repair" shall include replacements or renewals when necessary, and all such repairs made by the Tenant shall be equal in quality and class to the original work. Tenant shall keep the sidewalk in front of the Premises clean and shall remove snow and ice accumulations of less than one inch. Within ten (10) days after written request by Landlord, Tenant shall provide to Landlord written proof substantiating Tenant's performance of any maintenance, repair or replacement required under the terms hereof. If Tenant does not provide Landlord with a copy of the preventative maintenance contract for the HVAC equipment as required by subsection (i) above, then Landlord may, at its option, perform (or contract for) the preventative maintenance of the HVAC equipment at Tenant's expense. Tenant agrees that all maintenance costs will continue to be Tenant's responsibility whether or not Landlord performs or chooses not to perform the preventative maintenance to the HVAC equipment. In addition, Landlord may, upon six (6) months prior written notice to Tenant, relieve Tenant of its preventative maintenance obligations for the HVAC equipment (excluding Tenant's repair and replacement obligations) at which time Landlord will take over such obligations, the reasonable cost of which shall be billed back to Tenant. If Tenant fails, refuses or neglects to maintain or repair the Premises as required in this Lease, then subject to the notice and cure period requirements of ***Section 18.A.(2)*** herein (except in the event of an emergency when no prior notice need be given by Landlord), Landlord may make such repairs, without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, personal property, furniture, trade fixtures, equipment, or other property or to Tenant's business by reason thereof, provided that Landlord shall use reasonable efforts not to disturb or otherwise interfere with Tenant's operations in the Premises, and upon completion thereof, Tenant shall pay to Landlord all costs incurred by Landlord in making such repairs or maintenance, including ten percent (10%) for overhead, within thirty (30) days after Landlord delivers to Tenant an invoice for such costs.

Landlord warrants that the existing electrical, plumbing, and heating, ventilating and air conditioning systems shall be in good operating condition on the Commencement Date. If the Premises does not comply with the foregoing warranty, Landlord shall promptly after receipt of written notice from Tenant (received within fifteen (15) days' from the commencement Date) setting forth with specificity the nature and extent of such non-compliance, rectify the same at Landlord's sole cost and expense.

F. Alterations and Improvements. Subject to Tenant obtaining, at its sole expense, any and all necessary federal, state and municipal governmental licenses, permits or approvals, Tenant shall have the right, at its sole expense, to construct and install all tenant improvements, furniture, trade fixtures, equipment, machinery and other improvements

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necessary for Tenant to utilize the Premises for its Permitted Use; provided, however, that such work is performed in a workmanlike manner and Tenant uses reasonable efforts not to disturb other tenants' use of their demised premises or the Common Areas during performance of such work. Prior to installing or making any alterations, physical additions or tenant improvements (collectively, "Improvements") on or within the Premises, Tenant shall (i) obtain Landlord's written approval of plans and specifications for such improvements, which approval shall not be unreasonably withheld, and (ii) forward to Landlord a copy of all governmental approvals required for the Improvements that Tenant has obtained, together with names and addresses of all contractors and subcontractors who will be working at the Premises. At the time that Tenant requests written approval of Tenant's proposed alterations and/or improvements from Landlord, Tenant may also request written approval from Landlord to leave such alterations and/or improvements in the Premises at the end of the Lease Term. Landlord may accept or reject Tenant's request in Landlord's sole discretion. Any such approval from Landlord must be in writing to be binding on the parties. All such work shall be performed by qualified, licensed and insured contractors or subcontractors, and Tenant shall hold harmless, indemnify and defend Landlord from any liens, damages, costs, liability, or claims for personal injury, property damage or death arising from installation of any such improvements. Tenant shall not make or allow to be made any Improvements that (i) are structural in nature, (ii) affect the mechanical, electrical, utility or other service systems for the Building, (iii) are visible from the exterior of the Building, or (iv) that cost in excess of $1,000.00, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Any Improvements in or to the Premises made by Tenant shall, at Landlord's option, become the property of Landlord and shall be surrendered to Landlord upon the termination of this Lease; provided, however, upon request by Landlord (unless otherwise agreed to in writing by Landlord), Tenant shall remove any designated Improvements upon expiration or earlier termination of the Lease Term, and further provided, that, this clause shall not apply to Tenant's Personal Property, which shall remain the property of Tenant and shall be removed by Tenant prior to the end of the term of this Lease. Tenant shall repair any damage to the Premises arising from installation or removal of such Improvements or Tenant's Personal Property in order to restore the Premises to the condition required by the terms of ***Section 11.J.*** herein. All costs of installation and removal of such Improvements and Tenant's Personal Property and repair to the Premises relating thereto, shall be paid by Tenant and if not paid, shall be deemed additional rent recoverable by Landlord under this Lease.

G. Hazardous Substances. Tenant and its Affiliated Parties shall not manufacture, generate, treat, transport, dispose of, release, discharge, or store on, under or about the Premises or the Project (except as reasonably required in the ordinary course of Tenant's business operations in the Premises or for routine maintenance thereof, to the extent used in compliance with applicable laws), any asbestos, petroleum or petroleum products, explosives, toxic materials, or substances defined as hazardous wastes, hazardous materials, or hazardous substances under any federal, state, or local law or regulation ("Hazardous Materials"). Tenant shall indemnify, hold harmless and defend (with counsel reasonably approved by Landlord) Landlord from and against any claims, damages, penalties, liabilities, and costs (including reasonable attorneys fees and expenses and court costs) caused by or arising out of (i) a violation of the foregoing prohibition by Tenant or (ii) the presence of any Hazardous Materials on, under, or about the Premises or the Project during the term of the Lease to the extent caused by or arising out of the actions or omissions of Tenant or its Affiliated Parties. Tenant shall clean up, remove, remediate and repair any soil or ground water contamination and damage caused by the presence or

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release of any Hazardous Materials in, on, under or about the Premises or the Project during the term of the Lease to the extent caused by or arising, out of the actions or omissions of Tenant or its Affiliated Parties, as required by applicable law and subject to Landlord's prior reasonable approval of the scope of Tenant's work. Tenant shall immediately give Landlord written notice (i) upon learning of the presence or release of any Hazardous Materials on or about the Premises or the Project by Tenant, (ii) upon receiving any notices from governmental agencies pertaining to Hazardous Materials which may affect the Premises or the Project, or (iii) upon receipt of notice of pending or threatened claims against Tenant or the Project due to the presence or release of Hazardous Materials on or about the Premises or the Project. The obligations of both parties hereunder shall survive the expiration or earlier termination of this Lease and the monetary obligations of Tenant shall be deemed additional Rent payable to and recoverable by Landlord hereunder. At Landlord's option, any penalties, damages or costs of compliance arising from the presence or release of Hazardous Materials not caused by the acts or omissions of Landlord or its employees, agents or contractors or any other tenant of the Project, may be included within the definition of Operating Expenses and recoverable by Landlord pursuant to ***Section 7*** above, not to exceed $1,000 per year. Landlord shall indemnify, hold harmless and defend (with counsel reasonably approved by Tenant) Tenant from and against any claims, damages, penalties, liabilities, and costs (including reasonable attorneys fees and expenses and court costs) caused by or arising out of the presence or release of Hazardous Materials on or about the Premises or the Project at any time prior to execution of this Lease, or at any time after execution, to the extent arising from the actions or omissions of Landlord, its Affiliated Parties, or any prior owner of the Premises or the Project.

H. Mechanic's and Materialmen's Liens. Tenant shall keep the Premises and the Project free from any claims or liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant and Tenant shall immediately notify Landlord of any such claim or lien of which Tenant has knowledge. Tenant will pay and discharge any mechanic's, materialmen's or other lien against the Premises resulting from Tenant's failure to make payment to such liening party, or will post bond, cash escrow or other security reasonably required by Landlord and diligently contest the lien. If a lien is claimed and Tenant does not cause it to be removed or contested (together with posting of bond, cash escrow or other security reasonably required by Landlord) within thirty (30) days after notice from Landlord to do so, then Landlord may require that Tenant provide to Landlord, at Tenant's sole cost and expense, a bond, letter of credit or cash escrow in an amount equal to one and one-half (1.5) times the amount of the lien, to insure Landlord against any liability for such lien. If Tenant contests the lien, it will do so at its expense in an expeditious manner. If the lien is reduced to final judgment, Tenant will discharge the judgment.

I. Financial Statements. Tenant shall, not more than once per calendar year, within fifteen (15) days following written request by Landlord, furnish to Landlord, or any present or prospective lender or buyer of the Project, Tenant's prior year and most current year-to-date financial statements (including a balance sheet and an income statement) certified by an officer or general partner of Tenant, which statements shall be in reasonable detail and conform to generally accepted accounting principles. Landlord shall advise the recipient of the financial statements that they shall be kept

and maintained in a confidential manner. Notwithstanding the foregoing, it is hereby acknowledged that Tenant is a publicly held corporation and all financial statements are public information and can be found at Tenant's website http://www.sunshineheart.com/. Landlord agrees that so long as Tenant

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remains a publicly held corporation (and has not assigned nor sublet the Premises); Landlord will obtain Tenant's financial statements in this manner.

J. Obligations Upon Termination. Upon the termination of this Lease in any manner whatsoever, Tenant shall (i) remove Tenant's Personal Property (and the personal property of any other person claiming under Tenant) and if requested by Landlord (unless otherwise agreed to in writing by Landlord), any other improvements made at any time to the Premises by or at the request of Tenant, (ii) repair any injury or damage to the Premises arising from installation or removal of such personal property or improvements, and (iii) quit and deliver up the Premises to Landlord peaceably and quietly in as good order and condition as the same are now in or hereafter may be put in by Landlord or Tenant, ordinary wear and tear and repairs or restoration which are Landlord's obligation excepted. If Tenant does not return possession of the Premises to Landlord in the condition required by this Lease, then (i) any improvements Tenant is required to remove upon the termination of this Lease or any of Tenant's Personal Property that are not removed on or before the date of termination of this Lease, however terminated, shall be deemed abandoned and Landlord may remove and dispose of the same as it deems prudent and any cost in regard thereto shall be payable by Tenant as additional Rent, (ii) Landlord may repair and restore the Premises to the condition required above and recover the costs of doing so from Tenant, and (iii) Tenant shall be liable to Landlord for the fair market value of lost rentals accruing during the period of time necessary for Landlord to remove Tenant's improvements and Tenant's Personal Property and to repair and restore the Premises to the condition noted above.

SECTION 12. OBLIGATIONS OF LANDLORD.

A. Landlord's Maintenance and Repair Obligations. Landlord shall not be required to make any improvements, replacements or repairs of any kind or character to the Premises or the Project during the term of this Lease except as are specifically set forth in this Section or elsewhere in this Lease. Landlord shall maintain, repair and replace only the roof (including flashing and drainage systems), fire sprinkler system, utility lines up to connection points with the Building, foundation, parking areas, Common Areas (including without limitation site lighting, project identification signs, landscaping and irrigation), and the exterior and structural portions of the Building and other improvements within the Project (including exterior painting and tuckpointing), provided, that Landlord's cost of maintaining, repairing and replacing the items set forth in this Section shall be included within the definition of Operating Expenses and recoverable by Landlord pursuant to ***Section 7*** of this Lease. Landlord shall use reasonable efforts not to disturb or otherwise interfere with Tenant's operations in the Premises when performing any maintenance or repair at the Premises.

B. Landlord's Insurance Obligations. During the term of this Lease, Landlord shall carry hazard and property insurance coverage on the Building in an amount equal to the full replacement cost thereof. Landlord shall not be obligated in any way or manner to insure any of Tenant's Personal Property upon or within the Premises or any Improvements which Tenant is required to remove pursuant to ***Section 11.F*** hereof. Landlord shall also carry Commercial General Liability insurance in an amount of at least $1,000,000 per "occurrence" and $2,000,000 "aggregate" per this location. Landlord may also carry such other insurance coverage, including without limitation, rent loss insurance, of the type and in amounts as Landlord deems prudent. Notwithstanding the foregoing, any insurance carried or required to be carried by Landlord relative to the Premises may be maintained

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under a blanket policy or policies of insurance covering the Premises and other properties owned by Landlord and its affiliates, and all premiums, commissions, service fees, and administrative fees paid or incurred by Landlord or its management agent (CSM Corporation) for such insurance, to the extent properly allocable to the Premises, and the cost of repairs not covered under such insurance due to deductible or retention provisions, shall be included within the definition of Operating Expenses under ***Section 7*** of this Lease. Tenant shall have no right in or claim to the proceeds of any policy of insurance maintained by Landlord under this Lease even if the cost of such insurance is borne by Tenant pursuant to ***Section 7*** of this Lease. If an increase in any insurance premiums paid by Landlord relative to the Project is caused by Tenant's use of the Premises, then Tenant shall pay the amount of such increase as additional rent to Landlord.

C. Landlord's Warranty of Possession. Landlord warrants that it has the right and authority to execute this Lease, and Tenant, upon payment of the required Rent and subject to the terms, conditions, covenants and agreements contained in this Lease, shall have quiet enjoyment and possession of the Premises during the full term of this Lease as well as any extension or renewal thereof. Landlord shall not be responsible for the acts or omissions of any other lessee or third party that may interfere with Tenant's use of the Premises.

D. Landlord's Initial Repairs. Prior to the Commencement Date, Landlord, at its sole cost and expense, will complete various repairs to the Premises described in the floor plan attached hereto as **EXHIBIT B**.

SECTION 13. ASSIGNMENT AND SUBLETTING. Tenant shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any person, other than the employees of Tenant, to occupy or use the Premises or any portion thereof, without the prior written consent of Landlord not to be unreasonably withheld. Any assignment or transfer of this Lease by transfer of a majority interest of stock, asset sale, merger, consolidation, liquidation or dissolution, or any changes in the ownership of, or power to vote in excess of fifty percent (50%) of its outstanding stock, shall constitute an assignment for purposes of this Section.

If Tenant desires to assign or sublet all or any part of the Premises, Tenant shall notify Landlord at least thirty (30) days in advance of the date on which Tenant desires to make such assignment or sublease. Tenant shall provide Landlord with a copy of the proposed assignment or sublease and such information or written consents as Landlord might request concerning the proposed sublessee or assignee to allow Landlord to make informed judgments as to the type of use, financial condition, gross sales, business experience, reputation, operations and general desirability of the proposed sublessee or assignee or to obtain credit information from a credit reporting service. Within fifteen (15) days after Landlord's receipt of Tenant's proposed assignment or sublease and all required information concerning the proposed sublessee or assignee, Landlord shall have either of the following options: (i) consent to the proposed assignment or sublease, and, if the rent due and payable by any assignee or sublessee under any such permitted assignment or sublease (or a combination of the rent payable under such assignment or sublease plus any bonus or any other consideration or any payment incident thereto) exceeds the Base Rent payable

under this Lease for such space, Tenant shall pay to Landlord one-half (1/2) of all such excess rent and other excess consideration within ten (10) days following receipt thereof by Tenant; or (ii) refuse, in Landlord's reasonable discretion and

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judgment, to consent to the proposed assignment or sublease, which refusal shall be deemed to have been exercised unless Landlord gives Tenant written notice providing otherwise.

In the event of any assignment or sublease, any option or right of first refusal granted to Tenant shall not be assignable by Tenant to any assignee or sublessee without Landlord's prior written consent, not to be unreasonably withheld. No assignee or sublessee of the Premises or any portion thereof may assign or sublet the Premises or any portion thereof. Upon the occurrence of a Default hereunder, if all or any part of the Premises are then assigned or sublet, Landlord, in addition to any other remedies provided by this Lease or provided by law, may, at its option, collect directly from the assignee or sublessee all rents becoming due to Tenant by reason of the assignment or sublease. Any acceptance of Rent or collection by Landlord of other sums directly from the assignee, sublessee or any other person shall not be construed as a novation or release of Tenant or any guarantor from the further performance of their respective obligations under this Lease or any guarantee hereof, and shall not be construed as a waiver by Landlord of any provisions hereof or any right hereunder. Any assignment or subletting without consent of Landlord and, to the extent required, any Lender, shall be void, and shall at the option of Landlord, constitute a default under this Lease. Consent to one assignment, subletting, occupation or use by any other person or entity shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person or entity. No subletting or assignment by Tenant, made with or without Landlord's consent, shall ever release Tenant from its obligation to pay the Rent and perform all other obligations to be performed by Tenant hereunder for the term of this Lease, or release any guarantor from any obligation or liability under any guarantee of this Lease.

SECTION 14. LANDLORD'S RIGHT OF ACCESS. At any and all reasonable times hereunder during Tenant's normal business hours, Landlord and its Affiliated Parties shall have the right to access and enter the Premises to inspect the same, to show the Premises to prospective purchasers, lessees, mortgagees, insurers or other interested parties, and to alter, improve, maintain, or repair the Premises or any other portion of the Project. If such access is other than during Tenant's normal business hours, Landlord shall give Tenant at least 24 hours prior written notice, except in the event of an emergency when no such prior notice shall be required. Tenant shall not prohibit Landlord or its Affiliated Parties from entering the Premises. Landlord shall have the right to use any and all means which Landlord may deem reasonably necessary to gain entry to the Premises in an emergency without liability therefor. Tenant shall permit Landlord to install, use, maintain and repair pipes, cables, conduits, plumbing, vents and wires under or through the raceways, conduits, risers, utility lines or ceiling plenum of the Premises as often and to the extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper use, leasing, operation and maintenance of the Project. Landlord and/or its Affiliated Parties agree that any access to the Premises shall be done in a way so as to minimize any interruption in Tenant's use of the Premises.

SECTION 15. INDEMNITY AND WAIVER OF SUBROGATION.

A. Release. Tenant agrees that Landlord and its Affiliated Parties shall not be liable to Tenant or its Affiliated Parties for, and Tenant hereby releases such parties from, any damage, compensation, liability, loss or claim from any cause, other than the negligence (unless waived pursuant to ***Section 15.C.*** herein) or willful misconduct of Landlord or its Affiliated Parties, relative to or arising from: (i) loss or damage to Tenant's Personal Property or Improvements that Tenant is required to remove pursuant to ***Section 11.F.*** hereof; (ii) any injury to person or damage to property on or about the Premises; (iii) any criminal act on or about the Premises or Project; or (iv) interference with Tenant's business operations or loss of occupancy or use of the Premises arising from Landlord's

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performance of its maintenance and repair obligations under this Lease or from Landlord's right to access or enter the Premises under this Lease. Tenant acknowledges and agrees that Landlord has no duty or obligation to provide security for the Premises, Building or Common Areas of the Project.

B. Indemnity. Tenant agrees to hold harmless, defend (with counsel reasonably approved by Landlord) and indemnify Landlord and its Affiliated Parties against any damage, compensation, liability, loss or claim arising out of any personal injury, death or property loss or damage occurring in or about the Premises or the Project during the Lease Term, regardless of when such claim is made, to the extent arising from the willful misconduct or negligent acts or omissions of Tenant or its Affiliated Parties. Landlord agrees to hold harmless, defend (with counsel reasonably approved by Tenant) and indemnify Tenant and its Affiliated Parties against any damage, compensation, liability, loss or claim arising out of any personal injury, death or property loss or damage occurring in or about the Premises or the Project during the Lease Term, regardless of when such claim is made, to the extent arising from the willful misconduct or negligent acts or omissions of Landlord or its Affiliated Parties.

C. Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby waive and release each other and their respective Affiliated Parties of and from any and all right of liability, recovery, claim, action or cause of action, against each other or their Affiliated Parties (or anyone claiming through or under them by way of subrogation or otherwise), for any damage, compensation, liability, loss or claim, regardless of cause or origin, including without limitation, negligence of Landlord or Tenant and their respective Affiliated Parties, to the extent coverable by property insurance (i.e. hazard and all risk insurance, fire and extended coverage property insurance or equivalent insurance). Notwithstanding the foregoing or anything contained in this Lease to the contrary, any release or waiver of claims shall not be operative in any case where the effect of the release or waiver is to invalidate insurance coverage or invalidate the right of the insured to recover thereunder.

SECTION 16. CASUALTY LOSS.

A. Total Destruction. If all of the Premises or the Project are totally destroyed by fire or any other event ("Casualty"), then this Lease shall terminate at the option of either Landlord or Tenant by written notice to the other party within sixty (60) days following the date of Casualty, and the Rent shall be abated for the unexpired portion of the Lease effective as of the date of Casualty.

B. Partial Destruction. If the Premises is partially damaged by Casualty, and if the Premises are damaged to such extent that the damage cannot, in Landlord's reasonable judgment, be rebuilt or repaired economically (taking into account the time necessary to receive any insurance proceeds and using normal construction methods without overtime or other premium) within two hundred seventy (270) days after the date of Casualty, then this Lease shall terminate at the option of Landlord or Tenant by written notice to the other party within sixty (60) days following the date of Casualty, and the Rent shall be abated for the unexpired portion of the Lease effective as of the date of Casualty. Notwithstanding anything contained herein to

the contrary, if the Premises or the Project is partially damaged by Casualty and either (i) insurance proceeds are not made available to Landlord or are inadequate for restoration, or (ii) repair or restoration of the same would not be economically prudent in Landlord's reasonable determination, then Landlord shall

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have the right to terminate this Lease by written notice to Tenant within sixty (60) days following the date of Casualty, and the Rent shall be abated for the unexpired portion of the Lease effective as of the date of Casualty.

C. Restoration Obligations. If this Lease is not terminated pursuant to ***Section 16.A.*** or ***Section 16.B***. above, then Landlord shall, at its sole expense, proceed with reasonable diligence, subject to Force Majeure delays (as defined in ***Section 27.G.*** of this Lease) to rebuild or repair the Premises (including Improvements made or paid for by Tenant, the loss of which is covered by insurance carried by Landlord, but excluding Tenant's Personal Property and Improvements that Tenant is required to remove pursuant to ***Section 11.F.*** above), the Building or other improvements within the Project to as near the condition in which they existed immediately prior to the date of Casualty as reasonably possible. If the Premises are to be rebuilt or repaired and are untenantable in whole or in part following the Casualty, then the Rent payable under this Lease during the period for which the Premises are untenantable shall be abated in proportion to the areas of the Premises rendered untenantable (as reasonably and equitably determined by Landlord) from the date of Casualty until restoration is completed by Landlord. Notwithstanding anything contained herein to the contrary, if the holder of a Mortgage purchases or acquires Landlord's interest in the Premises or the Project by foreclosure sale or deed in lieu thereof, then such holder shall not be bound by the restoration obligations set forth in this ***Section 16*** and shall have the option either to use any such insurance proceeds to restore the Premises in accordance with the terms of this Lease or to terminate this Lease and retain all such proceeds as its own and upon such termination the Rent shall be abated for the unexpired portion of the Lease effective as of the date of Casualty.

D. Insurance Proceeds. Tenant hereby waives any right in or claim to the proceeds of any policy of insurance maintained by Landlord under this Lease. If any insurance proceeds are recoverable on account of any Casualty affecting the Premises or the Project, then Tenant agrees that as between this Lease and any recorded mortgage, deed of trust or other instrument presently existing or hereafter created covering Landlord's interest in all or part of the Premises or the Project, and all increases, refinancings, extensions, renewals, amendments and modifications thereof (collectively, "Mortgage"), the terms of such Mortgage shall govern and be determinative relative to the payment and disposition of such proceeds.

SECTION 17. EMINENT DOMAIN.

A. Total Taking. If the entire Premises or the Project are taken by eminent domain, this Lease shall automatically terminate as of the date of taking, and the Rent shall be abated for the unexpired portion of the Lease effective as of the date of the taking.

B. Partial Taking. If part of the Premises or the Project is taken by eminent domain, Landlord shall have the right to terminate this Lease as of a date specified by Landlord by giving written notice thereof to Tenant within sixty (60) days after the date of taking. If Landlord does not elect to terminate this Lease, then Landlord shall, at its sole expense, proceed with reasonable diligence, subject to Force Majeure delays, to rebuild or repair the Premises (inclusive of Improvements made or paid for by Tenant, the loss of which is covered by condemnation proceeds received by Landlord, but excluding Tenant's Personal Property and Improvements that Tenant is required to remove pursuant to ***Section 11.F.*** above), the Building or other improvements within the Project to as near the condition in which they existed immediately prior to the date of taking as reasonably

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possible. If part of the Premises is rendered untenantable following any taking, then the Rent payable under this Lease shall be abated in proportion to the areas of the Premises rendered untenantable (as reasonably and equitably determined by Landlord) effective as of the date of taking.

C. Condemnation Proceeds. All damages awarded for a taking under the power of eminent domain shall belong to and be the exclusive property of Landlord whether such damages be awarded as compensation for diminution in value of the leasehold estate hereby created or to the fee of the Premises or the Project; provided, however, that Tenant shall be entitled to maintain an action for a separate award to Tenant for (a) Tenant's moving and business relocation expenses, (b) loss of Tenant's Personal Property, and (c) any other compensable interest Tenant may have under Minnesota law. If any condemnation proceeds are recoverable by Landlord on account of any taking affecting the Premises or the Project, then Tenant agrees that as between this Lease and any Mortgage, the terms of such Mortgage shall govern and be determinative relative to the payment and disposition of such proceeds.

SECTION 18. DEFAULT AND REMEDIES.

A. Default by Tenant. Each of the following occurrences shall be deemed an event of default ("Default") by Tenant under this Lease:

(1) Tenant has not paid any past due installment of Rent or any other payment required pursuant to this Lease within five (5) days after Landlord gives written notice of nonpayment to Tenant, provided, however, that no more than one such notice shall be required to be given in any calendar year; or

(2) Tenant has not complied with any term, provision or covenant of this Lease, other than the payment of Rent, and has not cured such noncompliance within ten (10) days after written notice to Tenant, or such longer period as may be reasonably required, not to exceed an additional forty-five (45) days, if the nature of cure is such that it cannot be completed within ten (10) days, so long as Tenant commenced cure within the initial ten (10) day period and thereafter diligently pursues cure to completion; or

(3) Tenant files a petition, or an involuntary petition is filed against Tenant (and is not dismissed within sixty (60) days), or Tenant becomes insolvent under any applicable federal or state bankruptcy or insolvency law, or Tenant admits that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant (and is not dismissed within sixty (60) days), or Tenant shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or

(4) Tenant does or permits to be done any act which results in a lien being filed against the Premises or the Project, and such lien is not discharged or bonded over pursuant to ***Section 11.H.*** of this Lease.

If a Default under ***Section 18.A.(3)*** occurs, nothing contained herein shall be construed to express or imply that Landlord consents to any assumption and/or assignment of the Lease by Tenant or the inclusion of this Lease within Tenant's bankruptcy estate, and Landlord expressly reserves the right to object to any assumption and/or assignment of

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the Lease and to any inclusion of this Lease within Tenant's bankruptcy estate. Neither Tenant nor any trustee who may be appointed in such case shall conduct or permit of any "fire", "bankruptcy", "going out of business", auction sale or other public sale in or from the Premises.

B. Landlord's Remedies for Tenant's Default. Upon the occurrence and continuance of a Default as defined above, Landlord may, in its sole discretion, elect any one or more of the following remedies:

(1) to cancel and terminate this Lease by written notice to Tenant; or

(2) whether or not Landlord elects to terminate this Lease, to enter upon and repossess the Premises with resort to judicial process by unlawful detainer action, summary proceedings, ejectment, force, or otherwise (provided, however, that if Tenant has abandoned or voluntarily surrendered possession of the Premises, then Landlord may enter upon and repossess the Premises without resort to judicial process or notice of any kind), and Landlord may, at Landlord's option, enter the Premises and take and hold possession thereof, and may remove all persons and property from the Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, without Landlord becoming liable for any loss or damage which may be occasioned thereby; or

(3) to cure the Default at any time for the account and at the expense of Tenant, in which event Tenant shall reimburse Landlord upon demand for any amount expended by Landlord in connection with the cure, including, without limitation, reasonable attorneys' fees and interest; or

(4) to pursue any other remedy at law or in equity that may be available to Landlord.

Upon and after repossession, whether or not Landlord has elected to terminate this Lease, Landlord may, but shall not be obligated to, relet the Premises, or any part thereof, to any one other than the Tenant, for such time and upon such terms and uses as Landlord may determine in its sole discretion. Landlord may also make alterations and repairs to the Premises to the extent Landlord deems reasonably necessary or desirable to relet the Premises. Any rent received shall be applied against Tenant's monetary obligations hereunder, but Landlord shall not be responsible or liable for any failure to collect any rent due upon such reletting.

In the event of any such termination or repossession, Tenant shall be liable to Landlord as follows:

(i) for all reasonable attorneys' fees and expenses incurred by Landlord in connection with exercising any remedy hereunder;

(ii) for the unpaid installments of Base Rent, additional rent or other unpaid sums that were due prior to such termination or reentry, including without limitation, interest and late payment fees, which sums shall be payable immediately;

(iii) for the installments of Base Rent, additional rent, and other sums falling due pursuant to the provisions of this Lease for the period after reentry, including

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without limitation, late payment charges and interest, which sums shall be payable as they become due hereunder;

(iv) for any Base Rent or additional rent concession that may have been granted to Tenant, as set forth in ***Section 1.C.***

(v) for all reasonable expenses incurred in releasing the Premises, including leasing commissions, reasonable attorneys' fees, and costs of alteration or repairs, which shall be payable by Tenant as they are incurred by Landlord; and

(vi) while the Premises are subject to any new lease or leases made pursuant to this Section, for the amount by which the monthly installments of rent payable under such new lease or leases is less than the monthly installment for all charges payable pursuant to this Lease, which deficiencies shall be payable monthly.

At any time after termination or repossession, whether or not Landlord may have collected any damages pursuant to the foregoing provisions, Landlord shall be entitled to recover from Tenant, as and for liquidated and agreed upon final damages for loss of bargain due to Tenant's Default, and not as a penalty, and in lieu of the amounts which would thereafter be payable pursuant to the foregoing provisions (but not in diminution of the amounts payable as provided above before termination), a sum equal to the present value of the amount by which the then fair rental value of the Premises is less than the Base Rent, additional rent and other sums or charges which would have been payable by Tenant for the unexpired portion of the term of this Lease, computed utilizing a discount rate equal to the ten (10) year U.S. Treasury Bond rate (or equivalent if discontinued). Tenant shall promptly pay to Landlord on demand the amount of such deficiency and all expenses incident thereto (including without limitation, commissions, reasonable attorneys' fees and expenses, and costs of alterations and repairs). If Landlord, after any such reentry, leases or relets the Premises, then the rent payable under such new lease shall be conclusive evidence of the fair rental value of the unexpired portion of the term of this Lease. If this Lease shall be terminated by reason of bankruptcy or insolvency of Tenant, Landlord shall be entitled to recover from Tenant or Tenant's estate, as liquidated damages for loss of bargain and not as a penalty, the amount determined by the immediately preceding paragraph.

C. Additional Remedies, Waivers, Miscellaneous.

(1) The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now and hereafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. Landlord may exercise its rights and remedies at any times, in any order, to any extent, and as often as Landlord deems advisable without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another.

(2) A single or partial exercise of a right or remedy shall not preclude a further exercise thereof, or the exercise of another right or remedy from time to time, and shall not be construed to relieve Tenant of any of its liabilities and obligations under this Lease, which shall survive any such election.

(3) No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a Default.

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(4) No waiver of Default shall extend to or affect any other Default or impair any right or remedy with respect thereto.

(5) No action or inaction by Landlord shall constitute a waiver of Default.

(6) No waiver of a Default shall be effective unless it is in writing and signed by Landlord.

D. Default by Landlord. If Landlord fails to timely perform any of its obligations under this Lease, which failure continues for a period of more than thirty (30) days after receipt of written notice from Tenant specifying such failure, or if such failure is of a nature that it cannot be cured within said thirty (30) day period and continues beyond the time reasonably necessary to cure (and Landlord has not commenced cure within the initial thirty (30) day cure period and thereafter diligently pursued cure to completion), then Landlord shall be in default under this Lease.

SECTION 19. NOTICES. All Rent and other payments required to be made by Tenant shall be payable to Landlord as provided in ***Section 1.H.*** and ***Section 5*** of this Lease, or such other bank account or address designated by Landlord by written notice to Tenant. All payments required to be made by Landlord to Tenant shall be payable at the address set forth in ***Section 1.H.***, or such other address within the United States as designated by Tenant by written notice to Landlord. Any notice or document required or permitted to be delivered by the terms of this Lease shall be deemed to be delivered (whether or not actually received) when (i) deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, or (ii) deposited with a reputable national commercial courier for overnight delivery (e.g. Federal Express or U.P.S.), addressed to the parties at the respective addresses set forth in ***Section 1.I.*** of this Lease, or such other address as may be designated by written notice to the other party.

SECTION 20. LANDLORD ASSIGNMENT. Landlord shall have the right to sell, convey, transfer, mortgage, or assign, in whole or in part, for collateral purposes or otherwise, its rights and obligations under this Lease and in all or part of the Premises and the Project. In the event of any sale, conveyance, transfer or assignment made other than for collateral purposes, this Lease shall remain in full force and effect, provided, however, that (i) Landlord shall be released from any and all liabilities under this Lease first arising after the date of such sale, conveyance, assignment or transfer, so long as the transferee assumes in writing Landlord's obligations under this Lease first arising after the date of transfer, and (ii) upon receipt of written notice from Landlord, Tenant shall immediately and automatically attorn to the transferee, so long as the transferee assumes in writing Landlord's obligations under this Lease first arising after the date of transfer.

SECTION 21. SUBORDINATION AND ATTORNMENT. This Lease is subject and subordinate to (i) the lien of any Mortgage which may now or hereafter encumber all or part of the Project, and (ii) all existing recorded restrictions, covenants, easements and agreements with respect to the Project, provided, however, that so long as this Lease is in full force and effect and Tenant is not in default beyond any applicable cure period hereunder, Tenant's possession of the Premises shall not be disturbed. In order to confirm such subordination (and/or any other terms set forth in this Section), Tenant shall, within ten (10) days after written request from Landlord, execute and deliver to Landlord or any Mortgage holder, any certification, instrument or other document required by Landlord or such Mortgage holder, in form and content as reasonably required by Landlord or such Mortgage holder. Tenant acknowledges and agrees that its failure to deliver any such statement in a timely manner is a Default under this Lease. Notwithstanding anything

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contained herein to the contrary, if the holder of any Mortgage elects to have this Lease be prior to its lien, Tenant agrees that upon receipt of notice of same from Landlord or such Mortgage holder, this Lease will be prior to such lien.

If the interests of Landlord under this Lease shall be transferred by reason of foreclosure, deed in lieu of foreclosure or other proceedings for enforcement of any Mortgage to any third party transferee (including without limitation the holder of any such Mortgage) (sometimes called the "New Owner"), then (i) Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder, (ii) Tenant shall be bound to the New Owner under the terms, covenants and conditions of this Lease for the balance of the term remaining, including any extensions or renewals, with the same force and effect as if the New Owner were Landlord under this Lease, (iii) Tenant shall attorn to the New Owner as its Landlord, and (iv) so long as this Lease is in full force and effect and Tenant is not in default beyond any applicable cure period hereunder at the time of transfer to New Owner, this Lease shall remain in full force and effect and the New Owner shall not disturb Tenant's possession of the Premises. Notwithstanding anything in this Lease to the contrary, neither the holder of any Mortgage, its successors or assigns (whether or not it acquires the interest of Landlord under this Lease by foreclosure, deed in lieu of foreclosure or other proceedings to enforce a Mortgage) or any New Owner shall be liable for any act, omission and/or breach of the Lease by Landlord, or bound by (a) any offsets or defenses which Tenant might have against Landlord, (b) any prepayment by Tenant of more than one (1) month's installment of Rent, (c) any amendment or modification of this Lease made subsequent to the granting of the Mortgage by Landlord, (d) the application of insurance or condemnation proceeds or the restoration of the Premises by Landlord in the event of a casualty loss thereto or a taking thereof, (e) the commencement or completion of any construction or restoration, or (f) restrictions on the use of other properties owned by Landlord for purposes which compete with Tenant.

SECTION 22. ESTOPPEL CERTIFICATES. Tenant agrees to furnish, from time to time, within ten (10) days after receipt of request from Landlord, a written statement certifying, to the extent applicable, the following: (i) Tenant is in possession of the Premises; (ii) the Premises are acceptable; (iii) the Lease is in full force and effect and there have been no amendments or modifications, or if there have been amendments or modifications, stating the amendments or modifications; (iv) the dates through which the Rent and other charges hereunder have been paid by Tenant; (v) agreeing that Tenant and Landlord will not thereafter modify this Lease without the prior consent of the Mortgage holder; (vi) Tenant claims no present charge, lien, or claim or offset against Rent; (vii) the Rent is not and will not be prepaid for more than one month in advance; (viii) there is no existing default by reason of some act or omission by Landlord; and (ix) such other matters as may be reasonably required by Landlord or the Mortgage holder. Tenant agrees that any such statement may be relied upon by any present owner or prospective purchaser of the Project and any present or prospective Mortgage holder or assignee of such Mortgage holder. Tenant acknowledges and agrees that its failure to deliver any such statement in a timely manner is a Default under this Lease.

SECTION 23. LANDLORD'S LIABILITY. If Landlord shall be in default under this Lease and, if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Project as the same may then be encumbered and neither Landlord nor any person or entity comprising Landlord shall be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord nor any person or entity comprising Landlord other than its interest in the Project as herein expressly provided.

SECTION 24. SECURITY DEPOSIT. The security deposit set forth in ***Section 1.F.*** ("Security Deposit") shall be paid to Landlord concurrently with Tenant's execution and delivery of this Lease to Landlord and shall be held by Landlord for the performance of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of Rent or a measure of Landlord's damages in case of default by Tenant. Upon the occurrence of any Default by Tenant under this Lease, Landlord may, from time to time, in addition to any other remedy of Landlord, use the Security Deposit to the extent necessary to make good any arrears of Rent, or to repair any damage or injury, or pay any expense or liability incurred by Landlord arising from the Default, and any remaining balance of the Security Deposit shall be returned by Landlord to Tenant upon termination of this Lease. If any portion of the Security Deposit is so used or applied, Tenant shall, upon five (5) days written notice from Landlord, deposit with Landlord by cash or cashier's check an amount sufficient to restore the Security Deposit to its original amount.

SECTION 25. RELOCATION OPTION. Intentionally deleted.

SECTION 26. BROKERAGE. Landlord and Tenant each represents and warrants to the other that there is no obligation to pay any brokerage fee, commission, finder's fee or other similar charge in connection with this Lease, other than a fee due to **Jay O'Brien at Watermark Real Estate Ventures, Inc.**, which is the responsibility of **Landlord**. Each party covenants that it will defend, indemnify and hold harmless the other party from and against any loss or liability by reason of brokerage or similar services alleged to have been rendered to, at the instance of, or agreed upon by said indemnifying party. Notwithstanding anything herein to the contrary, Landlord and Tenant agree that there shall be no brokerage fee or commission due on expansions, options or renewals by Tenant.

SECTION 27. MISCELLANEOUS.

A. Limitation of Warranties. LANDLORD AND TENANT EXPRESSLY AGREE THAT EXCEPT AS OTHERWISE SET FORTH IN THIS LEASE, THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE.

B. Landlord's Management Agent. Landlord hereby notifies Tenant that CSM Corporation, a Minnesota corporation, has been appointed to act as the agent in the management and operation of the Project for Landlord and is authorized to accept service of process and receive or give receipts for notices and demands on behalf of Landlord. Landlord reserves the right to change the identity and status of its duly authorized agent upon written notice to Tenant.

C. Tenant's Authority. Tenant does hereby represent and warrant that (i) Tenant is a duly organized and validly existing corporation under the laws of the State of Delaware, (ii) Tenant is qualified to do business in the state in which the Premises are located, (iii) the corporation has full right and authority to enter into this Lease, and (iv) each person signing on behalf of the corporation is authorized to do so.

D. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of Landlord and its heirs, personal representatives, successors and assigns, and Tenant and its heirs, personal representatives and permitted successors and assigns.

E. Severability. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

F. Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but together shall constitute one and the same instrument.

G. Force Majeure. The time within which Landlord shall be required to perform any covenant or obligation in this Lease shall be extended, without liability to Tenant, if the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of Force Majeure or by Tenant, provided, however, that Landlord gives reasonable notice to Tenant of the Force Majeure occurrence causing such delay or non-performance. For purposes of this Lease, "Force Majeure" shall mean any of the following occurrences: act of God; fire; earthquake; flood; explosion; actions or the elements of war; invasion; insurrection; outbreaks of disease; riot; mob violence; sabotage; inability to procure equipment, facilities, materials or supplies in the open market; failure of power; failure of transportation; strikes; lockouts; actions of labor unions; condemnation; requisition; laws; orders of governments or civil or military authorities; or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of Landlord.

H. Submission of Lease. Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option to lease. This Lease is not effective until execution by and delivery to both Landlord and Tenant.

I. Interest and Attorney's Fees. Without limiting and in addition to any other remedy of Landlord hereunder, Tenant agrees to pay Landlord (i) accrued interest on any sum not timely paid to Landlord when due at the rate of the lesser of fifteen percent (15%) per annum or the highest rate permitted by law, (ii) Landlord's costs of collection of any past due sums owing by Tenant, including without limitation court costs and reasonable attorney's fees and expenses, whether suit is actually filed or not, and (iii) any late charges set forth in ***Section 5*** of this Lease.

J. Headings. The section headings appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any Section.

K. Amendment. This Lease may not be altered, waived, amended, or extended except by an instrument in writing signed by Landlord and Tenant.

L. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter set forth herein, and supersedes and replaces all other agreements or understandings of the parties, whether oral or written.

M. Construction. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY AND THEIR RESPECTIVE COUNSEL HAVE REVIEWED AND REVISED, OR HAVE HAD THE

OPPORTUNITY TO REVIEW AND REVISE, THIS AGREEMENT AND THAT THE NORMAL RULE OF CONSTRUCTION TO THE EFFECT THAT AMBIGUITIES ARE TO BE RESOLVED AGAINST THE DRAFTING PARTY SHALL NOT BE EMPLOYED IN THE INTERPRETATION OF THIS LEASE OR ANY EXHIBITS, ADDENDUMS OR AMENDMENTS HERETO.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease effective the day and year first above written.

LANDLORD	**TENANT**
CSM PROPERTIES, INC.	**SUNSHINE HEART, INC.**
By: /s/ Sean Butts	By: /s/ David Rosa
Print Name: Sean Butts	Print Name: David Rosa
Print Title: Asset Manager	Print Title: CEO

Exhibit 10.17

Sunshine Heart Sub-Lease at 3/12 Frederick Street, St Leonards

This agreement (Sublease) sets out the terms under which Australian Surgical Design & Manufacture Pty, Limited (ASDM) of 2/12 Frederick Street, St Leonards, agrees to lease factory and office space to Sunshine Heart Inc. (Sunshine).

1. The commencement date of the Sublease is 1st April, 2011.

2. The term of the Sublease is 6 months. Following on from 30 September 2011 it will be a monthly rental agreement and the lessee agrees to provide 3 months notice of their intention to vacate the premises.

3. The area to be leased is as per diagram attached as Appendix 1.

4. All additional fixtures and fittings required by Sunshine, including additions to the security system, are the responsibility and expense of Sunshine.

5. Sunshine agrees to return the area leased to its original condition by the end of the lease period.

6. Both ASDM and Sunshine may terminate this Sublease by mutual agreement with the other party.

7. The rent is fixed at $12,500.00 per month, payable month in advance. The rent will be increased by $500 from 1 October 2011 to take into account the monthly rental arrangement.

8. Electricity is to be paid, based on an agreed figure equivalent to the electricity usage at Sunshine's previous premises, totaling $500 per month.

9. ASDM has at its own expense provide sound attenuation to the door between the two areas leased by Sunshine which door shall not be a part of the Sunshine fit out.

10. Subject to the terms and conditions of this Sublease, the provisions of the Headlease (including without limitation, the definitions, interpretations, terms and conditions, appendices, annexures and schedules thereof) are hereby incorporated into this Sublease mutatis mutandis as if the same were reproduced herein and set out in full and, where appropriate, with references to:

    (a) "the Lessor" in the Headlease being a reference to ASDM;

    (b) "the Lessee" in the Headlease being a reference to Sunshine; and

    (c) "this Lease" in the Headlease being a reference to this Sublease.

11. Notwithstanding any other provision of this Sublease, execution of this Sublease by any one or more of the parties, the payment and acceptance of any rent or other monies to the Sublessor or any other person or the entry into possession of the Premises, this Sublease shall not bind ASDM until consents have been procured in a form reasonably satisfactory to the Sublessor from the Headlessor and any mortgagee of the property. Wherever the consent or approval of ASDM is required or requested in relation to this Sublease, the consent and approval of the Headlessor shall also be required and Sunshine shall comply with any conditions imposed by the Headlessor with respect to such consent or approval which the Headlessor may grant or withhold in accordance with the Headlease as incorporated into this Sublease.

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12. Sunshine and ASDM further agree to the following confidentiality and Solicitation clauses:

Confidentiality

The proximity of staff and consultants of Sunshine and ASDM working in overlapping spaces may allow information confidential to either party to become known to staff or consultants of the other. Sunshine and ASDM agree that:

1. they will each use reasonable commercial efforts to maintain the confidentiality of their own confidential information,

2. they will take all commercially reasonable steps to prevent any confidential information of the other from being disclosed to any third party without the authority and consent of the other party, including instructing their staff to respect the confidentiality of any and all information that they acquire from the other party or its employees or consultants that might be confidential.

3. The obligation of confidentiality shall not extend to information that was already in the public domain; which becomes part of the public domain other than through a breach of this agreement; that is already in, or comes into, the possession of the receiving party other than through a breach of this agreement, or

4. Information that a party is required to disclose by law, in which case the party so required shall inform the other party of the requirement to disclose and will work with that other party to ameliorate any adverse effects of such disclosure.

No Solicitation of staff or business

Each of Sunshine and ASDM agrees that it will not solicit or employ any employee or consultant of the other party until 6 months after that person ceased to have such a relationship with the other party without the prior written agreement of the other party.

Each of Sunshine and ASDM agrees that it will not solicit the customers or suppliers of the other during the term of this agreement and for 6 months thereafter without the prior written agreement of the other party.

Executed as a Deed on February 19th, 2010

/s/ Dr. Gregory Roger	/s/ Rowena Hubble
Dr Gregory Roger	**Ms Rowena Hubble**
Advanced Surgical Design and Manufacture Limited	**Sunshine Heart, Inc.**

Exhibit 10.18

OFFICE/INDUSTRIAL FLEX LEASE

SILVER PRAIRIE CROSSROADS, LLC,
as
Landlord

and

SUNSHINE HEART INC.,
a Delaware corporation
as
Tenant

Regarding the Premises Located at:
12988 Valley View Road
Eden Prairie, Minnesota 55344

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LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is dated for identification purposes and is made effective as of October 21, 2011 by and between SILVER PRAIRIE CROSSROADS, LLC ("Landlord"), and SUNSHINE HEART INC., a Delaware corporation ("Tenant").

IT IS AGREED AS FOLLOWS:

ARTICLE 1 — BASIC LEASE TERMS AND DEFINITIONS

1.1	Landlord and Landlord's Address for Notice:	SILVER PRAIRIE CROSSROADS, LLC c/o Principal Enterprise Capital 801 Grand Avenue ATTN: Asset Manager of Silver Prairie Crossroads Des Moines, IA 50392-1370
	With a copy to:	CB Richard Ellis, Inc. 4400 West 78th Street, Suite 200 Minneapolis, MN 55436 ATTN:Property Manager of Silver Prairie Crossroads
	Rent Payment Address:	Prairie Crossroads Corp. Center CBRE Bldg. ID DXD001

P.O. Box 6112
Hicksville, NY 11802-6112

1.2 Tenant and Tenant's Address for Notice: Sunshine Heart Inc.
12988 Valley View Road
Eden Prairie, MN 55344

1.3 Guarantor(s): None.

1.4 Premises: 12988 Valley View Road, Eden Prairie, Minnesota 55344 as shown on the floor plan attached hereto as **Exhibit A**.

1.5 Building: That certain property, building and other improvements located at 12988 Valley View Road, Eden Prairie, Minnesota 55344 and commonly referred to as Prairie Crossroads Corporate Center.

1.6 Area of Premises: Approximately 23,211 rentable square feet (of which approximately 16,044 rsf is office space and 7,167 rsf is warehouse space), which number is the final agreement of the parties and not subject to adjustment.

1.7 Lease Term: Fifty-two (52) *full* calendar months and any partial month.

1.8 Commencement Date: December 1, 2011. Tenant shall have access to the Premises prior to the Commencement Date for the purpose of installing its fixtures, furniture, and equipment, or the Permitted Use. Any such period of early occupancy shall be subject to all of the terms and conditions of this Lease, except that Tenant shall have no obligation to pay rent or Operating Expenses.

1.9 Expiration Date: March 31, 2016 (i.e., the last day of fifty-second (52nd) *full* calendar month following the Commencement Date.

1.10 Base Rent:

Dates	Annual Base Rent/RSF (Blended)	Monthly Installment
12/01/11 – 07/31/12	$ 7.03	$ 13,603.58
08/01/12 – 03/31/13	$ 7.03	$ 0.00*
04/01/13 – 03/31/14	$ 7.17	$ 13,875.65
04/01/14 – 03/31/15	$ 7.32	$ 14,153.16
04/01/15 – 03/31/16	$ 7.46	$ 14,436.23

* Such abatement shall apply solely to payment of the monthly installments of Base Rent and Operating Expenses and shall not be applicable to any other charges, expenses or costs payable by Tenant under this Lease, including, without limitation, Tenant's obligation to pay for all separately metered utilities.

1.11 Tenant's Proportionate Share: 28.71% based on approximately 80,862 rentable square feet of space within the Building. All measurements are the final agreement among the parties and not subject to change. Operating Expenses and Taxes are currently estimated at $3.70 per rentable square foot per year, which amount is subject to adjustment. Additionally Tenant shall pay for all separately metered electricity and gas.

1.12 Base Operating Year: None. This is a "triple net" lease and there is a full pass-through of Operating Expenses and Taxes.

1.13 Security Deposit: One Hundred Thirteen Thousand Four Hundred Eighty-Eight and No/100 Dollars ($113,488.00); provided, however, that if Tenant is not late in the payment of rent on more than one (1) occasion during any twelve (12) month period and Tenant has not been in default beyond any applicable notice and cure period, then, effective June 1, 2012, the Security Deposit shall begin to be reduced to Twenty-Thousand Seven Hundred Sixty and No/100 Dollars ($20,760.00) by applying the Security Deposit towards Tenant's Rent obligations for the months of June 2012, July 2012, May 2013, June 2013, and a portion of Tenant's Rent obligation for July 2013. Tenant must apply the Ninety-Two Thousand Seven Hundred Twenty-Eight and No/100 Dollar ($92,728.00) reduction toward its future rental obligations. After all reductions have been applied, Tenant's Security Deposit shall remain $20,760.00 throughout the Term of the Lease, as may be extended.

1.14 Brokers: Landlord's Broker: CB Richard Ellis
Tenant's Broker: Watermark REV

Tenant covenants that it has dealt with no other brokers, real estate agents or others who could claim a commission or other compensation in the negotiation of this Lease.

1.17 Parking Spaces: Tenant shall be exclusively entitled to the parking spaces identified on **Exhibit F**, attached hereto and entitled to another 20 unassigned parking spaces. Landlord, as part of Landlord's Work, subject to deduction from the Allowance, will place a reasonable amount of signage to indicate Tenant's parking reserved area. Landlord shall not be liable for any other tenants or persons parking in such spaces, but shall use commercially reasonable efforts to enforce Tenant's parking rights hereunder. Landlord, as part of Landlord's Work, subject to deduction from the Allowance, shall construct two (2) handicapped parking spaces and a curb ramp in front of the Premises.

1.18 Permitted Uses: General office, medical device assembly, lab and warehouse uses in keeping with the first class nature of the Building.

1.19 Allowance: See Section 1 of the Work Letter attached hereto as **Exhibit B**.

1.20 Amount Due on Execution:

Base Rent:	$	13,603.58
Operating Expenses:	$	7,156.73
Security Deposit:	$	113,488.00

Total:	$ 134,248.31

ARTICLE 2 - TERM AND DEMISE

(A) Landlord does hereby lease to Tenant and Tenant hereby rents the Premises on the terms and conditions set forth in this Lease. Notwithstanding the Commencement Date, if for any reason (other than a delay caused by Tenant, including, without limitation, change orders) Landlord cannot deliver possession of the Premises to Tenant on or by the scheduled Commencement Date, Tenant shall not be obligated to pay rent until possession of the Premises is tendered to Tenant. In such event, the Commencement Date and Expiration Date shall be extended so that the length of the Term remains constant. If the Premises are delivered on a date other than the 1st day of the month, rent for that month shall be prorated and the term extended for the full term from the first day of the following month. In the event that the delay of delivery of possession results from Tenant's failure to perform work for which Tenant is responsible, or fails to furnish or approve, as agreed, the plans and specifications as provided above, or fails to make timely selections of materials, color choices or other matters for which Tenant is responsible, the rent shall, nonetheless, commence on the Commencement Date stated above. If Tenant occupies the Premises prior to said Commencement Date, such occupancy shall be subject to all provisions hereof and shall not advance the Expiration Date, and Tenant shall not pay rent or Operating Expenses for such period pursuant to Section 1.8 above.

(B) All improvements shall be made in accordance with the Work Letter set forth in Exhibit "B" which is attached hereto and made a part hereof. The total cost for space planning, construction drawings, the actual construction and construction management is to be paid by Landlord up to a maximum amount of the Allowance. Unless otherwise stated in the Work Letter, if the total costs exceed the Allowance, Tenant shall be responsible for paying to Landlord within 30 days of the Commencement Date, costs exceeding the Allowance.

ARTICLE 3 - RENT (STEP RENT)

(A) Rent. Tenant shall pay Base Rent for the use and occupancy of the Premises on the first day of each month in advance without demand during the Lease Term. Rent of any period during the Lease Term hereof which is less than one month shall be a pro-rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing.

(B) Late Charge. Tenant hereby acknowledges that late payment by Tenant of Rent or other sums due thereunder will cause Landlord to incur costs not contemplated by this Lease. Therefore, if any installment of Rent shall not be received by Landlord within ten (10) days after such amount is due, Tenant shall pay to Landlord a late charge of five percent (5%) of such overdue amount; provided, however, Tenant shall be entitled to written notice and a five (5) day cure period on one (1) occasion during any twelve (12) month period before such late fee is assessed. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount or prevent Landlord from exercising any other right or remedy available to Landlord.

(C) Receipt. Upon execution of this Lease, Tenant shall pay to Landlord the Base Rent and Tenant's Proportionate Share of Operating Expenses and Taxes for the first month of the Lease Term.

(D) Security Deposit. Tenant shall deposit the Security Deposit with Landlord upon execution hereof as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay Rent or other charges due hereunder or otherwise defaults with respect to any provision of the Lease, Landlord may use, apply or retain all or any portion of said deposit for the payment of any Rent or other charge in default or for the payment of

any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Lessor may suffer thereby. Excluding the portion of the Security Deposit that is prepaid Rent and is to be applied pursuant to Section 1.13, if Landlord so uses or applies all or any portion of said deposit, Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount herein above stated and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep said deposit separate from its general accounts. If Tenant performs all of Tenant's obligations hereunder, the undisputed portion of said deposit, or so much thereof as has not theretofore been applied by Landlord shall be returned, without payment of interest or other increment for its use to Tenant (or at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) within sixty (60) days following the expiration of the Lease Term hereof, and after Tenant has vacated the Premises. No trust relationship is created herein between Landlord and Tenant with respect to said Security Deposit.

Tenant hereby agrees not to look to any mortgagee as mortgagee, mortgagee-in-possession or successor in title to the Premises for accountability for any Security Deposit required by Landlord hereunder, unless said sums have actually been received by said mortgagee as security for Tenant's performance of this Lease. Landlord shall deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises, in the event that such interest is sold, and thereupon Landlord shall be discharged from any further liability with respect to said Security Deposit.

ARTICLE 4 - PERMITTED USE

Tenant covenants that the Premises will be used for the Permitted Use together with the incidental activities of Tenant, its affiliated companies or other subsidiary companies and for no other use or purpose without the prior consent of Landlord, not to be unreasonably withheld, conditioned delayed. Tenant further covenants that the Premises will not be used or occupied for any unlawful purposes. Tenant also agrees not to conduct any catalogue, mail or telephone order sales in or from the Premises, except of merchandise which Tenant is permitted to sell "over the counter" in the Premises. Tenant acknowledges that the Permitted Use is not a use granted exclusively to Tenant and that Landlord reserves the right to lease premises in the building to others for the same or a similar Permitted Use. Tenant further acknowledges that it has received no written or oral inducements from Landlord or any of Landlord's representatives concerning this Lease (other than as specifically set forth herein) or that Tenant will be granted any such exclusive rights. Tenant further covenants that the Premises will not be used or occupied for any unlawful purposes. Tenant will not make or permit to be made any use of the Premises or any part thereof which would violate any of the covenants, agreements, terms, provisions and conditions of this Lease or which directly or indirectly is forbidden by public law, ordinance or governmental regulation; or make or permit any use of the Premises which is reasonably likely to be dangerous,

noxious or offensive or create or maintain any nuisance in, at or on the Premises; or make or permit any use of the Premises which may invalidate, or increase the premium cost of any policy of insurance carried on the Building and environs and their operation, or any use which, in Landlord's reasonable judgment, shall impair the character, reputation or appearance of the Building and environs.

ARTICLE 5 - OPERATING EXPENSES

(1) Taxes

(a) Landlord shall pay all taxes payable during the Lease Term before the same are delinquent.

(b) If in the future a tax or other charge on Rents shall be imposed by any governing body having the authority to impose such tax or charge, then such tax or charge shall likewise be the obligation of Landlord.

(c) As used herein, the term "taxes" shall mean real estate taxes, assessments (whether they be general or special), sewer rents, rates and charges, transit and transit district taxes, margin tax, taxes based upon the receipt of rent, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (but not

including income or franchise taxes or any other taxes imposed upon or measured by Landlord's income or profits, except as provided herein), which may now or hereafter be levied, assessed or imposed against the Premises.

(2) Tenant shall contract and pay for electricity and gas to the Premises (which is not part of Operating Expenses). Water and sewer are included in Operating Expenses.

(3) Landlord shall be responsible for providing the following: (a) trash removal for the Building common areas; (b) any vendor services to the Building common areas (Tenant contracts and pays for trash removal from the Premises); (c) landscaping; (d) all labor costs and supply costs involved in the operation of the Building; (e) all other services of any kind and nature which may be used in or upon the Premises (except as provided for elsewhere in this Lease); (f) management fees paid for the management of the Premises; (g) and the repair, maintenance and replacement of the Building and improvements as follows: (i) the roof; (ii) all interior and exterior components of the Building and improvements both structural or otherwise; (iii) parking lot, (iv) sidewalks, alleys and any and all access drives, including the removal of snow and ice therefrom; (v) common area heating and air conditioning equipment, lines and fixtures; (vi) plumbing equipment, lines and fixtures, including but not limited to fire sprinkler and fire control systems; (vii) electrical equipment, lines and fixtures; (viii) all ingress-egress doors; (ix) plate glass; (x) all utility lines and services; and (xi) and any and all other repairs maintenance and replacements to the Building and improvements during the term of this Lease. As of the Commencement Date, Landlord knows of no material impending repairs to the Building, roof or parking lot. If any such repairs are required during the Lease Term, such costs will be amortized over the useful life of the repairs, and Tenant shall only share in the amortized costs applicable to the remaining Lease Term.

(4) Landlord shall be responsible for providing Property and Liability Insurance for the Building. Should Landlord choose to self-insure, the cost of maintaining such self insurance shall be considered an expense of the property. In no event will the cost exceed the cost of maintaining first dollar coverage.

(5) Tenant, at Tenant's sole expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county, and municipal authorities now in force or which may hereafter be in force, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation or alteration of the Premises.

(6) All items listed in this paragraph 5(1) through paragraph 5(4), as well as any and all amounts, expenses and costs of whatever nature that Landlord incurs or pays in connection with the ownership, control, operation, repair, management, replacement or maintenance of the Building, all related improvements thereto or thereon and all machinery, equipment, landscaping, fixtures and other facilities, including personal property, as may now or hereafter exist in or on the Building, shall hereinafter be referred to as "Operating Expenses." Operating Expenses shall be calculated in accordance with generally accepted accounting principals consistently applied.

(7) Notwithstanding anything to the contrary herein, Operating Expenses shall NOT include: leasing commissions, costs, disbursements, and other expenses incurred for leasing, renovating, or improving space for tenants; costs (including permit, license, and inspection fees) incurred in renovating, improving, decorating, painting, or redecorating vacant space or space for tenants; depreciation and amortization on the Building except as expressly permitted elsewhere in the Lease; overhead and profit paid to subsidiaries or affiliates of Landlord for management or other services on or to the Property or for supplies or other materials, to the extent that the costs of the services, supplies, or materials exceed the competitive costs of the services, supplies, or materials were they not provided by a subsidiary or affiliate; interest on debt or amortization payments on mortgages or deeds of trust or any other debt for borrowed money; advertising and promotional expenditures; nonrecurring costs incurred to remedy structural defects in original construction materials or installations; the cost of any capital improvement to the property on which the Building is located (the "Property"); the cost of repairs, restoration or other work occasioned by fire, windstorm or other insured casualty other than the amount of any deductible under any insurance policy (regardless whether the deductible is payable by Landlord in connection with a capital expenditure); expenses

Landlord incurs in connection with leasing or procuring tenants or renovating space for new or existing tenants; legal expenses incident to Landlord's enforcement of any lease; interest or principal payments on any mortgage or other indebtedness of Landlord; or allowance or expense for depreciation or amortization; taxes imposed on or measured by the income of Landlord from the operation of the Building or Property, as applicable; costs arising from the negligence or willful misconduct of Landlord or its agents, employees, vendors, contractors, or providers of materials or services; costs incurred to comply with Laws in effect and applicable to the Premises as of the Commencement Date, including but not limited to Laws and regulations relating to handicap access or the removal of Hazardous Materials, which Hazardous Material is in existence in the Building or on the Property prior to the Commencement Date or is brought into the Building or onto the Property after the date hereof by Landlord; interests, fine, late fees, collection costs, legal fees or penalties assessed as a result of Landlord's failure to make payments in a timely manner or to comply with applicable laws, including regarding the payment of taxes, or to comply with the terms of any lease, mortgage, deed of trust, ground lease, private restriction or other agreement; costs relating to the Property which represent

a new service or improvement that is in a category of expense that was not included in Operating Expense in the first twelve (12) months of the Term; costs or expenses of leasing any item if the purchase price of such item is not properly chargeable as Operating Expenses; costs or allocations that cannot be documented by Landlord, Property Manager, or their representatives; any costs expressly excluded from Operating Expenses elsewhere in this Lease; and other expenses that under generally accepted accounting principles consistently applied would not be considered normal maintenance, repair, management, or operation expenses.

ARTICLE 6 - ADDITIONAL RENT (NET CLAUSE)

It is understood that the Rent set forth in paragraph 3 of the Lease was negotiated in anticipation that Tenant pays for its Proportionate Share of the Operating Expenses not paid directly by Tenant, defined in paragraph 5 of the Lease. Therefore, in order that Rent payable throughout the term of this Lease shall reflect such costs, Tenant shall pay its Proportionate Share of the Operating Expenses defined in paragraph 5. At the beginning of the Lease Term and within 60 days after the first day of each calendar year, Landlord shall furnish to Tenant an estimate of Tenant's Proportionate Share of Operating Expenses, not paid directly by Tenant, defined in Paragraph 5 for the ensuing calendar year. Tenant shall pay to Landlord 1/12th of said estimate at the same time and place as the Base Rent is to be paid pursuant to paragraph 3, above. Landlord will furnish a statement of the actual cost with respect to the reimbursable expenses no later than one hundred twenty (120) days following the calendar year-end including the year following the year in which the Lease terminates. In the event that Landlord is, for any reason, unable to furnish the accounting for the prior year within the time specified above, Landlord will furnish such accounting as soon thereafter as practicable with the same force and effect as the statement would have had if delivered within the time specified above. Tenant will pay any deficiency to Landlord as shown by such statement within thirty (30) days after receipt of statement. If the total amount paid by Tenant during any calendar year exceeds the actual amount of its share of the Operating Expenses due for such calendar year, the excess will be refunded by Landlord within thirty (30) days of the date of the statement. Landlord will keep books and records showing the Operating Expenses in accordance with generally accepted accounting principles.

ARTICLE 7 - REPAIRS AND MAINTENANCE

Notwithstanding anything to the contrary contained herein, Tenant will keep, maintain and preserve the Premises in a condition consistent with character of Building (normal wear and tear, damage from condemnation and casualty and Landlord's obligations excepted). Tenant at its sole cost and expense will provide janitorial and window washing for the interior of the Premises and pest control. In addition, Tenant shall be responsible for all utility services for which Tenant is separately metered. When and if needed, at Tenant's sole cost and expense, Tenant will make all repairs and replacements including but not limited to interior walls, doors and windows, floors, floor coverings, light bulbs, plumbing fixtures, HVAC systems, hot water systems, and electrical fixtures (to the point of common connection or exclusively servicing the Premises). Tenant shall also make all repairs and replacements to Tenant's overhead garage and exterior pedestrian doors. Tenant will also repair and replace at its sole cost and expense any broken windows and/or damage to the Building or Premises caused by the negligence of

Tenant or its employees, agents, guests or invitees during the Lease Term hereof. The above repairs, replacements, and/or services must be performed by an approved contractor of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Should Tenant fail to perform all interior repairs and replacements to Tenant's Premises such repairs may be performed by Landlord and charged to Tenant at Tenant's sole cost and expense. Tenant will comply with all ordinances of the city of in which the Building is located, rules and regulations of the Board of Health and the laws of the State of Minnesota. Tenant is also responsible for compliance with all laws, rules and regulations of any governmental authority required of either Landlord or Tenant relative to the repair, maintenance and replacement in the Premises.

Landlord warrants that the HVAC system servicing the Premises shall be in good working order and condition as of the Commencement Date and will correct any defects discovered within the initial twelve (12) months following the Commencement Date (unless the same were due to Tenant's failure to maintain). Tenant shall maintain, the heating, air conditioning, and ventilation equipment and system and the hot water equipment (collectively the "HVAC System") in good repair and condition and in accordance with law and with the equipment manufacturers' suggested operation/maintenance service program. Such obligation shall include the replacement of all equipment necessary to maintain the HVAC System servicing the Premises in good working order. Within ten (10) days after the Commencement Date, Tenant shall deliver to Landlord copies of contracts entered into by Tenant for regularly scheduled preventive maintenance (at least semi-annually) and service contracts for the HVAC System, each contract in a form and substance and with a contractor reasonably acceptable to Landlord. At least fourteen (14) days before the Expiration Date, the earlier termination of this Lease, or the termination of Tenant's right to possess the Premises, Tenant shall deliver to Landlord a certificate from an engineer reasonably acceptable to Landlord certifying that the HVAC System is then in good repair and working order.

Notwithstanding the foregoing to the contrary, provided Tenant enters into a regularly scheduled preventative maintenance and service contract for the HVAC System with a reputable HVAC contractor pursuant to the provisions of this Section 5.3, and provided that Tenant is not in default of any of the terms, covenants and conditions hereof, if at any time during the Term the HVAC unit serving the Premises requires replacement (as recommended by the contractor approved by Landlord and Tenant) and such replacement is not due to any misuse or abuse of the unit by Tenant or failure of Tenant to properly maintain the unit, then the cost of replacement shall be amortized over the useful life of the unit and Tenant shall only be required to pay that portion of the cost applicable to the Term (as may be extended). All such replacements will be subject to Landlord's written approval of the same. .

ARTICLE 8 - SORTING AND SEPARATION OF REFUSE AND TRASH

(A) Tenant covenants and agrees, as its sole cost and expense, to comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall sort and separate waste products, garbage, refuse and trash into such categories as provided by law. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles reasonably approved by Landlord. Such separate receptacles may, at Landlord's option, be removed from the Premises in accordance with a collection schedule prescribed by law.

(B) Landlord reserves the right to refuse to collect or accept from Tenant any waste products, garbage, refuse or trash that is not separated and sorted as required by law, and to require Tenant arrange for such collection at Tenant's sole cost and expense, utilizing a contractor satisfactory to Landlord. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this paragraph 8B, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Landlord harmless (including legal fees and expenses) from and against any actions, claims and suits arising from such noncompliance, utilizing counsel reasonably satisfactory to Landlord.

ARTICLE 9 - HAZARDOUS WASTE

9.1 Definitions.

A. "Hazardous Material" means any substance, whether solid, liquid or gaseous in nature:

(i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law, or

(ii) which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), the Clean Air Act (42 U.S.C. section 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. section 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. section 651 et seq.), as these laws have been amended or supplemented; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Minnesota or any political subdivision thereof; or

(iv) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or

(v) the presence of which on adjacent properties could constitute a trespass by Tenant; or

(vi) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(vii) without limitation which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or

(viii) without limitation which contains radon gas.

B. "Environmental Requirements" means all applicable present and future:

(i) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items (including, but not limited to those pertaining to reporting, licensing, permitting, investigations and remediation), of all Governmental Agencies; and

(ii) all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation, all requirements pertaining to emissions, discharges, releases, or threatened releases of Hazardous Materials or chemical substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or chemical substances.

C. "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses (including the expense of investigation and defense of any claim, whether or not such claim is ultimately defeated, or the amount of any good faith settlement or judgment arising from any such claim) of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable (including without limitation reasonable attorneys' fees and disbursements and consultants' fees) any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the Property or migrating or threatening to migrate to or from the Property, or the

existence of a violation of Environmental Requirements pertaining to the Property and the activities thereon, regardless of whether the existence of such Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property. Environmental Damages include, without limitation:

(i) damages for personal injury or injury to property or natural resources occurring upon or off of the Property, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest, penalties and damages arising from claims brought by or on behalf of employees of Tenant (with respect to which Tenant waives any right to raise as a defense against Landlord any immunity to which it may be entitled under any industrial or worker's compensation laws);

(ii) fees, costs or expenses incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any Governmental Agency or reasonably necessary to make full economic use of the Property or any other property in a manner consistent with its current use or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing the provisions of this Lease or collecting any sums due hereunder;

(iii) liability to any third person or Governmental Agency to indemnify such person or Governmental Agency for costs expended in connection with the items referenced in subparagraph (ii) above; and

(iv) diminution in the fair market value of the Property, including, without limitation, any reduction in fair market rental value or life expectancy of the Property or the improvements located thereon or the restriction on the use of or adverse impact on the marketing of the Property or any portion thereof.

D. "Governmental Agency" means all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states, counties, cities and political subdivisions thereof.

E. The "Tenant Group" means Tenant, Tenant's successors, assignees, guarantors, officers, directors, agents, employees, invitees, permitees or other parties under the supervision or control of Tenant or entering the Property during the term of this Lease with the permission or knowledge of Tenant other than Landlord or its agents or employees.

9.2 HazMat Certificate. Prior to executing this Lease, Tenant has completed, executed and delivered to Landlord Tenant's initial Hazardous Materials Disclosure Certificate (the "Initial HazMat Certificate"), a copy of which is attached hereto as **Exhibit E** and incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Initial HazMat Certificate is true and correct and accurately describes the use(s) of Hazardous Materials which will be made and/or used on the Premises by Tenant. Tenant shall commencing with the date which is one year from the Commencement Date and continuing every year thereafter, complete, execute, and deliver to Landlord, a Hazardous Materials Disclosure Certificate ("the HazMat Certificate") describing Tenant's present use of Hazardous Materials on the Premises, and any other reasonably necessary documents as requested by Landlord. The HazMat Certificate required hereunder shall be in substantially the form as that which is attached hereto as **Exhibit E.** Notwithstanding anything in this Lease to the contrary no indemnity from Tenant regarding Hazardous Materials or Environmental Damage shall include any Hazardous Materials that were located at the Premises or the Property prior to the date that Landlord delivered possession of the Premises to Tenant, nor any Hazardous Materials placed on the Premises or Property by Landlord, its employees, agents, or contractors.

ARTICLE 10 — INSURANCE; WAIVER OF SUBROGATION

Tenant shall, during the Lease Term, procure and keep in force the following insurance:

(a) Tenant's Liability Insurance. Commercial general liability insurance against any and all claims for bodily injury and property damage occurring in, or about the Premises arising out of Tenant's use and occupancy of the Premises. Such insurance shall have a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence with a Two Million Dollar ($2,000,000) aggregate limit and excess umbrella liability insurance in the amount of Five Million Dollars ($5,000,000). Such liability insurance shall be primary and not contributing to any insurance available to Landlord and Landlord's insurance shall be in excess thereto. In no event shall the limits of such insurance be considered as limiting the liability of Tenant under this lease.

(b) Tenant's Property Insurance. Personal property insuring all equipment, trade fixtures, inventory, fixtures, and personal property located on or in the Premises for perils covered by the causes of loss - special form (all risk) and in addition, coverage for flood, wind, earthquake, terrorism and boiler and machinery (if applicable). Such insurance shall be written on a replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the foregoing.

(c) Business Interruption Insurance. Business interruption and extra expense insurance in such amounts to reimburse Tenant for direct or indirect loss attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Building as result of such perils.

(d) Workers' Compensation/Employers Liability Insurance. Workers' compensation insurance in accordance with statutory law and employers' liability insurance with a limit of not less than $1,000,000 per accident, $1,000,000 disease, policy limit and $1,000,000 disease limit each employee.

(e) Increase in Coverage. Landlord may, by notice to Tenant, require an increase in policy limits or require that Tenant carry other forms of insurance; provided that the same are commercially reasonable and in keeping with the insurance requirements of owners of similar properties in the applicable submarket in which the Premises is located.

(f) General Requirements. The policies required to be maintained by Tenant shall be with companies rated A- X or better by A.M. Best. Insurers shall be licensed to do business in the state in which the Premises are located and domiciled in the USA. Any deductible amounts under any insurance policies required hereunder shall not exceed $1,000. Certificates of insurance (certified copies of the policies may be required) shall be delivered to Landlord prior to the commencement date and annually thereafter at least thirty (30) days prior to the policy expiration date, which shall identify Landlord, Landlord's property management company and any applicable lender as additional insureds. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Landlord as required by this Lease. Each policy of insurance shall endeavor to provide notification to Landlord at least thirty (30) days prior to any cancellation or modification to reduce the insurance coverage.

(g) Failure to Maintain. In the event Tenant does not purchase the insurance required by this lease or keep the same in full force and effect, Landlord may, but shall not be obligated to purchase the necessary insurance and pay the premium. The Tenant shall repay to Landlord, as additional rent, the amount so paid promptly upon demand. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional rent, any and all reasonable expenses (including attorneys' fees) and damages which Landlord may sustain by reason of the failure to Tenant to obtain and maintain such insurance.

(h) Waiver of Subrogation. Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property, to the extent that such loss or damage is insured by an insurance policy (or in the event either party elects to self insure any property coverage required) required to be in effect at the time of such loss or damage. Each party shall obtain any special endorsements, if required by its insurer whereby the insurer waives its rights of subrogation against the other party.

The provisions of this clause shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible.

ARTICLE 11 - DAMAGE OR RESTORATION

If, prior to or during the Lease Term, or any extension thereof, the Premises or the Building of which the Premises may be a part, shall be so damaged or destroyed by fire or other casualty so as to render them untenantable for the purposes set forth in Paragraph 4 hereof or such that they cannot reasonably be repaired within one hundred eighty (180) days of the date of the casualty, then Landlord, at its sole option, shall have the right to cancel and terminate this Lease.If not terminated, then Landlord shall repair and restore the Premises with all reasonable speed to substantially the same condition as immediately prior to such damage or destruction, and the Rent or a just and proportionate part thereof, according to Tenant's ability to utilize the Premises in its damaged condition, shall be abated until the Premises shall have been repaired and restored by Landlord. But if the Premises shall be so lightly damaged by fire or other casualty as not to be rendered untenantable, then Landlord agrees to repair the Premises with reasonable promptness and the rent accrued and accruing, shall not cease. "Untenantable" Premises shall be such as to not allow Tenant to transact and effectuate its operations in the ordinary course of business.

Landlord shall use good faith efforts to deliver to Tenant within forty-five (45) days after such casualty a good faith estimate of the time necessary to complete the repairs to restore the Premises to substantially the same condition as immediately prior to such damage or destruction.

If Landlord estimates that the Premises will remain untenantable for in excess of one hundred eighty (180) days, then Tenant may elect to terminate this Lease by written notice delivered to Landlord within thirty (30) days following Landlord's delivery to Tenant of the estimated duration that the Premises will remain untenantable.

If Landlord estimated the duration that the Premises would remain untenantable at one hundred eighty (180) days or less, and following one hundred eighty (180) days' from the date of casualty the Premises remains untenantable, then Tenant may thereafter terminate this Lease upon ten (10) business days' prior written notice to Landlord (and such termination shall be effective unless Landlord delivers the Premises in the required condition within said ten (10) business day period).

If Landlord estimated the duration that the Premises would remain untenantable at more than one hundred eighty (180) days (but neither party elected to terminate this Lease), and the Premises remains untenantable for longer than the estimated completion date (subject to extension for force majeure and delays caused by Tenant), then Tenant may thereafter terminate this Lease upon ten (10) business days' prior written notice to Landlord (and such termination shall be effective unless Landlord delivers the Premises in the required condition within said ten (10) business day period).

ARTICLE 12 - INDEMNIFICATION

12.1 **TENANT'S INDEMNITY OF LANDLORD. TENANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 12.5) FROM AND AGAINST ALL FINES, SUITS, LOSSES, COSTS, LIABILITIES, CLAIMS, DEMANDS, ACTIONS AND JUDGMENTS OF EVERY KIND OR CHARACTER, RELATING DIRECTLY OR INDIRECTLY TO (1) TENANT'S FAILURE TO PERFORM ITS COVENANTS UNDER THIS LEASE, (2) THE ACTS OR OMISSIONS OF A TENANT PARTY (DEFINED BELOW IN SECTION 12.5) OR ANY OTHER PERSON ENTERING UPON THE PREMISES UNDER OR WITH A TENANT PARTY'S EXPRESS OR IMPLIED INVITATION OR PERMISSION, (3) THE OCCUPANCY OR USE OF THE PREMISES BY A TENANT PARTY, OR (4) ANY OCCURRENCE IN THE PREMISES, HOWEVER CAUSED, OR SUFFERED BY, RECOVERED FROM OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES BY A TENANT PARTY. INDEMNIFICATION OF THE INDEMNIFIED PARTIES BY TENANT SHALL NOT APPLY TO THE**

EXTENT SUCH LOSS, DAMAGE, OR INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNIFIED PARTIES.

12.2 **LIABILITY. THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 12.5) SHALL NOT BE LIABLE TO THE TENANT PARTIES FOR ANY INJURY TO OR DEATH OF ANY PERSON OR PERSONS OR THE DAMAGE TO OR THEFT, DESTRUCTION, LOSS, OR LOSS OF USE OF ANY PROPERTY OR INCONVENIENCE (COLLECTIVELY AND INDIVIDUALLY A "LOSS") CAUSED BY CASUALTY, THEFT, FIRE, THIRD PARTIES, REPAIR, OR FAILURE TO REPAIR, OR ALTERATION OF ANY PART OF THIS BUILDING, OR ANY OTHER CAUSE, TO THE EXTENT NOT OTHERWISE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNIFIED PARTIES.**

12.3 **LANDLORD'S INDEMNIFICATION. SUBJECT TO APPLICABLE LIMITATIONS ON LIABILITY, RELEASES AND WAIVERS OF SUBROGATION, LANDLORD AGREES TO INDEMNIFY, DEFEND AND HOLD TENANT AND ITS OFFICERS, DIRECTORS, PARTNERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL LIABILITIES, LOSSES, DEMANDS, ACTIONS, EXPENSES OR CLAIMS, INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS BUT EXCLUDING CONSEQUENTIAL DAMAGES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY TO THE EXTENT SUCH ARE DETERMINED TO BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, ITS AGENTS, EMPLOYEES, OR CONTRACTORS IN OR ABOUT THE PREMISES OR BUILDING. NONE OF THE EVENTS OR CONDITIONS SET FORTH IN THIS PARAGRAPH SHALL BE DEEMED A CONSTRUCTIVE OR ACTUAL EVICTION OR ENTITLE TENANT TO ANY ABATEMENT OR REDUCTION OF RENT.**

12.4 Survival. The provisions of this Section 12 shall survive the expiration or earlier termination of this Lease.

12.5 Definitions. "Tenant Party" or collectively the "Tenant Parties" shall include Tenant, any assignees claiming by, through, or under Tenant, any subtenants claiming by, through, or under Tenant, and any of their respective agents, contractors, employees, and invitees; and "Indemnified Parties" shall include Landlord, its successors, assigns, agents, employees, contractors, Property Manager, partners, directors, officers and affiliates.

12.6. Liability of Tenant's Directors and Officers. Despite any other provision of this Lease, the Landlord acknowledges that the officers, directors, partners and employees of the Tenant ("Beneficiaries") have no personal liability under this Lease except obligations which are mandated by law,

and cannot be excluded. Further, the Landlord releases each of the Beneficiaries from any claim it may have against them under or by virtue of this Lease, to the extent that this is permitted by law. This clause may be used by the Beneficiaries as a defense in any claim or proceedings brought against them under or by virtue of this Lease

ARTICLE 13 - ASSIGNMENT AND SUBLETTING

(A) Landlord's Consent. Tenant shall not sell, assign, encumber, mortgage or transfer this Lease or any interest therein, sublet or permit the occupancy or use by others of the Premises or any part thereof, or allow any transfer hereof of any lien upon Tenant's interest by operation of law or otherwise (collectively, a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld conditioned or delayed. Without limiting Landlord's right to withhold such consent, the withholding of such consent may be based upon, but not limited to, the following:

(i) In the reasonable judgment of Landlord, the subtenant or assignee (A) is, of a character or engaged in a business or proposes to use the Premises in a manner which is not in keeping with the standards of Landlord for the Building or (B) has an unfavorable reputation or credit standing;

(ii) Either the area of the Premises to be sublet or the remaining area of the Premises is not regular in shape with appropriate means of ingress or egress suitable for normal renting purposes only if Landlord exercises rights pursuant to Subsection (C) below;

(iii) Tenant is in Default under this Lease beyond any applicable cure period;

(iv) Is then an occupant or tenant of any other space in the Building unless there is no vacancy in the Building;

(v) The proposed sublessee or assignee is a person or entity with whom Landlord is then negotiating to lease space in the Building; or

(vi) The proposed assignment or sublease instrument does not have the substance or form which is reasonably acceptable to Landlord.

Any Transfer which is not in compliance with the provisions of this Article shall, at the option of Landlord, be void and of no force or effect.

(B) Notice To Landlord. Tenant shall provide written notice of the proposed assignee, sublettee or transferee, as applicable, which notice shall provide Landlord with (i) the name and address of the proposed subtenant, assignee, pledgee, mortgagee or transferee, (ii) a reasonably detailed description of such person or entity's business, (iii) detailed financial references for such person or entity, (iv) a true and complete copy of the proposed sublease, assignment, pledge, mortgage or other conveyance and all related documentation, and (v) such other information as Landlord may reasonably require.

(C) Landlord's Right Of Recapture. Tenant shall, by written notice in the form specified above, advise Landlord of Tenant's intent on a stated date to Transfer any part or all of the Premises or its interest therein for the balance or any part of the Term, and, in such event, Landlord shall have the right, to be exercised by giving written notice to Tenant within ten (10) business days after receipt of Tenant's notice, to recapture the space described in Tenant's notice and such recapture notice shall, if given, cancel and terminate this Lease with respect to the space therein described as of the date stated in Tenant's notice. If Tenant's notice shall cover all of the space hereby demised, and Landlord shall elect to give the aforesaid recapture notice with respect thereto, then the Term shall expire and end on the date stated in Tenant's notice as fully and completely as if that date had been herein definitely fixed for the expiration of the Term. If, however, this Lease is terminated pursuant to the foregoing with respect to less than the entire Premises, the Base Rent and additional Rent then in effect shall be adjusted on the basis of the number of rentable square feet retained by Tenant in proportion to the original rentable area of the Premises, and this Lease as so amended shall continue thereafter in full force and effect. If Landlord, upon receiving Tenant's notice that it intends to sublet or assign any such space, shall not exercise its right to recapture the space described in Tenant's notice, Landlord will, as hereinabove provided, determine whether to approve Tenant's request to sublet or assign the space covered by its notice.

(D) Excess Rent. If Tenant shall sublet Premises or any part thereof or assign any interest in this Lease at a rental rate (or additional consideration) in excess of the then current Base Rent and Operating Expenses and Taxes per rentable square foot, one-half (½) all of said excess Rent (or additional consideration) shall be and become the property of Landlord and shall be paid to Landlord as it is received by Tenant (after taking into consideration Tenant's reasonable brokerage (excluding commissions paid to brokers who are Tenant's affiliates), legal and other expenses ("Tenant's Costs") incurred in connection with such assignment or, in the case of a sublease, less the monthly pro rata share of such Tenant's Costs as determined by dividing such Tenant's Costs by the number of months in the term of such sublease). If Tenant shall sublet the Premises or any part thereof, Tenant shall be responsible for all actions and neglect of the subtenant and its officers, partners, employees, agents, guests and invitees as if such subtenant and such persons were employees of Tenant. Nothing in this Section shall be construed to relieve Tenant from the obligation to obtain Landlord's prior written consent to any proposed sublease.

(E) Included And Excluded Transfers. Any dissolution, merger, consolidation or other reorganization, or the sale, transfer or redemption of a controlling interest of the ownership interests of the entity that is Tenant, in one or more transactions, shall be deemed a voluntary assignment of this Lease and subject to the provisions of this Article. Neither this Lease nor any interest therein nor any estate created thereby shall pass by operation of law or otherwise to any trustee, custodian or receiver in bankruptcy of Tenant or any assignee for the assignment of the benefit of creditors of Tenant. Notwithstanding any provision of this Lease to the contrary, provided that Tenant remains liable on this Lease, provides Landlord with prior written notice and names of the applicable transferee, Tenant is not then in default, then the following transfers will not require Landlord's prior consent:

(i) a transfer to any entity which is wholly owned by Tenant;

(ii) a transfer to any entity which owns all of the outstanding ownership interests of Tenant ("Parent");

(iii) a transfer to any entity which is wholly owned by Tenant's Parent;

(iv) a transfer to any entity which merges with Tenant or purchases substantially all of Tenant's assets, provided that such transferee or surviving corporation has a net worth at least as favorable as Tenant; or

(v) a transfer over a nationally-recognized stock exchange.

(F) No Waiver. The consent by Landlord to any Transfer shall not be construed as a waiver or release of Tenant from liability for the performance of all covenants and obligations to be performed by Tenant under this Lease, and Tenant shall remain liable therefor, nor shall the collection or acceptance of Rent from any assignee, subtenant or occupant constitute a waiver or release of Tenant from any of its obligations or liabilities under this Lease. Any consent given pursuant to this Article shall not be construed as relieving Tenant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment or subletting.

(G) Marketing. Tenant hereby agrees to list the Premises (or portion thereof) for subleasing or assignment through a broker or real estate agent reasonably acceptable to Landlord.

(H) Document Review. Tenant shall pay to Landlord a transfer request fee not to exceed $1,000.00 contemporaneous with Tenant's request for approval of an assignment, subletting or transfer required above. All documents utilized by Tenant to evidence any subletting or assignment for which Landlord's consent has been requested, shall be subject to prior approval by Landlord or its attorney.

(I) Options. Tenant acknowledges and agrees that any and all options granted under this Lease, if any (including, without limitation, options regarding termination, renewal except transfers under Section 13(E) above, extension, expansion, offer and/or refusal), shall be deemed to be personal to Tenant and if Tenant subleases, assigns or otherwise transfers any interest hereunder prior to the exercise of such option, such option shall lapse and be of no further force or effect.

(J) Landlord's Assignment. Landlord may transfer and assign, in whole or in part, its rights and obligations in the Building or Premises that are the subject to this Lease, in which case Landlord shall have no further liability hereunder, provided that such transferee assumed the obligations.

ARTICLE 14 - CARE OF PREMISES

Tenant further covenants and agrees that during said Lease Term it will keep said Premises and every part thereof and all Buildings at any time situated thereon in a clean and safe condition and generally that it will in all respects

and at all times duly comply with all lawful health and police regulations and also that it will keep the improvements at any time situated upon the Premises safe, secure and comfortable to the lawful and valid requirements applicable thereto.

ARTICLE 15 - ALTERATION BY TENANT

(A) Tenant is hereby given the right, at its sole cost and expense, at any time during the term hereof, to make any alterations or improvements to the interior of the Premises which Tenant may deem necessary or desirable for its purposes; provided, however, that no alterations or improvements shall be made without the written approval of Landlord, which written approval shall not be unreasonably withheld, conditioned or delayed. Landlord's approval of any plans, specifications or work drawings shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency or compliance with any laws, rules and regulations of governmental agencies or authorities. Notwithstanding the foregoing, Tenant shall not be obligated to receive the written consent of Landlord for interior alterations or improvements to the Premises if said alterations or improvements do not in any way affect the Building's structure or Building's systems and Tenant is not required by applicable law to obtain a permit to perform the alteration or improvement and cost less than $10,000 in the aggregate on a per project basis (Tenant must still satisfy all insurance requirements and provide Landlord with at least five (5) business days' prior written notice of such improvements).

(B) All work herein permitted shall be done and completed by Tenant in a good and workmanlike manner and in compliance with all requirements of law and of governmental rules and regulations. Tenant agrees to indemnify Landlord against all mechanics' or other liens arising out of any of such work, and also against any and all claims for damages or injury which may occur during the course of any such work. Landlord agrees to join with Tenant in applying for all permits necessary to be secured from governmental authorities and to promptly execute such consents as such authorities may require in connection with any of the foregoing work.

(C) Landlord may require that Tenant remove any or all said alterations, improvements or additions at the expiration of the term, and restore the Premises to their prior condition by giving Tenant notice of the same at the time Tenant requests Landlord's consent. Unless Landlord requires their removal, all alterations, additions and improvements which may be made on the Premises, shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the Lease Term. Tenant shall repair any damage to the Premises caused by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Without limitation to the generality of the foregoing, at all times during the term of this Lease, Tenant shall ensure that all wiring and cabling that it installs within the Premises or Building complies with all provisions of local fire and safety codes, as well as with the National Electric Code. Further, upon the expiration or sooner termination of the Term, Tenant shall remove all wiring and cabling within the Premises and the Building (including the plenums, risers and rooftop) placed there by or at the direction of Tenant, unless excused in writing by Landlord. Without limitation to the remedies available to Landlord in the event that Tenant fails to comply with the terms and conditions of this subsection, Tenant shall forfeit such sums from the Security Deposit (or otherwise pay to Landlord) an amount that Landlord pays for the removal and disposal of any such wires and cabling.

ARTICLE 16 - CONDEMNATION

(A) If the Premises shall be wholly taken by exercise of right of eminent domain, then this Lease shall terminate from the day the possession of the whole of the Premises shall be required under the exercise of such power of eminent domain. Any award for the taking of all or part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord. Tenant reserves such separate rights as it may have against the condemning authority to claim damages for loss of its trade fixtures and the cost of removal and relocation expenses.

(B) If such part of the Building or buildings in which Tenant's business is operated shall be condemned so as to substantially and materially hamper the operation of Tenant's business, then the Rent payable hereunder shall be reduced in the proportion that the remaining area of the Premises bears to the original area of the entire Premises leased hereunder. If the parties are unable to agree upon the amount of the reduction in Rent within seven (7) days from the date Tenant's business is substantially and materially hampered, then it shall be arrived at by arbitration, each party to select an arbitrator and if the two arbitrators are unable to agree they shall select a third arbitrator and the three arbitrators so selected shall determine the amount of such reasonable reduction. It is agreed that the findings of the arbitrators shall be binding upon the parties.

ARTICLE 17 - SUBORDINATION

Tenant shall, upon the written request of Landlord, agree to the subordination of this Lease and the lien hereof to the lien of any present or future mortgage upon the premises irrespective of the time of execution or the time of recording of any such mortgage. No such subordination shall permit material interference with Tenant's rights hereunder so long as Tenant is not in default hereunder beyond any applicable cure period, Tenant's rights hereunder shall not be disturbed but shall continue in full force and effect. In the event of subordination of this Lease, Landlord will attempt to obtain from the holder of any such mortgage, a written agreement with Tenant to the effect that (A) in the event of a foreclosure or other action taken under the mortgage by the holder thereof, this Lease and the rights of Tenant hereunder shall not be disturbed but shall continue in full force and effect so long as Tenant shall not be in default hereunder; and (B) such holder will agree that in the event it or any successor assign shall be in possession of the Premises, that so long as Tenant shall observe and perform all of the obligations of Tenant to be performed pursuant to this Lease, such Mortgagee will perform all obligations of Landlord required to be performed under this Lease. The word "Mortgage" as used herein includes mortgages, deeds of trust and any sale-leaseback transactions, or other similar instruments, and modifications, extensions, renewals, and replacements thereof, and any and all advances thereunder.

ARTICLE 18 - ACCESS TO PREMISES

So long as the exercise of such rights does not unreasonably interfere with Tenant's use of or access to the Premises, upon twenty-four (24) hours prior notice to Tenant (or Landlord's ability to get Tenant's approval and Landlord coordinates such access with Tenant), Landlord and its authorized agents shall have access to said Premises at any and all reasonable times during normal business hours to inspect the same and for the purposes pertaining to the rights of Landlord. Notwithstanding the foregoing, Tenant reserves the right to accompany Landlord and any third parties accessing the Premises.

ARTICLE 19 - RULES AND REGULATIONS

Tenant agrees to comply with all non-discriminatory rules and regulations promulgated by Landlord from time to time of which Tenant has prior written notice concerning the use and enjoyment of the Premises or related facilities. Among other things, the rules and regulations specifically prohibit outdoor storage.

ARTICLE 20 - COVENANTS OF RIGHT TO LEASE

Landlord covenants that it has good and sufficient right to enter into this Lease and that they alone have full right to lease the Premises for the Lease Term aforesaid. Landlord further covenants that upon performing the terms and obligations of Tenant under this Lease, Tenant will have quiet enjoyment throughout the Lease Term and any renewal or extension thereof.

ARTICLE 21 - MECHANIC'S LIENS

Neither Tenant nor anyone claiming by, through, or under the lease, shall have the right to file or place any mechanic's lien or other lien of any kind or character whatsoever upon said Premises or upon any Building or improvement thereon, or upon the leasehold interest of Tenant therein, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration repairs or any part thereof, shall at any time be or become entitled to any lien thereon, and for the further security of Landlord, Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and subcontractors who may furnish or agree to furnish any such material, service or labor.

ARTICLE 22 - EXPIRATION OF LEASE AND SURRENDER OF POSSESSION

(A) Holding Over. Tenant will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession to Landlord. If Tenant retains possession of the Premises or any part thereof after such termination, then Landlord may, at its option, serve written notice upon Tenant that such holding over constitutes any one of (i) creation of a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) creation of a tenancy at sufferance, in any case upon the terms and conditions set forth in this Lease; provided, however, that the monthly Rent (or daily Rent under (ii)) shall, in addition to all other sums which are to be paid by Tenant hereunder, whether or not as additional Rent, be equal to double the Rent being paid monthly to Landlord under this Lease immediately prior to such termination (prorated in the case of (ii) on the basis of a 365-day year for each day Tenant remains in possession). If no such notice is served, then a tenancy at sufferance shall be deemed to be created at the Rent in the preceding sentence. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including the loss of any proposed subsequent tenant for any portion of the Premises. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as herein set forth; nor shall receipt of any Rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to terminate this Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

(B) Surrender. Upon the expiration of this Lease, by lapse of time or otherwise, any and all buildings, improvements or additions erected on said Premises by Tenant shall be and become the property of Landlord without any payment therefor and Tenant shall surrender said Premises, together with all buildings and improvements thereon, whether erected by Tenant or Landlord, ordinary wear and tear and damage by fire or other casualty, condemnation and Landlord's obligations excepted. Tenant may install adequate equipment, fixtures and machinery for the carrying on of its business and upon the termination of this Lease by lapse of time or otherwise, provided all Rents and other amounts that may be due and owing to Landlord have been paid and the provisions of this Lease complied with, Tenant may remove such equipment, fixtures and machinery installed by it at Tenant's cost. However, upon removal of such equipment, fixtures and machinery, Tenant shall also repair any damage caused by such removal or installation.

ARTICLE 23 - DEFAULT-REMEDIES

The occurrence of one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

(A) Failure by Tenant to make payment of any Rent herein agreed to be paid or any other payment required to be made by Tenant hereunder, as and when due, and such a failure shall continue for a period of five (5) business days; provided, however, that Tenant shall be entitled to written notice and an additional five (5) day cure period on two (2) occasions during any twelve (12) month period before there shall be a default hereunder; however, Landlord's notice to Tenant of the amount of the partial payment of Rent for June 2013 shall not be considered a written notice for the purposes of this Article 23 (A);

(B) The making by Tenant of any assignment or arrangement for the benefit of creditors;

(C) The filing by Tenant of a petition in bankruptcy or for any other relief under the Federal Bankruptcy Law or any other applicable statute;

(D) The levying of an attachment, execution of other judicial seizure upon Tenant's property in or interest under this Lease, which is not satisfied or released or the enforcement thereof stayed or superseded by an appropriate proceeding within sixty (60) days thereafter;

(E) The filing of an involuntary petition in bankruptcy or for reorganization or arrangement under the Federal Bankruptcy Law against Tenant and such involuntary petition is not withdrawn, dismissed, stayed or discharged within sixty (60) days from the filing thereof;

(F) The appointment of a Receiver or Trustee to take possession of the property of Tenant or of Tenant's business or assets and the order or decree appointing such Receiver or Trustee shall have remained in force undischarged or unstayed for sixty (60) days after the entry of such order or decree;

(G) The vacating or abandonment of the Premises. Notwithstanding the foregoing, Tenant shall be allowed to cease operations in the Building without causing a default, provided that Tenant: (1) delivers to Landlord a certified forwarding address where Landlord can provide required notice under this Lease, (2) maintains its regularly scheduled HVAC maintenance program as required herein, (3) and preventative maintenance agreements with vendors reasonably approved by the Landlord to maintain the interior of the Premises, including the mechanical, electrical, and plumbing systems in a clean and adequate condition, (4) promptly upon demand reimburses Landlord for any increases in Landlord's insurance attributable to Tenant's vacation of the Premises, (5) keeps all utilities to the Premises supplied and heats the Premises (so that pipes don't freeze), and (6) Tenant is not in default of any of the terms, covenants and conditions, hereof, including the timely payment of all Rent to Landlord when due or any payment or reimbursement required under this Lease.

(H) The failure by Tenant to perform or observe any other term, covenant, agreement or condition to be performed or kept by Tenant under the terms, conditions, or provisions of this Lease, and such a failure shall continue uncorrected for thirty (30) days after written notice thereof has been given by Landlord to Tenant; provided however, if such default cannot be cured or corrected within that time, then such additional time as may be necessary if Tenant has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default.

Then and in any such event Landlord shall have the right, at the option of Landlord to be exercised in accordance with applicable law, then or at any time thereafter while such default or defaults shall continue, to elect either (1) to cure such default or defaults at its own expense and without prejudice to any other remedies which it might otherwise have, any payment made or expenses incurred by Landlord in curing such default with interest thereon at eighteen percent (18%) per annum to be and become additional Rent to be paid by Tenant with the next installment of Rent falling due thereafter; or (2) to re-enter the Premises, with notice, and dispossess Tenant and anyone claiming under Tenant by summary proceedings or otherwise, and remove their effects, and take complete possession of the Premises and either (a) declare this Lease forfeited and the Lease Term ended, or (b) elect to continue this Lease in full force and effect, but with the right at any time thereafter to declare this Lease forfeited and the Lease Term ended. In such re-entry Landlord may, with process of law, remove all persons from the Premises, and Tenant hereby covenants in such event, for itself and all others occupying the Premises under Tenant, to peacefully yield up and surrender the Premises to Landlord. Should Landlord declare this Lease forfeited and the Lease Term ended, Landlord shall be entitled to recover from Tenant the Rent and all other sums due and owing by Tenant to the date of termination, plus the costs of curing all of Tenant's defaults existing at or prior to the date of termination, plus the cost of recovering possession of the Premises, plus the deficiency, if any, between Tenant's Rent for the balance of the Lease Term provided hereunder and the Rent obtained by Landlord under another lease for the Premises for the balance of the Lease Term remaining under this Lease. Tenant shall remain liable for payments of all Rent and other charges and costs imposed on Tenant herein, in the amounts, at the times and upon

the conditions as herein provided, but Landlord shall credit against such liability of Tenant all amounts received by Landlord from such reletting after first reimbursing itself for all costs incurred in curing Tenant's defaults and re-entering, preparing and refinishing the Premises for reletting, and reletting the Premises, and for the payment of any procurement fee or commission paid to obtain another tenant, and for the attorney fees and legal costs incurred by Landlord.

Landlord shall use commercially reasonable efforts (consistent with applicable law) to mitigate its damages after an event of default by Tenant; provided, however, Landlord does not guaranty that any such mitigation efforts shall be successful. Tenant hereby acknowledges that (i) Landlord may reasonably elect to lease other comparable available space in the Building, or in other buildings owned by Landlord or Landlord's affiliates, before reletting the Premises, (ii) Landlord need not enter into any new lease that Landlord does not reasonably deem to be acceptable, and (iii) Landlord may decline to incur expenses to relet, other than customary leasing commissions and legal fees for negotiation of a lease with a new tenant.

ARTICLE 24 - RE-ENTRY BY LANDLORD

No re-entry by Landlord or any action brought by Landlord to oust Tenant from the Premises shall operate to terminate this Lease unless Landlord shall have given written notice of termination to Tenant, in which event Tenant's liability shall be as above provided. No right or remedy granted to Landlord herein is intended to be exclusive of any other right or remedy, and each and every right and remedy herein provided shall be cumulative and in addition to any other right or remedy hereunder or now or hereafter existing in law or equity or by statute. In the event of termination of this Lease, Tenant waives any and all rights to redeem the Premises either given by any statute now in effect or hereafter enacted.

ARTICLE 25 - ADDITIONAL RIGHTS TO LANDLORD

(A) In addition to any and all other remedies, Landlord may restrain any threatened breach of any covenant, condition or agreement herein contained but the mention herein of any particular remedy or right shall not preclude Landlord from any other remedy or right it may have either at law or equity, or by virtue of some other provision of this Lease; nor shall the consent to one act, which would otherwise be a violation or waiver of or redress for one violation either of covenant, promise agreement undertaking or condition, prevent a subsequent act which would originally have constituted a violation from having all the force and effect of any original violation.

(B) Receipt by Landlord of Rent or other payments from Tenant shall not be deemed to operate as a waiver of any rights of Landlord to enforce payment of any Rent, additional Rent, or other payments previously due or which may thereafter become due, or of any rights of Landlord to terminate this Lease or to exercise any remedy or right which otherwise might be available to Landlord, the right of Landlord to declare a forfeiture for each and every breach of this Lease is a continuing one for the life of this Lease.

ARTICLE 26 - SUCCESSORS, ASSIGNS AND LIABILITY

The terms, covenants, conditions and agreements herein contained and as the same may from time to time hereafter be supplemented, modified or amended, shall apply to, bind, and inure to the benefit of the parties hereto and their legal representatives, successors and assigns, respectively. In the event either party now or hereafter shall consist of more than one person, firm or corporation, then and in such event all such person, firms and/or corporations shall be jointly and severally liable as parties hereunder.

ARTICLE 27 - NOTICES

All notices required under this Lease shall be in writing and shall be deemed to be properly served when posted by certified United States mail, postage prepaid, return receipt requested, addressed to the party to whom directed at the

address herein set forth in Article 1 or at such other address as may be from time to time designated in writing by the party changing such address.

ARTICLE 28 - MORTGAGEE'S APPROVAL

If Landlord's mortgagee shall require modifications of the terms and provisions of this Lease, Tenant agrees to execute and deliver to Landlord the agreements required to effect such Lease modification within thirty (30) days after Landlord's request therefor. In no event, however, shall Tenant be required to agree to any modification of the provision of this Lease relating to: the amount of Rent or other charges reserved herein; the size and/or general location of the Premises; the duration and/or Commencement Date of the Lease Term; increasing Tenant's obligations or reducing the improvements to be made by Landlord to the Premises prior to the delivery of possession.

ARTICLE 29 - ESTOPPEL CERTIFICATES

Tenant agrees that at any time within ten (10) days following written notice from Landlord, it will execute, acknowledge and deliver to Landlord or any proposed mortgagee or purchaser a statement in writing certifying whether this Lease is in full force and effect and, if it is in full force and effect, what modifications have been made to the date of the certificates and whether or not any defaults or offsets exist with respect to this Lease and, if there are, what they are claimed to be and setting forth dates to which Rent or other charges have been paid in advance, if any, and stating whether or not Landlord is in default, if so, specifying what the default may be. The failure of Tenant to execute, acknowledge, and deliver to Landlord a statement as above shall constitute an acknowledgment by Tenant that this Lease is unmodified and in full force and effect and that the Rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of Landlord's notice to Tenant and shall constitute as to any person, a waiver of any defaults which may exist prior to such notice.

Landlord agrees not to unreasonably withhold its consent to or execution of any similar estoppel certificate requested by any potential assignee or sublessee of Tenant's interests herein.

ARTICLE 30 - MISCELLANEOUS

(A) If any term or provision of this Lease is declared invalid or unenforceable, the remainder of this Lease shall not be affected by such determination and shall continue to be valid and enforceable.

(B) This agreement contains the entire Lease contract between the parties hereto. A short form of this Lease, for the purpose of recording, may be executed by the parties simultaneously herewith and if either party desires to record this Lease, the short form shall be used for that purpose.

(C) The parties executing this Lease warrant that this agreement is being executed with full corporate authority and that the officers whose signatures appear hereon are duly authorized and empowered to make and execute this Lease in the name of the corporation by appropriate and legal resolution of its Board of Directors.

(D) Unless the context clearly denotes the contrary, the word "Rent" or "Rental" as used in this Lease not only includes cash Rental, but also all other payments and obligations to pay assumed by Tenant, whether such obligations to pay run to Landlord or to other parties.

(E) It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of the Premises or any claim of injury or damage and any emergency statutory or any other statutory remedy. If Landlord commences any summary proceeding for

nonpayment of Rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding.

(F) Neither Landlord nor Tenant shall be considered in default or breach of any of the terms, covenants and conditions of this Lease on either party's part to be performed (other than Tenant's obligation to pay Base Rent or Additional Rent) if either party fails to timely perform same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, actualities, Acts of God, acts caused directly or indirectly by the other party or any other cause beyond the reasonable control of either party.

(G) In the event either party institutes legal proceedings against the other for breach of or interpretation of any of the terms, conditions or covenants of this Lease, the party against whom a judgment is entered, shall pay all reasonable costs and expenses relative thereto, including reasonable attorneys' fees of the prevailing party.

(H) Tenant acknowledges and agrees that by executing and delivering this Lease to Landlord or Landlord's agent Tenant has made an offer to Landlord which offer may not be revoked, altered or modified for a period of ten (10) business days and, thereafter, only if Landlord has failed to countersign a copy of this Lease prior to Landlord's receipt of a written revocation.

(I) OFAC Compliance.

(a) Tenant represents and warrants that: (1) To the best of Tenant's knowledge, after reasonable inquiry, Tenant and each person or entity owning an interest in Tenant is: (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and; (ii) is not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; (2) None of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined); (3) No Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly); (4) None of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and; (5) Tenant has implemented procedures, and will consistently apply those procedures to ensure the foregoing representations and warranties remain true and correct at all times.

(b) Tenant covenants and agrees: (1) To comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect; (2) To immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached; (3) To not knowingly use funds from any "Prohibited Person" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under the Lease, and (4) At the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant's compliance with the terms hereof.

(c) Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease.

(d) Tenant shall also require and shall take reasonable measures to ensure compliance with the requirement that no person who owns any other direct interest in the Tenant is or shall be listed on any of the Lists or is an Embargoed Person. The term Embargoed Person means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law ("Embargoed Person"). This Subsection (d) shall not apply to any person to the extent that such person's interest in the Tenant is through a U.S. Publicly-Traded Entity. As used in this Agreement, U.S. Publicly-Traded Entity means a Person, other than an individual, whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person ("U.S. Publicly-Traded Entity").

(J) Tenant shall have the right to install a Wireless Fidelity Network ("Wi-Fi Network") within the Premises for the use of Tenant. Notwithstanding anything to the contrary contained herein, Tenant shall, at its sole cost and expense, return the Premises to the condition as existed on the date immediately prior to the commencement of the Lease term, including, without limitation, removal of the Wi-Fi Network from the Premises, prior to the expiration or sooner termination of the Lease term. Tenant agrees that Tenant's communications equipment associated with the Wi-Fi Network that will not cause radio frequency, electromagnetic, or other interference to any other party, or occupants of the Building or any other party. Should any interference occur, Tenant shall take all necessary steps as soon as commercially practicable and no later than three calendar days following such occurrence to correct such interference. If such interference continues after such three-day period, Tenant shall immediately cease operating Tenant's Communications Equipment until such interference is corrected or remedied to Landlord's satisfaction. Tenant acknowledges that Landlord has granted and/or may grant leases, licenses and/or other rights to other tenants and occupants of the Building and to telecommunication service providers. Tenant hereby indemnifies, hold harmless, and defends Landlord (except for matters directly resulting from Landlord's gross negligence or willful misconduct) against all claims, losses or liabilities arising as a result of Tenant's use and/or construction of any Wi-Fi Network.

ARTICLE 31 - DEFAULT RATE OF INTEREST

All amounts owed by Tenant to Landlord pursuant to any provision of this Lease shall bear interest from the date due until paid at eighteen percent (18%) per annum, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged.

ARTICLE 32 - EXCULPATORY PROVISIONS

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of Landlord while in form purporting to be the representations,

warranties, covenants, undertakings and agreements of Landlord are nevertheless each and every one of them made and intended, not as personal representations, warranties, covenants, undertakings and agreements by Landlord or for the purpose or with the intention of binding Landlord personally, but are made and intended for the purpose only of subjecting Landlord's interest in the Premises to the terms of this Lease and for no other purpose whatsoever.

ARTICLE 33 - MORTGAGE PROTECTION

Tenant agrees to give any holder of any first mortgage or first trust deed in the nature of a mortgage (both hereinafter referred to as a "First Mortgage") against the Premises, or any interest therein, by registered or certified mail, a copy of any notice or claim of default served upon Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of Landlord's interest in

leases, or otherwise) of the address of such First Mortgage holder. Tenant further agrees that if Landlord shall have failed to cure any such default within twenty (20) days after such notice to Landlord (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such twenty (20) days and is diligently pursuing the remedies or steps necessary to cure or correct such default), then the holder of the First Mortgage shall have an additional thirty (30) days within which to cure or correct such Default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if such holder of the First Mortgage has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default, including the time necessary to obtain possession if possession is necessary to cure or correct such default).

ARTICLE 34 - RECIPROCAL COVENANT ON NOTIFICATION OF ADA VIOLATIONS

Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the property or the Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the property or the Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the property or the Premises.

ARTICLE 35 - LAWS THAT GOVERN

Landlord and Tenant agree that the term and conditions of this Lease shall be governed by the Laws of the State of Minnesota.

ARTICLE 36 - FINANCIAL STATEMENTS

Within ten (10) business days after Landlord's request, but not more frequently than one time per year unless sale, refinance or default, Tenant shall deliver to Landlord the current financial statements of Tenant, and financial statement of the two (2) years prior to the current financial statements year, with an opinion of a certified public accountant. This information includes a balance sheet and profit and loss statement for the most recent prior year, all prepared in accordance with generally accepted accounting principles consistently applied.

ARTICLE 37 - RELOCATION OF TENANT

Intentionally Deleted.

ARTICLE 38 - CONFIDENTIALITY

Tenant agrees that this Agreement of Lease will be kept confidential and shall not, without Landlord's prior written consent, be disclosed by Tenant or by its agents, representatives and employees who have a need to know and who are informed by Tenant of the confidential nature of the Agreement of Lease.

ARTICLE 39 – SIGNAGE

With the prior consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed, Tenant will have a right, at its sole cost and expense, to place its name and logo on the front door and other doors to the Premises and its name on the Building and building identification signs in accordance with all governmental rules and ordinances applicable to the same. Tenant shall be responsible for removing their signs at the termination of the Lease.

ARTICLE 40 – Smoking Restriction

Landlord and its property management personnel shall make a reasonable effort to prevent smoking by tenants of the building within 100 feet of Tenant' entrances, exits or common areas.

IN WITNESS WHEREOF, the parties hereto may execute this Lease in counterpart copies, each of which shall be deemed originals or Landlord and Tenant have executed this Lease the date and year noted below.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SIGNATURE PAGE

LANDLORD:

SILVER PRAIRIE CROSSROADS, LLC

By: PRINCIPAL SILVER, LLC,
its sole member

By: Principal Enterprise Capital Holdings, LLC,
its managing member

By: Principal Enterprise Capital, LLC,
its manager

By: /s/ Bruce K. Bruene
Name: Bruce K. Bruene
Title: Managing Partner

By: /s/ P. Mare Poggioli
Name: P. Mare Poggioli
Title: Managing Partner

TENANT:

SUNSHINE HEART INC.,
a Delaware corporation

By: /s/ Jeffrey S. Mathiesen
Name: Jeffrey S. Mathiesen
Title: CFO

CONSULT YOUR ATTORNEY: This document has been prepared for approval by your attorney. No representation or recommendation is made by Broker as to the legal sufficiency, legal effect, or tax consequence of this document or the transaction to which it relates. These are questions for your attorney and financial advisors.

RIDER TO LEASE

1. One Time Right of Offer.

(a) Offer Space. If, at any time during the initial Term and the Extension Option has not lapsed, but on only one (1) occasion, Landlord desires to actively market that space that is currently vacant, containing approximately 11,693 rentable square feet of space, Landlord shall give Tenant written notice ("Offer Space Notice") of such event. Such notice shall identify the location, configuration and size of the space ("Offer Space"), as well as the applicable business terms under which Landlord is willing to lease such space (such as duration, commencement date, concessions, base rent, and additional rent). Within ten (10) business days after the date the Offer Space Notice is given to Tenant, the time of giving of such notice to be of the essence of this Section, Tenant shall give Landlord written notice ("Offer Acceptance Notice") of its election to lease the entire Offer Space.

(b) Amendment. After receipt of any such Offer Acceptance Notice, Landlord and Tenant shall enter into an amendment to this Lease acceptable to Landlord and Tenant to amend the Lease pursuant to the terms and conditions of the Offer Space Notice. Except as set forth in the Offer Space Notice, the terms and conditions of the Lease as they apply to the Premises shall govern Tenant's lease of the Offer Space.

(c) Failure to Exercise. In the event that Tenant fails to exercise its right as aforesaid within ten (10) business days of the date the Offer Space Notice is given to Tenant or, in the event Tenant shall have exercised its right and Tenant shall not have executed an amendment of this Lease as aforesaid within ten (10) business days from the date the Tenant is given such an Amendment, Tenant shall be deemed to have waived its right under this Section.

(d) Subordination. Tenant's right of offer granted hereunder shall be subordinate to any and all existing rights or interests conferred to other tenants for all or any portion of the Offer Space, as contained in any lease, or otherwise, in effect on the date of execution of this Lease including, without limitation, (i) options or rights regarding renewal, extension or expansion, (ii) subleases and (iii) assignments.

(e) Not Transferable. Tenant acknowledges and agrees that any right of offer granted herein shall be deemed personal to Tenant and if Tenant subleases, assigns or otherwise transfers any interests under this Lease prior to the exercise of any right of offer granted under this Section, such right shall lapse and be of no further force or effect.

(f) No Default. Tenant shall be deemed to have waived its rights under this Section in the event that Tenant is in default under the Lease beyond any applicable notice and grace period as of the date of either the Offer Space Notice or Offer Acceptance Notice.

EXHIBIT A

(FLOOR PLAN)

See Exhibit B-1 for a footprint of the Premises.

EXHIBIT B

(Work Letter)

This is the Work Letter referred to in and specifically made a part of the Lease to which this **Exhibit B** is annexed, covering the Premises, as more particularly described in the Lease. Landlord and Tenant agree as follows:

1. Defined Terms. The following defined terms shall have the meaning set forth below and, unless provided to the contrary herein, the remaining defined terms shall have the meaning set forth in the Lease:

Landlord's Representative:	Gary Lidstone of CB Richard Ellis. Landlord has designated Landlord's Representative as its sole representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of Landlord as required in this Work Letter. Landlord shall not change Landlord's Representative except upon notice to Tenant. Tenant acknowledges that neither Tenant's architect nor any contractor engaged by Tenant is Landlord's agent and neither entity has authority to enter into agreements on Landlord's behalf or otherwise bind Landlord.
Tenant's Representative:	Kirk Stremke. Tenant has designated Tenant's Representative as its representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of Tenant as required in this Work Letter. Tenant shall not change Tenant's Representative except upon prior written notice to Landlord.
Allowance:	The lesser of (a) One Hundred Seventy-Two Thousand Three Hundred Eighty-Six and No/100 Dollars ($172,386.00) or (b) the actual cost of Landlord's Work and Tenant Work, as defined below; provided, however, Tenant may apply the difference to the cost of other mutually acceptable initial leasehold improvements to the Premises.
Construction Management Fee:	Three percent (3%) of the actual hard construction costs for Tenant's Work, for Landlord's costs resulting from Landlord's review of the Plans, construction management costs, use of facilities and other such costs incurred by Landlord as a result of Tenant's Work
General Contractor:	MP Johnson

2. Landlord's Work. Tenant accepts the Premises in its current "AS IS" condition and acknowledges that Landlord shall have no obligation to do any work in or on the Premises to render it ready for Tenant's use or occupancy; provided, however, that Landlord shall deliver the Premises in the condition set forth on the attached **Exhibit B-1** ("Landlord's Work"). If Landlord determines that the cost of Landlord's Work will exceed the Allowance, then prior to commencement of Landlord's Work, Landlord will submit to Tenant a cost estimate for Landlord's Work ("Cost Estimate") which Tenant shall approve or reject within five (5) days after receipt thereof. Tenant's failure to reject the Cost Estimate within said five (5) day period shall be deemed to be an acceptance thereof. If Tenant rejects the Cost Estimate, Tenant shall, together with such rejection, propose such changes to the Plans as will cause the Cost Estimate to be acceptable. If the accepted Cost Estimate exceeds the Allowance, then Tenant shall pay to Landlord the amount of such excess within thirty (30) business days after receipt by Tenant of a bill therefor, but in no event later than the Commencement Date.

A. Extra Work; Omissions. Tenant may request substitutions, additional or extra work and/or materials over and above Landlord's Work ("Extra Work") to be performed by Landlord, provided that the Extra Work, in Landlord's reasonable judgment, (1) shall not delay completion of Landlord's Work or the Commencement Date of the Lease; (2) shall be practicable and consistent with existing physical conditions in the Building and any other plans for the Building which have been filed with the appropriate municipality or other governmental authorities having jurisdiction thereover; (3) shall not impair Landlord's ability to perform any of Landlord's obligations hereunder or under the Lease or any other lease of space in the Building; and (4) shall not affect any portion of the Building other than the Premises. All Extra Work shall require the installation of new materials at least comparable to Building standards and any substitution shall be of equal or greater quality than that for which it is substituted. In the event Tenant requests Landlord to perform Extra Work and if Landlord accedes to such request, then and in that event, prior to commencing such Extra Work, Landlord shall submit to Tenant a written estimate ("Estimate") for said Extra Work to be performed. Within five (5) days after Landlord's submission of the Estimate, Tenant shall, in writing, either accept or reject the Estimate. Tenant's failure either to accept or reject the Estimate within said ten (10) day period shall be deemed rejection thereof. In the event that Tenant rejects the Estimate or the Estimate is deemed rejected, Tenant shall within five (5) days after such rejection propose to Landlord such necessary revisions of the Plans so as to enable Landlord to proceed as though no such Extra Work had been requested. Should Tenant fail to submit such proposals regarding necessary revisions of the Plans within said five (5) day period, Landlord, in its sole discretion, may proceed to complete Landlord's Work in accordance with the Plans already submitted, with such variations as in Landlord's sole discretion may be necessary so as to eliminate the Extra Work. Tenant may request the omission of an item of Landlord's Work, provided that such omission shall not delay the completion of Landlord's Work and Landlord thereafter shall not be obligated to install the same. Credits for items deleted or not installed shall be granted in amounts equal to credits obtainable from subcontractors or materialmen. In no event shall there be any cash credits. In the event Landlord performs Extra Work hereunder, Tenant shall pay to

Landlord, upon acceptance of the Estimate a sum equal to the Estimate to the extent the Estimate together with the amount set forth in the Cost Estimate exceeds the Allowance.

B. Substantial Completion and Punch List. When Landlord is of the opinion that Landlord's Work is complete and Landlord has received a certificate of occupancy or other similar final approval from the governmental authority having jurisdiction over the Premises allowing Tenant to lawfully occupy the Premises, then Landlord shall so notify Tenant. Tenant agrees that upon such notification, Tenant promptly (and not later than two (2) business days after the date of Landlord's said notice) will inspect the Premises and furnish to Landlord a written statement that Landlord's Work has been completed and are complete as required by the provisions of this Exhibit and the Lease with the exception of certain specified and enumerated items (hereinafter referred to as the "Punch List"). Tenant agrees that at the request of Landlord from time to time thereafter, Tenant will promptly furnish to Landlord revised Punch Lists reflecting any completion of any prior Punch List items. It is mutually agreed that if the Punch List or any revised Punch List consists only of items which would not materially impair Tenant's use or occupancy of the Premises, then, in such event, Tenant will acknowledge in writing that Landlord's Work is complete and accept possession of the Premises ("Substantial Completion Date" or "Date of Substantial Completion"); provided, however, that such acknowledgment of acceptance shall not relieve Landlord of its obligations to promptly complete all such Punch List items. Notwithstanding the foregoing, in no event shall Landlord be obligated to repair latent defects, not originally listed on the Punch List, beyond a period of twelve (12) months after the Substantial Completion Date. Promptly after the Substantial Completion Date, the parties will execute an instrument in the form attached hereto as Exhibit D. The Commencement Date shall not be delayed due to any Tenant Delay in the Substantial Completion Date. If Landlord's Work is not substantially complete due to any special equipment, fixtures or materials, changes, alterations or additions requested by Tenant or the delay or failure of Tenant in supplying information or approving or authorizing any applicable plans, specifications, estimates or other matters, or any other act or omission of Tenant, then there shall be a Tenant Delay. In the event the Substantial Completion Date is delayed due to one or more Tenant Delays, then the Substantial Completion Date shall be modified to be the earlier of the Substantial Completion Date or the date Landlord's Work would have been complete but for any Tenant Delays.

C. Tenant's Entry Prior to Commencement Date. Landlord may permit Tenant or its agents or laborers to enter the Premises at Tenant's sole risk prior to the Commencement Date in order to perform through Tenant's own contractors the Tenant Work and such other work as Tenant may desire, at the same time that Landlord's contractors are working in the Premises. The foregoing license to enter prior to the Commencement Date, however, is conditioned upon Tenant's labor not interfering with Landlord's contractors or with any other tenant or its labor. If at any time such entry shall cause disharmony, interference or union disputes of any nature whatsoever, or if Landlord shall, in Landlord's reasonable judgment, determine that such entry, such work or the continuance thereof shall interfere with, hamper or prevent Landlord from proceeding with the completion of the Building or Landlord's Work at the earliest possible date, this license may be withdrawn by Landlord immediately upon written notice to Tenant. Such entry shall be deemed to be under and subject to all of the terms, covenants and conditions of the Lease, and Tenant shall comply with all of the provisions of the Lease which are the obligations or covenants of Tenant, including, but not limited to, insurance requirements and indemnification obligations, except that the obligation to pay Rent shall not commence until the Commencement Date. In the event that Tenant's agents or laborers incur any charges from Landlord, including, but not limited to, charges for use of construction or hoisting equipment on the Building site, such charges shall be deemed an obligation of Tenant and shall be collectible as Rent pursuant to the Lease, and upon default in payment thereof, Landlord shall have the same remedies as for a default in payment of Rent pursuant to the Lease.

D. Time is of the Essence. Landlord and Tenant mutually acknowledge that Landlord's construction process in order to complete the Premises requires a coordination of activities and a compliance by Tenant without delay of all obligations imposed upon Tenant pursuant to this exhibit and that time is of the essence in the performance of Tenant's obligations hereunder and Tenant's compliance with the terms and provisions or this exhibit.

3. Tenant's Work. The "Tenant Work" shall mean the interior walls, partitions, doors, door hardware, wall coverings, wall base, counters, lighting fixtures, electrical and telephone wiring, cabling for computers, metering and outlets, ceilings, floor and window coverings, HVAC system, fire sprinklers system, and other items of general applicability that Tenant desires to be installed in the interior of the Premises, which are attached hereto as **Exhibit B-2**. Tenant shall promptly commence and diligently prosecute to full completion the Tenant Work in accordance with the Drawings. The parties agree that no demolition work or other Tenant Work shall be commenced on the Premises until such time as Tenant has provided to Landlord copies of the demolition and building permits required to be obtained from all applicable governmental authorities and all other conditions precedent have been fully satisfied. All materials, work, installations, equipment and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or during the Term shall be at Tenant's risk, and neither Landlord nor any party acting on Landlord's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever, excluding by reason of Landlord's gross negligence or willful or criminal misconduct.

A. Drawings. Tenant shall engage and pay for the services of a licensed architect to prepare a space layout, drawings and specifications for all of the Tenant Work (the "Drawings"), which architect shall be subject to Landlord's reasonable approval (the "Architect"). Tenant shall devote such time in consultation with the Architect as shall be necessary to enable the Architect to develop complete and detailed architectural, mechanical and engineering drawings and specifications, as necessary, for the construction of the Tenant Work, showing thereon all of the Tenant Work**.** Tenant hereby acknowledges and agrees that it is Tenant's sole and exclusive responsibility to cause the Tenant Work and the Drawings to comply with all applicable laws, including the Americans with Disabilities Act and other ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction thereof.

B. Landlord's Approval. On or before the applicable Time Limit set forth below, Tenant shall submit to Landlord complete and final Drawings for the Tenant Work. The Drawings shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord should

disapprove such Drawings, Landlord shall specify to Tenant the reasons for its disapproval and Tenant shall cause the same to be revised to meet the Landlord's and Tenant's mutual reasonable satisfaction and shall resubmit the same to Landlord, as so revised, on or before the applicable Time Limit set forth below.

C. Selection of Contractors. It is understood and agreed by the parties that, as hereinafter set forth, Tenant has elected to retain a general contractor and arrange for the construction and installation of the Tenant Work itself in a good and workmanlike manner. On or before the applicable Time Limit set forth below, Tenant shall submit to Landlord the names of the general contractor, electrical, ventilation, plumbing and heating subcontractors (hereinafter "Major Subcontractors"), as applicable, for Landlord's approval, which approval shall not be unreasonably withheld. If Landlord shall reject any

Major Subcontractor, Landlord shall advise Tenant of the reason(s) in writing and, Tenant shall choose another Major Subcontractor. Along with Tenant's notice of its Major Subcontractors, Tenant shall notify Landlord of its estimate of the total costs for the Tenant Work. If the final estimate of total costs exceeds Allowance ("Excess Costs"), Tenant must provide to Landlord, reasonably acceptable adequate assurance that Tenant has the financial resources to pay for such Excess Costs.

D. Tenant's Construction of Tenant Work.

(i) Payment; Liens. Tenant shall promptly pay any and all costs and expenses in connection with or arising out of the performance of the Tenant Work and shall furnish to Landlord evidence of such payment upon request. Landlord shall post and serve notices of non-liability in accordance with applicable laws. In the event any lien is filed against the Building or any portion thereof or against Tenant's leasehold interest therein, the provisions of Article 15 of the Lease shall apply.

(ii) Indemnity. Tenant shall indemnify, defend (with counsel reasonably satisfactory to Landlord and Tenant) and hold Landlord harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers' compensation, attorneys' fees and costs) based on personal injury or property damage caused in, or contract claims (including, but not limited to claims for breach of warranty) arising from Tenant's Work. Tenant shall repair or replace (or, at Landlord's election, reimburse Landlord for the cost of repairing or replacing) any portion of the Building or item of Landlord's equipment or any of Landlord's real or personal property damaged, lost or destroyed in the construction of the Tenant Work.

(ii) Contractors. The Major Subcontractors employed by Tenant and any subcontractors thereof shall be (a) duly licensed in the state in which the Premises are located, and (b) except as otherwise approved herein, subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. On or before ten (10) business days prior to the commencement of any construction activity in the Premises, Tenant and Tenant's contractors shall obtain and provide Landlord with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies reasonably satisfactory to Landlord. If Landlord should disapprove such insurance, Landlord shall specify to Tenant the reasons for its disapproval within five (5) business days after delivery of such certificates. Tenant's agreement with its contractors shall require such contractors to provide daily clean up of the construction area to the extent such clean up is necessitated by the construction of the Tenant Work, and to take reasonable steps to minimize interference with other tenants' use and occupancy of the Building. Nothing contained herein shall make or constitute Tenant as the agent of Landlord. Tenant and Tenant's contractors shall comply with any other reasonable rules, regulations or requirements that Landlord may impose.

(iv) Use of Common Areas. During the construction period and installation of fixtures period, Tenant shall be allowed to use, at no cost to Tenant, a freight elevator for the purpose of hoisting materials, equipment and personnel to the Premises. Also during the construction period, Tenant shall ensure that the Building and all common areas and the Premises are kept in a clean and safe condition at all times. After hours construction activities by Tenant shall require reimbursement to Landlord for its costs for after-hours supervision, which amount shall be in addition to the Construction Management Fee. Further, all construction activities shall be conducted so

as to use reasonable efforts to minimize interference with the use and occupancy of the Building by the tenants thereof. Such entry shall be deemed to be under all the terms, covenants, provisions and conditions of the Lease.

(v) Coordination. All work performed by Tenant shall be coordinated with Landlord's Representative. Tenant shall timely notify and invite Landlord's Representative to all construction meetings (with contractors, engineers, architects and others), and supply all documentation reasonably requested by Landlord's Representative.

(vi) Assumption of Risk. All materials, work, installations, equipment and decorations of any nature whatsoever brought on or installed in the Premises as Tenant Work pursuant to the provisions of this Work Letter before the commencement of the Term or throughout the Term shall be at Tenant's risk, and neither Landlord nor any party acting on Landlord's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever, excluding by reason of Landlord or such other party's gross negligence or willful or criminal misconduct.

E. Time Limits. The following maximum time limits and periods shall be allowed for the indicated matters:

Action	Time Limit
Tenant notifies Landlord of its selection of Major Subcontractors.	On or before 10 business days after the date of mutual execution of this Lease.
Landlord approves/disapproves Tenant's Major Subcontractors.	On or before 10 business days after the date of Landlord's receipt of the list of Major Subcontractors.
If applicable, Landlord and Tenant mutually approve the final revised list of Major Subcontractors.	On or before 5 business days after the date of Landlord's receipt of a revised list of Major Subcontractors.
If applicable, Landlord and Tenant mutually approve the final revised Drawings.	On or before 5 business days after the date of Landlord's receipt of revised Drawings.
Tenant submits Drawings for building permit, if applicable.	On or after the date Tenant and Landlord mutually approve the final, revised Drawings.
Tenant allowed access to the Premises to commence Construction of Tenant Work	After providing copies of the building permit(s) and the contractors meeting all of Landlord's insurance requirements.

Except as may be otherwise specifically provided for herein, in all instances where either Tenant's or Landlord's approval is required, if no written notice of disapproval is given within the applicable Time Limit, at the end of such period the applicable party shall be deemed to have given its approval and the next succeeding time period shall commence. Any delay in any of the foregoing dates (including any "re-do", continuation or abatement of any item due to Tenant's or Landlord's disapproval thereof) shall automatically delay all subsequent deadlines by a like amount of time.

F. Allowance. Landlord shall contribute to the costs and expenses of all costs for the planning and design of the Tenant Work, including all permits, licenses and construction fees and constructing the Tenant Work in an amount not to exceed Allowance. If the final costs for Tenant's Work exceed Allowance, those Excess Costs shall be paid by Tenant. Provided this Lease is in full force and effect and Tenant is not in Default hereunder beyond any applicable notice and grace period, Landlord shall pay Allowance to Tenant consistent with the terms and conditions of this Section. After Tenant's Work is substantially complete (as provided under Section G hereof), Tenant may submit to Landlord a request in writing for Allowance which request shall include: (a) "as-built" drawings showing all of the Tenant Work, (b) a detailed breakdown of Tenant's final and total construction costs, together with receipted invoices showing payment thereof, (c) a certified, written statement from the Architect that all of the Tenant Work has been completed substantially in accordance with the Drawings, (d) all required AIA forms, supporting final lien waivers, and releases executed by the Architect, General Contractor, the Major Subcontractors and all subcontractors and suppliers in connection with the Tenant Work, (e) a copy of a certificate of occupancy or amended certificate of occupancy required with respect to the Premises, if applicable, together with all licenses, certificates, permits and other government authorizations necessary in connection with the Tenant Work and the operation of Tenant's business from the Premises, and (f) proof reasonably satisfactory to Landlord that Tenant has complied with all of the conditions set forth in this Work Letter and has satisfactorily completed the Tenant Work, including, at Landlord's option, a certificate from Landlord's construction manager after inspection of the Tenant Work ("Draw Request"). Upon Landlord's receipt and approval of the Draw Request, Landlord shall pay the balance of Allowance less the Construction Management Fee. Payment by Landlord shall be made within thirty (30) days, unless Landlord notifies Tenant, in writing, of its rejection (and the reasons therefor) of any or all of the Draw Request. To the extent Landlord does not so reject any portion of said Draw Request, Landlord shall timely pay such acceptable portion of the Draw Request.

G. Substantial Completion. The Tenant Work shall be deemed substantially complete when all work called for by the Drawings has been finished, even though minor items may remain to be installed, finished or corrected ("Substantial Completion Date" or the "Date of Substantial Completion"). Tenant shall cause the contractors to diligently complete any items of work not completed when the Premises are substantially complete. In the event of any dispute as to substantial completion of Tenant Improvements, the statement of Landlord's construction manager shall be conclusive. Substantial completion shall have occurred notwithstanding punch list items. Promptly after the Substantial Completion Date, the parties will execute an instrument in the form attached hereto as **Exhibit D**, setting forth the Commencement Date of the Lease, so that said date is certain and such instrument, when executed, is hereby made a part of this Lease and incorporated herein by reference.

UNDER NO CIRCUMSTANCES SHALL A DELAY IN THE SUBSTANTIAL COMPLETION DATE DELAY THE COMMENCEMENT DATE, RENT OR ANY OTHER APPLICABLE DATES OR OBLIGATIONS OF TENANT.

H. No Representations or Warranties. Notwithstanding anything to the contrary contained in the Lease or herein, Landlord's participation in the preparation of the Drawings, the cost estimates for Tenant and the construction of the Tenant Work and/or the Tenant Work shall not constitute any representation or warranty, express or implied, that (i) the Drawings are in conformity with applicable governmental codes, regulations or rules or (ii) the Tenant Work, if built in accordance with the Drawings, will be suitable for Tenant's intended purpose. Tenant acknowledges and agrees that the Tenant Work is intended for use by Tenant and the specification and design requirements for such improvements are not within the special knowledge or experience of Landlord. Landlord's obligations shall be to review the Drawings; and any additional cost or expense required for the modification thereof to more adequately meet Tenant's use, whether during or after construction thereof, shall be borne entirely by Tenant.

EXHIBIT B-1

[Diagram Omitted]

Exhibit B2
Tenant submitted contractors for clean room improvements as per Tenant's work.

Landlord approves the selection of Gerbig Engineering and Allen Mechanical for the improvements described in their attached proposals for improvements to Room 112 and 113 of the plan attached in Exhibit B1. Furthermore, notwithstanding the requirements for Tenant Work described in the lease under Work Letter as Exhibit B and their fulfillment as a precondition, Landlord agrees that these improvements qualify for reimbursement from any remaining construction allowance funds after Landlord's Work is completed.

LANDLORD:

SILVER PRAIRIE CROSSROADS, LLC

By: PRINCIPAL SILVER, LLC,
its sole member

By: Principal Enterprise Capital Holdings, LLC,
its managing member

By: Principal Enterprise Capital, LLC,
its manager

By: /s/ Bruce K. Bruene

Name: Brue K. Bruene
Title: Managing Partner
Date: October 24, 2011

[Proposals Omitted]

EXHIBIT C

BUILDING RULES AND REGULATIONS

1. Any sign, lettering, picture, notice, or advertisement installed on or in any part of the Premises and visible from the exterior of the Building, or visible from the exterior of the Premises, shall be installed at Tenant's sole cost and expense, and in such manner, character, and style as Landlord may approve in writing. In the event of a violation of the foregoing by Tenant, Landlord may remove the same without any liability and may charge the expense incurred by such removal to Tenant.
2. No awning or other projection shall be attached to the outside walls of the Building. No curtains, blinds, shades, or screens visible from the exterior of the Premises, shall be attached to or hung in, or use in connection with any window or door of the Premises without the prior written consent of Landlord. Such curtains, blinds, shades, screens, or other fixtures must be of a quality, type, design, and color and attached in the manner approved by Landlord.
3. Tenant, its servants, employees, customers, invitees, and guests shall not obstruct sidewalks, entrances, passages, corridors, vestibules, halls, or stairways in and about the Building which are used in common with other tenants and their servants, employees, customers, guests, and invitees and which are not a part of the Premises of Tenant. Tenant shall not place objects against glass partitions or doors or windows which would be unsightly from the Building and will promptly remove any such objects upon notice from Landlord.
4. Tenant shall not make excessive noises, cause disturbances or vibrations or use or operate any electrical or mechanical devices that emit excessive sound or other waves or disturbances or create obnoxious odors, any of which may be offensive to the other tenants and occupants of the Building, or that would interfere with the operation of any device, equipment, radio, television broadcasting, or reception from or within the Building or elsewhere and shall not place or install any projections, antennas, aerials, or similar devices inside or outside of the Premises or on the Building without Landlord's approval.
5. Tenant shall not waste electricity, water, or air conditioning and shall cooperate fully with Landlord to insure the most effective operation of the Building's heating and air conditioning system and shall refrain from attempting to adjust any controls other than unlocked room thermostats, if any, installed for Tenant's use. Tenant shall keep corridor doors closed.
6. Tenant assumes full responsibility for protecting its space from theft, robbery, and pilferage which includes keeping doors locked and other means of entry to the Premises closed and secured after normal business hours.
7. Subject to Exhibit E, in no event shall Tenant bring into the Building inflammables such as gasoline, kerosene, naphtha and benzene or explosives or any other article of intrinsically dangerous nature. If, by reason of the failure of Tenant to comply with the provisions of this subparagraph, any insurance premium for all or any part of the Building shall at any time be increased, Tenant shall make immediate payment of the whole of the increase insurance premium without waiver of any of Landlord's other rights at law or in equity for Tenant's breach of this Lease.
8. Tenant shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations and Building rules and shall not directly or indirectly make any use of the Premises which may be prohibited by any of the foregoing or which may be dangerous to persons or property or may increase the cost of insurance or require additional insurance coverage.
9. Landlord shall have the right to prohibit any advertising by Tenant which in Landlord's reasonable opinion tends to impair the reputation of the Building or its desirability as a building for office or industrial use and, upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
10. The Premises shall not be used for lodging, sleeping, or for any illegal purpose.
11. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully and comply strictly with the foregoing rules and regulations and such other and further appropriate rules and regulations as Landlord or Landlord's agent may from time to time adopt. Reasonable notice of any additional rules and regulations shall be given in such manner as Landlord may reasonable elect.
12. Unless expressly permitted by Landlord, no additional locks or similar devices shall be attached to any door or window and no keys other than those provided by Landlord shall be made for any door. If Tenant desires more

than two keys for one lock, Landlord may provide the same upon payment by Tenant. Upon termination of this Lease or of Tenant's possession, Tenant shall surrender all keys of the Premises and shall explain to Landlord all combination locks on safes, cabinets, and vaults.
13. Any carpeting cemented down by Tenant shall be installed with a releasable adhesive. In the event of a violation of the foregoing by Tenant, Landlord may charge the expense incurred by such removal to Tenant.
14. The water and wash closets, drinking fountains, and other plumbing fixtures shall not be used by any purpose other than those for which they were constructed and no sweepings, rubbish, rags, coffee grounds, or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant who, or whose servants, employees, agents, visitors, or licensees, shall have cause the same. No person shall waste water by interfering or tampering with the faucets or otherwise.
15. No electric circuits for any purpose shall be brought into the Premises without Landlord's written permission specifying the manner in which same may be done.
16. No animals (excluding service animals) shall be allowed in any office, halls, corridors, or elsewhere in the Building. Notwithstanding the ban on animals (excluding service animals) in the Building, Landlord may grant or withhold consent to allow certain animals in the Building on a case-by-case basis. Landlord will only consider granting such consent if (i) the animal is registered with a legitimate and nationally-recognized therapeutic training facility as having completed all applicable training; (ii) the animal is always accompanied by a person which requires the animal to assist with a serious medical or psychological condition, which assistance is prescribed by a licensed medical doctor, psychologist, or equivalent; (iii) the animal does not pose a real, potential, or perceived threat to others in the Building or related facilities; (iv) the animal is trained not to urinate or defecate indoors; and (v) both Tenant and the individual owner of the animal agree in writing to indemnify and hold harmless Landlord from and against any costs, amounts, fees (including, without limitation, reasonable attorneys' fees), and liabilities relating directly to such animal(s). Landlord may institute other rules and regulations regarding animals at any time. Landlord reserves the right to retract consent to any animals at any time.
17. Tenant shall not throw anything out of the door or windows or down any passageways or elevator shafts.

18. All loading, unloading, receiving, or delivery of goods, supplies, or disposal of garbage or refuse shall be made only through entryways and freight elevators provided for such purposes and indicated by Landlord. Tenant shall be responsible for any damages to the Building or the property of its employees or to others and injuries sustained by any person whomsoever resulting from the use of or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.
19. All safes, equipment, or other heavy articles shall be carried in or out of the Premises only at such time and in such manner as shall be prescribed in writing by Landlord and Landlord shall in all cases have the right to specify the proper position of any such safe, equipment, or other heavy article which shall only be used by Tenant in a manner which will not interfere with or cause damage to the Premises or the building in which they are located, or to the other tenants or occupants of said building. Tenant shall be responsible for any damage to the Building or the property of its employees or other and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Premises and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.
20. Canvassing, soliciting and peddling in the Building is prohibited and each Tenant shall cooperate to prevent the same.
21. Vending machines shall not be installed without permission of Landlord not to be unreasonably withheld, conditioned or delayed.
22. Wherever in these Building Rules and Regulations the word “Tenant” occurs, it is understood and agreed that it shall mean Tenant’s associates, agents, clerks, servants, and visitors. Wherever the work “Landlord” occurs, it is understood and agreed that it shall mean Landlord’s agents, clerks, servants, and visitors.
23. Tenant, its servants, employees, customers, invitees, and guests shall, when using the common parking facilities, if any, in and around the Building, observe and obey all signs regarding fire lanes, visitor parking, and no parking zones and when parking, always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no parking or visitor parking zone improperly. All vehicles shall be parked at the sole risk of the owner and Landlord assumes no

responsibility for any damage to or loss of vehicles. No vehicles shall be parked overnight outside the Premises without notice to Landlord or its agents. No trailers or over-sized vehicles may be parked in the parking facilities.
24. All entrance doors to the Premises shall be locked when the Premises are not in use. All corridor doors shall also be closed during times when the air conditioning equipment in the Building is operating so as not to dissipate the effectiveness of the systems or place an overload thereon.
25. Landlord reserves the right at any time from time to time upon prior written notice to Tenant to rescind, alter, or waive, in whole or in part, any of these Rules and Regulations when it is deemed necessary, desirable, or proper, in Landlord’s judgment, for its best interest or for the best interest of tenants of the Building.
26. Tenant, at no cost to Tenant shall fully cooperate with Landlord in any programs in which Landlord may elect to participate relating to the Building’s energy efficiency, environmental efficiency, and/or safety, including, without limitation, the Leadership in Energy and Environmental Design (LEED) program and related Green Building Rating System promoted by the U.S. Green Building Council. Tenant shall not be required to incur any costs in complying with this Section; provided, however, costs may be included in Operating Expenses to the extent allowable under Article 5 above. Nothing in this Section shall limit any rights of Tenant under the Lease or unreasonably restrict the operation of Tenant’s business from the Premises.

EXHIBIT D
Confirmation of Lease Terms and Dates

Re: Office/Industrial Lease (the “Lease”) dated October 21, 2011 by and between SILVER PRAIRIE CROSSROADS, LLC (“Landlord”), SUNSHINE HEART INC., a Delaware corporation (“Tenant”).

The undersigned, as Tenant, hereby confirms as of this day of , 20 , the following:

1. The Substantial Completion Date for the Premises occurred on , 20 , and Tenant is currently occupying the same.

2. The Commencement Date is December 1, 2011.

3. The Expiration Date is March 31, 2016.

4. The schedule of Base Rent is:

Dates	Annual Base Rent/RSF (Blended)	Monthly Installment
12/01/11 — 07/31/12	$ 7.03	$ 13,603.58
08/01/12 — 03/31/13	$ 7.03	$ 0.00*
04/01/13 — 03/31/14	$ 7.17	$ 13,875.65
04/01/14 — 03/31/15	$ 7.32	$ 14,153.16
04/01/15 — 03/31/16	$ 7.46	$ 14,436.23

* See Lease for additional details.

5. All alterations and improvements required to be performed by Landlord pursuant to the terms of the Lease to prepare the entire Premises for Tenant’s initial occupancy have been satisfactorily completed subject to Landlord’s completion of the Punch List items on Schedule 1 hereto and Landlord’s repair of latent defects within twelve (12) months of the Substantial Completion Date. As of the date hereof, Landlord has fulfilled all of its obligations under the Lease. The Lease is in full force and effect and has not been modified, altered, or amended. There are no offsets or credits against Rent or other amounts owed by Tenant to Landlord.

TENANT:
SUNSHINE HEART INC.,

a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT E

HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease agreement with you as tenant. After a lease agreement is signed by you and the Landlord (the "Lease Agreement"), on an annual basis in accordance with the provisions of the signed Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. The information contained in the initial Hazardous Materials Disclosure Certificate and each annual certificate provided by you thereafter will be maintained in confidentiality by Landlord subject to release and disclosure as required by (i) any lenders and owners and their respective environmental consultants, (ii) any prospective purchaser(s) of all or any portion of the property on which the Premises are located, (iii) Landlord to defend itself or its lenders, partners or representatives against any claim or demand, and (iv) any laws, rules, regulations, orders, decrees, or ordinances, including, without limitation, court orders or subpoenas. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the signed Lease Agreement. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: SILVER PRAIRIE CROSSROADS, LLC
c/o PRINCIPAL ENTERPRISE CAPITAL
801 Grand Ave.
Des Moines, Iowa 50392-1370
Attn: Asset Manager of Silver Prairie Crossroads

Name of (Prospective) Tenant: Sunshine Heart Inc., a Delaware corporation

Mailing Address: 12988 Valley View Road, Eden Prairie, Minnesota 55344

Contact Person, Title and Telephone Number(s):

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s):

Address of (Prospective) Premises: 12988 Valley View Road, Eden Prairie, Minnesota 55344

Length of (Prospective) initial Term: Fifty-two (52) full calendar months and any partial month.

1. GENERAL INFORMATION:

Describe the initial proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted. Existing tenants should describe any proposed changes to on-going operations.

2. USE, STORAGE AND DISPOSAL OF HAZARDOUS MATERIALS

2.1 Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws)? Existing tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

Wastes	Yes, indicate amounts stored below	No
Chemical Products	Yes, indicate amounts stored below	No
Other	Yes, indicate amounts stored below	No

If Yes is marked, please explain and indicate amounts of each item stored:

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage); and the proposed location(s) and method of disposal for each Hazardous Material, including, the estimated frequency, and the proposed contractors or subcontractors. Existing tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. STORAGE TANKS AND SUMPS

3.1 Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing tenants should describe any such actual or proposed activities.

Yes No

If yes, please explain:

4. WASTE MANAGEMENT

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing tenants should describe any additional identification numbers issued since the previous certificate.

Yes No

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing tenants should describe any new reports filed.

Yes No
If yes, attach a copy of the most recent report filed.

5. WASTEWATER TREATMENT AND DISCHARGE

5.1 Will your company discharge wastewater or other wastes to:

storm drain? sewer?
surface water? no wastewater or other wastes discharged.

Existing tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

5.2 Will any such wastewater or waste be treated before discharge?

Yes No

If yes, describe the type of treatment proposed to be conducted. Existing tenants should describe the actual treatment conducted.

6. AIR DISCHARGES

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes No

If yes, please describe:

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing tenants should specify any such equipment being operated in, on or about the Premises.

Spray booth(s) Incinerator(s)
Dip tank(s) Other (Please describe)
Drying oven(s) No Equipment Requiring Air Permits

If yes, please describe:

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("Management Plan") pursuant to Fire Department or other governmental or regulatory

agencies' requirements? Existing tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes No

If yes, attach a copy of the Management Plan. Existing tenants should attach a copy of any required updates to the Management Plan.

8. ENFORCEMENT ACTIONS AND COMPLAINTS

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations of similar nature to the space in question? Existing tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes No

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Section 29 of the signed Lease Agreement.

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes No

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Section 29 of the signed Lease Agreement.

8.3 Have there been any problems or complaints from adjacent tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing tenants should indicate whether or not there have been any such problems or complaints from adjacent tenants, owners or other neighbors at, about or near the Premises.

Yes No

If yes, please describe. Existing tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement.

9. PERMITS AND LICENSES

9.1 Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease Agreement and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the provisions of the Lease Agreement; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the HazMat Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations under the Lease with respect to Hazardous Materials, including, without limitation, Tenant's indemnification of the Indemnitees and compliance with all Environmental Laws, or (b) imposing upon Landlord, directly or indirectly, any duty or liability with respect to any such Hazardous Materials, including, without limitation, any duty on Landlord to investigate or otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws; (i) the delivery of such certificate to Landlord and/or Landlord's acceptance of such certificate, (ii) Landlord's review and approval

of such certificate, (iii) Landlord's failure to obtain such certificate from Tenant at any time, or (iv) Landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's Representatives. This should not be interpreted as a relief of tenant's responsibility to follow environmental laws and best practices so as not to impact the property by the use of the disclosed materials. Notwithstanding the foregoing or anything to the contrary contained herein, the

undersigned acknowledges and agrees that Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement.

I (print name) , acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

TENANT:
SUNSHINE HEART INC.,
a Delaware corporation

By: _____ Date: _____
Name: _____
Title: _____

EXHIBIT F — Tenant's Parking Spaces

[Diagram Omitted]