

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

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

For the quarterly period ended June 30, 2013

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-35312

**SUNSHINE HEART, INC.**

**Delaware**  
(State or other Jurisdiction of  
Incorporation or Organization)

**No. 68-0533453**  
(IRS Employer  
Identification Number)

**12988 Valley View Road, Eden Prairie, MN 55344**  
(Address of Principal Executive Offices) (Zip Code)

**(952) 345-4200**  
(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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

The number of shares outstanding of the Company's common stock on August 5, 2013 was 12,384,890.

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**SUNSHINE HEART, INC.**  
**Condensed Consolidated Balance Sheets**  
(Dollars in thousands, except share amounts)

	June 30, 2013 (unaudited)	December 31, 2012
<b>Current assets</b>		
Cash and cash equivalents	\$ 21,526	\$ 14,224
Other current assets	704	333
<b>Total current assets</b>	<u>22,230</u>	<u>14,557</u>
<b>Property, plant and equipment, net</b>	413	479
<b>TOTAL ASSETS</b>	<u><u>\$ 22,643</u></u>	<u><u>\$ 15,036</u></u>
<b>Current liabilities</b>		
Accounts payable	\$ 1,324	\$ 1,156
Accrued salaries, wages, and other compensation	926	931
<b>Total current liabilities</b>	<u>2,250</u>	<u>2,087</u>
<b>Total liabilities</b>	2,250	2,087
Commitments and contingencies	—	—
<b>Stockholders' equity</b>		
Preferred Stock as of June 30, 2013 and December 31, 2012, par value \$0.0001; per share; authorized 40,000,000 shares	—	—
Common stock as of June 30, 2013 and December 31, 2012, par value \$0.0001 per share; authorized 100,000,000 shares; issued and outstanding 12,384,867 and 9,282,724 shares, respectively	1	1
Additional paid-in capital	107,005	91,017
Accumulated other comprehensive income:		
Foreign currency translation adjustment	1,260	1,185
Accumulated deficit	(87,873)	(79,254)
<b>Total stockholders' equity</b>	<u>20,393</u>	<u>12,949</u>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<u><u>\$ 22,643</u></u>	<u><u>\$ 15,036</u></u>

See notes to the condensed consolidated financial statements.

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**SUNSHINE HEART, INC.**  
**Condensed Consolidated Statements of Operations and Comprehensive Loss**  
**(Unaudited)**  
(In thousands, except per share amounts)

	Three months ended June 30,		Six months ended Jun 30,	
	2013	2012	2013	2012
<b>Net sales</b>	\$ —	\$ —	\$ —	\$ —
Operating expenses				
Selling, general and administrative	2,150	1,569	4,126	3,509
Research and development	3,150	1,787	5,576	3,953
Total operating expenses	<u>5,300</u>	<u>3,356</u>	<u>9,702</u>	<u>7,462</u>
Loss from operations	(5,300)	(3,356)	(9,702)	(7,462)

Interest income	3	4	6	29
Loss before income taxes	(5,297)	(3,352)	(9,696)	(7,433)
Income tax benefit	(1,077)	(730)	(1,077)	(730)
<b>Net loss</b>	<b>\$ (4,220)</b>	<b>\$ (2,622)</b>	<b>\$ (8,619)</b>	<b>\$ (6,703)</b>
<b>Basic and diluted loss per share</b>	<b>\$ (0.35)</b>	<b>\$ (0.42)</b>	<b>\$ (0.81)</b>	<b>\$ (1.08)</b>
Weighted average shares outstanding — basic and diluted	11,911	6,277	10,664	6,223
<b>Comprehensive loss</b>	<b>\$ (4,137)</b>	<b>\$ (2,610)</b>	<b>\$ (8,544)</b>	<b>\$ (6,640)</b>

See notes to the condensed consolidated financial statements.

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**SUNSHINE HEART, INC.**  
**Condensed Consolidated Statements of Cash Flows**  
**(Unaudited)**  
(in thousands)

	For the six months ended	
	June 30,	
	2013	2012
Net loss	\$ (8,619)	\$ (6,703)
Adjustments to reconcile net loss to cash flows used in operating activities:		
Depreciation and amortization	83	63
Loss on disposal of plant and equipment	—	63
Stock-based compensation expense	838	621
Amortization of warrants for service agreements	240	—
Changes in assets and liabilities		
Other current assets	(371)	(286)
Accounts payable and accrued expenses	258	(573)
<b>Net cash used in operations</b>	<b>(7,571)</b>	<b>(6,815)</b>
Cash flows used in investing activities:		
Purchases of property and equipment	(17)	(107)
<b>Net cash used in investing activities</b>	<b>(17)</b>	<b>(107)</b>
Cash flows provided by financing activities:		
Net proceeds from the sale of common stock	14,910	2,068
<b>Net cash provided by financing activities</b>	<b>14,910</b>	<b>2,068</b>
Effect of exchange rate changes in cash	(20)	63
Net decrease in cash and cash equivalents	7,302	(4,791)
<b>Cash and cash equivalents - beginning of period</b>	<b>14,224</b>	<b>6,563</b>
<b>CASH AND CASH EQUIVALENTS - END OF PERIOD</b>	<b>\$ 21,526</b>	<b>\$ 1,772</b>

See notes to the condensed consolidated financial statements.

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**SUNSHINE HEART, INC. AND SUBSIDIARY**

**Notes to Condensed 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 (“we” or the “Company”) was founded in November 1999 and incorporated in Delaware in August 2002. The Company’s headquarters are located in Eden Prairie, MN and the Company also has a wholly owned subsidiary, Sunshine Heart Company Pty Ltd, located in Clontarf, 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, or C-Pulse Heart 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. The C-Pulse Heart System is designed to relieve the symptoms of heart failure through the use of counterpulsation technology by enabling an increase in cardiac function, an increase in coronary blood flow, and a reduction in the heart’s pumping load. The Company received approval from the U.S. Food and Drug Administration, or FDA, to conduct a U.S. pivotal clinical trial with the C-Pulse Heart System. Our shares of common stock in the form of CHES Depositary Interests, or CDIs, were publicly traded in Australia on the Australian Securities Exchange, or ASX, from September 2004 until our delisting from the ASX, effective May 6, 2013.

*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, 2012 and 2011 and through June 30, 2013, 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 December 31, 2012, we had an

accumulated deficit of \$79,254 and we expect to incur losses for the foreseeable future. To date, the Company has 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 intercompany accounts and transactions between consolidated entities have been eliminated.

*Unaudited Interim Condensed Consolidated Financial Information:* The interim condensed consolidated balance sheet as of June 30, 2013 and statement of operations for the three and six month periods ended June 30, 2013 and 2012, as well as the statement of cash flows for the six months ended June 30, 2013 and 2012 and related interim information contained in the notes to these financial statements are unaudited. The accompanying condensed consolidated financial statements have been prepared in accordance with Regulation S-X of the Securities Act of 1933, as amended. In the opinion of management, such unaudited interim condensed 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 condensed consolidated information when read in conjunction with the audited consolidated financial statements and notes thereto. Certain information and disclosures normally included in the consolidated financial statements have been condensed or omitted pursuant to such rules and regulations, although management believes that disclosures are adequate to make information presented not misleading. Results for the three and six months ended June 30, 2013 are not necessarily indicative of the results that may be expected for the year ending December 31, 2013 or any other interim period or for any other future year.

*Use of Estimates:* The preparation of interim condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts and disclosures in the interim condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

*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

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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 ("**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 3,247,311 and 2,457,291 for the six months ended June 30, 2013 and 2012, 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 periods.

*Fair Value of Financial Instruments:* Our financial instruments consist of cash, 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 Financial Accounting Standards Board ("**FASB**"), Audit Standards Codification ("**ASC**") Topic 820, Fair Value Measurement, 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.

*Recent Accounting Pronouncements:* In February 2013, the FASB issued guidance adding new disclosure requirements for items reclassified out of accumulated other comprehensive income ("**AOCI**"), which became effective for us on January 1, 2013. The guidance is intended to help entities improve the transparency of changes in other comprehensive income ("**OCI**") and items reclassified out of AOCI in financial statements. It does not amend any existing requirements for reporting net income or OCI in financial statements. The implementation of the guidance did not have a material impact on our consolidated financial statements.

## **Note 2 — Equity**

### *Common Stock Purchase Agreement*

On January 15, 2013, we entered into a Common Stock Purchase Agreement (the “**Purchase Agreement**”) with Aspire Capital Fund, LLC (“**Aspire Capital**”), which provides that, upon the terms and subject to the conditions and limitations set forth therein, Aspire Capital is committed to purchase up to an aggregate of \$25.0 million in shares of our common stock (the “**Purchase Shares**”) over a two-year period at purchase prices determined in accordance with the Purchase Agreement. Pursuant to the terms of the Purchase Agreement, we have filed and maintain a registration statement on Form S-1 with the SEC under which we have registered 3,000,000 shares of our common stock for resale by Aspire Capital.

In consideration for entering into the Purchase Agreement, concurrently with the execution of the Purchase Agreement, we issued to Aspire Capital 80,257 shares of our common stock as a commitment fee (the “**Commitment Shares**”). The Purchase Agreement provides that we may not issue and sell more than 1,856,616 shares, or 19.99% of the Company’s outstanding shares as of January 15, 2013.

As of June 30, 2013, we have sold 146,886 shares of common stock to Aspire Capital pursuant to the Purchase Agreement. Including the Commitment Shares, an aggregate of 227,143 shares of common stock have been issued to Aspire Capital pursuant to the Purchase Agreement.

The Purchase Agreement contains customary representations, warranties, covenants, closing conditions and indemnification and termination provisions by, among and for the benefit of the parties. The Purchase Agreement may be terminated by us at any time, at our discretion, without any cost or penalty to us. Aspire Capital has covenanted not to cause

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or engage in any manner whatsoever, any direct or indirect short selling or hedging of our shares. We did not pay Aspire Capital any expense reimbursement in connection with the transaction. There are no limitations on use of proceeds, financial or business covenants, restrictions on future fundings, rights of first refusal, participation rights, penalties or liquidated damages in the Purchase Agreement.

*Public Offering*

On April 16, 2013 we sold 2,875,000 shares of common stock in a public offering at \$5.25 per share including 375,000 shares of common stock pursuant to the exercise of the over-allotment option by our underwriters. Proceeds in the public offering and exercise of the over-allotment option, net of transaction costs were \$14,036 in the aggregate.

*Stock-Based Compensation*

The Company recognizes all share-based payments, including grants of stock options and compensatory employee stock purchase plans, in the income statement as an operating expense, based on their fair value over the requisite service period. We recorded \$483 and \$174 of related compensation expense to selling, general and administrative expense and research and development expense, respectively, for the three months ended June 30, 2013, as compared to \$196 and \$107, respectively, of related compensation expense for the three months ended June 30, 2012. We recorded \$603 and \$286 of related compensation expense to selling, general and administrative expense and research and development expense, respectively, for the six months ended June 30, 2013, as compared to \$402 and \$219, respectively, of related compensation expense for the six months ended June 30, 2012. As of June 30, 2013, a total of \$5,106 of unrecognized compensation costs related to non-vested stock option awards was outstanding and is expected to be recognized within the next 3.8 fiscal years.

The Company uses the Black-Scholes option pricing model to determine the weighted average fair value of options. The volatility factor used in the Black-Scholes option pricing model is based on historical stock price fluctuations. The current forfeiture rate is based on a reasonable estimate by management. Expected dividend yield is based upon the Company’s historical and projected dividend activity and the risk free interest rate is based upon US Treasury rates appropriate for the expected term of the options. The expected term is based on estimates regarding projected employee stock option exercise behavior.

The Company’s stock options generally vest over four years of service and have a contractual life of 10 years. We have 400,924 shares authorized for grant under our Amended and Restated 2011 Equity Incentive Plan and 195,000 shares authorized for grant under our 2013 Non-Executive Directors’ Equity Incentive Plan.

*Warrants*

Warrants to purchase 1,633,253 shares of common stock were outstanding at June 30, 2013 and December 31, 2012.

**Note 3 - Balance Sheet Information**

*Property, Plant and Equipment*

Property, plant and equipment were as follows:

	<u>June 30, 2013</u>	<u>December 31, 2012</u>
Office Furniture & Fixtures	\$ 108	\$ 102
Leasehold Improvements	145	145
Software	13	12
Production Equipment	438	425
Computer Equipment	115	118
Total	<u>819</u>	<u>802</u>
Accumulated Depreciation	<u>(406)</u>	<u>(323)</u>
	<u>\$ 413</u>	<u>\$ 479</u>

Depreciation expense for the three and six months ended June 30, 2013 and 2012 was \$43, \$32, \$ 83 and \$63, respectively.

#### Note 4 — Income Taxes

We received a \$1,077 research and development tax credit refund in the quarter ended June 30, 2013, based upon

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qualified research and development expenditures of our Australian subsidiary for its tax period ended June 30, 2012. We received a \$730 research and development tax credit refund in the quarter ended June 30, 2012 based upon qualified research and development expenditures of our Australian subsidiary for its tax period ended June 30, 2011. We have not completed the Australian tax return for the period ended June 30, 2013; therefore, we have not reflected a benefit related to the Australian research and development tax credit for that period as we recognize any benefit only upon receipt.

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### ITEM 2. 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 interim condensed consolidated financial statements and related notes included in Item 1 of Part I of this Quarterly Report and the audited consolidated financial statements and related notes and Management’s Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended December 31, 2012. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of a variety of factors, including those discussed in Part I, Item 1A Risk Factors, in our Annual Report on Form 10-K for the year ended December 31, 2012 and in our subsequent filings with the U.S. Securities and Exchange Commission.*

#### Overview

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 (the “**C-Pulse 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. The C-Pulse System is designed to relieve the symptoms of heart failure through the use of counterpulsation technology by enabling an increase in cardiac function, an increase in coronary blood flow, and a reduction in the heart’s pumping load.

We are in the process of obtaining regulatory approvals necessary to sell our system in the United States while also gathering additional clinical data in Europe. We completed enrollment of our North American feasibility clinical trial in the first half of 2011. In November 2011, we announced the preliminary results of the six-month follow-up period for the feasibility study and we submitted the clinical data to the FDA. In March 2012, the FDA notified us that it completed its review of the C-Pulse System feasibility trial data, concluded we met the applicable agency requirements, and indicated that we can move forward with an investigational device exemption application. In November 2012, the FDA provided us with unconditional approval to initiate a pivotal trial. We currently anticipate that enrollment of our pivotal trial will begin during the second half of 2013.

We obtained CE Mark approval for the C-Pulse System in July 2012 and have taken initial steps to evaluate the market potential for our system in targeted countries that accept the CE Mark in anticipation of commencing commercial sales. In order to gain additional clinical data and support reimbursement in Europe, we have initiated a post-market trial in Europe that will evaluate endpoints similar to those for our U.S. pivotal trial and enrollment under this trial commenced in the second quarter of 2013.

#### 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 System is not approved for commercial sale. Our revenue consists solely of sales of the C-Pulse Heart System 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 Condensed Consolidated Statements of Operations and Comprehensive Loss 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.

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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, 2012 and 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 February 2013, the FASB issued guidance adding new disclosure requirements for items reclassified out of AOCI, which became effective for us on January 1, 2013. The guidance is intended to help entities improve the transparency of changes in OCI and items reclassified out of AOCI in financial statements. It does not amend any existing requirements for reporting net income or OCI in financial statements. The implementation of the guidance did not have a material impact on our consolidated financial statements.

**Financial Overview**

We are an early-stage medical device company focused on developing, manufacturing and commercializing our C-Pulse Heart 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 June 30, 2013, we had an accumulated deficit of \$88 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 Three Months Ended June, 2013 to Three Months Ended June 30, 2012*

*Revenue*

Three Months Ended June 30, 2013	Three Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ —	\$ —	\$ —	N/A

Sales of the C-Pulse Heart System to hospitals and clinics under contract in conjunction with our North American FDA clinical trials historically have generated all of our revenue. We did not sell our C-Pulse Heart System device in the three month periods ended June 30, 2013 or 2012, as we completed enrollment in our feasibility trial in early 2011 and have not yet commenced enrollment in our pivotal clinical trial. We expect our revenue will be minimal until we establish reimbursement in our recently initiated post marketing trial in select countries in Europe and begin enrolling patients in our North American pivotal clinical trial, expected to commence in the second half of 2013.

*Selling, General and Administrative Expense*

Three Months Ended June 30, 2013	Three Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ 2,150,000	\$ 1,569,000	\$ 581,000	37.0%

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Our increase in selling, general and administrative expense for the three months ended June 30, 2013 compared to the prior year is attributed to increased infrastructure expenses, professional fees, and compensation expense to support our anticipated growth. We expect our selling, general and administrative expense will continue to be above comparable prior year period levels in future periods as a result of the infrastructure recently put in place to support our growth.

*Research and Development Expense*

Three Months Ended June 30, 2013	Three Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ 3,150,000	\$ 1,787,000	\$ 1,363,000	76.3%

Our increase in research and development expense for the second quarter 2013 compared to the prior year's period resulted primarily from increased personnel and clinical research infrastructure to support our clinical trials in North America and Europe. We expect our research and development expense will continue to be above prior year levels throughout 2013 as we add personnel to support our clinical trials and pursue our development efforts.

#### Interest Income

Three Months Ended June 30, 2013	Three Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ 3,000	\$ 4,000	\$ (1,000)	(25.0)%

Our decrease in interest income for the second quarter 2013 compared to the prior year was primarily caused by decreased cash balances held in Australia, where higher interest rates are earned on deposits, during the second quarter of 2013 as compared to 2012.

#### Income Tax Benefit

Three Months Ended June 30, 2013	Three Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ (1,077,000)	\$ (730,000)	\$ 347,000	47.5%

Our income tax benefit for the three months ended June 30, 2013 and 2012 resulted from a research and development tax credit in Australia. We completed our Australian tax return for the twelve month period ended June 30, 2012 in the second quarter of 2013 and received a \$1,077 research and development tax credit refund during the quarter. We completed our Australian tax return for the twelve month period ended June 30, 2011 in the second quarter of 2012 and received a \$730,000 research and development tax credit refund during the quarter. Assuming no further changes to the applicable Australian law for research and development tax credits, we expect to receive research and development tax credits refunds in the future in decreased amounts that vary based on reduced research and development expenditures in Australia. At this time, we are working to complete our analysis of the potential research and development tax credit refund that may be available for the period ended June 30, 2013.

#### Comparison of Six Months Ended June, 2013 to Six Months Ended June 30, 2012

##### Revenue

Six Months Ended June 30, 2013	Six Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ —	\$ —	\$ —	N/A

Sales of the C-Pulse Heart System to hospitals and clinics under contract in conjunction with our North American FDA clinical trials historically have generated all of our revenue. We did not sell our C-Pulse Heart System device in the six month periods ended June 30, 2013 or 2012, as we completed enrollment in our feasibility trial in early 2011 and have not yet commenced enrollment in our North American pivotal clinical trial.

##### Selling, General and Administrative Expense

Six Months Ended June 30, 2013	Six Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ 4,126,000	\$ 3,509,000	\$ 617,000	17.6%

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Our increase in selling, general and administrative expense for the six months ended June 30, 2013 compared to the prior year is attributed to increased infrastructure expenses, professional fees, and compensation expense to support our anticipated growth. We expect our selling, general and administrative expense will continue to be above comparable prior year period levels in future periods as a result of the infrastructure recently put in place to support our growth.

##### Research and Development Expense

Six Months Ended June 30, 2013	Six Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ 5,576,000	\$ 3,953,000	\$ 1,623,000	41.1%

Our increase in research and development expense for the first half of 2013 compared to the prior year's period resulted primarily from increased personnel and clinical research infrastructure to support our clinical trials in North America and Europe. We expect our revenue will be minimal until we establish reimbursement in our recently initiated post marketing trial in select countries in Europe and begin enrolling patients in our North American pivotal clinical trial, expected to commence in the second half of 2013.

#### Interest Income

Six Months Ended June 30, 2013	Six Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ 6,000	\$ 29,000	\$ (23,000)	(79.3)%

Our decrease in interest income for the first half of 2013 compared to the prior year was primarily caused by decreased cash balances held in Australia during the first six months of 2013 as compared to 2012.

#### Income Tax Benefit



Six Months Ended June 30, 2013	Six Months Ended June 30, 2012	Increase (Decrease)	% Change
\$ (1,077,000)	\$ (730,000)	\$ 347,000	47.5%

Our income tax benefit for the six months ended June 30, 2013 and 2012 resulted from a research and development tax credit in Australia. We completed our Australian tax return for the twelve month period ended June 30, 2012 in the second quarter of 2013 and received a \$1,077 research and development tax credit refund during the quarter. We completed our Australian tax return for the twelve month period ended June 30, 2011 in the second quarter of 2012 and received a \$730,000 research and development tax credit refund during the quarter. Assuming no further changes to the applicable Australian law for research and development tax credits, we expect to receive research and development tax credits refunds in the future in decreased amounts that vary based on reduced research and development expenditures in Australia. At this time, we are working to complete our analysis of the potential research and development tax credit refund that may be available for the period ended June 30, 2013.

## 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 for net proceeds of \$14.9 million and \$2.1 million in the first six months of 2013 and 2012, respectively. As of June 30, 2013 and December 31, 2012, cash and cash equivalents were \$21.5 million and \$14.2 million, respectively.

We believe, based on our current operating plan, that our cash balances and cash generated from our clinical trials and the net proceeds from the sale of stock to Aspire Capital, if completed in its entirety, will be sufficient to meet our anticipated cash requirements for at least the next twelve months, however, we will require additional funding to complete our pivotal trial. From time to time we may seek to sell additional equity or convertible debt securities or enter into credit facilities. The sale of additional equity, debt, or convertible debt securities may result in dilution to our stockholders. If we raise additional funds through the issuance of debt, convertible debt or enter into credit facilities, these securities and debt holders could have rights senior to those of our common stock, and this debt could contain covenants that would restrict our operations and would require us to use cash for debt service rather than our operations. We may require additional capital

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beyond our currently forecasted amounts. Although we have successfully financed our operations through the issuance of common stock and warrants to date, any such required additional capital may not be available to us on acceptable terms, or at all.

### *Cash Flows from Operating Activities*

Net cash used in operating activities was \$7.6 million and \$6.8 million in the six months ended June 30, 2013 and 2012, 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 \$17,000 and \$107,000 in the six months ended June 30, 2013 and 2012, respectively. The majority of cash used in investing activities in first six months of 2012 was for leasehold improvements, furniture and equipment associated with the relocation of our headquarters in January 2012.

### *Cash Flows from Financing Activities*

Net cash provided by financing activities was \$14.9 million and \$2.1 million in the six months ended June 30, 2013 and 2012, respectively. Net cash provided by financing activities was attributable to proceeds from sales of our common stock.

### *Capital Resource Requirements*

As of June 30, 2013, we did not have any material commitments for capital expenditures.

## Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

## Forward-Looking Statements and Risk Factors

Certain statements in this report are forward-looking statements that are based on management's beliefs, assumptions and expectations and information currently available to management. All statements that address future operating performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements, including without limitation, our expectations with respect to product development and commercialization efforts, results of clinical trials, timing of regulatory filings and approvals, regulatory acceptance of our filings, research and development activities, ultimate clinical outcomes and benefits of our products to patients, market and physician acceptance of the products, intellectual property protection, and potentially competitive product offerings. The risk factors described in our filings with the U.S. Securities and Exchange Commission (the "SEC") could cause actual events to adversely differ from the expectations indicated in these forward-looking statements. Management believes that these forward-looking statements are reasonable as and when made. However, you should not place undue reliance on forward-looking statements because they speak only as of the date when made. Sunshine Heart does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Sunshine Heart may not actually achieve the plans, projections or expectations disclosed in forward-looking statements, and actual results, developments or events could differ materially from those disclosed in the forward-looking statements. Forward-looking statements are subject to a number of risks and uncertainties, including without limitation, the possibility that regulatory authorities do not accept our

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#### **ITEM 4. CONTROLS AND PROCEDURES**

##### **Evaluation of Disclosure Controls and Procedures**

As of the end of the period covered by this report, we conducted an evaluation, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer, of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective as of June 30, 2013, to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (ii) accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

##### **Changes in Internal Controls**

There have been no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the period covered by this report that have materially affected, or are reasonably likely to materially affect, internal control over financial reporting.

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#### **PART II: OTHER INFORMATION**

##### **ITEM 1A. RISK FACTORS**

In addition to the other information set forth elsewhere in this report, you should carefully consider the factors discussed in Part I, Item 1A Risk Factors of the Company's Annual Report on Form 10-K for the year ended December 31, 2012. Those factors, if they were to occur, could cause our actual results to differ materially from those expressed in our forward-looking statements in this report, and materially adversely affect our financial condition or future results. Although we are not aware of any other factors that we currently anticipate will cause our forward-looking statements to differ materially from our future actual results, or materially affect the Company's financial condition or future results, additional risks and uncertainties not currently known to us or that we currently deem to be immaterial might materially adversely affect our actual business, financial condition and/or operating results.

##### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

As previously disclosed.

##### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

##### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

##### **ITEM 5. OTHER INFORMATION**

None.

##### **ITEM 6. EXHIBITS**

The exhibits filed as part of this Quarterly Report on Form 10-Q are listed in the Exhibit Index immediately following the signature page of this report.

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#### **SIGNATURES**

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

By: /s/ David A. Rosa  
David A. Rosa  
Chief Executive Officer  
(Principal executive officer)

By: /s/ Jeffrey S. Mathiesen  
Jeffrey S. Mathiesen  
Chief Financial Officer  
(Principal financial officer and principal accounting officer)

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**Exhibit Index**  
**Sunshine Heart, Inc.**  
**Form 10-Q for Quarter Ended June 30, 2013**

<b>Exhibit Number</b>	<b>Description</b>
3.1	Form of Certificate of Designations of Series A Junior Participating Preferred Stock of Sunshine Heart, Inc. (incorporated herein by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K, filed on June 14, 2013).
4.1	Rights Agreement dated June 14, 2013 by and between Sunshine Heart, Inc. and American Stock Transfer & Trust Company, LLC, as Rights Agent (incorporated herein by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K, filed on June 14, 2013).
10.1*	Sunshine Heart, Inc. New-Hire Equity Incentive Plan.
10.2*	Sunshine Heart, Inc. Non-Employee Director Compensation Policy.
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

\*Filed herewith.

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**SUNSHINE HEART, INC.**  
**NEW-HIRE EQUITY INCENTIVE PLAN**

**1. GENERAL.**

(a) **General Purpose.** The Company, by means of the Plan, seeks to retain the services of persons not previously an employee or director of the Company, or following a *bona fide* period of non-employment, as an inducement material to the individual's entering into employment with the Company within the meaning of Rule 5635(c)(4) of the NASDAQ Listing Rules, and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

(b) **Eligible Award Recipients.** The persons eligible to receive Stock Awards are persons entering into employment with the Company or an Affiliate, as further specified in Section 4.

(c) **Available Awards.** The Plan provides for the grant of the following Stock Awards: (i) Options, (ii) Restricted Stock Awards, (iii) Restricted Stock Unit Awards, (iv) Stock Appreciation Rights, and (v) Other Stock Awards.

**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; and (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Awards granted under it, 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, 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 a Stock 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 Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, relating to certain nonqualified deferred compensation under 409A of the Code and/or to bring the Plan or Stock Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. 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 (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing.

(vii) To approve forms of Stock 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 than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however*, that, the 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, and without the affected Participant's consent, the Board may amend the terms of any one or more Awards if necessary to bring the Award into compliance with Code Section 409A and the related guidance thereunder.

(viii) 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.

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

(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, revert in the Board some or all of the powers previously delegated.

(ii) **Rule 16b-3 Compliance.** In the sole discretion of the Board, the Committee may consist solely of two or more Non-Employee Directors, in accordance with Rule 16b-3. In addition, the Board or the Committee, in its sole discretion, may delegate to a Committee of Directors who need not be Non-Employee Directors the authority to grant Stock Awards to eligible persons who are not then subject to Section 16 of the Exchange Act.

(d) **Delegation to an Officer.** The Board may delegate to one or more Officers the authority to do one or both of the following: (i) designate individuals who are not Officers to be recipients of Options (and, to the extent permitted by applicable law, other Stock Awards) and the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such individuals; *provided, however*, that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Stock

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Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Notwithstanding anything to the contrary in this Section 2(d), the Board may not delegate to an Officer authority to determine the Fair Market Value of the Common Stock pursuant to Section 13(s)(ii) below.

(e) **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 the provisions of Section 9 relating to adjustments upon changes in stock, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards after the Effective Date shall not exceed, in the aggregate, the sum of (i) 318,993 shares (the "**Share Reserve**"). For clarity, the limitation in this subsection 3(a) is a limitation in the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this subsection 3(a) does not limit the granting of Stock Awards except as provided in subsection 7(a). Furthermore, if a Stock Award (i) expires or otherwise terminates without having been exercised in full or (ii) is settled in cash (*i.e.*, the holder of the Stock Award 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 issued pursuant to 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 which are forfeited shall revert to and again become available for issuance under the Plan. Also, any shares reacquired by the Company as consideration for the exercise of an Option shall again become available for issuance under the Plan.

(c) **Source of Shares.** The stock issuable under the Plan shall be shares of authorized but unissued Common Stock.

4. **ELIGIBILITY.** Stock Awards may be granted only to persons not previously an Employee or Director of the Company, or following a *bona fide* period of non-employment, as an inducement material to the individual's entering into employment with the Company or an Affiliate within the meaning of Rule 5635(c)(4) of the NASDAQ Listing Rules. In addition, notwithstanding any other provision of the Plan to the contrary, all Stock Awards must be granted either by a majority of the Company's independent directors or by a committee comprised of a majority of independent directors within the meaning of Rule 5605(a)(2) of the NASDAQ Listing Rules.

5. **OPTION PROVISIONS.** Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The provisions of separate Options need not be identical; *provided, however*, that each Option Agreement shall include (through incorporation of provisions hereof by reference in the Option Agreement or otherwise) the substance of each of the following provisions:

(a) **Term.** No Option shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Option Agreement.

(b) **Exercise Price.** The exercise price of each Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price

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lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option if such Option is granted pursuant to an assumption or substitution for another option in a manner consistent with the provisions of Sections 424(a) and 409A of the Code.

(c) **Consideration.** 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. The methods of payment permitted by this Section 5(c) are:

(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) by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued 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 outstanding under such Option and will not be exercisable thereafter to the extent that (A) shares are used 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) **Transferability of Options.** The Board may, in its sole discretion, impose such limitations on the transferability of Options 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 shall apply:

(i) **Restrictions on Transfer.** An Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder; *provided, however*, that the Board may, in its sole discretion, permit transfer of the Option in a manner consistent with applicable tax and securities laws upon the Optionholder’s request.

(ii) **Domestic Relations Orders.** Notwithstanding the foregoing, an Option may be transferred pursuant to a domestic relations order.

(iii) **Beneficiary Designation.** Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to

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the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

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

(f) **Termination of Continuous Service.** Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, in the event that an Optionholder’s Continuous Service terminates (other than upon the Optionholder’s death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option 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 Optionholder’s Continuous Service (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(g) **Extension of Termination Date.** An Optionholder’s Option Agreement may provide that if the exercise of the Option following the termination of the Optionholder’s Continuous Service (other than upon the Optionholder’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 shall terminate on the earlier of (i) the expiration of the applicable period of time after the termination of the Optionholder’s Continuous Service during which the exercise of the Option would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option as set forth in the Option Agreement.

(h) **Disability of Optionholder.** In the event that an Optionholder’s Continuous Service terminates as a result of the Optionholder’s Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option 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 Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(i) **Death of Optionholder.** In the event that (i) an Optionholder’s Continuous Service terminates as a result of the Optionholder’s death, or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder’s Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder’s estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionholder’s death, but only within the period ending on the earlier of (i) the date twelve (12) months following the date of death (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, after the Optionholder’s death, the Option is not exercised within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

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(j) **Non-Exempt Employees.** No Option granted to an individual that is a non-exempt employee for purposes of the Fair Labor Standards Act shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option. 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 will be exempt from his or her regular rate of pay.

(k) **Compliance with Section 409A of the Code.** Notwithstanding anything to the contrary set forth herein, any Option granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Option will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the award agreement evidencing such Option. For example, such restrictions may include, without limitation, a requirement that an Option not exempt from 409A must be exercised and paid in accordance with a fixed pre-determined schedule.

## 6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.

(a) **Restricted Stock Awards.** Each Restricted Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. To the extent consistent with the Company’s Bylaws, at the Board’s election, shares of Common Stock may be (x) held in book entry form subject to the Company’s instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate shall be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may

change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical, *provided, however*, that each Restricted Stock Award Agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration.** A Restricted Stock Award may be awarded in consideration for (A) past or future services actually or to be rendered to the Company or an Affiliate, or (B) any other form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) **Vesting.** Shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) **Termination of Participant's Continuous Service.** In the event a Participant's Continuous Service terminates, the Company may receive via a forfeiture condition, any or all of the shares of Common Stock held by the Participant which have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) **Transferability.** Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board shall determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(b) **Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical, *provided, however*, that each Restricted Stock Unit Award Agreement shall include (through

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incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) **Vesting.** At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) **Payment.** A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) **Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) **Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all the terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) **Termination of Participant's Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(vii) **Compliance with Section 409A of the Code.** Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Restricted Stock Unit Award will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award. For example, such restrictions may include, without limitation, a requirement that any Common Stock that is to be issued in a year following the year in which the Restricted Stock Unit Award vests must be issued in accordance with a fixed pre-determined schedule.

(c) **Stock Appreciation Rights.** Each Stock Appreciation Right Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. Stock Appreciation Rights may be granted as stand-alone Stock Awards or in tandem with other Stock Awards. The terms and conditions of Stock Appreciation Right Agreements may change from time to

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time, and the terms and conditions of separate Stock Appreciation Right Agreements need not be identical; *provided, however*, that each Stock Appreciation Right Agreement shall include (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) **Term.** No Stock Appreciation Right shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Stock Appreciation Right Agreement.

(ii) **Strike Price.** Each Stock Appreciation Right will be denominated in shares of Common Stock equivalents. The strike price of each Stock Appreciation Right shall not be less than one hundred percent (100%) of the Fair Market Value of the Common Stock equivalents subject to the Stock Appreciation Right on the date of grant.

(iii) **Calculation of Appreciation.** 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 share 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.

(iv) **Vesting.** At the time of the grant of a Stock Appreciation Right, the Board may impose such restrictions or conditions to the vesting of such Stock Appreciation Right as it, in its sole discretion, deems appropriate.

(v) **Exercise.** 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.

(vi) **Payment.** 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.

(vii) **Termination of Continuous Service.** In the event that a Participant's Continuous Service terminates, the Participant may exercise his or her Stock Appreciation Right (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of termination) but only within such period of time ending on the earlier of (A) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the Stock Appreciation Right Agreement), or (B) the expiration of the term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after termination, the Participant does not exercise his or her Stock Appreciation Right within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

(viii) **Compliance with Section 409A of the Code.** Notwithstanding anything to the contrary set forth herein, any Stock Appreciation Rights granted under the Plan that are not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Stock Appreciation Rights will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Stock

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Appreciation Right Agreement evidencing such Stock Appreciation Right. For example, such restrictions may include, without limitation, a requirement that a Stock Appreciation Right not exempt from 409A must be exercised and paid in accordance with a fixed pre-determined schedule.

(d) **Other Stock Awards.** Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock 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.

(c) **No Obligation to Notify.** The Company shall have no duty or obligation to any holder of a Stock Award 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.** No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until such Participant has exercised the Stock Award pursuant to its terms and the

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Participant shall not be deemed to be a stockholder of record until the issuance of the Common Stock pursuant to such exercise 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 other instrument executed thereunder or in connection with any Award granted pursuant to the Plan 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) 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 (x) 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 (y) 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.

**(f) Withholding Obligations.** To the extent that the Company is required to withhold federal, state, local or foreign taxes in connection with any payment made or benefit realized by a Participant or other person under this Plan, it shall be a condition to the receipt of such payment or the realization of such benefit that the Participant or such other person make arrangements satisfactory to the Company for payment of all such taxes required to be withheld. At the discretion of the Board (or any Committee designated hereunder), such arrangements may include relinquishment of a portion of such benefit. For the avoidance of doubt, the Participants shall have no legal right to own or receive any shares of Common Stock withheld from delivery for such purpose, and otherwise shall have no rights in respect of such shares of Common Stock whether as a stockholder or otherwise. The Company shall have the power and the right to deduct or withhold from any other payments due to a Participant, or require a Participant to remit to the Company, an amount sufficient to satisfy Federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any grant, exercise, or payment under or as a result of this Plan.

**(g) 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.

**(h) 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

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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. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of employment or retirement, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

**(i) Compliance with 409A.** To the extent that the Board determines that any Award granted under the Plan is subject to Section 409A of the Code, the Stock 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 Stock Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued or amended after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Board determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Board may adopt such amendments to the Plan and the applicable Stock Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Board determines are necessary or appropriate to (1) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (2) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance. Notwithstanding anything else to the contrary in the Plan, to the extent that a Participant is a "specified employee" (as determined in accordance with the requirements of Section 409A of the Code), no payment on account of a Participant's "separation from service" (as such term is defined in Section 409A) in settlement of a 409A Award may be made before the date which is six months after such Participant's date of separation from service, or, if earlier, the date of the Participant's death. Notwithstanding any provision of this Plan, in no event shall the Company be liable for any additional tax, interest or penalty imposed upon or other detriment suffered by a Participant under Code Section 409A or for any damages suffered by such Participant for any failure of this Plan or any Award to comply with or be exempt from Code Section 409A.

**(j) Not Benefit Plan Compensation.** Payments and other benefits received by a Participant under a Stock Award made pursuant to the Plan shall not be deemed a part of Participant's compensation for purposes of determining the Participant's benefits under any other benefit plans or arrangements provide by the Company or an Affiliate, except where the Board expressly provides otherwise in writing.

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

**(a) Capitalization Adjustments.** In the event of a Capitalization Adjustment, the Board shall appropriately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a) and (ii) 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) **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 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

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option may be repurchased 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.

(c) **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.

(i) **Stock Awards May Be Assumed.** Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Stock Awards outstanding under the Plan or may substitute similar stock awards for Stock Awards outstanding under the Plan (including but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Stock Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of a Stock Award or substitute a similar stock award for only a portion of a Stock Award. The terms of any assumption, continuation or substitution shall be set by the Board in accordance with the provisions of Section 2.

(ii) **Stock Awards Held by Current Participants.** Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the "**Current Participants**"), the vesting of such Stock Awards (and, if applicable, the time at which such Stock Awards may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full 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 time of the Corporate Transaction), and such Stock Awards shall terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Stock Awards shall lapse (contingent upon the effectiveness of the Corporate Transaction).

(iii) **Stock Awards Held by Persons other than Current Participants.** Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, the vesting of such Stock Awards (and, if applicable, the time at which such Stock Award may be exercised) shall not be accelerated and such Stock Awards (other than a Stock Award

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consisting of vested and outstanding shares of Common Stock not subject to the Company's right of repurchase) shall terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction; *provided, however*, that any reacquisition or repurchase rights held by the Company with respect to such Stock Awards shall not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

(iv) **Payment for Stock Awards in Lieu of Exercise.** Notwithstanding the foregoing, in the event a Stock Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of any Stock Award that is not exercised prior to such effective time will receive a payment, in such form as may be determined by the Board, equal in value to the excess, if any, of (A) the value of the property the holder of the Stock Award would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise.

(d) **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. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) **No Impairment of Rights.** 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 such state's conflict of laws rules.

13. **DEFINITIONS.** As used in the Plan, the definitions contained in this Section 13 shall apply to the capitalized terms indicated below:

(a) **“Affiliate”** means, at the time of determination, any “parent” or “subsidiary” 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) **“Board”** means the Board of Directors of the Company.

(c) **“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, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company. Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction “without receipt of consideration” by the Company.

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(d) **“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 by an investor, any affiliate thereof or any other Exchange Act Person from the Company 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 (B) 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 are Directors on the date this Plan is adopted by the Board (collectively, the **“Incumbent Board”**) cease for any reason to constitute at least a majority of the Directors; *provided, however*, that if the election (or nomination for election) of any new Director was approved or recommended by a majority vote of the members of the Incumbent Board then still in office or by a majority vote of a committee comprised of such members, such new member shall, for purposes of this Plan, be considered a member of the Incumbent Board.

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For Clarity, 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.

Notwithstanding the foregoing or any other provision of this Plan, to the extent “Change in Control” is a payment trigger, and not merely a vesting trigger for a 409A Award, “Change in Control” will be defined in accordance with Treas. Reg. §1.409A-3(i)(5), and any such payments in respect of such 409A Award shall not occur until after the occurrence of such a “Change in Control” event.

The Board may, in its sole discretion and without Participant consent, amend the definition of Change in Control to conform to the definition of Change of Control under Section 409A of the Code, as amended, and the Treasury Department or Internal Revenue Service Regulations or Guidance issued thereunder.

(e) **“Code”** means the Internal Revenue Code of 1986, as amended.

(f) **“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) and which is comprised of a majority of independent directors within the meaning of Rule 5605(a)(2) of the NASDAQ Listing Rules.

(g) **“Common Stock”** means the common stock of the Company.

(h) **“Company”** means Sunshine Heart, Inc., a Delaware corporation.

(i) **“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.

(j) **“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. For example, a change in status from an Employee of the Company to a Consultant to an Affiliate or to a Director shall not constitute an interruption of Continuous Service. 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 any leave of absence approved by that party, including sick leave, military leave or any other personal leave. 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.

(k) **“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) 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) a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

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

(iv) the consummation of a merger, consolidation or similar transaction 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.

Notwithstanding the foregoing or any other provision of this Plan, to the extent “Corporate Transaction” is a payment trigger, and not merely a vesting trigger for a 409A Award, “Corporate Transaction” will be defined in accordance with Treas. Reg. §1.409A-3(i)(5), and any such payments in respect of such 409A Award shall not occur until after the occurrence of such a “Corporate Transaction” event.

(l) **“Director”** means a member of the Board.

(m) **“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 can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) and 409A(a)(2)(c)(i) of the Code.

(n) **“Effective Date”** means the effective date of this Plan document, which is July 30, 2013, the date the Board approved the Plan.

(o) **“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.

(p) **“Entity”** means a corporation, partnership, limited liability company or other entity.

(q) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

(r) **“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 an 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 of the Plan as set forth in Section 11, 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.

(s) **“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 the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) 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

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*The Wall Street Journal* or such other source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price (or closing bid if no sales were reported) for the Common Stock on the date of determination, then the Fair Market Value shall be the closing selling price (or closing bid if no sales were reported) on the last preceding date for which such quotation exists.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith and, if necessary for an award to be exempt from or to comply with Code Section 409A in accordance with Treas. Reg. 1.409A-1(b)(5)(iv).

(t) **“409A Award”** means any Stock Award that is treated as a deferral of compensation subject to the requirements of Section 409A of the Code.

(u) **“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.

(v) **“Officer”** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(w) **“Option”** means an option to purchase shares of Common Stock granted pursuant to the Plan that is not intended to qualify as an incentive stock option under Section 422 of the Code and the regulations promulgated thereunder.

(x) **“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.

(y) **“Optionholder”** means a person to whom an Option is granted pursuant to the Plan or, if permitted under the terms of this Plan, such other person who holds an outstanding Option.

(z) **“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(d).

(aa) **“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 power, which includes the power to vote or to direct the voting, with respect to such securities.

(bb) **“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.

(cc) **“Plan”** means this Sunshine Heart, Inc. New-Hire Equity Incentive Plan.

(dd) **“Restricted Stock Award”** means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

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(ee) **“Restricted Stock Award Agreement”** means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ff) **“Restricted Stock Unit Award”** means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(gg) **“Restricted Stock Unit Award Agreement”** means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement shall be subject to the terms and conditions of the Plan.

(hh) **“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.

(ii) **“Securities Act”** means the Securities Act of 1933, as amended.

(jj) **“Stock Appreciation Right”** means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 6(c).

(kk) **“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.

(ll) **“Stock Award”** or **“Award”** means any right to receive Common Stock granted under the Plan, including an Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right or any Other Stock Award.

(mm) **“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.

(nn) **“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%).

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## SUNSHINE HEART, INC.

## NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

On July 30, 2013, upon the recommendation of the Compensation Committee (the "**Compensation Committee**") of the Board of Directors (the "**Board**") of SUNSHINE HEART, INC., a Delaware corporation (the "**Company**"), the Board approved the following compensation policy (this "**Policy**") for non-employee directors of the Company, effective as of July 30, 2013. For purposes of this Policy, a "**Non-Employee Director**" is a director who has not served as an employee or executive officer of the Company or its affiliates or otherwise provided services to the Company or its affiliates in a capacity other than as a director during the preceding year.

## ANNUAL CASH COMPENSATION

The annual cash compensation amount set forth below is payable in equal quarterly installments, payable in arrears on the last day of each fiscal quarter in which the service occurred. If a Non-Employee Director joins the Board or a committee of the Board at a time other than effective as of the first day of a fiscal quarter, each annual retainer and fee set forth below will be pro-rated based on days served in the applicable fiscal year, with the pro-rated amount paid for the first fiscal quarter in which the Non-Employee Director provides the service, and regular full quarterly payments thereafter. All annual cash fees are vested upon payment.

Base Annual Retainer for Non-Employee Directors (other than the Chairman of the Board)	\$	55,000
Base Annual Retainer for the Chairman of the Board	\$	105,000

## ANNUAL EQUITY AWARD

Each Non-Employee Director will be eligible to receive compensatory equity awards under the Company's 2013 Non-Employee Directors' Equity Incentive Plan (the "**Plan**") as consideration for service on the Board. All grants under this Policy will be made automatically in accordance with the terms of this Policy and the Plan, without the need for any additional corporate action by the Board or the Compensation Committee. Vesting of all equity awards granted under this Policy is subject to a Non-Employee Director's Continuous Service (as defined in the Plan) from the date of grant through each applicable vesting date. All equity awards granted under this Policy will be subject to the Company's standard forms of award agreements, as most recently adopted by the Board for use under this Policy.

Each year, commencing in 2014, on the date of the first regular annual meeting of the Company's stockholders (the "**Annual Meeting**"), the Company will automatically grant each newly-elected and each continuing Non-Employee Director, an annual equity award with an aggregate value on the date of grant equal to \$35,000 (the "**Annual Equity Award**"). One-third of the Annual Equity Award will be issued in the form of an Option (as defined in the Plan), which will vest as follows, subject to a Non-Employee Director's Continuous Service: 1/12<sup>th</sup> of the shares will vest monthly, commencing on the one-month anniversary of the date of grant, so that all of the shares will be vested on the one-year anniversary of the date of grant. Two-thirds of the Annual Equity Award will be issued in the form of a Restricted Stock Unit Award (as defined in the Plan), which will vest as follows, subject to a Non-Employee Director's Continuous Service: 1/12<sup>th</sup> of the shares will vest monthly, commencing on the one-month anniversary of the date of grant, so that all of the shares will

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be vested on the one-year anniversary of the date of grant.

## PRO-RATED ANNUAL EQUITY AWARD FOR NEW NON-EMPLOYEE DIRECTORS

If an individual first becomes a Non-Employee Director other than at the Annual Meeting, the Company will automatically grant such new Non-Employee Director, on the date that he or she is first elected or appointed to the Board, an annual equity award with an aggregate value on the date of grant equal to the pro rata portion of the Annual Equity Award, which pro rata portion reflects a reduction for each month prior to the date of grant that has elapsed since the preceding Annual Meeting (the "**Pro-Rated Annual Equity Award**"). One-third of the Pro-Rated Annual Equity Award will be issued in the form of an Option, which will vest as follows, subject to such Non-Employee Director's Continuous Service: 1/12<sup>th</sup> of the shares will vest monthly, commencing on the one-month anniversary of the date of grant, so that all of the shares will be vested on the one-year anniversary of the date of grant. Two-thirds of the Pro-Rated Annual Equity Award will be issued in the form of a Restricted Stock Unit Award, which will vest as follows, subject to such Non-Employee Director's Continuous Service: 1/12<sup>th</sup> of the shares will vest monthly, commencing on the one-month anniversary of the date of grant, so that all of the shares will be vested on the one-year anniversary of the date of grant.

## EXPENSE REIMBURSEMENT

All Non-Employee Directors will be entitled to reimbursement from the Company for their reasonable travel (including airfare and ground transportation), lodging and meal expenses incident to meetings of the Board or committees thereof. The Company will also reimburse directors for attendance at director continuing education programs that are relevant to their service on the Board and which attendance is pre-approved by the Chairman of the Governance and Nominating Committee or the Chairman of the Board. The Company will make reimbursement to a Non-Employee Director within a reasonable amount of time following submission by such Non-Employee Director of reasonable written substantiation for the expenses.

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## SARBANES-OXLEY SECTION 302 CERTIFICATION

I, David A. Rosa, certify that:

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

Date: August 8, 2013

By: /s/ David A. Rosa  
David A. Rosa  
Chief Executive Officer

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## SARBANES-OXLEY SECTION 302 CERTIFICATION

I, Jeffrey S. Mathiesen, certify that:

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

Date: August 8, 2013

By: /s/ Jeffrey S. Mathiesen  
Jeffrey S. Mathiesen  
Chief Financial Officer

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

In connection with the Quarterly Report of Sunshine Heart, Inc. (the "**Company**") on Form 10-Q for the quarter ended June 30, 2013 as filed with the Securities and Exchange Commission (the "**Report**"), I, David A. Rosa, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2013

By:           /s/ David A. Rosa            
David A. Rosa  
Chief Executive Officer

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

In connection with the Quarterly Report of Sunshine Heart, Inc. (the "**Company**") on Form 10-Q for the quarter ended June 30, 2013 as filed with the Securities and Exchange Commission (the "**Report**"), I, Jeffrey S. Mathiesen, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2013

By: /s/Jeffrey S. Mathiesen  
Jeffrey S. Mathiesen  
Chief Financial Officer

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