As filed with the Securities and Exchange Commission on January 4, 2002
Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ALTUS MEDICAL, INC.
(Exact name of registrant as specified in its charter)

Delaware	3845	77-0492262
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

821 Cowan Road
Burlingame, California 94010
(650) 552-9700
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kevin P. Connors
Chief Executive Officer
Altus Medical, Inc.
821 Cowan Road
Burlingame, California 94010
(650) 552-9700
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

David J. Saul Philip H. Oettinger Wilson Sonsini Goodrich & Rosati Professional Corporation 650 Page Mill Road Palo Alto, California 94304 (650) 493-9300	Robert M. Smith Dewey Ballantine LLP 525 Middlefield Road Suite 250 Menlo Park, CA 94025 (650) 462-7400

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. [_]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [_]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act

registration number of the earlier effective registration statement for the same offering. [_]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [_]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [_]

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)(2)	Amount of Registration Fee
Common Stock, par value $0.001...	$60,000,000	$14,340

(1) In accordance with Rule 457(o) under the Securities Act of 1933, the number of shares being registered and the proposed maximum offering price per share are not included in this table.
(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.
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PRELIMINARY PROSPECTUS January 4, 2002

Subject to completion

Shares

[Altus Medical, Inc. Logo]

Common Stock

This is our initial public offering of shares of our common stock. No public

market currently exists for our common stock. We expect the public offering price to be between $ and $ per share.

We have applied to have our common stock approved on the Nasdaq National Market for quotation under the symbol "ALTU."

Before buying any shares you should read the discussion of material risks of investing in our common stock in "Risk factors" beginning on page 9.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

	Per share	Total
Public offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds, before expenses, to us	$	$

The underwriters may also purchase up to shares of common stock from us at the public offering price, less the underwriting discounts and commissions, within 30 days from the date of this prospectus. The underwriters may exercise this option only to cover over-allotments, if any. If the underwriters exercise the option in full, the total underwriting discounts and commissions will be $, and our total proceeds, before expenses, will be $.

The underwriters are offering the common stock as set forth under "Underwriting." Delivery of the shares will be made on or about , 2002.

UBS Warburg Lehman Brothers

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of shares of our common stock.

Through and including , 2002 (the 25th day after the commencement of this offering), all dealers that buy, sell or trade shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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As used in this prospectus, references to "we," "our," "us" and "Altus" refer to Altus Medical, Inc., unless the context requires otherwise.

Prospectus summary

This summary highlights information contained elsewhere in this prospectus. This summary is not complete and does not contain all the information you should consider before buying shares in the offering. You should read the entire prospectus carefully, especially the risks of investing in our common stock, which we discuss under "Risk factors." Except as otherwise indicated, information in this prospectus assumes the conversion of each outstanding share of convertible preferred stock into one share of common stock and assumes no exercise of the underwriters' over-allotment option.

OUR BUSINESS

We design, manufacture and market innovative medical devices for use in the aesthetic market. We enable dermatologists, plastic surgeons, general physicians and other licensed healthcare practitioners to offer non-invasive laser-based treatments to their patients. Our initial product, CoolGlide, is used for the removal and permanent reduction of hair. CoolGlide is effective for patients across the full spectrum of skin pigmentation, including patients with dark or tanned skin, who could not be treated safely by other aesthetic laser products. CoolGlide Excel, our second product, combines in one compact solution CoolGlide performance for permanent hair reduction with the broadest range of leg and facial vein treatments available. Our products are easy to use and the procedures performed using our products are efficient, effective and safe. These and other advantages have allowed us to rapidly grow our business and successfully compete in the aesthetic market.

We are introducing additional, advanced, laser-based aesthetic solutions to increase the range of products and services we offer our customers. In the fall of 2001, we acquired North American distribution rights to the new Medlite C series of products, manufactured by Continuum Electro Optics for removal of tattoos and pigmented lesions. In addition, we have developed the Enterprise Program, through which we will offer customers the opportunity to use CoolGlide on a pay-per-use basis. This program is designed to make CoolGlide attractive to customers who may not otherwise be able to justify the capital outlay.

Our customers pay for our products directly and typically are not reimbursed by the government or other third-party payors. We received United States Food and Drug Administration, or FDA, clearance to market CoolGlide for the treatment of vascular lesions, including leg and facial veins, in June 1999, for hair removal in March 2000 and for the permanent reduction of hair in January 2001. In addition, we have filed for clearance with the FDA for additional indications involving non-invasive procedures to improve skin appearance. We commercially launched CoolGlide in March 2000, CoolGlide Excel in March 2001 and the first Medlite series C product in the fourth quarter of 2001. As of December 1, 2001, we had sold approximately 400 units. We have been profitable since the second quarter of 2000.

INDUSTRY BACKGROUND

We believe that the aesthetic market for elective, non-invasive procedures is experiencing broad growth. According to the American Society of Plastic Surgeons, an estimated $7.4 billion was spent on cosmetic surgery in over 13 million surgical and non-surgical procedures in 2000. The December 2001 US Worldwide Epilation Market report estimates that more than 5 million light-based hair removal treatments will be performed in 2001, generating $1.3 billion in fees. The report also indicates that the installed base of lasers for hair removal will grow approximately 300% from 2000 to 2004.

Aesthetic laser-based procedures include the following:

. removal and permanent reduction of unwanted hair;

. treatment of unwanted leg and facial veins;

. removal of tattoos and pigmented lesions;

. wrinkle reduction; and

. other emerging applications, such as acne and psoriasis treatments.

While our existing laser-based technology platform has the potential to offer multiple applications in the aesthetic market, our initial focus has been on the removal and permanent reduction of unwanted hair and the treatment of unwanted veins.

Hair removal
The only treatment, other than laser-based treatments, that provides a long-lasting solution for hair removal is electrolysis. Lasers are well suited for the removal of hair because, with the proper selection of four parameters -- wavelength, pulse length, spot size and energy -- lasers can be used to non-invasively target the hair structure without damaging the surrounding skin. In addition, numerous hair follicles can be treated simultaneously, allowing for rapid coverage of large areas. Historically, lasers have provided effective treatment primarily for people with lightly-pigmented skin, as dark and tanned skin was found to absorb too much energy and treatments often resulted in blistering, skin discoloration and other complications.

Leg and facial veins
The current methods for the treatment of leg and facial veins include sclerotherapy and laser-based treatments. Sclerotherapy, the treatment of choice for leg veins, is almost impossible to use for small leg or facial veins. Historically, laser-based treatments have been used to treat small facial veins, but have tended to result in either significant bruising and pain or limited efficacy. In addition, these lasers are unsuitable for the treatment of larger leg veins. As a result, there has been an unmet market need for a laser technology that can be used to treat the whole range of veins from small facial veins to large leg veins.

THE ALTUS SOLUTION

Our products address unmet needs in the aesthetic market. We believe that our products are technologically superior to competitors' products. Key features of our products include:

. Broadest range of treatments. The limitations on many competing hair removal and vein treatment products cause practitioners to turn away patients on a regular basis from aesthetic laser procedures. CoolGlide removes hair safely and effectively, not only on those with fair pigmentation, but also on the otherwise unserved population of patients with dark or tanned skin. CoolGlide Excel also adds the capability of

treating large leg veins, in addition to small face and leg veins.

- Technology leadership. We believe that we offer the most advanced laser-based solutions for the aesthetic market. Our technology combines longer wavelength, higher power, larger spot size and wider range of pulse lengths to provide a laser that is safe and effective for people with conditions that were previously untreatable using competitors' products.

- Proprietary ClearView handpiece. Our proprietary ClearView handpiece provides an unobstructed view of the treatment area that enables a practitioner to quickly and accurately position the laser beam. In addition, the active cooling system integrated into our ClearView handpiece permits the practitioner to move continuously and safely through a targeted area.

- Multiple applications. CoolGlide Excel provides the practitioner one unit for multiple applications that would normally require the purchase of two. Because practitioners can use our CoolGlide Excel product for both permanent hair reduction and vein treatment, the cost of the unit may be spread across a greater number of procedures, and therefore more rapidly recovered.

- Easy-to-use controls. The practitioner has three simple independently adjustable controls from which to select a wide range of treatment parameters and settings to suit the patient's profile and treatment needs.

- Compact and transportable design. The compact design gives the practitioner the flexibility to easily move the product from room to room. Our products weigh significantly less than many competing products.

OUR STRATEGY

Our strategy is to become a leading provider of medical devices and services for the aesthetic market by:

- increasing sales of existing products in the United States;

- expanding our international presence;

- continuing to develop additional clinical capabilities of our existing technology platform;

- broadening our customer base;

- continuing our commitment to new research and development; and

- acquiring complementary businesses and technologies.

We were incorporated in Delaware in August 1998 as Acme Medical, Inc. and changed our name to Altus Medical, Inc. in July 1999. Our principal executive offices are located at 821 Cowan Road, Burlingame, CA 94010. Our telephone number is (650) 552-9700. Our web site is located at www.altusmedical.com. We do not intend information contained on our web site to be part of this prospectus.

The offering

The following information assumes that the underwriters do not exercise their over-allotment option to purchase additional shares in this offering.

Common stock being offered.....	shares
Common stock to be outstanding after the offering...	shares
Proposed Nasdaq National Market symbol.....	ALTU
Use of proceeds.....	For working capital and general corporate purposes. See "Use of proceeds."

Unless we indicate otherwise, all information in this prospectus has been adjusted to reflect the conversion of all outstanding shares of our preferred stock into 4,675,000 shares of our common stock and the assumed exercise and conversion of warrants to purchase 50,000 shares of preferred stock into 50,000 shares of our common stock upon the closing of this offering.

The number of shares of common stock that will be outstanding after this offering is based on shares outstanding as of December 1, 2001, and excludes the following:

- 3,222,969 shares of common stock issuable upon the exercise of options outstanding as of December 1, 2001 under our 1998 Stock Plan at a weighted-average exercise price of $1.29 per share;
- 20,000 shares of common stock issuable upon the exercise of warrants outstanding as of December 1, 2001 at a weighted-average exercise price of $1.55 per share;
- shares of common stock reserved for future issuance under our 2002 Stock Plan; and
- shares reserved for future issuance under our 2002 Employee Stock Purchase Plan.

Summary financial data

The following table presents summary historical and unaudited pro forma financial data. The summary financial data for the period from August 10, 1998 (date of inception) to December 31, 1998, and the years ended December 31, 1999 and 2000 and the nine months ended September 30, 2001 are derived from our audited financial statements. We have also included data from our unaudited financial statements for the nine months ended September 30, 2000. You should read this data together with our financial statements and related notes included elsewhere in this prospectus and the information under "Selected financial data" and "Management's discussion and analysis of financial condition and results of operations."

	Period from August 10, 1998 (date of inception) to December 31,	Years ended December 31,		Nine months ended September 30,	
Statements of operations data	1998	1999	2000	2000 (unaudited)	2001(1)
	(In thousands, except per share data)				
Net revenue.....	$ --	$ 100	$9,531	$6,447	$13,918

Cost of revenue	--	413	3,365	2,246	5,036
Gross profit (loss)	--	(313)	6,166	4,201	8,882
Operating expenses:					
Sales and marketing	26	706	2,794	1,790	4,047
Research and development	188	1,333	1,539	1,099	1,593
General and administrative	43	419	989	709	1,111
Total operating expenses	257	2,458	5,322	3,598	6,751
Income (loss) from operations	(257)	(2,771)	844	603	2,131
Interest and other income, net	11	57	193	146	146
Income (loss) before income taxes	(246)	(2,714)	1,037	749	2,277
Provision for income taxes	--	--	--	--	370
Net income (loss)	$ (246)	$(2,714)	$1,037	$ 749	$ 1,907
Net income (loss) per share:					
Basic	$(1.06)	$ (3.04)	$ 0.97	$ 0.72	$ 1.35
Diluted	$(1.06)	$ (3.04)	$ 0.13	$ 0.09	$ 0.22
Weighted average number of shares used in per share calculations:					
Basic	231	892	1,064	1,034	1,412
Diluted	231	892	8,008	8,001	8,668
Pro forma net income per share (unaudited):					
Basic			$ 0.18		$ 0.31
Diluted			$ 0.13		$ 0.22
Weighted average number of shares used in pro forma per share calculations (unaudited):					
Basic			5,789		6,137
Diluted			8,058		8,687

	As of September 30, 2001		
Balance sheet data	Actual	Pro forma (2)	Pro forma as adjusted (3)
	(In thousands)		
Cash and cash equivalents	$ 6,491	$ 6,591	$
Working capital	6,636	6,736	
Total assets	10,667	10,767	
Non-current liabilities	--	--	
Redeemable convertible preferred stock	7,272	--	
Accumulated deficit	(16)	(16)	
Total stockholders' equity	399	7,771	

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(1) Stock-based compensation expense of $93,000, $38,000, $181,000, $25,000 and $40,000 is included in net revenue, cost of revenue, sales and marketing, research and development, and general and administrative, respectively, for the nine months ended September 30, 2001.

(2) On a pro forma basis to give effect to the automatic conversion of all outstanding shares of preferred stock into 4,675,000 shares of common stock and the assumed exercise and conversion of warrants to purchase 50,000 shares of preferred stock into 50,000 shares of common stock upon closing of this offering.

(3) On a pro forma as adjusted basis to reflect the net proceeds from the sale of shares of our common stock in this offering at an assumed public

offering price of $ per share, after deducting the underwriting discounts and commissions and estimated offering expenses.

Risk factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below with all of the other information included in this prospectus before making an investment decision. If any of the possible adverse events described below actually occurs, our business, results of operations or financial condition would likely suffer. In such an event, the market price of our common stock could decline and you could lose all or part of your investment.

RISKS RELATED TO OUR BUSINESS

We have a limited history of operations, which could impair our ability to grow significantly, as well as our future revenues, profits and our ability to remain profitable.

We were incorporated in August 1998 and first became profitable in March 2000. Consequently, we have limited experience operating as a profitable company. Our ability to maintain profitability, and the overall success of our business, will depend on our ability to increase product sales and expand our international distribution network, which we cannot guarantee. Even if we are able to expand our sales and marketing capabilities, we cannot guarantee that our direct sales force or third-party distributors will be able to promote and sell our products successfully. As a result, we cannot assure you that we will be able to increase sales of our products and achieve continued revenue growth and profitability.

Our future revenue and operating results will depend on our ability to manage the anticipated growth of our business. It may be difficult for us to contain costs if we have to significantly expand our manufacturing abilities. Our success in growing our business also will depend upon the ability of our management team to implement improvements in our operational systems, realize economies of scale, manage multiple development projects and continue to expand, train and manage our personnel worldwide. If we cannot scale and manage our business appropriately or manage the introduction of new products, we will not experience projected growth and our financial results will suffer.

We may experience fluctuations in our revenue and income from operations, which may cause our financial results to fluctuate and our stock price to fall.

Our limited operating history makes it difficult for us to predict future performance. Historically, the demand for our products has varied from quarter to quarter. A number of factors may contribute to fluctuations in our financial results, such as:

. the timing of customer orders and shipments;

. the seasonality of the industry;

. the condition of the economy and the willingness of consumers to spend money on elective aesthetic procedures;

. decisions by our customers not to purchase existing products due to impending introduction of new and improved products; and

. foreign currency fluctuations.

Our net sales and operating results may vary significantly from quarter to quarter and from year to year. In the event our revenue and operating results

do not meet the expectations of stock market analysts and investors for a certain quarter, the price of our stock may decline significantly. Our inability to

provide meaningful projections of our operating results on a quarter to quarter and year to year basis may result in volatility of our stock price.

Our success depends on our ability to compete effectively with our existing products, as well as our ability to develop product enhancements and new products. If our products fail to meet the needs of prospective customers, our business will suffer.

The aesthetic laser market is highly competitive and dynamic, and marked by rapid obsolescence of products. Demand for our products could be diminished by equivalent or superior products and technologies offered by competitors. To be successful, we must be able to respond to new developments in the aesthetic market by creating innovative products and new applications of existing products. Our ability to compete could suffer if we are unable to respond quickly to new technological innovations and competitors' new products, or if we are unable to anticipate and meet the needs of our customers through new product offerings and improvements to existing products.

We must devote significant resources to develop new products and technology. Resources committed to research and development will not be used to expand other activities, such as sales and marketing. Once we create new products and technologies, we will need to successfully transition them into the manufacturing process and to find suitable suppliers for product components. If we fail to devote sufficient resources to research and development, we may not be able to introduce new products or enhancements to existing products. Our inability to compete effectively with new products or technology could negatively impact our business, financial condition and results of operations.

We compete against companies that have greater resources and more established products, which may prevent us from achieving significant market penetration or increased operating results.

Our products compete against similar products offered by Lumenis, Candela and Laserscope, as well as other smaller, highly-specialized firms. Competition with these companies could result in price cutting, reduced profit margins and loss of market share, any of which would harm our business and results of operations. Our ability to compete effectively depends upon our ability to distinguish our company and our products from our competitors and include such factors as:

- market acceptance of our products both domestically and internationally;
- the product performance;
- the price of our products and procedures;
- quality of our customer support;
- success and timing of new product development and introduction;
- our ability to obtain regulatory clearances or approvals for new products or modifications; and
- continued development of successful distribution channels.

Some of our current and prospective competitors have significantly greater financial, research and development, manufacturing, and sales and marketing resources than we have. Our competitors could utilize their greater financial resources to acquire other companies to gain new technologies or products that could effectively compete with our existing product lines. For example, ESC Medical purchased Coherent's medical business and the surviving company, Lumenis, incorporates competitive product lines and technologies of the predecessor companies into its current products. Any business combination, such as this one, could exacerbate any existing competitive forces, which could harm our business.

In addition, some of our competitors have more established products and customer relationships than we do, which could inhibit our market penetration efforts. For example, we have in the past encountered, and expect in the future to encounter, situations where due to pre-existing relationships, potential customers are committed to purchasing products offered by our competitors. Such commitments reduce the possibility that potential customers also will purchase our products. Potential customers also may need to recoup the cost of expensive products that they have already purchased from our competitors and may decide not to purchase our products, or to delay such purchase, as a result. If we are unable to achieve market penetration, we will be unable to compete effectively and our business will be harmed.

We depend on skilled personnel to operate our business effectively. If we are unable to recruit, hire and retain skilled employees, our ability to manage and expand our business will be harmed, which would impair our future revenue and profit.

Our ability to retain our skilled labor force and our success in attracting and hiring new highly-skilled employees will be a critical factor in determining whether we will be successful in the future. We intend to hire a significant number of employees over the next 12 months. We may not be able to meet our future hiring needs or retain existing personnel. We will face particularly significant challenges and risks in hiring, training, managing and retaining engineering, sales and marketing employees, as well as independent distributors, all of whom are geographically dispersed and must be trained in the use and benefits of our products. Failure to attract and retain personnel, particularly technical and sales and marketing personnel, would materially harm our ability to compete effectively and grow our business.

We depend on our management team to run our operations. If we are unable to retain our management team, our business will be harmed.

Our success largely depends on the skills, experience and efforts of our executive officers. None of our officers or key employees is party to an employment agreement and any of our employees may terminate their employment at any time. In addition, we do not maintain "key person" life insurance policies covering any of our employees. The loss of any of our management team members could weaken our management expertise and harm our business.

Intellectual property rights may not provide meaningful commercial protection for some or all of our products, which may permit third parties to compete against us more effectively.

We rely on patent, copyright, trade secret and trademark laws to protect our products from being duplicated by competitors. As of December 1, 2001, we did not have any issued patents, and we had four pending US patent applications and three pending foreign patent applications. Intellectual property laws afford us

only limited protection. We and our competitors rely upon proprietary rights that cannot be patented. Certain of our patentable products and processes may not be protected by patents. Additionally, our patent applications may not issue as patents or, if issued, may not issue in a form that will be advantageous to us. Any patents we obtain may be challenged, invalidated or legally circumvented by third parties. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by consultants, vendors, former employees or current employees, despite the existence of nondisclosure and confidentiality agreements and other contractual restrictions.

An absence of intellectual property protection could result in competition that would make our market opportunity accessible to a greater number of companies. Any of our competitors could purchase one of our products and attempt to replicate some or all of the competitive advantages we derive from our development efforts. Moreover, the laws of many foreign countries will not protect our intellectual

property rights to the same extent as the laws of the United States. If our intellectual property is not adequately protected, our competitors could develop new products or enhance existing products to compete more directly and effectively with us and harm our business.

We are involved in intellectual property litigation with Lumenis that may hurt our competitive position, may be costly to us and may prevent us from selling our products.

In October 2001, Lumenis filed a lawsuit against us, which alleges that we sell our products in willful disregard of two issued patents that they own and that they claim our products infringe. Lumenis's patents concern methods and devices for conducting various aspects of laser skin treatments. We believe that we have meritorious defenses in this action. However, litigation is unpredictable and we may not prevail in successfully defending our position.

If we lose this lawsuit, we could be required to pay Lumenis substantial damages. Further, a finding of willful infringement would result in a treble damages award. We may have to obtain a license from Lumenis or another entity that has the right to license the technology. We may need to pay a royalty to Lumenis, or a licensee of Lumenis, if we are to continue to market products that have been found to infringe Lumenis's patents. Lumenis may not be required to, and Lumenis or a licensee of Lumenis may be unwilling to, grant us a license, which could require us to stop selling any then commercially-available product that is found to infringe their patents. In that case, we would have to redesign such product so it does not infringe Lumenis's patents, which we may be unable to do without delay if at all.

This litigation will be expensive, may be protracted and our confidential information may be compromised. Whether or not we are successful in this lawsuit, this litigation could consume substantial amounts of our financial resources and could divert management's attention away from our core business. At any time Lumenis may file additional claims against us, or we may file claims against Lumenis, which could increase the risk, expense and duration of the litigation. For more information on our litigation with Lumenis, see "Business -- Litigation."

Others may assert that our products infringe their intellectual property rights, which may cause us to engage in costly disputes and, if we are not successful in defending ourselves, could also cause us to pay substantial damages and prohibit us from selling our products.

The laser industry is characterized by a large number of patents, claims of which appear to overlap in many cases. As a result, there is a significant amount of uncertainty in the industry regarding patent protection and infringement, and many of the claims in issued patents may not be valid or enforceable. We are aware of patents owned by our competitors, including a patent which others in our industry have licensed. We believe that our products do not require us to obtain such a license but the patent owner may disagree, and may assert the patent against us. While we attempt to ensure that our products do not infringe the valid intellectual property rights of other parties, our competitors may assert that our products and the methods we employ may be covered by patents held by them or invented by them before they were invented by us.

We may become involved in litigation not only as a result of alleged infringement of a third party's intellectual property rights but also to protect our own intellectual property. Although we may seek to obtain an agreement to resolve certain claims or actions, we may not be able to obtain such an agreement on reasonable terms or at all. If, following a successful third-party action for infringement, we are not successful in obtaining a license or redesigning our products, we may have to stop manufacturing our products and our business would suffer as a result.

Infringement and other intellectual property claims, with or without merit, can be expensive and time-consuming to litigate and divert management's attention from our core business. If we lose in this kind of litigation, a court could require us to pay substantial damages or grant royalties, and prohibit us from using technologies essential to our products.

Our manufacturing operations are highly dependent upon third-party suppliers, making us vulnerable to supply shortages and price fluctuations, which could harm our business.

Many of the components and materials that comprise our products are currently manufactured by a limited number of third-party suppliers, including some of our key components, such as laser crystals, optical fibers, electronic parts and printed circuit boards. Although we believe that alternative sources for these components are available, a supply interruption could harm our ability to manufacture our products until a new source of supply is identified and qualified. Our reliance on these outside suppliers subjects us to a number of risks that could harm our business, including:

- some of these suppliers are small privately-held companies that may modify or discontinue their operations at any time;
- an uncorrected defect or supplier's variation in a component, either unknown to us or incompatible with our manufacturing process, could delay our ability to ship our products;
- we purchase our key components through the use of long-term purchase orders and do not have guaranteed supply arrangements with any of our suppliers;
- we may not be able to obtain adequate supply in a timely manner or on commercially-reasonable terms;
- we may have difficulty locating and qualifying alternative suppliers for our components;

- once we identify alternative suppliers, we could experience significant delays in production due to the need to evaluate and test the products delivered by alternative suppliers and to obtain regulatory qualification for them;

- many of our suppliers have multiple customers, some of whom may have greater priority with our suppliers;

- any fluctuation in demand for products produced by our suppliers for third-party customers may affect delivery of our components; and

- our suppliers may encounter financial hardships unrelated to our demand for components, which could inhibit their ability to fulfill our orders.

Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner could impair our ability to meet the demand of our customers and cause customers to cancel orders.

We forecast sales to determine requirements for components and other materials used in our products and if our forecasts are incorrect, we may experience delays in shipments and an inability to meet demand.

We keep limited materials and components on hand. To manage our manufacturing operations with our third-party suppliers, we forecast anticipated product orders and material requirements to predict our inventory needs up to 12 months in advance and enter into purchase orders on the basis of these requirements. Our limited historical experience may not provide us with enough data to predict future

demand. If our business expands, our demand for components will increase and supplier lead times may increase. If we overestimate our component and material requirements, we will have excess inventory, which would increase our expenses. If we underestimate our component and material requirements, we may have inadequate inventory, which could interrupt and delay delivery of our products to our customers or result in cancellation of orders. Any of these occurrences would negatively affect our financial performance and the level of satisfaction our customers have with our business.

Our business is based upon an elective procedure. A number of factors could inhibit a patient's decision to choose the procedure and our revenues could suffer.

Most procedures performed using CoolGlide and CoolGlide Excel are not reimbursable through insurance and are therefore elective surgeries, the cost of which must be borne by the patient. The decision to utilize our products may therefore be influenced by a number of factors, including:

- the cost of procedures performed using our products;

- the cost and effectiveness of alternative treatments;

- the success of our sales and marketing efforts; and

- consumer confidence, which has been impacted by the current US recession, terrorism and war in Afghanistan, as well as other general economic conditions.

If, as a result of these factors, there is not sufficient demand for the

procedures performed with our products, practitioner demand for the products could be inhibited, resulting in unfavorable operating results.

We are subject to risks associated with international operations that could harm our financial condition and results of operations.

To successfully market our products internationally, we must address many issues with which we have little or no experience. We have obtained regulatory clearance to market our products in the European Union but we have not obtained any other international regulatory approvals for other markets. We may not obtain such approvals or maintain approvals that we do obtain. Currently, approximately 31% of our total revenue is derived from international sales and we believe that an increasing percentage of our future revenues will come from international sales. However, these sales are subject to a number of risks, including:

. dependence on foreign distributors to sell our products;

. export restrictions, tariff and trade regulations and foreign tax laws;

. customs duties and shipping delays;

. lengthy payment cycles and difficulty in collecting accounts receivable;

. foreign certification and regulatory requirements;

. fluctuating foreign currency exchange rates;

. reduced protection for intellectual property rights in some countries;

. general market conditions;

. political and economic instability; and

. preference for locally-produced products.

The occurrence of any one or more of the foregoing could harm our financial condition and results of operations.

We currently depend on third-party distributors to sell our products internationally and if these distributors underperform, or if we are unable to attract additional distributors, we may be unable to increase international revenues.

Internationally, we rely on a network of distributors to sell our products. We depend on these distributors in such markets and we will need to attract additional distributors to grow our business and expand the territories into which we sell our products. Distributors may not commit the necessary resources to market and sell our products to the level of our expectations. If current or future distributors do not perform adequately, we may not realize expected international revenue growth.

Components used in our products are complex in design and defects may not be discovered prior to shipment to customers, which could result in returns and warranty service, reducing our revenue and increasing our cost.

In manufacturing our products, we depend upon third parties for the supply of various components. Many of these components require a significant degree of

technical expertise to produce. If our third-party suppliers fail to produce components to specification or inadvertently use defective materials in the manufacturing process, the reliability and performance of our products will be compromised.

The existence of defects may not be discovered until after shipment. The cost associated with product recall or repair may be significant, which would in turn reduce our operating results. If our products contain defects that cannot be repaired easily, we may experience:

. loss of customer orders;

. damage to our brand reputation;

. increased cost of our warranty program due to product returns;

. inability to attract new customers and market acceptance;

. diversion of resources from our engineering and research and development departments into our service department; and

. legal actions.

The occurrence of any one or more of the foregoing could harm our business.

Because we are permitted to sell our products to non-physicians and we are not required to provide training for the use of our products, there exists an increased potential for misuse of our products, which could harm our reputation and our business.

Federal regulation allows for the sale of our products to licensed practitioners as determined on a state-by-state basis. We do not supervise the procedures performed with our products, nor do we require that direct medical director supervision occur. The absence of required training and the purchase and use of our products by non-physicians may result in their misuse, which could harm our reputation and expose us to costly product liability litigation.

Many foreign jurisdictions also do not require our products to be purchased, administered or supervised by a physician. In addition, our distributors may sell our products to untrained practitioners, since we do

not control the sales activities of our distributors. We may be liable for the misuse of our products if our distributors sell to customers that are not qualified or fail to use our products in accordance with standard practice and operating instructions.

Product liability suits against us due to a defective design, defective manufacture or misuse of our products, could result in expensive and time-consuming litigation, payment of substantial damages and an increase in our insurance rates.

If our products are defectively designed or manufactured, malfunction or are misused, we may become subject to substantial and costly litigation. The risk of malfunction or misuse leading to injury is significant, since our products are classified as Class IV lasers, the most powerful class of lasers available. Misusing our laser could cause significant skin and tissue damage. Product liability claims could divert management's attention from our core business, be expensive to defend and result in sizable damage awards against us. While we believe that we are reasonably insured against these risks, we may not be able

to obtain insurance in amounts or scope sufficient to provide us with adequate coverage against all potential liabilities. Any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing coverage in the future and would harm our reputation in the industry. A product liability claim in excess of our insurance coverage would be paid out of cash reserves reducing our operating results.

If we fail to obtain and maintain necessary FDA clearances or approvals for our products, or if clearances or approvals for future products are delayed, our US commercial operations would be harmed.

Our products are medical devices that are subject to extensive regulation in the United States by the FDA. Unless an exemption applies, each medical device that we wish to market in the United States must first receive either 510(k) clearance or premarketing approval from the FDA. Either process can be expensive and lengthy. Although we have obtained 510(k) clearance for our CoolGlide and CoolGlide Excel products our clearances can be revoked if safety or effectiveness problems develop. We may not be able to obtain clearances or approvals for additional products in a timely fashion, or at all. Delays in obtaining future clearances or approvals could adversely affect our revenues and profitability. We also are subject to Medical Device Reporting regulations which require us to report to the FDA if our products cause or contribute to a death or serious injury or malfunction in a way that would likely cause or contribute to a death or serious injury. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA which may include any of our following sanctions:

. fines, injunctions, and civil penalties;

. recall or seizure of our products;

. operating restrictions, partial suspension or total shutdown of production;

. refusing our requests for 510(k) clearance or premarket approval of new products or new intended uses;

. withdrawing 510(k) clearance or premarket approvals that are already granted; and

. criminal prosecution.

If we fail to comply with the FDA's Quality System Regulation and laser performance standards, our manufacturing operations could be delayed, and our business would suffer.

We are currently required to demonstrate and maintain compliance with the FDA's Quality System Regulation, or QSR. The QSR covers the methods and documentation of the design, testing, control,

labeling, packaging, storage and shipping of our products. The FDA enforces the QSR through periodic unannounced inspections. We have in the past been, and anticipate in the future to be, subject to such inspections. Because our products involve the use of lasers, our products also are covered by a performance standard for lasers set forth in FDA regulations. The laser performance standard imposes certain specific record-keeping, reporting, product testing and product labeling requirements. These requirements also include affixing warning labels to laser products, as well as incorporating certain safety features in the design of laser products. Our failure to take

satisfactory corrective action in response to an adverse QSR inspection or our failure to comply with applicable laser performance standards could result in enforcement actions that could have a material adverse effect on our operations.

Modifications to our marketed devices may require new 510(k) clearances or premarket approvals or require us to cease marketing and recall the modified devices until clearances or approvals are obtained.

Any modification to an FDA-cleared device that significantly affects its safety or effectiveness, or that would constitute a major change in its intended use, requires a new FDA 510(k) clearance or possibly premarket approval. The FDA requires every manufacturer to make this determination in the first instance, but the FDA can review any such decision. We have modified aspects of our products since receiving regulatory clearance without additional FDA submissions and may make additional modifications to those products and future products after they have received clearance or approval and, in appropriate circumstances, determine that new submission is unnecessary. The FDA may not agree with any of our decisions not to seek new clearance or approval. If the FDA requires us to seek 510(k) clearance or premarket approval for any modifications to a previously cleared product, we may be required to cease marketing or recall the modified device until we obtain clearance or approval. Also, in such a circumstance, we could be subject to significant regulatory fines or penalties.

We may be unable to obtain or maintain international regulatory approvals for our current or future products.

We are subject to international rules and regulations governing the sale of our products in foreign markets. For example, we are required to maintain our ISO 9001/EN 46001 status for our manufacturing facility and CE Mark certification through international Notified Body audit requirements similar to those of the FDA. If we do not pass such audits, our ability to sell our products in foreign countries will be harmed and we will encounter delays in selling our products as a result of implementing corrective action. In addition, the international regulatory environment is constantly changing. New rules and regulations may prevent or delay product sales, or increase our costs, either of which would adversely impact our operating results.

Any acquisitions that we make could disrupt our business and harm our financial condition.

In the future we may evaluate potential strategic acquisitions of complementary businesses, products or technologies. We may not be able to identify appropriate acquisition candidates or successfully negotiate, finance or integrate any businesses, products or technologies that we acquire. Furthermore, the integration of any acquisition may divert management's time and resources from our core business. While we from time to time evaluate potential acquisitions of businesses, products and technologies, and anticipate continuing to make these evaluations, we have no present understandings, commitments or agreements with any respect to acquisitions.

Risk factors

Power outages in California may adversely affect us.

We conduct all of our assembly, testing and management activities in California and rely on a continuous supply of electrical power to conduct operations, as do many of our suppliers, who are also located in California. California's current energy crisis could substantially disrupt our operations and increase our expenses. California recently implemented, and may in the future implement,

rolling blackouts throughout the state. If blackouts interrupt our power supply, we may be temporarily unable to continue operations at our facilities, which include the production of CoolGlide and CoolGlide Excel. Interruptions in our ability to continue operations at our facilities could delay our shipments of products, delay the development of new products and disrupt communications with our customers, suppliers and third-party manufacturers. Future interruptions could result in lost revenue and damage our reputation, either of which could harm our business and results of operations. Furthermore, shortages in wholesale electricity supplies have caused power prices to increase. Any wholesale price increase would have a negative effect on our operating results.

RISKS RELATED TO THIS OFFERING

Our directors, executive officers and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.

After this offering, our officers, directors, and principal stockholders holding more than 5% of our common stock, together will control approximately % of our outstanding common stock. As a result, these stockholders, if they act together, will be able to control the management and affairs of our company and all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change in control and might adversely affect the market price of our common stock. This concentration of ownership may not be in the best interest of our other stockholders.

Anti-takeover provisions in our certificate of incorporation and bylaws and Delaware law contain provisions that could discourage a takeover.

Our basic corporate documents and Delaware law contain provisions that might enable our management to resist a takeover. These provisions might discourage, delay or prevent a change in control of our company or a change in our management. The existence of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock. See "Description of capital stock."

We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as the board of directors may consider relevant. If we do not pay dividends, our stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

Our common stock has not been publicly traded, and we expect that the price of our common stock will fluctuate substantially.

Before this offering, there has been no public market for our common stock. An active public trading market may not develop after completion of this offering or, if developed, may not be sustained. The

price of the common stock sold in this offering will not necessarily reflect the market price of the common stock after this offering. The market price for

the common stock after this offering will be affected by a number of factors, including:

- the announcement of new customers or service enhancements by us or our competitors;
- quarterly variations in our or our competitors' results of operations;
- changes in earnings estimates, recommendations by securities analysts or our failure to achieve analysts' earning estimates;
- developments in our industry; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

In addition, the stock prices of many companies in both the medical device and medical services industries have experienced wide fluctuations that have often been unrelated to the operating performance of those companies. These factors and price fluctuations may materially and adversely affect the market price of our common stock.

A sale of a substantial number of shares of our common stock may cause the price of our common stock to decline.

If our stockholders sell substantial amounts of our common stock in the public market after this offering, including shares issued upon the exercise of outstanding options, the market price of our common stock could fall. These sales also might make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate. See "Shares eligible for future sale."

New investors in our common stock will experience immediate and substantial dilution after this offering.

If you purchase shares of our common stock in this offering, you will incur immediate and substantial dilution in pro forma net tangible book value. If the holders of outstanding options exercise those options, you will incur further dilution. See "Dilution."

If our management team does not effectively allocate the proceeds of this offering, we may fail to achieve our objectives and our stock price may decline.

Our management has significant flexibility in applying the proceeds that we receive in this offering. We intend to use the proceeds for working capital and general corporate purposes. We may use a portion of the net proceeds to acquire complementary products, technologies or businesses; however, we currently have no agreements or commitments to complete any such transactions and are not involved in negotiations to do so. Because the proceeds are not required to be allocated to any specific investment or transaction, you cannot determine the value or propriety of our management's application of the proceeds prior to your investment. If we do not allocate the proceeds of the offering effectively, we may fail to achieve our objectives and the market price of our common stock may decline.

Forward-looking information

Some of the statements under "Prospectus summary," "Risk factors," "Management's discussion and analysis of financial condition and results of operations," "Business" and elsewhere in this prospectus constitute

forward-looking statements. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among other things, those listed under "Risk factors" and elsewhere in this prospectus. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "could," "expects," "plans," "intends," "anticipates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of such terms and other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. These statements are only predictions. Actual events or results may differ materially. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of those statements. We undertake no duty to update any of the forward-looking statements after the date of this prospectus to conform them to actual results.

Use of proceeds

We estimate that the net proceeds from the sale of the shares of common stock we are offering will be approximately $ million. If the underwriters fully exercise the over-allotment option, the net proceeds will be approximately $ million. Net proceeds are what we expect to receive after we pay the underwriting discounts and commissions and the estimated offering expenses. For the purpose of estimating net proceeds, we are assuming that the public offering price will be $ per share. We expect to use all of the net proceeds from this offering for working capital and general corporate purposes. We may use a portion of the net proceeds to acquire complimentary products, technologies or businesses; however, we currently have no agreements or commitments to complete any such transactions and are not involved in negotiations to do so. Pending our uses of the proceeds, we intend to invest the net proceeds of this offering primarily in short-term, interest-bearing instruments.

The timing and amount of our actual expenditures will be based on many factors, including cash flows from operations and the anticipated growth of our business.

Dividend policy

We have never declared or paid any dividends on our capital stock. We anticipate that we will retain any earnings to support operations and to finance the growth and development of our business. Therefore, we do not expect to pay cash dividends in the foreseeable future. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects and other factors that the board of directors may deem relevant.

Capitalization

The following table sets forth our capitalization as of September 30, 2001:

- on an actual basis;
- on a pro forma basis to give effect to the automatic conversion upon completion of this offering of all outstanding shares of our preferred stock into 4,675,000 shares of common stock and the assumed exercise and conversion of warrants to purchase 50,000 shares of preferred stock into 50,000 shares of common stock; and
- on a pro forma as adjusted basis to give effect to the sale of shares of common stock at an assumed public offering price of $ per share, less underwriting discounts and commissions and estimated offering expenses.

	As of September 30, 2001		
	Actual	Pro forma	Pro forma as adjusted
	(in thousands, except per share amounts		
Convertible preferred stock, $0.001 par value; 4,784,000 shares authorized, 4,675,000 shares issued and outstanding, actual; no shares issued and outstanding, pro forma and pro forma as adjusted	$ 7,272	$ --	$ --
Stockholders' equity:			
Common stock, $0.001 par value; 20,000,000 shares authorized, 1,825,092 shares issued and outstanding, actual; 6,550,092 shares issued and outstanding, pro forma; and shares issued and outstanding, pro forma as adjusted	2	7	
Additional paid-in capital	2,254	9,621	
Deferred stock-based compensation	(1,841)	(1,841)	
Accumulated deficit	(16)	(16)	
Total stockholders' equity	399	7,771	
Total capitalization	$ 7,671	$ 7,771	$

The table above does not include:

- 3,200,357 shares of common stock issuable upon the exercise of options under our 1998 Stock Plan outstanding as of September 30, 2001 at a weighted-average exercise price of $1.12 per share;
- 20,000 shares of common stock issuable upon the exercise of warrants outstanding as of September 30, 2001 at a weighted-average exercise price of $1.55 per share;
- shares of common stock reserved for future issuance under our 2002 Stock Plan; and
- shares of common stock reserved for future issuance under our 2002 Employee Stock Purchase Plan.

Dilution

If you invest in our common stock, your interest will be diluted immediately to the extent of the difference between the public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock after this offering.

Our pro forma net tangible book value as of September 30, 2001 was $7,771,000, or $1.19 per share. Pro forma net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the total number of shares of common stock outstanding after giving effect to the conversion of all outstanding shares of preferred stock into common stock and the assumed exercise and conversion of warrants to purchase 50,000 shares of preferred stock into common stock. Dilution in net tangible book value per share represents the difference between the amount per share paid by purchasers of shares of our common stock in this offering and the net tangible book value per share of our common stock immediately afterwards. After giving effect to our sale of shares of our common stock offered by this prospectus at an assumed public offering price of $ per share and after deducting the underwriting discounts and commissions, estimated offering expenses, our pro forma net tangible book value as of September 30, 2001 would be $, or $ per share. This represents an immediate increase in pro forma net tangible book value of $ per share to existing stockholders and an immediate dilution in pro forma net tangible book value of $ per share to new investors. The following table illustrates this per share dilution:

Assumed initial public offering price per share		$
Pro forma net tangible book value per share as of September 30, 2001	$	
Increase per share attributable to new investors		
Pro forma as adjusted net tangible book value per share after the offering		
Dilution per share to new investors		$

The following table sets forth, on a pro forma basis, as of September 30, 2001, the differences between the number of shares of common stock purchased from us, the total consideration paid and average price per share paid by existing stockholders, and by new investors purchasing shares of our common stock in this offering, before deducting underwriting discounts and commissions and estimated expenses at an assumed public offering price of $ per share.

	Shares purchased		Total consideration		Average price per share
	Number	Percent	Amount	Percent	
Existing stockholders		%	$	%	$
New investors					
Total		100.0%	$	100.0%	

The tables above assume no exercise of the underwriters' over-allotment option and exclude 3,200,357 options outstanding as of September 30, 2001, with a weighted-average exercise price of $1.12 per share, and 20,000 shares of common stock subject to warrants outstanding as of September 30, 2001, with a weighted-average price of $1.55 per share. Assuming exercise in full of these options and warrants having an exercise price less than the offering price would increase the dilutive effect to new investors an additional $ per share, to $ per share.

Dilution

If the underwriters exercise their over-allotment option in full, the following will occur:

- the number of shares of common stock held by existing stockholders will decrease to approximately % of the total number of shares of common stock outstanding; and
- the number of shares held by new investors will increase to or approximately % of the total number of shares of our common stock outstanding after this offering.

Selected financial data

The selected financial data set forth below should be read in conjunction with our financial statements and the related notes thereto and "Management's discussion and analysis of financial condition and results of operations," included in this prospectus. The statement of operations data for the period from August 10, 1998 (date of inception) to December 31, 1998, for the years ended December 31, 1999 and 2000 and for the nine months ended September 30, 2001, and the balance sheet data as of December 31, 1999 and 2000 and September 30, 2001, are derived from our audited financial statements included elsewhere in this prospectus. The balance sheet data as of December 31, 1998 is derived from our audited financial statements that are not included in this prospectus. The statement of operations data for the nine months ended September 30, 2000 is derived from our unaudited financial statements included elsewhere in this prospectus. In the opinion of management, the unaudited financial statements include all adjustments, consisting principally of normal recurring adjustments, necessary for a fair presentation of the financial position and results of operations for these periods. The historical results are not necessarily indicative of the operating results to be expected in the future and the results of interim periods are not necessarily indicative of the results for a full year.

Statements of operations data	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	Years ended December 31, 2000	Nine months ended September 30, 2000 (unaudited)	Nine months ended September 30, 2001(1) (unaudited)
	(In thousands, except per share data)				
Net revenue	$ --	$ 100	$9,531	$6,447	$13,918
Cost of revenue	--	413	3,365	2,246	5,036

Gross profit (loss)	--	(313)	6,166	4,201	8,882
Operating expenses:					
Sales and marketing	26	706	2,794	1,790	4,047
Research and development	188	1,333	1,539	1,099	1,593
General and administrative	43	419	989	709	1,111
Total operating expenses	257	2,458	5,322	3,598	6,751
Income (loss) from operations	(257)	(2,771)	844	603	2,131
Interest and other income, net	11	57	193	146	146
Income (loss) before income taxes	(246)	(2,714)	1,037	749	2,277
Provision for income taxes	--	--	--	--	370
Net income (loss)	$ (246)	$(2,714)	$1,037	$ 749	$ 1,907
Net income (loss) per share(2):					
Basic	$(1.06)	$ (3.04)	$ 0.97	$ 0.72	$ 1.35
Diluted	$(1.06)	$ (3.04)	$ 0.13	$ 0.09	$ 0.22
Weighted average number of shares used in per share calculations:					
Basic	231	892	1,064	1,034	1,412
Diluted	231	892	8,008	8,001	8,668

Selected financial data

Balance sheet data	As of December 31, 1998	1999	2000	As of September 30, 2001
	(In thousands)			
Cash and cash equivalents	$1,781	$ 4,184	$ 3,562	$ 6,491
Working capital	1,690	4,180	4,768	6,636
Total assets	1,798	4,913	7,038	10,667
Non-current liabilities	--	118	68	--
Redeemable convertible preferred stock	1,945	7,272	7,272	7,272
Total stockholders' equity (deficit)	(244)	(2,958)	(1,918)	399

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(1) Stock-based compensation expense of $93,000, $38,000, $181,000, $25,000 and $40,000 is included in net revenue, cost of revenue, sales and marketing, research and development and general and administrative, respectively at September 30, 2001.

(2) Please see the notes to the financial statements for an explanation of the method used to determine the numbers of shares used in computing basic and diluted net income (loss) per share.

Management's discussion and analysis of financial condition and results of operations

The following discussion of our financial condition and results of operations

should be read in conjunction with our financial statements and the notes to those statements included elsewhere in this prospectus. This discussion may contain forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth under "Risk factors" and elsewhere in this prospectus, our actual results may differ materially from those anticipated in these forward-looking statements.

OVERVIEW

We design, manufacture and market innovative medical devices for use in the aesthetic market. We enable our customers to offer non-invasive laser-based treatments to their patients. We were incorporated in August 1998. Our activities from our inception to the fourth quarter of 1999 principally consisted of development of our first product, CoolGlide, for the permanent reduction of hair and the treatment of leg and facial veins. We received FDA clearance to market CoolGlide for the treatment of vascular lesions in June 1999. We commercially launched CoolGlide in March 2000 after obtaining FDA clearance for hair removal. We obtained FDA clearance for permanent reduction of hair in January 2001 and began sales of our second product, CoolGlide Excel, in March 2001. We have been profitable since the second quarter of 2000 and, as of September 30, 2001, had an accumulated deficit of $16,000. In September 2001, we acquired North American distribution rights to the new Medlite C series of products, manufactured by Continuum Electro Optics, for removal of tattoos and pigmented lesions. We launched the first of these products in the fourth quarter of 2001. We have also developed the Enterprise Program, through which we will offer CoolGlide for a "pay-per-use" fee. To date, we have no material revenue from Medlite or the Enterprise Program.

We derive revenue primarily from the sale of our aesthetic laser products. Revenue is recognized upon shipment of product to the customer, provided that a purchase order exists, remaining obligations are insignificant and collectibility of the resulting receivable is reasonably assured. We generally offer a one-year warranty with our products. We provide for the estimated warranty costs at the time of sale. We also earn revenues from the sale of extended warranty contracts. Such revenues are deferred and recognized ratably over the extended warranty period. We sell our products in the United States through direct sales representatives, and use distributors to sell our products outside of the United States. For the nine months ended September 30, 2001, international sales comprised 31% of our revenue.

Our cost of revenue consists primarily of materials, labor, manufacturing overhead expenses, amortization of deferred stock-based compensation and warranty and shipping and handling costs. As we grow our business and realize manufacturing efficiencies and economies of scale, we expect our cost of revenue to decrease as a percentage of net sales, thereby increasing our gross margin. For the year ended December 31, 2000 and the nine months ended September 30, 2001, our gross margins were 65% and 64%, respectively. We attempt to maintain gross margins even as average selling prices decline by introducing new products with higher margins and by realizing manufacturing efficiencies and cost reductions. The markets in which we operate are highly competitive, and there can be no assurance that we will be able to successfully maintain our current gross margins. Any significant decline in our gross margins could materially harm our business.

Our operating expenses include sales and marketing, research and development, and general and administrative expenses. Sales and marketing expenses consist primarily of personnel costs, advertising, amortization of deferred stock-based compensation, public relations and participation in selected medical conferences and trade shows. Research and development expenses consist primarily of personnel costs,

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Management's discussion and analysis of financial condition and results of

operations

clinical and regulatory costs, patent application costs, amortization of deferred stock-based compensation and supplies. General and administrative expenses consist primarily of personnel costs, professional fees, amortization of deferred stock-based compensation and other general operating expenses of our company. We expect our operating expenses to increase in the future as a result of increased sales and marketing expenses to promote revenue growth and geographic expansion, continued research and development of new products and technologies, and increased general and administrative expenses, to keep pace with our overall growth and the requirements of a public company. We expect operating expenses to decrease as a percentage of net revenue.

We incurred net operating losses from inception through the year ended December 31, 1999 and, accordingly, did not pay any federal or state income taxes during this period. We did not incur an income tax charge during the year ended December 31, 2000 due to the utilization of net operating loss carryforwards from prior periods. We had no net operating loss carryforwards and no research and development credits remaining at September 30, 2001 and, accordingly, we recorded a provision for income taxes during the nine months ended September 30, 2001.

We grant incentive stock options to attract, motivate and retain employees. In connection with the grant of stock options to employees, we record deferred stock-based compensation as a component of stockholders' equity. Deferred stock-based compensation for options granted to employees is the difference between the option exercise price and the fair value of our common stock on the date such options were granted. For stock options granted to non-employees, the fair value of the options is estimated using the Black-Scholes valuation model and is periodically remeasured as the options vest. As a result of stock options granted through September 30, 2001, we recorded aggregate deferred stock-based compensation of $2,218,000, of which $1,841,000 was unamortized as of September 30, 2001. The remaining deferred stock-based compensation as of September 30, 2001 will be amortized to expense on a straight-line basis over the respective vesting terms of the underlying options, which is typically four years. Deferred stock-based compensation expense is allocated according to employees and their respective departments and by function for non-employees. During the period from October 1, 2001 through December 14, 2001, we recorded additional deferred stock-based compensation of $2,996,000 in connection with options granted to employees.

We have a limited history of operations. We anticipate that our quarterly results of operations will fluctuate for the foreseeable future due to several factors, including market acceptance of our current and new products, the timing of significant orders and the length of the sales cycle, the introduction of new products by our competitors, litigation and dispute resolution, the timing and extent of our research and development efforts, and general market conditions. Our limited history makes accurate predictions of future operating results difficult.

RESULTS OF OPERATIONS

Nine months ended September 30, 2001 and 2000

Net revenue

Net revenue for the nine months ended September 30, 2001 was $13.9 million, compared to $6.4 million for the nine months ended September 30, 2000, an increase of 116%. The increase was primarily due to higher sales volume resulting from increased customer awareness of our technology, expansion of our sales force, increased geographical coverage and the introduction of the CoolGlide Excel product in March 2001, both domestically and internationally. Revenue increased by $4.7 million in the United States and $2.7 million internationally. International growth was seen in almost all markets, with the largest increase of $1.0 million coming from Japan.

Cost of revenue

Cost of revenue for the nine months ended September 30, 2001 was $5.0 million, compared to $2.2 million for the nine months ended September 30, 2000, an increase of 124%. This increase was primarily attributable to the expansion of our manufacturing operations and higher material, labor and overhead costs associated with increased sales volume of our products. Included in cost of revenue was amortization of deferred stock-based compensation of $38,000 for the nine months ended September 30, 2001, compared to none in the nine months ended September 30, 2000. As a percentage of net revenue, cost of revenue was 36% and 35% for the nine months ended September 30, 2001 and 2000, respectively.

Gross profit

Gross profit for the nine months ended September 30, 2001 was $8.9 million, compared to $4.2 million for the nine months ended September 30, 2000, an increase of 111%. This increase was primarily due to higher sales volume. As a percentage of net revenue, gross profit was 64% and 65% for the nine months ended September 30, 2001 and 2000, respectively.

Sales and marketing expenses

Sales and marketing expenses for the nine months ended September 30, 2001 were $4.0 million, compared to $1.8 million for the nine months ended September 30, 2000, an increase of 126%. This increase was primarily due to an increase of $1.6 million related to additional labor costs, travel and other expenses related to the expansion of our sales force. In addition, marketing expenses increased by $425,000 as a result of trade show expenses, labor costs and other promotional expenses. Included in sales and marketing expenses was amortization of deferred stock-based compensation of $181,000 for the nine months ended September 30, 2001, compared to none in the nine months ended September 30, 2000. As a percentage of revenue, sales and marketing expenses were 29% and 28% for the nine months ended September 30, 2001 and 2000, respectively.

Research and development expenses

Research and development expenses for the nine months ended September 30, 2001 were $1.6 million, compared to $1.1 million for the nine months ended September 30, 2000, an increase of 45%. This increase was primarily due to higher employee labor costs of $353,000 and higher outside consulting service costs of $213,000. The labor costs increased due to hiring additional staff for engineering and regulatory positions. In addition to higher labor costs, we contracted with additional engineering and industrial design consultants to expedite the product launch of CoolGlide Excel. Included in research and development expenses was amortization of deferred stock-based compensation of $25,000 in the nine months ended September 30, 2001, compared to none in the nine months ended September 30, 2000. As a percentage of net revenue, research and development expenses decreased to 11% for the nine months ended September 30, 2001, from 17% for the nine months ended September 30, 2000.

General and administrative expenses

General and administrative expenses for the nine months ended September 30, 2001 were $1.1 million, compared to $709,000 for the nine months ended September 30, 2000, an increase of 57%. This increase was primarily due to the addition of administrative staff and outside services for legal, accounting and information technology consulting. Included in general and administrative expenses was amortization of deferred stock-based compensation of $40,000 in

the nine months ended September 30, 2001, compared to none in the nine months ended September 30, 2000. As a percentage of net revenue, general and administrative expenses decreased to 8% for the nine months ended September 30, 2001, from 11% for the nine months ended September 30, 2000.

Management's discussion and analysis of financial condition and results of operations.

Interest and other income, net

Interest and other income, net for the nine months ended September 30, 2001 was $146,000, compared to $146,000 for the nine months ended September 30, 2000. Interest income was $163,000 for the nine months ended September 30, 2001, compared to $161,000 for the nine months ended September 30, 2000. Interest expense was $17,000 for the nine months ended September 30, 2001, compared to $15,000 for the nine months ended September 30, 2000.

Provision for income taxes

We recorded a provision for income taxes of $370,000 during the nine months ended September 30, 2001. This comprised a current income tax charge of $964,000, offset by a deferred tax benefit of $594,000. We recorded a deferred tax asset at September 30, 2001 related to short-term timing differences that are likely to be realized.

Years ended December 31, 2000, 1999 and the period from August 10, 1998 to December 31, 1998

Net revenue

Net revenue in 2000 was $9.5 million, compared to $100,000 in 1999 and none in 1998. Although two units were sold in December 1999, CoolGlide was commercially launched in March 2000.

Cost of revenue

Cost of revenue in 2000 was $3.4 million, compared to $413,000 in 1999 and none in 1998. The cost of revenue in 1999 was primarily comprised of start-up costs associated with our manufacturing operations. As a percentage of net revenue, cost of revenue was approximately 35% in 2000.

Sales and marketing expenses

Sales and marketing expenses in 2000 were $2.8 million, compared to $706,000 in 1999 and $26,000 in 1998. The increase in sales and marketing expenses during 2000 was attributable to increased costs of $1.5 million associated with the creation of our direct sales force in the United States and increased costs of $600,000 associated with marketing support. As a percentage of net revenue, sales and marketing expenses were 29% of net revenue in 2000.

Research and development expenses

Research and development expenses in 2000 were $1.5 million, compared to $1.3 million in 1999 and $188,000 in 1998. The increase in research and development expenses during 1999 and 2000 was due to the hiring of additional employees and expenses associated with the development of our CoolGlide and CoolGlide Excel products. As a percentage of net revenue, research and development expenses were 16% in 2000.

General and administrative expenses

General and administrative expenses in 2000 were $1.0 million, compared to $419,000 in 1999 and $43,000 in 1998. The increase in general and administrative expenses was primarily attributable to the hiring of additional financial and administrative staff. As a percentage of net revenue, general and administrative expenses were 10% in 2000.

Interest and other income, net

Interest and other income, net in 2000 was $193,000, compared to $57,000 in 1999 and $11,000 in 1998. Interest income in 2000 increased significantly due to higher average cash and cash equivalents balances, offset by a small increase in interest expense. Interest income was $217,000 and interest expense was $24,000 in 2000.

Provision for Income Taxes

We did not record provisions for income taxes during 2000, 1999 and 1998 due to the availability of net operating loss carryforwards.

LIQUIDITY AND CAPITAL RESOURCES

Since our inception, we have funded our operations principally through two private placements of preferred stock during 1998 and 1999, resulting in net proceeds of $7.3 million.

At September 30, 2001 we did not have any outstanding debt financing arrangements. At September 30, 2001 we had working capital of $6.6 million and our primary source of liquidity was $6.5 million in cash and cash equivalents.

Net cash provided by (used in) operating activities was $3.8 million for the nine months ended September 30, 2001, $(1,000) in 2000 and $(2.8 million) in 1999. During the nine months ended September 30, 2001, net cash provided by operating activities resulted from net income, adjusted for decreases in accounts receivable, increases in accrued liabilities, deferred stock-based compensation expense and depreciation expense, offset by an increase in inventory, an increase in deferred tax asset and a decrease in deferred revenue. During 2000, net income and increases in accruals and deferred revenue were offset by an increase in accounts receivable.

Net cash provided by (used in) investing activities was $(781,000) in the nine months ended September 30, 2001, $(579,000) in 2000 and $(264,000) in 1999. Our investing activities consisted principally of capital expenditures for equipment and machinery relating to manufacturing, research and development, and other operating activities.

Net cash provided by (used in) financing activities was $(85,000) in the nine months ended September 30, 2001, $(42,000) in 2000 and $5.5 million in 1999. The cash provided by financing activities in 1999 was primarily attributable to the proceeds from the private placement of equity securities.

We expect to continue to generate positive cash flow from operations in the future. Our future capital requirements depend on a number of factors, including market acceptance of our products, the resources we devote to developing and supporting our products, continued progress of our research and development of new products and the potential need to acquire licenses to proprietary technology.

While we believe that the net proceeds from this offering together with our existing capital resources and expected positive cash flow will be sufficient to fund our operations and capital investments for at least the next 24 months, we cannot assure you that we will not require additional financing before that time. We cannot assure you that such additional financing will be available on a timely basis on terms acceptable to us or at all, or that such financing will not be dilutive to our stockholders. If adequate funds are not available to us, we could be required to suspend research and development efforts, delay commercialization of our products, reduce resources dedicated to sales and marketing activities or decide

not to acquire companies or products that would complement our business, any of which could have a material adverse effect on our business, financial condition and results of operations.

QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We invest our excess cash primarily in US government securities and marketable debt securities of financial institutions and corporations with strong credit ratings. These instruments have maturities of three months or less when acquired. We do not utilize derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions in any material fashion. Accordingly, we believe that, while the instruments we hold are subject to changes in the financial standing of the issuer of such securities, we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive instruments.

Although substantially all of our sales and purchases are denominated in US dollars, future fluctuations in the value of the US dollar may affect the price competitiveness of our products. We do not believe, however, that we currently have significant direct foreign currency exchange rate risk and have not hedged exposures denominated in foreign currencies.

RECENT ACCOUNTING PRONOUNCEMENTS

In July 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 141 "Business Combinations," which establishes financial accounting and reporting for business combinations and supersedes Accounting Principles Board ("APB") Opinion No. 16, "Business Combinations," and FASB Statement No. 38, "Accounting for Preacquisition Contingencies of Purchased Enterprises." SFAS No. 141 requires that all business combinations be accounted for using one method, the purchase method. The provisions of this Statement apply to all business combinations initiated after June 30, 2001. We will adopt SFAS No. 141 during the first quarter of fiscal year 2002, and this adoption is not expected to have any impact on our financial statements.

In July 2001, the FASB issued SFAS No. 142, "Goodwill and Other Intangible Assets," which establishes financial accounting and reporting for acquired goodwill and other intangible assets and supersedes APB Opinion No. 17, "Intangible Assets." SFAS No. 142 addresses how intangible assets that are acquired individually or with a group of other assets (but not those acquired in a business combination) should be accounted for in financial statements upon their acquisition, and after they have been initially recognized in the financial statements. The provisions of this Statement are effective for fiscal

years beginning after December 15, 2001. We will adopt SFAS No. 142 during the first quarter of fiscal year 2002, and this adoption is not expected to have any material impact on our financial statements.

In August 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations," which is effective for fiscal years beginning after June 15, 2002. This Statement addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. SFAS No. 143 requires, among other things, that the retirement obligations be recognized when they are incurred and displayed as liabilities on the balance sheet. In addition, the asset's retirement costs are to be capitalized as part of the asset's carry amount and subsequently allocated to expense over the asset's useful life. We believe that the adoption of SFAS No. 143 will not have a material impact on our financial statements.

In October 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which is effective for fiscal years beginning after December 15, 2001 and interim periods within those fiscal years. This Statement develops one accounting model for long-lived assets that are to be disposed of by sale, as well as addressing the principal implementation issues. We believe that the adoption of SFAS No. 144 will not have a material impact on our financial statements.

Business

OVERVIEW

We design, manufacture and market innovative medical devices for use in the aesthetic market. We enable dermatologists, plastic surgeons, general physicians and other licensed healthcare practitioners to offer non-invasive laser-based treatments to their patients. Our initial product, CoolGlide, is used for the removal and permanent reduction of hair. CoolGlide, unlike many other aesthetic laser products currently available, is effective for patients across the full spectrum of skin pigmentation, including patients with dark or tanned skin, who may not otherwise be treated safely. CoolGlide Excel, our second product, integrates in one compact solution CoolGlide performance for permanent hair reduction with the broadest available range of leg and facial vein treatments. Our products are easy to use, and the procedures performed using our products are efficient, effective and safe. These and other advantages have allowed us to rapidly grow our business and successfully compete in the aesthetic market.

We are introducing additional, advanced, laser-based aesthetic solutions to increase the range of products and services we offer our customers. In the fall of 2001, we acquired North American distribution rights to the new Medlite C series of products, manufactured by Continuum Electro Optics, for removal of tattoos and pigmented lesions. In addition, we have developed the Enterprise

Program which enables us to offer CoolGlide for a "pay-per-use" fee, making the product attractive to licensed practitioners who perform a limited number of aesthetic procedures and who may not otherwise be able to justify the capital outlay for one of our products.

We received FDA clearance to market CoolGlide for the treatment of vascular lesions, including leg and facial veins, in June 1999, for hair removal in March 2000 and for the permanent reduction of hair in January 2001. In addition, we have filed for clearance with the FDA for additional indications involving non-invasive procedures to improve skin appearance. We commercially launched CoolGlide in March 2000, CoolGlide Excel in March 2001 and the first Medlite series C product in the fourth quarter of 2001. As of December 1, 2001, we had sold approximately 400 units. We have been profitable since the second quarter of 2000.

INDUSTRY BACKGROUND

We believe that the aesthetic market for elective, non-invasive procedures is experiencing broad growth. According to the American Society of Plastic Surgeons, an estimated $7.4 billion was spent on aesthetic surgery in over 13 million surgical and non-surgical procedures in 2000. The December 2001 US Worldwide Epilation Market report estimates that more than 5 million light-based hair removal treatments will be performed in 2001, generating $1.3 billion in fees. The report also indicates that the installed base of lasers for hair removal will grow approximately 300% from 2000 to 2004.

The market for aesthetic laser-based procedures includes the following:

. removal and permanent reduction of unwanted hair from the face and body;

. treatment of unwanted leg and facial veins;

. removal of tattoos and pigmented lesions;

. wrinkle reduction; and

. emerging applications, such as acne and psoriasis treatments.

Except in rare instances, aesthetic procedures are not reimbursed by third-party payors. Therefore, the success of a product in the aesthetic industry is not dependent upon third-party reimbursement. As a result, aesthetic procedures have become increasingly attractive to physicians and other licensed professionals.

While our existing laser-based technology platform has the potential to offer multiple applications in the aesthetic market, our initial focus has been on the removal and permanent reduction of unwanted hair and the treatment of unwanted veins.

Hair removal

The current methods for hair removal include waxing, chemical treatments, depilatories, tweezing, shaving, electrolysis and laser-based hair removal. Of these, the only technique other than laser-based hair removal that provides a long-lasting solution is electrolysis. However, electrolysis is performed on one hair follicle at a time and makes the treatment of even small areas very time-consuming and often painful.

Laser-based solutions for long-lasting hair removal were first introduced in the United States in 1995. Lasers are well suited for the removal of hair because, with the proper selection of four parameters -- wavelength, pulse length, spot size and energy -- lasers can be used to non-invasively target the hair structure without damaging the surrounding skin. In addition, numerous hair follicles can be treated simultaneously, allowing for rapid coverage of large areas. Historically, lasers have provided effective treatment primarily for people with lightly-pigmented skin, as dark and tanned skin was found to absorb too much energy and treatments often resulted in blistering, skin discoloration and other complications.

Leg and facial veins

The current methods for the treatment of leg and facial veins include sclerotherapy and laser-based treatments. Sclerotherapy, which has been the treatment of choice for leg veins, involves the use of a syringe and small needle and requires the tip of the needle to be placed into the inner portion of the vein. A saline-based solution is then injected to collapse the vein. However, smaller veins are especially difficult or impossible to treat due to the requirement of correctly positioning the needle. Additionally, there are some potential patients with a fear of needle injections who would prefer a less invasive form of treatment.

Historically, laser-based treatments have been used to treat small facial veins, but have tended to result in either significant bruising and pain or limited efficacy. In addition, these lasers are unsuitable for the treatment of larger leg veins. As a result, there has been an unmet market need for a laser technology which can be used to treat the whole range of veins, from small facial veins to large leg veins.

THE ALTUS SOLUTION

Our products address unmet needs in the aesthetic market. We believe that our products are technologically superior to our competitors' products. Key features of our products include:

. Broadest range of treatments. The limitations on many competing hair removal and vein treatment products cause practitioners to turn away patients on a regular basis. CoolGlide removes hair safely and effectively, not only on those with fair skin, but also on the otherwise unserved population of patients with dark or tanned skin. CoolGlide Excel adds the capability of treating large leg veins, including spider and varicose veins, in addition to small face and leg veins.

. Technology leadership. We believe that we offer the most advanced laser-based solutions for the aesthetic market. Our technology combines longer wavelength, higher power, larger spot size and wider range of pulse lengths, to provide a laser that is safe and effective for people with conditions that have been previously untreatable.

. Proprietary ClearView handpiece. Our proprietary ClearView handpiece provides an unobstructed view of the treatment area that enables a practitioner to position the laser beam quickly and accurately. In addition, the active cooling system integrated into our ClearView handpiece permits the practitioner to move continuously through a targeted area. It also pre-cools the skin prior to delivery of energy at the treatment site. By cooling the skin in advance, the skin can absorb more energy without

overheating and blistering, ensuring patient comfort and effective skin protection.

- Multiple applications. CoolGlide Excel gives the practitioner the ability to purchase one unit for multiple applications that would otherwise require the purchase of two. Because practitioners can use CoolGlide Excel for both permanent hair reduction and vein treatment, the cost of the unit may be spread across a greater number of procedures, and therefore be more rapidly recovered.

- Easy-to-use controls. The practitioner has three simple, independently adjustable controls from which to select a wide range of treatment parameters and settings to suit the patient's profile and treatment choice.

- Compact and transportable design. The compact design gives the practitioner the flexibility to easily move the product from room to room. Our products weigh only 135 pounds. Many competing products weigh in excess of 200 pounds and are more difficult to move.

STRATEGY

Our strategy is to become a leading provider of medical devices and services for the aesthetic market by:

- Increasing sales of existing products in the United States. While we have sold approximately 250 units in the United States as of December 1, 2001, we are still relatively new to the marketplace and have significant growth potential with our current products. For example, we first began selling CoolGlide Excel in March 2001. We intend to increase penetration of our primary customer base, dermatologists and plastic surgeons, by increasing our sales force and serving more regions within the United States. We currently offer frequent educational seminars and intend to increase the number of programs and offering sites.

- Expanding our international presence. We are focused on increasing our market penetration overseas and building global brand-recognition for our product lines. We currently sell our products through a network of distributors in 26 countries. We have recently added regional managers in Europe and Asia to increase our international market penetration and cultivate distributor relationships. We require our distributors to invest in service training and equipment, display our products at exhibitions and commit to a minimum sales amount to obtain exclusivity. We intend to add additional distributors, regional managers and support staff to increase sales and strengthen customer relationships.

- Continuing to develop additional clinical capabilities. Although our products are currently marketed for hair removal and vein treatment, we are exploring the use of our existing technology platform for other aesthetic laser-based applications, such as improving skin appearance. We work with our technology advisory board and other thought leaders to explore and develop new applications with our existing technology platform. The development of additional capabilities will allow us to offer a more complete line of the latest, most advanced products and services to our customers.

- Broadening our customer base. We intend to expand our marketing efforts to a broader base of users with our new Enterprise Program. This program will offer customers the opportunity to provide laser-based solutions on a

"pay-per-use" basis, without the need to purchase our product. Our Enterprise Program will offer customers all the advantages of our CoolGlide product and requires only a non-refundable deposit up front and a commitment to a set rate for each laser pulse. By charging on a per-use basis, we make the product attractive to physicians who perform a limited number of aesthetic procedures and who may not otherwise be able to justify the capital outlay.

. Continuing our commitment to new research and development. We intend to develop other products for the aesthetic market. We continue to invest in research and development for the next generation of products and technologies for the aesthetic market. We also intend to leverage our ability to design and manufacture innovative products for the aesthetic market with an emphasis on cost effective solutions to target broad markets.

. Acquiring complementary businesses and technologies. We intend to pursue opportunities to expand our core business, offering a full range of products and service into the aesthetic market, by acquiring businesses or products that have technologies or capabilities complementary to ours. Consistent with this strategy, we entered into a strategic relationship in September 2001 with Continuum Electro Optics, a leading manufacturer of laser-based devices for removal of tattoos and pigmented lesions.

THE COOLGLIDE PROCEDURE

To perform a CoolGlide procedure, the treatment site on the skin is first cleaned and shaved. The practitioner applies a thin layer of clear gel, such as ultrasound gel, for easy gliding of the handpiece. The practitioner then uses the ClearView handpiece to cool the area to be treated and deliver a laser pulse. This procedure is then repeated at the next treatment site. The energy delivered by the 1064 nanometer laser light emitted by the CoolGlide product primarily penetrates through the surface layer of skin, and into the underlying skin, where the hair follicle or hemoglobin targets are located. The surrounding tissue remains unaffected. For hair removal, patients receive on average three to six treatments, while vein removal patients typically require fewer treatments.

PRODUCTS AND PROGRAMS

CoolGlide

CoolGlide consists of a control console, which includes a high-powered, 1064 nanometer wavelength laser and the ClearView handpiece. The control console produces up to 4,700 watts of laser power, which is as much as 600% greater than the power produced by competing products and enables the practitioner to rapidly deliver therapeutic energy to the target without damaging surrounding tissue. The easy-to-use control console includes a user-interface, which provides controls to adjust the fluence, or brightness of the light transmitted, pulse width and repetition rate. The ClearView handpiece provides a 10 millimeter spot size, enabling fast and accurate treatment of a large area with minimal scatter and allowing the practitioner to effectively target the base of the hair follicle. The ClearView handpiece incorporates our proprietary cooling system, providing integrated pre-cooling of the treatment area through a temperature-controlled metal plate. Its ergonomic design allows the practitioner an unobstructed view of the treatment area and minimizes user fatigue, a common problem associated with other heavier devices.

CoolGlide Excel

In addition to the features of CoolGlide, CoolGlide Excel allows the practitioner to effectively reduce hair and treat a full range of leg and facial veins. CoolGlide Excel features a much broader range of

treatment parameters that significantly expand the clinical capabilities beyond CoolGlide. The product provides an adjustable spot size of 3, 5, 7 or 10 millimeters, which allows the practitioner to control treatment depth. Larger spots enable hair removal and the treatment of deep leg veins. Smaller spots provide for shallow penetration, typically useful for superficial vein treatments.

Medlite C

We are the exclusive US distributor for the Medlite C series of products manufactured by Continuum Electro Optics, a subsidiary of Hoya Photonics. The Medlite C products are used for the removal of tattoos and the treatment of pigmented skin irregularities, such as age spots and brown spots. The products feature two treatment modalities, with green and infrared wavelengths, and treatments using variable spot sizes ranging from 2 millimeters to 7 millimeters. The Medlite C products are self-contained, with closed-loop water cooling systems. The products are compact for easy transport and storage.

There are currently two products in the the Medlite C series, C3 and C6. The C6 product can deliver twice the energy of the C3 product, allowing for greater treatment speed. The C6 is the only Medlite product designed for use with a MultiLite handpiece, an optional accessory, that is intended to enable practitioners to treat a wider range of tattoo colors. We launched the first of these products, the C3, in the fourth quarter of 2001, and expect to launch the C6 in 2002.

Enterprise Program

We have developed a pay-for-use program, called the Enterprise Program, designed to allow practitioners to place the CoolGlide product in their facilities and offer hair removal treatments with a minimal cash outlay. The focus of this arrangement will be on licensed practitioners who perform a limited number of aesthetic laser-based procedures and who may not otherwise be able to justify the capital outlay for CoolGlide.

The Enterprise Program will allow customers to use the CoolGlide product by paying a non-refundable licensing fee, which commits them to a minimum monthly fee and a set rate for each laser pulse administered in excess of a designated number per billing cycle. The number of pulses is counted and stored by a key, the S-Key, which is required for the product to function.

SERVICES AND SUPPORT

Our products are engineered to enable quick and efficient service and support. There are several separate components of our CoolGlide product, each of which can easily be removed and replaced. We believe that quick and effective delivery of service is important to our customers. We strive to respond to service calls within 48 hours to minimize practitioner disruptions. We have five service engineers, one in each of California, Connecticut, Michigan, Rhode Island and Florida. We have also trained third parties to repair our products in various other states. Replacement parts are shipped from our headquarters into the field and each of our service engineers carries spare parts. Independent distributors maintain parts depots and service representatives adequate to cover their installed products and have primary responsibility to service such products. In addition, we have service representatives in each of our markets worldwide.

Initial warranties on our products cover parts and service for 12 months. Our extended warranties vary by the type of product and the level of service desired by the customer and are typically for a 12 to 24 month period after the initial warranty period expires. Customers are notified 60 to 90 days before their initial warranty expires and are able to choose from three different extended warranty plans

covering preventative maintenance and replacement parts and labor. In the event one of our customers declines an additional warranty, we will still service our products and charge for time and materials.

SALES AND MARKETING

We sell, market and distribute CoolGlide, CoolGlide Excel and our Medlite products in the United States through a direct sales force supported by a team of technical service specialists. We also intend to market our Enterprise Program through our sales force. Currently, we have 17 sales personnel, three of whom are regional managers and one of whom is our Vice President of North American Sales. Our strategy to increase market penetration in the United States relies on selling directly to high volume practicing dermatologists and plastic surgeons. In addition, we target lower volume OB/Gyn practitioners, family practitioners, general practitioners and physician-directed licensed practitioners.

Internationally, we sell our products through a network of distributors. We have distributors in the following countries: Argentina, Australia, Brazil, Canada, China, Cyprus, France, Germany, Greece, India, Indonesia, Italy, Japan, Korea, Malaysia, New Zealand, Pakistan, Philippines, Portugal, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Thailand and Uruguay. We require our distributors to invest in service training and equipment, to attend certain exhibitions and congresses, and to commit to minimum sales amounts to gain exclusivity.

Our regional sales managers are available to train and serve as mentors for our distributors, and to assist them in selling our products most effectively. For the nine months ended September 30, 2001, international sales accounted for 31% of our revenue.

We primarily target our marketing efforts to practitioners through office visits, trade shows and trade journals and to consumers through glossy brochures and our web site. Our sales philosophy includes establishing strong collaborations with the leading people of influence in our field regarding our technology platform. In addition, we allow physicians and nurse practitioners to use our products on a free trial basis, on patients that they consider difficult to treat, to demonstrate the effectiveness of our products.

MANUFACTURING

Our products are manufactured with components and subassemblies supplied by subcontractors. We assemble and test each of our CoolGlide products at our Burlingame, California facility. Ensuring adequate inventory, continuous cost reduction and superior product quality are top priorities of our manufacturing operations. To achieve our goals, we:

. work closely with our research and development team;

. continually improve just-in-time inventory management; and

. effectively manage a limited number of the most qualified suppliers.

We purchase certain components and subassemblies from a limited number of suppliers. We enter into purchase orders for the component and material requirements that we need 12 months in advance. We have met the requirements of the purchase orders by increasing the amount of components and materials we order every four months. The forecasts we use are based on historical demand and fluctuations from quarter to quarter in our orders and components and

materials needs. It is very important that we accurately predict the demand for our products and the lead times for the components of our laser products. Lead times for components and materials may vary significantly depending on the size of the order, specific supplier requirements and current market demand for the components.

The S-Key component used in our Enterprise Program is supplied by a single source supplier. Although we believe that we could readily find an alternative to our S-Key component if we are forced to do so, we could experience delays in our manufacturing. If our suppliers are unable to meet our requirements on a timely basis, our production could be interrupted until we obtain an alternative source of supply. To date, we have not experienced significant delays in obtaining any of our products.

We are required to manufacture our products in compliance with the FDA's Quality System Regulations, or QSR. The QSR covers the methods and documentation of the design, testing, control, labeling, packaging, storage and shipping of our products. The FDA enforces the QSR through periodic unannounced inspections. Our failure to maintain compliance with the QSR requirements could result in the shut down of our manufacturing operations and the recall of our products, which would have a material adverse effect on our business. In the event that one of our suppliers failed to maintain compliance with our quality requirements, we may have to qualify a new supplier and could experience manufacturing delays as a result. In February 2000, our facility was awarded the ISO 9001 and EN 46001 certification.

RESEARCH & DEVELOPMENT

We are committed to investing in our research and development activities to develop new products and enhance existing products. Our research and development activities are conducted internally by a staff consisting of five employees. Expenditures for the nine months ended September 30, 2001 were $1.6 million, or 11% of net revenue. We work closely with customers, both individually and through our sponsored seminars, to develop products that meet customer application and performance needs. We are developing a new product with indications for use primarily relating to non-invasive procedures for improving skin appearance, including redness and pigmentary variations. We recently submitted a premarket notification with the FDA for this product. Assuming clearance is received, we plan to launch the product in the first half of 2002. We are working with leading practitioners in the field to develop additional new products and make improvements to existing products.

PATENTS AND PROPRIETARY TECHNOLOGY

We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. We currently have four pending US patent applications and three pending foreign patent applications. We intend to file for additional patents to strengthen our intellectual property rights. CoolGlide is a registered trademark in the United States and Japan.

Our employees, consultants and advisors are required to execute confidentiality agreements in connection with their employment, consulting or advisory relationships with us. We also require our employees and consultants to agree to disclose and assign to us all inventions conceived during the work day, using our property or which relate to our business. We cannot provide any assurance that employees, consultants or advisors will abide by the confidentiality terms of their agreements. Despite any measures taken to

protect our intellectual property, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary.

Our patent applications may not be approved, and if they are approved we cannot assure you that the patents that issue will protect our intellectual property rights. Any patents issued to us may be challenged by third parties as invalid or parties may independently develop similar or competing technology or design around any of our patents. We cannot be certain that the steps we have taken will prevent the misappropriation of our intellectual property, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States.

We believe that we own or have the right to use the patentable inventions embodied in our products. However, the laser industry is characterized by a very large number of patents, many of which are of questionable validity and some of which appear to overlap with other issued patents. As a result, there is a significant amount of uncertainty in the industry regarding patent protection and infringement. Because patent applications are maintained in secrecy until such patents are issued and are maintained in secrecy for a period of time outside the United States, we cannot be certain whether our technology infringes any patents or patent applications of others.

While we attempt to ensure that our products do not infringe other parties' valid patents and proprietary rights, our competitors may assert that our products and the methods they employ may be covered by patents held by them. In addition, our competitors may assert that future or current products we market infringe their patents. For example, while we are aware that others in our industry have licensed a patent from one of our competitors, we believe that our products do not require us to obtain a license. Nonetheless, the patent owner may disagree with our assessment. We have, and may in the future, become involved in litigation to protect our intellectual property rights or as a result of an alleged infringement of intellectual property rights belonging to other parties. Any unfavorable judgments could subject us to significant liability for damages and invalidation of our proprietary rights. These lawsuits, regardless of their success, would likely be time-consuming and expensive to resolve and would divert management's time and attention. Any potential intellectual property litigation also could force us to do one or more of the following:

. redesign our products;

. stop selling our products or incorporating components into our products if they include intellectual property belonging to another party; or

. acquire a license to sell or use the proprietary technology, which license may not be available on reasonable terms, or available at all.

If we are required to take any of these actions, our results of operations and financial condition may be seriously harmed. Although we carry general liability insurance, our insurance may not cover potential claims of this type or may not be adequate to indemnify us for all liability that may be imposed.

COMPETITION

The medical device industry is subject to intense competition. Our products compete against similar products offered by Lumenis, Candela and Laserscope, as well as several smaller highly-specialized companies. We compete primarily on

the basis of performance, brand name, reputation and price. In addition, competition among providers of devices for the aesthetic market is characterized by extensive research efforts and rapid technological progress. To compete effectively, we have to demonstrate that our products are attractive alternatives to other laser-based devices. Additionally, there are many companies, both public and private, that are developing devices that use both laser-based and alternative technologies for the conditions treated by our products that may prove to be more effective, safer or less costly than our products. Many of these competitors have significantly greater financial and human resources than we do and have established reputations as well as worldwide distribution channels that are more effective than ours. Additional competitors may enter the market, and we are likely to compete with new companies in the future. We expect to encounter potential customers that, due to existing relationships with our competitors, are committed to or prefer the products offered by these competitors. We expect that competitive pressures may result in price reductions, reduced margins and loss of market share. There can be no assurance that competitors, many of which have made substantial investments in competing technologies, will not prevent, limit or interfere with our ability to make, use or sell our products either in the United States or in international markets.

GOVERNMENT REGULATION

Our products are medical devices subject to extensive regulation by the FDA and other regulatory bodies. The FDA regulations govern, among other things, the following activities that we or our partners perform and will continue to perform:

- product design and development;
- product testing;
- product manufacturing;
- product labeling;
- product storage;
- premarket clearance or approval;
- advertising and promotion; and
- product sales and distribution.

FDA's premarket clearance and approval requirements

Unless an exemption applies, each medical device we wish to commercially distribute in the United States will require either prior 510(k) clearance or premarket approval from the FDA. The FDA classifies medical devices into one of three classes. Devices deemed to pose lower risks are placed in either class I or II, which requires the manufacturer to submit to the FDA a premarket notification requesting permission to commercially distribute the device. This process is generally known as 510(k) clearance. Some low risks devices are exempted from this requirement. Devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) device, are placed in class III, requiring premarket approval.

510(k) clearance pathway

To obtain 510(k) clearance, we must submit a premarket notification demonstrating that our proposed device is substantially equivalent to a previously cleared 510(k) device or a device that was in commercial distribution before May 28, 1976 for which the FDA has not yet called for the submission of premarket approval applications, or PMA. The FDA's 510(k) clearance review has recently taken from three to twelve months from the date the application is submitted, but it can take significantly longer.

Laser devices used for aesthetic procedures, such as hair removal, have generally qualified for clearance under 510(k) procedures. We received FDA clearance to market CoolGlide for the treatment of vascular lesions in June 1999, for hair removal in March 2000, and for permanent hair reduction in January 2001. We recently submitted a premarket notification with the FDA with indications for use primarily relating to non-invasive procedures for improving skin appearance including redness and pigmentary variations. We are anticipating clearance for these indications in the first half of 2002.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, will require a new 510(k) clearance or could require premarket approval. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with a manufacturer's determination, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or premarket approval is obtained. We have modified aspects of the CoolGlide product since receiving regulatory

clearance, but we believe that new 510(k) clearances are not required. If the FDA requires us to seek 510(k) clearance or premarket approval for any modifications to a previously cleared product, we may be required to cease marketing or recall the modified device until we obtain this clearance or approval. Also, in these circumstances, we may be subject to significant regulatory fines or penalties.

Premarket approval pathway

A PMA must be submitted to the FDA if the device cannot be cleared through the 510(k) process. A PMA must be supported by extensive data including, but not limited to, technical, preclinical, clinical trials, manufacturing and labeling to demonstrate to FDA's satisfaction the safety and effectiveness of the device.

After a PMA is filed, the FDA begins an in-depth review of the submitted information, which generally takes between one and three years, but may take significantly longer. During this review period, the FDA may request additional information or clarification of information already provided. Also during the review period, an advisory panel of experts from outside the FDA may in many cases be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. In addition, the FDA will conduct a pre-approval inspection of the manufacturing facility to insure compliance with quality system regulations. New PMAs or application supplements are required for significant modifications to the manufacturing process, labeling and design of a device that is approved through the premarket approval process. Premarket approval supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA, and may not require as extensive clinical data or the convening

of an advisory panel.

We currently do not expect that any additional indications that we may seek for our products will require premarket approval.

Clinical trials

A clinical trial is almost always required to support a PMA and is sometimes required for a 510(k) premarket notification. These trials generally require submission of an investigational device exemption, or IDE, application to the FDA. The application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The application must be approved in advance by the FDA for a specified number of patients, unless the product is deemed a non-significant risk device and eligible for more abbreviated IDE requirements. Clinical trials for a significant risk device may begin once the application is reviewed and cleared by the FDA and the appropriate institutional review boards at the clinical trial sites. Future clinical trials of our products may require that we submit and obtain clearance of an IDE from the FDA prior to commencing clinical trials. The results of clinical testing may not be sufficient to obtain clearance or approval of a new intended use of our device. For example, we are currently investigating wrinkle reduction. To obtain FDA approval or clearance for this new indication, we would be required to conduct clinical trials.

Pervasive and continuing regulation

After a device is placed on the market, numerous regulatory requirements apply. These include:

- quality system regulations, which require manufacturers to follow design, testing, control, documentation and other quality assurance procedures during the manufacturing process;

- labeling regulations, which prohibit the promotion of products for uncleared or unapproved, or "off-label" uses; and

- medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur.

Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include any of the following sanctions:

- fines, injunctions and civil penalties;

- recall or seizure of our products;

- operating restrictions, partial suspension or total shutdown of production;

- refusing our requests for 510(k) clearance or premarket approval of new products or new intended uses;

- withdrawing 510(k) clearance or premarket approvals that are already granted; and

- criminal prosecution.

We are subject to unannounced inspections by the FDA and the Food and Drug Branch of the California Department of Health Services, or CDHS, to determine our compliance with the Quality Systems Regulations and other regulations, and these inspections may include the manufacturing facilities of our subcontractors. In the past, our facilities have been inspected, and observations were noted. Our responses to these observations have been accepted by the FDA and CDHS.

We are also regulated under the Radiation Control for Health and Safety Act, which requires laser products to comply with performance standards, including design and operation requirements, and manufacturers to certify in product labeling and in reports to the FDA that their products comply with all such standards. The law also requires laser manufacturers to file new product and annual reports, maintain manufacturing, testing and sales records, and report product defects. Various warning labels must be affixed and certain protective devices installed, depending on the class of the product.

We are also subject to a wide range of federal, state and local laws and regulations, including those related to the environment, health and safety, land use and quality assurance. We believe that compliance with these laws and regulations as currently in effect will not have a material adverse effect on our capital expenditures, earnings and competitive and financial position.

International

International sales of medical devices are subject to foreign governmental regulations, which vary substantially from country to country. The time required to obtain clearance or approval by a foreign country may be longer or shorter than that required for FDA clearance or approval, and the requirements may be different.

The primary regulatory environment in Europe is that of the European Union, which consists of fifteen countries encompassing most of the major countries in Europe. Other countries, such as Switzerland, have voluntarily adopted laws and regulations that mirror those of the European Union with respect to medical devices. The European Union has adopted numerous directives and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. Devices that comply with the requirements of a relevant directive will be entitled to bear CE conformity marking, indicating that the device conforms with the essential requirements of the applicable directives and, accordingly, can be commercially distributed throughout Europe. The method of assessing conformity

varies depending on the class of the product, but normally involves a combination of self-assessment by the manufacturer and a third-party assessment by a Notified Body. This third-party assessment may consist of an audit of the manufacturer's quality system and specific testing of the manufacturer's device. An assessment by a Notified Body in one country within the European Union is required in order for a manufacturer to commercially distribute the product throughout the European Union. ISO 9001 certification is one of the CE Mark certification requirements. In February 2000, our facility was awarded ISO 9001 and EN 46001 certification, allowing us to apply the CE mark to our products and market them throughout the European Union.

EMPLOYEES

As of December 1, 2001, we had 53 employees, with 17 employees in sales, 9 employees in technical service, 8 employees in manufacturing operations, 8

employees in general and administrative, 5 employees in research and development, 2 employees in marketing, 2 employees in regulatory and quality control, 1 employee in business development and 1 employee in clinical affairs. We believe that our future success will depend in part on our continued ability to attract, hire and retain qualified personnel. None of our employees is represented by a labor union and we believe our employee relations are good.

FACILITIES

We are headquartered in Burlingame, California, where we lease one building with approximately 11,600 square feet of office, research and development and manufacturing space under a lease expiring October 1, 2005. We believe our current facility is adequate to meet our current and foreseeable requirements through the end of 2003 or that suitable additional or substitute space will be available as needed.

LITIGATION

On October 12, 2001, Lumenis filed a lawsuit in United States District Court for the Southern District of New York (Case No. 01CV-9085) alleging that by making, using, selling or offering for sale our CoolGlide and CoolGlide Excel products, we are infringing Lumenis's US patent numbers 5,527,350 and 5,707,403 in willful disregard of Lumenis's patent rights. These patents concern methods for conducting various aspects of laser skin treatment.

Although issued patents enjoy a presumption of validity as a matter of law, we believe that we have meritorious defenses in this action and intend to challenge the validity of the Lumenis patents. On November 26, 2001, we filed our answer to the complaint wherein we have responded that the Lumenis patents are not infringed and/or are invalid. We have also asserted a counterclaim for declaratory judgment that the Lumenis patents are not infringed and/or are invalid. This matter has been transferred to the United States District Court for the Northern District of California.

The Lumenis action seeks to enjoin our continued activities relating to these products. This action subjects us to potential liability for damages, including treble damages. If Lumenis prevails in the lawsuit, we could be required to cease making, using or selling the products at issue, or to obtain a license from Lumenis or another entity to continue to manufacture, use or sell those affected products. We cannot assure you that we will prevail in this action, nor can we assure you that any license required would be made available on commercially-acceptable terms, if at all. Failure to successfully defend ourselves against the Lumenis action could harm our business, financial condition and operating results. For further information on the risks associated with this litigation see "Risk factors -- We are involved in intellectual property litigation with Lumenis that may hurt our competitive position, may be costly to us and may prevent us from selling our products."

Technical Advisory Board

The members of our technical advisory board, none of whom are our managers or employees, consult with us to provide advice, assistance and consultation in the fields of dermatology and plastic surgery. We consider our advisory board to be opinion leaders in their fields and they offer us advice and feedback regarding the following:

. unmet needs and opportunities in their fields;

. clinical feedback on existing products;

. assessment of new technologies and their applications; and

. assessment of new clinical applications.

Technical Advisory Board members

Name	Position and Affiliation
R. Rox Anderson, MD	Associate Professor of Dermatology, Harvard Medical School; Research Director, Wellman Laboratories of Photomedicine
A. Jay Burns, MD	Assistant Professor of Plastic Surgery, University of Texas Southwestern Medical School
Donald Groot, MD, FRCP(C), FACP	Medical Director, Groot DermaSurgery Centre; Clinical Professor of Medicine, University of Alberta
Melanie Grossman, MD	Dermatologist, private practice, New York, New York
Suzanne L. Kilmer, MD	Director, Laser & Skin Surgery Center of Northern California; Assistant Clinical Professor, University of California, Davis
David Trost	Director of Technology Development, Etec Systems
Jay Walsh, PhD	Professor of Biomedical Engineering, Northwestern University

Management

EXECUTIVE OFFICERS AND DIRECTORS

The following table sets forth certain information concerning our executive officers and directors as of December 1, 2001.

Name	Age	Position(s)
Kevin P. Connors	39	President, Chief Executive Officer and Director
Ronald J. Santilli	42	Chief Financial Officer and Vice President of Finance and Administration
David A. Gollnick	37	Vice President of Research and Development and Director
Michael R. Davin	43	Vice President of North American Sales
Gregory R. Fava	41	Vice President of New Business Development
Michael J. Levernier	40	Vice President of Clinical Development
Marc P. Maisel	55	Vice President of International Sales

Kathleen A. Maynor.....	48	Vice President of Regulatory Affairs and Quality Assurance
David B. Apfelberg, MD.....	60	Director
Annette J. Campbell-White..	54	Director
Guy P. Nohra.....	41	Director

Kevin P. Connors has served as our President and Chief Executive Officer and a member of our board of directors since our inception in August 1998. From May 1996 to June 1998, Mr. Connors served as President and General Manager of Coherent Medical Group, a unit of Coherent, a manufacturer of lasers, optics and related accessories.

Ronald J. Santilli has served as our Chief Financial Officer and Vice President of Finance and Administration since September 2001. From April 2001 to August 2001, Mr. Santilli served as Senior Director of Financial Planning and Accounting at Lumenis, a manufacturer of medical lasers. From May 1993 to March 2001, Mr. Santilli held several positions at Coherent, including Sales Operations Manager, Controller of the Medical Group and, most recently, Director of Finance and Administration. Mr. Santilli holds an MBA in Finance from Golden Gate University and a BS in Business Administration from San Jose State University.

David A. Gollnick has served as our Vice President of Research and Development and as a member of our board of directors since our inception in August 1998. From June 1996 to July 1998, Mr. Gollnick was Vice President of Research and Development at Coherent Medical Group. Mr. Gollnick holds a BS in Mechanical Engineering from Fresno State University.

Michael R. Davin has served as our Vice President of North American Sales since April 1999. From November 1997 to April 1999, Mr. Davin served as Sales Manager of Coherent Medical Group. From September 1995 to November 1997, Mr. Davin first served as Sales Representative and later as a

Regional Sales Trainer for Baxter V. Muler, a manufacturer of surgical instrumentation and operating room equipment. Mr. Davin holds a BS in Business Administration from New Hampshire College.

Gregory R. Fava has served as our Vice President of New Business Development since September 2001. From March 1995 to September 2001, Mr. Fava held several positions at Iridex, a medical laser manufacturer, including Product Manager, Director of Product Marketing and Business Development and, most recently, General Manager of OEM Laser Products. Mr. Fava holds an AS in Electronics from the College of San Mateo.

Michael J. Levernier has served as our Vice President of Clinical Development since December 2001. From September 1998 to December 2001 he served as our Director of Clinical Development. From June 1996 to September 1998, Mr. Levernier served as manager of the photorefractive development program at Coherent Medical Group. Mr. Levernier holds a BS in Electronic Engineering from California Polytechnic State University, San Luis Obispo and an MS in Electrical Engineering from Stanford University.

Marc P. Maisel has served as our Vice President of International Sales since December 1999. From July 1998 to December 1999, Mr. Maisel worked as an

independent sales and marketing consultant. From October 1983 to July 1998, Mr. Maisel held several senior management positions at Coherent Medical Group. In his last four years there, he served as Director of US Sales and Vice President Sales, Americas. Mr. Maisel holds a BA in Psychology from the State University of New York, Buffalo.

Kathleen A. Maynor has served as our Vice President of Regulatory Affairs and Quality Assurance since August 2001. From November 1997 to August 2001, Ms. Maynor served as Vice President of Regulatory, Quality & Clinical of Coherent Medical Group. From January 1997 to November 1997, Ms. Maynor served as the Regulatory and Quality Assurance Manager of Cavro, Inc., a manufacturer of Medical pumps and robots. Ms. Maynor holds a BA in Natural Sciences -- Chemistry from the University of South Florida and a JD from Lincoln University School of Law.

David B. Apfelberg, MD has served on our board of directors since November 1998. He has been an Assistant Clinical Professor of Plastic Surgery at the Stanford University Medical Center since 1980. Since 1987, Dr. Apfelberg has also been a consultant for individual entrepreneurs, venture capital companies and attorneys, with special expertise in the area of lasers in medicine. From June 1991 to May 2001, Dr. Apfelberg was Director of the Plastic Surgery Center, in Atherton, California. Dr. Apfelberg holds both a BMS, bachelor of medical science, and an MD from Northwestern University Medical School.

Annette J. Campbell-White has served on our board of directors since November 1998. She has been the Managing Partner of MedVenture Associates I, II and III, which are venture partnerships investing primarily in early stage businesses in the health care field, since May 1986. Ms. Campbell-White currently serves on the board of directors of ArthroCare, a publicly-traded company that designs, manufactures and markets surgical instruments, on the board of directors of Therasense, a company that develops, manufactures and sells glucose self-monitoring systems, as well as on the boards of a number of privately-held companies. Ms. Campbell-White holds a BS degree in Chemical Engineering and an MS degree in Chemistry, both from the University of Cape Town, South Africa.

Guy P. Nohra has served on our board of directors since November 1999. He has been a partner at Alta Partners, a venture partnership that invests in biotechnology and medical device companies, since February 1996. Mr. Nohra currently serves as a director on the boards of several privately-held companies. Mr. Nohra holds a BA in History from Stanford University and an MBA from the University of Chicago.

EXECUTIVE OFFICERS

Our executive officers are elected by, and serve at the discretion of, our board of directors. There are no family relationships among our directors and officers.

BOARD OF DIRECTORS

Currently, our authorized number of directors is seven. Upon completion of this offering, our amended and restated certificate of incorporation will provide that, as of the first annual meeting of stockholders, our board of directors will be divided into three classes, each with staggered three-year terms. As a result, only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Messrs. Connors and Gollnick have been designated as Class I directors, whose terms expire at the 2003 annual meeting of

stockholders; Dr. Apfelberg and Mr. Nohra have been designated as Class II directors, whose terms expire at the 2004 annual meeting of stockholders. Ms. Campbell-White has been designated as a Class III director whose term expires at the 2005 annual meeting of stockholders. This classification of the board of directors may delay or prevent a change in control of our company or our management. See "Description of capital stock -- Anti-takeover effects of provisions of the certificate of incorporation, bylaws and Delaware law."

BOARD COMMITTEES

Our board of directors has an audit committee and a compensation committee.

The audit committee was formed in and currently consists of , and . The audit committee reviews the results and scope of our annual audits and other services provided by our independent accountants, reviews and evaluates our internal audit and control functions and monitors transactions between us and our employees, officers and directors.

The compensation committee was formed in and currently consists of and . The compensation committee administers our 1998 Stock Plan, the 2002 Stock Plan and 2002 Employee Stock Purchase Plan, and reviews the compensation and benefits for our executive officers.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

Before establishing the compensation committee, the board of directors as a whole performed the functions delegated to the compensation committee. None of our compensation committee members and none of our executive officers have a relationship that would constitute an interlocking relationship with executive officers or directors of another entity.

DIRECTOR COMPENSATION

Our non-employee directors are reimbursed for certain of their out-of-pocket expenses incurred in connection with attending board and committee meetings, but they are not compensated for their services as board members. We have in the past granted directors options to purchase our common stock pursuant to the terms of our 1998 Stock Plan. See "Employee benefit plans."

EXECUTIVE COMPENSATION

The following table sets forth certain information concerning compensation of our chief executive officer and each of the other four most highly compensated current executive officers whose aggregate cash compensation exceeded $100,000 during the year ended December 31, 2000. We refer to these persons as our named executive officers elsewhere in this prospectus.

Summary compensation table

Name and principal position	2000 compensation		Long-term compensation securities underlying options	All other compensation
	Salary	Bonus		
Kevin P. Connors..... President, Chief Executive Officer and Director	$177,500	$ 4,000	850,000	--

Michael R. Davin..... Vice President of North American Sales	92,625	13,650	190,000	91,336(1)
David A. Gollnick..... Vice President of Research and Development and Director	128,646	9,583	425,000	--
Michael J. Levernier..... Vice President of Clinical Development	113,208	8,433	220,000	--
Marc P. Maisel..... Vice President of International Sales	111,604	8,342	105,000	--

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(1) Consists of $90,180 in commissions and $1,156 in car allowance.

OPTION GRANTS

The following table sets forth certain information with respect to stock options granted to each of our named executive officers during the fiscal year ended December 31, 2000.

Option grants in fiscal year 2000

	Individual grants				Potential realizable value at assumed annual rates of stock price appreciation for option term(1)	
Name	Number of securities underlying options granted	Percent of total net options granted to employees	Exercise price per share	Expiration date	5%	10%
Kevin P. Connors.....	50,000	7.02%	$ 0.50	08/04/10	$15,722	$39,844
Michael R. Davin.....	25,000	3.51	0.50	06/09/10	7,861	19,922
David A. Gollnick.....	25,000	3.51	0.50	08/04/10	7,861	19,922
Michael J. Levernier....	20,000	2.81	0.50	08/04/10	6,289	15,937
Marc P. Maisel.....	15,000	2.11	0.50	06/09/10	4,717	11,953
	90,000	12.63	0.20	02/11/10	11,320	28,687

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(1) Potential realizable value is based upon fair market value of our common stock on the grant date of the options as determined by our board of directors, which is substantially less than the initial public offering price. If the potential realizable value were calculated over the ten-year term of the options, based on the initial public offering price, the resulting stock price at the end of the term would be significantly higher.

In 2000, we granted options to purchase an aggregate of 743,000 shares. Shares generally vest at the rate of 25.0% after one year of service from the date of grant, and monthly thereafter, generally over 36 additional months. Options have a term of ten years but may terminate before their expiration dates if the optionee's status as an employee is terminated or upon the optionee's death or disability.

With respect to the amounts disclosed in the column captioned "Potential realizable value at assumed annual rates of stock price appreciation for option term," the 5% and 10% assumed annual rates of

compounded stock price appreciation are mandated by rules of the Securities and

Exchange Commission and do not represent our estimate or projection of our future common stock prices. The potential realizable values are calculated by assuming that the exercise price per share of each option was equal to the fair market value of our common stock at the time of grant, that the common stock appreciates at the indicated rate for the entire term of the option, and that the option is exercised at the exercise price and sold on the last day of the option term at the appreciated price. Actual gains, if any, on stock option exercises are dependent on the future performance of our common stock and overall stock market conditions. The amounts reflected in the table may not necessarily be achieved.

OPTIONS EXERCISED AND YEAR-END VALUES

The following table sets forth certain information concerning exercises of stock options during the fiscal year ended December 31, 2000 by the named executive officers and the number and value of unexercised options held by each of the named executive officers on December 31, 2000. No options were exercised by the named executive officers in 2000. The value of in-the-money stock options represents the positive spread between the exercise price of stock options and the fair market value of the options, based upon the public offering price minus the exercise price per share.

	Number of securities underlying unexercised options at December 31, 2000		Value of unexercised in-the-money options at December 31, 2000	
Name	Exercisable	Unexercisable	Exercisable	Unexercisable
Kevin P. Connors.....	250,000	600,000	$	$
Michael R. Davin.....	64,062	125,938		
David A. Gollnick.....	125,000	300,000		
Michael J. Levernier....	62,500	157,500		
Marc P. Maisel.....	22,500	82,500		

LIMITATIONS ON LIABILITY AND INDEMNIFICATION

Our bylaws provide that we will indemnify our directors and executive officers, and may indemnify our other officers, employees and other agents, to the fullest extent permitted by the General Corporation Law of the State of Delaware. Under our bylaws, we also are empowered to enter into indemnification agreements with our directors and officers and to purchase insurance on behalf of any person whom we are required or permitted to indemnify. We intend to purchase a directors' and officers' liability insurance policy that insures such persons against the costs of defense, settlement or payment of a judgment under certain circumstances.

We intend to enter into indemnification agreements with our directors and executive officers. Under these agreements, we would be required to indemnify them against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any actual, or any threatened, proceeding if any of them may be made a party because he or she is or was one of our directors or officers. We are obligated to pay these amounts only if the officer or director acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to our best interests. With respect to any criminal proceeding, we are obligated to pay these amounts only if the officer or director had no reasonable cause to believe that his or her conduct was unlawful. The indemnification agreements also set forth procedures that will apply in the event of a claim for indemnification thereunder.

In addition, our amended and restated certificate of incorporation filed in connection with this offering provides that the liability of our directors for monetary damages shall be eliminated to the fullest extent

permissible under the General Corporation Law of the State of Delaware. This provision in our amended and restated certificate of incorporation does not eliminate a director's duty of care and, in appropriate circumstances, equitable remedies such as an injunction or other forms of non-monetary relief would remain available. Each director will continue to be subject to liability for any breach of the director's duty of loyalty to us, for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, for acts or omissions that the director believes to be contrary to our best interests or our stockholders, for any transaction from which the director derived an improper personal benefit, for improper transactions between the director and us, and for improper distributions to stockholders and loans to directors and officers. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable.

There is no pending litigation or proceeding involving any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

EMPLOYEE BENEFIT PLANS

1998 Stock Plan

Our sole director at the time adopted our 1998 Stock Plan in August 1998, and the stockholders approved our 1998 Plan in November 1998. Our board of directors has decided not to grant any additional awards under the 1998 Plan as of the effective date of this offering. However, the 1998 Plan will continue to govern the terms and conditions of the outstanding awards granted under the 1998 Plan.

A total of 3,850,000 shares of our common stock are authorized for issuance under the 1998 Plan. As of December 1, 2001, options and stock purchase rights to acquire a total of 3,222,969 shares of our common stock were issued and outstanding, and a total of 236,115 shares of our common stock had been issued upon the exercise of options and stock purchase rights granted under the 1998 Plan.

Our board of directors or a committee of our board administers the 1998 Plan. The administrator of the 1998 Plan has the authority to determine the terms and conditions of the options and stock purchase rights granted under the 1998 Plan.

Our 1998 Plan provides for the grant of options and stock purchase rights to our service providers. Stock purchase rights and nonstatutory stock options may be granted to our employees, directors and consultants, and incentive stock options within the meaning of Section 422 of the Internal Revenue Code may be granted to our employees.

The exercise price of options granted under our 1998 Plan may not be less than 85% of fair market value of our common stock on the date of grant, or 100% of fair market value of our common stock in the case of an incentive stock option, and the term of an option may not exceed 10 years. An outstanding option may terminate before the end of its 10 year term if an optionee ceases to be a service provider.

Stock purchase rights provide an eligible service provider the right to purchase shares of our common stock. The shares under a stock purchase right may or may not be fully vested on the date of grant. If the shares are initially unvested, the shares will vest over the individual's period of continued service with us. We will have the right to repurchase any unvested shares upon the individual's termination of service with us at the original price paid for the shares.

Our 1998 Plan provides that in the event of our merger with or into another corporation or a sale of substantially all of our assets, the successor corporation will assume or substitute each stock purchase right and option. If the outstanding stock purchase rights or options are not assumed or substituted, they become fully exercisable before termination.

2002 Stock Plan

Our board of directors adopted the 2002 Stock Plan in 2002 and the stockholders initially approved it in 2002. Our 2002 Stock Plan provides for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code, to our employees, and for the grant of nonstatutory stock options and stock purchase rights to our employees, directors and consultants.

As of , 2002, a total of shares of our common stock were reserved for issuance pursuant to the 2002 Stock Plan, of which no options were issued and outstanding as of that date. The 2002 Stock Plan will become effective on the completion of this offering. At that time, no further grants will be made under the 1998 Stock Plan. In addition, our 2002 Stock Plan provides that any shares reserved but unissued under the 1998 Stock Plan and any shares returned to the 1998 Stock Plan as the result of termination of options or the repurchase of shares issued under the 1998 Stock Plan will be reserved for issuance under the 2002 Stock Plan together with annual increases in the number of shares available for issuance under the 2002 Stock Plan on the first day of each fiscal year, beginning with our fiscal year 2003, equal to the lesser of:

- 5% of the outstanding shares of common stock on the first day of our fiscal year;
- shares; and
- an amount our board may determine.

Our board of directors or a committee of our board administers the 2002 Stock Plan. In the case of options intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Internal Revenue Code, the committee will consist of two or more "outside directors" within the meaning of Section 162(m) of the Code. The administrator has the power to determine the terms of the options or stock purchase rights granted, including the exercise price, the number of shares subject to each option or stock purchase right, the exercisability of the options and the form of consideration payable upon exercise.

The administrator determines the exercise price of options granted under the 2002 Stock Plan, but with respect to nonstatutory stock options intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code and all incentive stock options, the exercise price must at least be equal to the fair market value of our common stock on the date of

grant. The term of an incentive stock option generally may not exceed ten years and the administrator determines the term of all other options.

No optionee may be granted an option to purchase more than shares in any fiscal year. In connection with his or her initial service, an optionee may be granted an additional option to purchase up to shares.

After termination of one of our employees, directors or consultants, he or she may exercise his or her option for the period of time stated in the option agreement. Generally, if termination is due to death or disability, the option will remain exercisable for 12 months. In all other cases, the option will generally remain exercisable for 3 months. However, an option may never be exercised later than the expiration of its term.

The administrator determines the exercise price of stock purchase rights granted under our 2002 Stock Plan. Unless the administrator determines otherwise, the restricted stock purchase agreement will grant us a repurchase option that we may exercise upon the voluntary or involuntary termination of the purchaser's service with us for any reason (including death or disability). The purchase price for shares we repurchase will generally be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to us. The administrator determines the rate at which our repurchase option will lapse.

Our 2002 Stock Plan generally doesn't allow for the transfer of options or stock purchase rights and only the optionee may exercise an option and stock purchase right during his or her lifetime.

Our 2002 Stock Plan provides that in the event of our "change of control," the successor corporation will assume or substitute an equivalent option or right for each outstanding option or stock purchase right. If there is no assumption or substitution of outstanding options or stock purchase rights, the administrator will provide notice to the optionee that he or she has the right to exercise the option or stock purchase right as to all of the shares subject to the option or stock purchase right, including shares which would not otherwise be exercisable, for a period of 15 days from the date of the notice. The option or stock purchase right will terminate upon the expiration of the 15-day period.

Our 2002 Stock Plan will automatically terminate in 2012, unless we terminate it sooner. In addition, our board of directors has the authority to amend, suspend or terminate the 2002 Stock Plan provided it does not adversely affect any option previously granted under it.

Employee Stock Purchase Plan

Concurrently with this offering, we intend to establish an Employee Stock Purchase Plan.

A total of shares of our common stock will be made available for sale. In addition, our Employee Stock Purchase Plan provides for annual increases in the number of shares available for issuance under the Employee Stock Purchase Plan on the first day of each fiscal year, beginning with our fiscal year 2003, equal to the lesser of:

. 2% of the outstanding shares of our common stock on the first day of the fiscal year;

. shares; and

. such other amount as may be determined by our board of directors.

Our board of directors or a committee of our board administers the Employee Stock Purchase Plan. Our board of directors or its committee has full and exclusive authority to interpret the terms of the Employee Stock Purchase Plan and determine eligibility.

All of our employees are eligible to participate if they are customarily employed by us or any participating subsidiary for at least 20 hours per week and more than five months in any calendar year. However, an employee may not be granted an option to purchase stock if such employee:

. immediately after grant owns stock possessing 5% or more of the total combined voting power or value of all classes of our capital stock, or

. whose rights to purchase stock under all of our employee stock purchase plans accrues at a rate that exceeds $25,000 worth of stock for each calendar year.

Our Employee Stock Purchase Plan is intended to qualify under Section 423 of the Internal Revenue Code and provides for consecutive, overlapping 12-month offering periods. Each offering period includes two 6-month purchase periods. The offering periods generally start on the first trading day on or after May 1 and November 1 of each year, except for the first such offering period which will commence on the first trading day on or after the effective date of this offering and will end on the first trading day on or after May 1, 2003.

Our Employee Stock Purchase Plan permits participants to purchase common stock through payroll deductions of up to 15% of their eligible compensation which includes a participant's base salary, wages, overtime pay, commissions, bonuses and other compensation remuneration paid directly to the employee. A participant may purchase a maximum of shares during a 6-month purchase period.

Amounts deducted and accumulated by the participant are used to purchase shares of our common stock at the end of each six-month purchase period. The price is 85% of the lower of the fair market value of our common stock at the beginning of an offering period or after a purchase period end. If the fair market value at the end of a purchase period is less than the fair market value at the beginning of the offering period, participants will be withdrawn from the current offering period following their purchase of shares on the purchase date and will be automatically re-enrolled in a new offering period. Participants may end their participation at any time during an offering period, and will be paid their payroll deductions to date. Participation ends automatically upon termination of employment with us.

A participant may not transfer rights granted under the Employee Stock Purchase Plan other than by will, the laws of descent and distribution or as otherwise provided under the Employee Stock Purchase Plan.

In the event of our "change of control," a successor corporation may assume or substitute each outstanding option. If the successor corporation refuses to assume or substitute for the outstanding options, the offering period then in progress will be shortened, and a new exercise date will be set.

Our board of directors has the authority to amend or terminate our Employee

Stock Purchase Plan, except that, subject to certain exceptions described in the Employee Stock Purchase Plan, no such action may adversely affect any outstanding rights to purchase stock under our Employee Stock Purchase Plan.

2002 Director Option Plan

Our board of directors adopted the 2002 Director Option Plan in 2002 and our stockholders initially approved it in , 2002. The 2002 Director Option Plan provides for the periodic grant of nonstatutory stock options to our non-employee directors.

As of , 2002, a total of shares were reserved for issuance under the 2002 Director Option Plan, of which no options to acquire shares were issued and outstanding as of this date.

In addition, our 2002 Director Option Plan provides for annual increases in the number of shares available for issuance under it on the first day of each fiscal year, beginning with our fiscal year 2003, equal to the lesser of: the number of shares issued pursuant to options under the 2002 Director Option Plan in the prior fiscal year, or an amount determined by our board of directors.

All grants of options to our non-employee directors under the Director Plan are automatic. We will grant each non-employee director an option to purchase shares when such person first becomes a non-employee director (except for those directors who become non-employee directors by ceasing to be employee directors). All non-employee directors receive an option to purchase shares on the date of our annual stockholder's meeting each year.

All options granted under our Director Plan have a term of ten years and an exercise price equal to fair market value on the date of grant. Each option to purchase shares becomes exercisable as to one-third of the shares subject to the option on each anniversary of its date of grant, provided the non-employee director remains a director on such dates. Each option to purchase shares becomes exercisable as to 100% of the shares subject to the option on the third anniversary of its date of grant, provided the non-employee director remains a director on such date.

After termination as a non-employee director with us, an optionee must exercise an option at the time set forth in his or her option agreement. If termination is due to death or disability, the option will remain exercisable for 12 months. In all other cases, the option will remain exercisable for a period of 3 months. However, an option may never be exercised later than the expiration of its term.

A non-employee director may not transfer options granted under our 2002 Director Option Plan other than by will or the laws of descent and distribution. Only the non-employee director may exercise the option during his or her lifetime.

In the event of our merger with or into another corporation or a sale of substantially all of our assets, the successor corporation will assume or substitute each option. If such assumption or substitution occurs, the options will continue to be exercisable according to the same terms as before the merger or sale of assets. Following such assumption or substitution, if a non-employee director is terminated other than by voluntary resignation, the option will become fully exercisable and generally will remain exercisable for a period of 3 months. If the outstanding options are not assumed or substituted for, our board of directors will notify each non-employee director that he or

she has the right to exercise the option as to all shares subject to the option for a period of 30 days following the date of the notice. The option will terminate upon the expiration of the 30-day period.

Unless terminated sooner, our 2002 Director Option Plan will automatically terminate in 2012. Our board of directors has the authority to amend, alter, suspend, or discontinue the 2002 Director Option Plan, but no such action may adversely affect any grant made under it.

Related party transactions

On October 15, 1998, we issued and sold an aggregate of 2,000,000 shares of common stock to a total of 8 individuals at a purchase price of $0.001 per share. The officers, directors and five percent stockholders who purchased shares of common stock were: Kevin Connors, Michael Levernier and David Gollnick. The shares are subject to a right of repurchase in the event of termination of employment. The right of repurchase lapsed as to 25% of the shares on October 15, 1998 and continues to lapse 1/48 of the remainder each full month thereafter such that our repurchase right lapses in full as of October 15, 2002.

In November 1998, we sold shares of our Series A preferred stock, which is convertible into an aggregate of 2,000,000 shares of common stock, at a price per share equal to $1.00. We sold the shares to a total of 18 investors, pursuant to a preferred stock purchase agreement and a registration rights agreement under which we made standard representations, warranties and covenants, and provided the purchasers with registration rights and information rights. The registration rights are the only rights that survive beyond this offering. See "Description of capital stock."

In November 1999, we sold shares of our Series B preferred stock, which is convertible into an aggregate of 2,675,000 shares of common stock, at a price per share equal to $2.00. We sold the shares to a total of 6 investors, pursuant to a preferred stock purchase agreement and a registration rights agreement under which we made standard representations, warranties and covenants, and provided the purchasers with registration rights and information rights. The registration rights are the only rights that survive beyond this offering. See "Description of capital stock."

The purchasers of the Series A and Series B preferred stock included, among others, the following principal stockholders, directors and affiliated entities:

Stockholders, directors and affiliated entities	Series A preferred	Series B preferred
MedVenture Associates III, LP	1,439,759	1,199,000
MedVen Affiliates III, LP	61,241	51,000
Alta California Partners II, LP	--	1,357,846
Alta Embarcadero Partners II, LLC	--	17,154
Kevin P. Connors	38,000	--

Principal stockholders

The following table sets forth certain information known to us with respect to beneficial ownership of our common stock as of December 1, 2001, as adjusted to reflect the sale of shares offered by:

- each person known by us to own beneficially more than 5% of our outstanding stock;
- each of our directors;
- each of our executive officers; and
- all current executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or exercisable within 60 days of December 1, 2001 are deemed outstanding. Percentage of beneficial ownership is based upon shares of common stock outstanding before this offering and shares of common stock outstanding after this offering, based on the number of shares outstanding as of December 1, 2001. To our knowledge, except as set forth in the footnotes to this table and subject to applicable community property laws, each person named in the table has sole voting and investment power with respect to the shares set forth opposite such person's name. Except as otherwise indicated, the address of each of the persons in this table is 821 Cowan Road, Burlingame, California 94010.

Name of beneficial owner	Number of shares owned	Number of shares underlying options or warrants	Percent beneficially owned before this offering	Percent beneficially owned after this offering
Entities affiliated with MedVenture Associates.... 4 Orinda Way, Bldg. D, Suite 150 Orinda, CA 94563	2,801,000	50,000	43.1%	
Funds Affiliated with Alta Partners..... One Embarcadero Center Suite 4050 San Francisco, CA 94111	1,375,000	--	21.1	
Annette J. Campbell-White(1)..... 4 Orinda Way, Bldg. D, Suite 150 Orinda, CA 94563	2,806,166	54,166	43.1	
Guy P. Nohra(2)..... One Embarcadero Center Suite 4050 San Francisco, CA 94111	1,379,166	4,166	21.2	
David B. Apfelberg, MD.....	35,000	--	*	
Kevin P. Connors.....	848,189	486,457	12.1	
Michael R. Davin.....	118,645	48,645	1.8	
David A. Gollnick.....	509,735	243,228	7.6	
Michael J. Levernier.....	402,534	277,952	6.1	
Marc P. Maisel.....	52,812	27,812	*	

Principal stockholders

Name of beneficial owner	Number of shares owned	Number of shares underlying options or warrants	Percent beneficially owned before this offering	Percent beneficially owned after this offering
All executive officers and directors as a group (10 persons)	6,151,247	939,056	82.6	

* Less than 1% of the outstanding common stock.

(1) Includes 2,638,759 shares and a warrant for 47,960 shares held by MedVenture Associates III, LP and 112,241 shares and a warrant for 2,040 shares held by MedVen Affiliates III, LP (collectively "MedVenture Associates") and 4,166 shares exercisable within 60 days of December 1, 2001 under an option granted to Ms. Campbell-White. Ms. Campbell-White is a member of MedVentures Associates Management III Co., LLC, which is the general partner of MedVentures Associates III, LP and MedVen Affiliates III, LP. Ms. Campbell-White disclaims beneficial ownership of these shares except to the extent of her pecuniary interest therein. Annette Campbell-White and George Choi, another general partner, share voting and investment control in MedVentures Associates Management III Co., LLC, and MedVentures Associates Management III Co., LLC.

(2) Includes 1,357,846 shares held by Alta California Partners II, LP. and 17,154 shares held by Alta Embarcadero Partners II, LLC. Mr. Nohra is a general partner of Alta California Partners II, LP and Alta Embarcadero Partners II, LLC and disclaims beneficial ownership of the shares held by such entities except to the extent of his proportionate partnership interest therein.

Description of capital stock

The following information describes our common stock and preferred stock, as well as options to purchase our common stock, and provisions of our amended and restated certificate of incorporation and bylaws. This description is only a summary. You should also refer to our amended and restated certificate of incorporation and bylaws which have been filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part.

Upon the completion of this offering, we will be authorized to issue up to shares of capital stock, $0.001 par value, to be divided into two classes to be designated, respectively, common stock and preferred stock. Of such shares authorized, shares shall be designated as common stock, and 5,000,000 shares shall be designated as preferred stock.

COMMON STOCK

As of December 1, 2001, there were 6,556,092 shares of common stock outstanding that were held of record by 41 stockholders, assuming conversion of all shares of preferred stock outstanding as of December 1, 2001 into 4,675,000 shares of common stock and the assumed exercise and conversion of warrants for 50,000 shares of preferred stock into 50,000 shares of common stock. There will be shares of common stock outstanding assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options after giving effect to the sale of common stock offered in this offering. As of December 1, 2001, there were outstanding options to purchase a total of 3,222,969 shares of our common stock under our stock plans.

The holders of common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. Our stockholders do not have cumulative voting rights in the election of directors. Accordingly, holders of a majority of the shares voting are able to elect all of the directors. Subject to preferences that may be granted to any then outstanding preferred stock, holders of common stock are entitled to receive ratably only those dividends as may be declared by the board of directors out of funds legally available therefor, as well as any distributions to the stockholders. See "Dividend policy." In the event of our liquidation, dissolution or winding up, holders of common stock are entitled to share ratably in all of our assets remaining after we pay our liabilities and distribute the liquidation preference of any then outstanding preferred stock. Holders of common stock have no preemptive or other subscription or conversion rights. There are no redemption or sinking fund provisions applicable to the common stock.

PREFERRED STOCK

Upon the completion of this offering, our board of directors will have the authority, without further action by the stockholders, to issue up to 5,000,000 shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions thereof. These rights, preferences and privileges include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of common stock. The issuance of preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change in our control or other corporate action. We have no present plan to issue any shares of preferred stock.

WARRANTS

As of December 1, 2001, there were warrants to purchase 9,000 shares of Series A convertible preferred stock and 61,000 shares of Series B convertible preferred stock at an exercise price of $1.00 per share and $2.00 per share, respectively. Warrants for 50,000 shares of Series B preferred stock will be automatically net exercised upon this offering. Assuming a public offering price of per share, the net exercise of the warrants for 50,000 shares of Series B preferred stock with result in shares of common stock. In addition, assuming conversion of Series A and Series B convertible preferred stock into common stock upon completion of this offering, the warrant to purchase Series A preferred stock will be exercisable into 9,000 shares of common stock at an exercise price of $1.00 per share, and the remaining warrant to purchase Series B preferred stock will be exercisable into 11,000 shares of common stock at an exercise price of $2.00 per share. The warrant to purchase 9,000 shares of

Series A preferred stock is exercisable at any time prior to February 2004, and the warrant to purchase 11,000 shares of Series B preferred stock is exercisable at any time prior to May 2007. We issued the warrant for 9,000 shares of Series A preferred stock and for the 11,000 shares of Series B preferred stock to Silicon Valley Bank in connection with a line of credit. We issued the warrants for 50,000 shares of Series B preferred stock to entities affiliated with MedVenture Associates in connection with our Series B preferred stock financing.

REGISTRATION RIGHTS

After the closing of this offering, the holders of approximately 4,675,000 shares of our common stock will be entitled to certain rights with respect to the registration of such shares under the Securities Act. In the event that we propose to register any of our securities under the Securities Act, either for our own account or for the account of other security holders, these holders are entitled to notice of such registration and are entitled to include their common stock in such registration, subject to certain marketing and other limitations. Beginning six months after the closing of this offering, the holders of at least 50% of these securities have the right to require us, on not more than two occasions, to file a registration statement under the Securities Act in order to register shares of their common stock. We may, in certain circumstances, defer such registrations and the underwriters have the right, subject to certain limitations, to limit the number of shares included in such registrations. Further, these holders may require us to register all or a portion of their shares on Form S-3, subject to certain conditions and limitations.

ANTI-TAKEOVER EFFECTS OF PROVISIONS OF THE CERTIFICATE OF INCORPORATION, BYLAWS AND DELAWARE LAW

Our amended and restated bylaws, to be effective upon completion of this offering, will provide for our board of directors to be divided into three classes, with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. However, until this classification of our board of directors is effective, and because our stockholders have no cumulative voting rights, our stockholders representing a majority of the shares of common stock outstanding will be able to elect all of the directors. Our amended and restated bylaws will also provide that all stockholder action must be effected at a duly called meeting of stockholders and not by a consent in writing, and that only our board of directors, chairman of the board and president may call a special meeting of stockholders.

The combination of the classification of our board of directors, when effective, and the lack of cumulative voting will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since the board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In

addition, the authorization of undesignated preferred stock makes it possible for the board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions may have the effect of deterring hostile takeovers or delaying

changes in our control or management. These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and in the policies they implement, and to discourage certain types of transactions that may involve an actual or threatened change of our control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions may also have the effect of preventing changes in our management.

SECTION 203 OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

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

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested holder;

- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the number of shares outstanding those shares owned by persons who are directors and also officers and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;

- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or

- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

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

NASDAQ NATIONAL MARKET LISTING

Application has been made for quotation of our common stock on The Nasdaq National Market under the symbol "ALTU."

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for our common stock is Computershare Investor Services, LLC. Its address is 12039 West Alameda Parkway, Suite Z-2, Lakewood, Colorado 80228, and its telephone number is (303) 986-5400.

Shares eligible for future sale

We will have shares of common stock outstanding after the completion of this offering (shares if the underwriters' over-allotment is exercised in full). Of those shares, the shares of common stock sold in the offering (shares if the underwriters' over-allotment option is exercised in full) will be freely transferable without restriction, unless purchased by persons deemed to be our "affiliates" as that term is defined in Rule 144 under the Securities Act). Any shares purchased by an affiliate may not be resold except pursuant to an effective registration statement or an applicable exemption from registration, including an exemption under Rule 144. The remaining 6,556,092 shares of common stock to be outstanding immediately following the completion of this offering are "restricted," which means they were originally sold in offerings that were not registered under the Securities Act. These restricted shares may only be sold through registration under the Securities Act or under an available exemption from registration, such as provided through Rule 144 promulgated under the Securities Act.

All of our officers, directors and security holders, have entered into lock-up agreements pursuant to which they have agreed, subject to limited exceptions, not to offer or sell any shares of common stock or securities convertible into or exchangeable or exercisable for shares of common stock for a period of 180 days from the date of this prospectus without the prior written consent of UBS Warburg LLC. See "Underwriting." After the 180-day lock-up period, these shares may be sold in accordance with Rule 144.

After the offering, the holders of approximately shares of our common stock (including 20,000 shares issuable upon exercise of outstanding warrants) will be entitled to registration rights. For more information on these registration rights, see "Description of capital stock -- Registration rights."

In general, under Rule 144, as currently in effect, a person (or persons whose shares are aggregated), including an affiliate, who has beneficially owned shares of our common stock for one year or more, may sell in the open market within any three-month period a number of shares that does not exceed the greater of:

- one percent of the then outstanding shares of our common stock (approximately shares immediately after the offering); or

- the average weekly trading volume in the common stock on the Nasdaq National Market during the four calendar weeks preceding the sale.

Sales under Rule 144 are also subject to certain limitations on the manner of sale, notice requirements and the availability of our current public information. A person (or persons whose shares are aggregated) who is deemed not to have been our affiliate at any time during the 90 days preceding a sale by him and who has beneficially owned his shares for at least two years, may sell the shares in the public market under Rule 144(k) without regard to the volume limitations, manner of sale provisions, notice requirements or the availability of current public information we refer to above.

Any of our employees, officers, directors, or consultants who purchased his or her shares before the date of completion of this offering or who holds options as of that date pursuant to a written compensatory plan or contract is entitled to rely on the resale provisions of Rule 701, which permits non-affiliates to sell their Rule 701 shares without having to comply with the public-information, holding-period, volume-limitation or notice provisions of Rule 144 and permits affiliates to sell their Rule 701 shares without having to comply with Rule 144's holding-period restrictions, in each case commencing 90 days after completion of this offering. Neither Rule 144 nor Rule 701 supersedes the contractual obligations of our security holders set forth in the lock-up agreements described above.

Subject to the lock-up agreements, the shares of our common stock that were outstanding on December 1, 2001 that will become eligible for sale without registration pursuant to Rule 144 or Rule 701 under the Securities Act are as follows:

- shares will be immediately eligible for sale in the public market without restriction pursuant to Rule 144(k);
- shares will be eligible for sale in the public market under Rule 144 or Rule 701 beginning 90 days after the date of this prospectus, subject to volume, manner of sale, and other limitations under those rules; and
- the remaining shares of common stock will become eligible for sale from time to time after the date of this prospectus under Rule 144 upon expiration of their respective holding periods.

Upon closing of this offering, we intend to file a registration statement on Form S-8 under the Securities Act to register shares of common stock reserved for issuance under the 1998 Stock Plan, the 2002 Stock Plan and the 2002 Employee Stock Purchase Plan, thus permitting the resale of such shares by non-affiliates in the public market without restriction under the Securities Act. Such registration statements will become effective immediately upon filing.

Before this offering, there has been no public market for our common stock, and any sale of substantial amounts in the open market may adversely affect the market price of our common stock offered hereby.

Underwriting

We and the underwriters named below have entered into an underwriting agreement concerning the shares we are offering. Subject to conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. UBS Warburg LLC and Lehman Brothers Inc. are the representatives of the underwriters.

Underwriters	Number of shares
UBS Warburg LLC	
Lehman Brothers Inc	
Total	

If the underwriters sell more shares than the total number set forth in the table above, the underwriters have a 30-day option to buy from us up to additional shares at the initial public offering price less the underwriting discounts and commissions to cover these sales. If any shares are purchased under this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions we will pay to the underwriters. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase up to additional shares.

	No exercise	Full exercise
Per share	$	$
Total	$	$

We estimate that the total expenses of the offering payable by us, excluding underwriting discounts and commissions, will be approximately $.

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $ per share from the initial public offering price. Any of these securities dealers may resell any shares purchased from the underwriters to other brokers or dealers at a discount of up to $ per share from the initial public offering price. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms.

The underwriters have informed us that they do not expect discretionary sales to exceed 5% of the shares of common stock to be offered.

We, our directors, officers and substantially all of our stockholders, have agreed with the underwriters not to offer, sell, contract to sell, hedge or otherwise dispose of, directly or indirectly, or file with the SEC a registration statement under the Securities Act of 1933 relating to, any of our common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, without the prior written consent of UBS Warburg LLC.

The underwriters have reserved for sale, at the initial public offering price, up to shares of our common stock being offered for sale to our customers

and business partners. At the discretion of our

management, other parties, including our employees, may participate in the reserved share program. The number of shares available for sale to the general public in the offering will be reduced to the extent these persons purchase reserved shares. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same terms as the other shares in this offering. Shares purchased in this program by persons who have otherwise entered into lock-up agreements with the underwriters, as described above, generally may not be sold for 180 days after the date of this prospectus. In some cases, the rules of National Association of Securities Dealers, Inc. may require purchasers in this offering, including participants in this program, to enter into agreements not to sell their shares for a specified period.

Before this offering, there has been no public market for our common stock. The initial public offering price was negotiated by us and the representatives. The principal factors considered in determining the initial public offering price include:

- the information set forth in this prospectus and otherwise available to the representatives;
- the history and the prospects for the industry in which we compete;
- the ability of our management;
- our prospects for future earnings, the present state of our development, and our current financial position;
- the general condition of the securities markets at the time of this offering; and
- the recent market prices of, and the demand for, publicly traded common stock of generally comparable companies.

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include stabilizing transactions. Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of the common stock while the offering is in progress. These transactions may also include short sales and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. Short sales may be either "covered short sales" or "naked short sales." Covered short sales are sales made in an amount not greater than the underwriters' over-allotment option to purchase additional shares in the offering. The underwriters may close out any covered short position by either exercising their over-allotment option or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. Naked short sales are sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.

The underwriters also may impose a penalty bid. This occurs when a particular

underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

These activities by the underwriters may stabilize, maintain or otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise

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might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. These transactions may be effected on the Nasdaq National Market, in the over-the-counter market or otherwise.

We have agreed to indemnify the several underwriters against some liabilities, including liabilities under the Securities Act of 1933 and to contribute to payments that the underwriters may be required to make in respect thereof.

Legal matters

The validity of the shares of common stock offered hereby will be passed upon for Altus Medical, Inc. by Wilson Sonsini Goodrich & Rosati, Palo Alto, California. Certain members of Wilson Sonsini Goodrich & Rosati, Palo Alto, California maintain beneficial ownership of 100,000 shares of our common stock. Dewey Ballantine LLP, Menlo Park, California, is acting as counsel for the underwriters in connection with this offering.

Experts

The financial statements as of December 31, 1999 and 2000 and September 30, 2001 and for the period from August 10, 1998 (date of inception) to December 31, 1998, for each of the two years in the period ended December 31, 2000 and for the nine month period ended September 30, 2001, included in this prospectus, have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

Where you can find more information

We have filed with the SEC a registration statement on Form S-1 (including exhibits, schedules and amendments) under the Securities Act with respect to the shares of common stock to be sold in this offering. This prospectus does not contain all the information set forth in the registration statement. For further information with respect to us and the shares of common stock to be sold in this offering, reference is made to the registration statement. Statements contained in this prospectus as to the contents of any contract, agreement or other document referred to are not necessarily complete. Whenever a reference is made in this prospectus to any contract or other document of ours, the reference may not be complete, and you should refer to the exhibits that are apart of the registration statement for a copy of the contract or

document.

You may read and copy all or any portion of the registration statement or any other information that we file at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference rooms. Our SEC filings, including the registration statement, are also available to you on the SEC's web site (http://www.sec.gov).

As a result of this offering, we will become subject to the information and reporting requirements of the Securities Exchange Act and, in accordance with those requirements, will file periodic reports, proxy statements and other information with the SEC.

This prospectus includes statistical data that were obtained from industry publications. These industry publications generally indicate that the authors of these publications have obtained information from sources believed to be reliable, but do not guarantee the accuracy and completeness of their information. While we believe these industry publications to be reliable, we have not independently verified their data.

ALTUS MEDICAL, INC.

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REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Stockholders of
Altus Medical, Inc.

In our opinion, the accompanying balance sheets and the related statements of

operations, of stockholders' equity (deficit) and of cash flows present fairly, in all material respects, the financial position of Altus Medical, Inc. at December 31, 1999, 2000 and September 30, 2001, and the results of its operations and its cash flows for the period from August 10, 1998 (date of inception) to December 31, 1998 and for the years ended December 31, 1999 and 2000 and for the nine months ended September 30, 2001, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PRICEWATERHOUSECOOPERS LLP

San Jose, California
December 14, 2001

ALTUS MEDICAL, INC.

BALANCE SHEETS
(in thousands, except share and per share data)

	December 31,		September 30,	Pro forma stockholders' equity at September 30,
	1999	2000	2001	2001 (unaudited)
ASSETS				
Current assets:				
Cash and cash equivalents	$ 4,184	$ 3,562	$ 6,491	
Restricted cash	--	--	100	
Accounts receivable, net	67	2,141	1,411	
Inventory	328	479	826	
Deferred cost of revenue	--	86	--	
Deferred tax asset	--	--	594	
Other current assets	82	116	210	
Total current assets	4,661	6,384	9,632	
Property and equipment, net	243	645	1,035	
Other assets	9	9	--	
Total assets	$ 4,913	$ 7,038	$10,667	
LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)				
Current liabilities:				
Accounts payable	$ 254	$ 374	$ 696	
Accrued liabilities	115	686	2,211	
Deferred revenue	67	506	89	
Line of credit, current	45	50	--	
Total current liabilities	481	1,616	2,996	
Non-current liabilities:				
Line of credit, net of current portion	118	68	--	
Total liabilities	599	1,684	2,996	
Commitments and contingencies (Note 5)				
Redeemable convertible preferred stock, $0.001 par value:				
Authorized: 4,734,000 shares at December 31, 1999 and				

4,784,000 shares at December 31, 2000 and September 30, 2001				
Issued and outstanding: 4,675,000 shares at December 31, 1999 and 2000 and September 30, 2001, none pro forma (Liquidation and redemption value: $7,350 at December 31, 1999 and 2000 and September 30, 2001)	7,272	7,272	7,272	$ --
Stockholders' equity (deficit):				
Common stock, $0.001 par value: Authorized: 20,000,000 shares; Issued and outstanding: 2,000,000, 1,688,076 and 1,825,092 shares at December 31, 1999 and 2000 and September 30, 2001, respectively, and 6,550,092 shares pro forma (unaudited)	2	2	2	7
Additional paid-in capital	--	3	2,254	9,621
Deferred stock-based compensation	--	--	(1,841)	(1,841)
Accumulated deficit	(2,960)	(1,923)	(16)	(16)
Total stockholders' equity (deficit)	(2,958)	(1,918)	399	$ 7,771
Total liabilities, redeemable convertible preferred stock and stockholders' equity (deficit)	$ 4,913	$ 7,038	$10,667	

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

ALTUS MEDICAL, INC.

STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	2000	Nine months ended September 30, 2000 (unaudited)	2001
Net revenue	$ --	$ 100	$9,531	$6,447	$13,918
Cost of revenue	--	413	3,365	2,246	5,036
Gross profit (loss)	--	(313)	6,166	4,201	8,882
Operating expenses:					
Sales and marketing	26	706	2,794	1,790	4,047
Research and development	188	1,333	1,539	1,099	1,593
General and administrative	43	419	989	709	1,111
Total operating expenses	257	2,458	5,322	3,598	6,751
Income (loss) from operations	(257)	(2,771)	844	603	2,131
Interest and other income, net	11	57	193	146	146
Income (loss) before income taxes	(246)	(2,714)	1,037	749	2,277
Provision for income taxes	--	--	--	--	370
Net income (loss)	$ (246)	$(2,714)	$1,037	$ 749	$ 1,907
Net income (loss) per share:					
Basic	$(1.06)	$ (3.04)	$ 0.97	$ 0.72	$ 1.35
Diluted	$(1.06)	$ (3.04)	$ 0.13	$ 0.09	$ 0.22
Weighted-average number of shares used in per share calculations:					
Basic	231	892	1,064	1,034	1,412
Diluted	231	892	8,008	8,001	8,668
Pro forma net income per share (unaudited) (Note 2):					

Basic	$ 0.18	$ 0.31
Diluted	$ 0.13	$ 0.22
Weighted-average number of shares used in pro forma per share calculations (unaudited) (Note 2):		
Basic	5,789	6,137
Diluted	8,058	8,687

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

ALTUS MEDICAL, INC.

STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share amounts)

	Common stock Shares	Common stock Amount	Additional paid-in capital	Deferred stock-based compensation	Accumulated deficit	Total stockholders' equity (deficit)
Issuance of common stock to founders	2,000,000	$ 2	$ --	$ --	$ --	$ 2
Net loss	--	--	--	--	(246)	(246)
Balance at December 31, 1998	2,000,000	2	--	--	(246)	(244)
Net loss	--	--	--	--	(2,714)	(2,714)
Balance at December 31, 1999	2,000,000	2	--	--	(2,960)	(2,958)
Repurchase of common stock from founders	(332,674)	--	--	--	--	--
Exercise of stock options	20,750	--	3	--	--	3
Net income	--	--	--	--	1,037	1,037
Balance at December 31, 2000	1,688,076	2	3	--	(1,923)	(1,918)
Repurchase of common stock from founders	(72,349)	--	--	--	--	--
Exercise of stock options	209,365	--	33	--	--	33
Deferred stock-based compensation	--	--	2,218	(2,218)	--	--
Amortization of deferred stock-based compensation	--	--	--	377	--	377
Net income	--	--	--	--	1,907	1,907
Balance at September 30, 2001	1,825,092	$ 2	$2,254	$(1,841)	$ (16)	$ 399

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

STATEMENTS OF CASH FLOWS
(in thousands)

	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	Years ended December 31, 2000	Nine months ended September 30, 2000 (unaudited)	Nine months ended September 30, 2001
Cash flows from operations:					
Net income (loss)	$ (246)	$(2,714)	$ 1,037	$ 749	$1,907
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:					
Depreciation and amortization	1	31	177	111	291
Amortization of deferred stock-based compensation	--	--	--	--	377
Change in assets and liabilities:					
Accounts receivable, net	--	(67)	(2,074)	(1,449)	730
Inventory	--	(328)	(151)	(122)	(347)
Deferred cost of revenue	--	--	(86)	(12)	86
Other current assets	(7)	(75)	(34)	(4)	(94)
Deferred tax asset	--	--	--	--	(594)
Other assets	--	(9)	--	9	9
Accounts payable	98	157	120	168	322
Accrued liabilities	--	115	571	349	1,525
Deferred revenue	--	67	439	18	(417)
Net cash provided by (used in) operating activities	(154)	(2,823)	(1)	(183)	3,795
Cash flows from investing activities:					
Acquisition of property and equipment	(12)	(264)	(579)	(467)	(681)
Change in restricted cash	--	--	--	--	(100)
Net cash provided by (used in) investing activities	(12)	(264)	(579)	(467)	(781)
Cash flows from financing activities:					
Proceeds from line of credit	--	190	--	--	--
Repayments on line of credit	--	(27)	(45)	(32)	(118)
Proceeds from issuance of redeemable convertible preferred stock, net	1,945	4,327	--	--	--
Proceeds from bridge loan	--	1,000	--	--	--
Proceeds from issuance of common stock to founders	2	--	--	--	--
Proceeds from exercise of stock options	--	--	3	1	33
Net cash provided by (used in) financing activities	1,947	5,490	(42)	(31)	(85)
Net increase (decrease) in cash and cash equivalents	1,781	2,403	(622)	(681)	2,929
Cash and cash equivalents at beginning of period	--	1,781	4,184	4,184	3,562
Cash and cash equivalents at end of period	$1,781	$ 4,184	$ 3,562	$ 3,503	$6,491
Supplemental disclosure of cash flow information:					
Cash paid for interest	$ --	$ 17	$ 18	$ 14	$ 13
Cash paid for taxes	$ --	$ --	$ --	$ --	$ 63
Supplemental disclosure of significant non-cash investing and financing activities:					
Issuance of Series B preferred stock in exchange for conversion of bridge loan	$ --	$ 1,000	$ --	$ --	$ --
Deferred stock-based compensation	$ --	$ --	$ --	$ --	$2,218

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

NOTES TO FINANCIAL STATEMENTS

NOTE 1--ORGANIZATION:

Formation and business of the Company

Altus Medical, Inc. (the "Company") designs, manufactures and markets medical devices for use in the aesthetic market. The Company was incorporated in

Delaware on August 10, 1998 under the name of Acme Medical, Inc. and changed its name to Altus Medical, Inc. in July 1999. The Company's activities from inception to the fourth quarter of 1999 consisted of development of the CoolGlide laser system for the removal and permanent reduction of hair and for vein treatment. The Company commenced sales of CoolGlide in December 1999 and of its second product, CoolGlide Excel, in March 2001. In September 2001, the Company acquired North American distribution rights to laser products, manufactured by a third party, for removal of tattoos and pigmented lesions. The Company exited the development stage during the year ended December 31, 2000.

NOTE 2--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Unaudited interim financial data

The accompanying statements of operations and of cash flows for the nine months ended September 30, 2000 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the Company's financial position and its results of operations and its cash flows for the nine months ended September 30, 2000. The financial data and other information disclosed in the notes to the financial statements related to this interim period are unaudited. The results of interim periods are not necessarily indicative of the results for a full year.

Pro forma common shares outstanding and pro forma net income per share (unaudited)

The pro forma common shares outstanding at September 30, 2001, the pro forma weighted-average common shares outstanding during the year ended December 31, 2000 and the pro forma weighted-average common shares outstanding during the nine months ended September 30, 2001 reflect the automatic conversion of all shares of redeemable convertible preferred stock outstanding into 4,675,000 shares of common stock and the assumed exercise and conversion of warrants for 50,000 shares of preferred stock into 50,000 shares of common stock as if such exercises and conversions had occurred on January 1, 2000.

Unaudited pro forma net income per share amounts for the year ended December 31, 2000 and for the nine months ended September 30, 2001, included in the statement of operations, are computed using the pro forma weighted-average number of common shares outstanding, which includes the pro forma effects of the automatic conversion of preferred stock into common stock and the assumed exercise and conversion of warrants for 50,000 shares of preferred stock into common stock as if such exercises and conversions had occurred on January 1, 2000.

A reconciliation of the numerator and denominator used in the calculation of pro forma net income per share follows (in thousands):

	Year ended December 31, 2000	Nine months ended September 30, 2001

	(unaudited)	
Numerator:		
Net income	$1,037	$1,907
Denominator:		
Weighted average number of shares outstanding used in computing basic net income per share	1,064	1,412
Adjustment to reflect the effect of the assumed conversion of the preferred stock from the date of issuance	4,675	4,675
Adjustment to reflect the effect of the assumed exercise and conversion of warrants from the date of issuance	50	50
Weighted-average number of shares used in computing basic pro forma net income per share	5,789	6,137
Weighted-average number of shares used in computing diluted pro forma net income per share	8,058	8,687

Use of estimates

The preparation of the accompanying financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and cash equivalents

Cash equivalents are stated at cost, which approximates market value. The Company considers all highly liquid investments with an original maturity of three months or less at the time of purchase to be cash equivalents.

Restricted cash

At September 30, 2001, cash balances of $100,000 were restricted from withdrawal and held by a bank in the form of certificates of deposit. These certificates of deposit serve as collateral against payroll direct deposits and merchant accounts.

Fair value of financial instruments

Carrying amounts of the Company's financial instruments including, cash and cash equivalents, accounts receivable, accounts payable, and accrued liabilities, approximate their fair values due to their short maturities.

Concentration of credit risk and other risks and uncertainties

Financial instruments, which potentially subject the Company to concentrations of risk, consist principally of cash and cash equivalents and accounts receivable. The Company's cash and cash equivalents are invested in deposits and money market accounts with one major bank in the United States of America. Deposits in this bank may exceed the amount of insurance provided on such deposits, if any. Management believes that this financial institution is financially sound and, accordingly, minimal credit risk exists. The Company has not experienced any losses on its deposits of cash and cash equivalents.

The following table summarizes significant customer information:

	% of revenue			
	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	2000	Nine months ended September 30, 2001
Customer A	--	40%	--	--
Customer B	--	60%	--	--
Customer C	--	--	16%	10%

	% of accounts receivable		
	December 31, 1999	2000	September 30, 2001
Customer A	100%	--	--
Customer B	--	11%	17%
Customer C	--	--	18%
Customer D	--	--	10%

The following table summarizes revenue by geographic region:

	% of revenue			
	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	2000	Nine months ended September 30, 2001
United States	--	60%	74%	69%
Canada	--	40%	13%	9%
Other	--	--	13%	22%

The Company is subject to risks common to companies in the medical device industry including, but not limited to, new technological innovations, dependence on key personnel, dependence on key suppliers, protection of proprietary technology, product liability and compliance with government regulations. To continue profitable operations, the Company must continue to successfully develop, manufacture and market its products. There can be no assurance that current products will continue to be widely accepted in the marketplace. Nor can there be any assurance that any future products can be developed or manufactured at an acceptable cost and with appropriate performance characteristics, or that such products will be successfully marketed, if at all. These factors could have a material adverse effect on the Company's future financial results.

The future products developed by the Company may require clearance or approvals from the Food and Drug Administration or other international regulatory agencies prior to commercial sales. There can be no assurance that the Company's products will continue to meet the necessary regulatory requirements. If the Company were denied such approvals or such approvals were delayed, it may have a materially adverse impact on the Company.

Inventory

Inventory is stated at the lower of cost or market, cost being determined on a standard cost basis (which approximates actual cost on a first-in, first-out basis) and market being determined as the lower of replacement cost or net realizable value.

Deferred cost of revenue

Deferred cost of revenue consists of the direct costs associated with the manufacture of units for which the revenue has been deferred in accordance with the Company's revenue recognition policies. If the Company expects the deferred revenue to be realized within one year, then the deferred revenue and associated deferred costs are classified as current liabilities and current assets, respectively.

Property and equipment

Property and equipment are stated at cost and depreciated on a straight-line basis over the estimated useful lives of the related assets, which is generally two to five years. Amortization of leasehold improvements is computed using the straight-line method over the shorter of the remaining lease term or the estimated useful life of the related assets, typically five years. Upon sale or retirement of assets, the costs and related accumulated depreciation and amortization are removed from the balance sheet and the resulting gain or loss is reflected in operations. Maintenance and repairs are charged to operations as incurred.

Impairment of long-lived assets

The Company accounts for long-lived assets under Statement of Financial Accounting Standards ("SFAS") No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed of." SFAS No. 121 requires the Company to review for impairment of long-lived assets, whenever events or changes in circumstances indicate that the carrying amount of an asset might not be recoverable. When such an event occurs, management determines whether there has been an impairment by comparing the anticipated undiscounted future cash flows to the related asset's carrying value. If an asset is considered impaired, the asset is written down to fair value, which is determined based either on discounted cash flows or appraised values, depending on the nature of the asset.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

Revenue recognition

The Company recognizes revenue in accordance with Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements." The Company's revenue is primarily derived from the sale of its laser-based products for use in the aesthetic market. Revenue is recognized upon shipment of the product to the customer, provided that a purchase order exists, remaining obligations are insignificant and collectibility of the resulting receivable is reasonably assured.

The Company generally offers a one-year warranty with its products. The Company provides for the estimated warranty costs at the time of sale. The Company also earns revenues from the sale of extended warranty contracts. Such revenues are deferred and recognized ratably over the extended warranty period. Such revenues were $0, $0 and $8,000 during the years ended December 31, 1999 and 2000 and the nine months ended September 30, 2001, respectively.

Research and development expenditures

Costs related to research, design and development of products are charged to research and development expense as incurred.

Advertising costs

Advertising costs are included in sales and marketing expenses and are expensed as incurred. Advertising expense was $0, $0 and $91,000 during the period from August 10, 1998 (date of inception) to December 31, 1998 and the years ended December 31, 1999 and 2000, respectively and $80,000 for the nine months ended September 30, 2001.

Stock-based compensation

The Company accounts for stock-based employee compensation arrangements in accordance with the provisions of Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees" and its interpretations, and complies with the disclosure provisions of SFAS No. 123, "Accounting for Stock-Based Compensation." Under APB Opinion No. 25, compensation expense is based on the difference, if any, on the date of the grant, between the fair value of the Company's stock and the exercise price. SFAS No. 123 defines a "fair value" based method of accounting for an employee stock option or similar equity investment. The Company accounts for equity instruments issued to non-employees in accordance with the provisions of SFAS No. 123 and Emerging Issues Task Force No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services."

Income taxes

Deferred tax assets and liabilities are determined based on the differences between financial reporting and tax basis of assets and liabilities, measured at tax rates that will be in effect when the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Comprehensive income (loss)

Comprehensive income (loss) is defined as the change in equity from transactions and other events and circumstances other than those resulting from investments by owners and distributions to owners. For the periods ended December 31, 1998, 1999 and 2000, and for the nine months ended September 30,

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

2001, the Company did not have any significant components of comprehensive income (loss) other than net income (loss). Therefore, no separate statement of comprehensive income (loss) has been presented.

Segment information

The Company operates in one business segment, which encompasses the designing, manufacturing and marketing of aesthetic laser systems for dermatologists, plastic surgeons, general physicians and other licensed healthcare practitioners worldwide. Management uses one measurement of profitability and does not desegregate its business for internal reporting. All long-lived assets are maintained in the United States of America. The Company has sales outside the United States, which are disclosed elsewhere in Note 2.

Recent accounting pronouncements

In July 2001, the Financial Accounting Standards Board ("FASB") issued SFAS No. 141 "Business Combinations" which establishes financial accounting and reporting for business combinations and supersedes APB Opinion No. 16, "Business Combinations", and SFAS No. 38, "Accounting for Preacquisition Contingencies of Purchased Enterprises." SFAS No. 141 requires that all business combinations be accounted for using one method, the purchase method. The provisions of this Statement apply to all business combinations initiated after June 30, 2001. The Company will adopt SFAS No. 141 during the first quarter of fiscal year 2002, and this adoption is not expected to have any impact on the Company's financial statements.

In July 2001, the FASB issued SFAS No. 142 "Goodwill and Other Intangible Assets," which establishes financial accounting and reporting for acquired goodwill and other intangible assets and supersedes APB Opinion No. 17, "Intangible Assets." SFAS No. 142 addresses how intangible assets that are acquired individually or with a group of other assets (but not those acquired in a business combination) should be accounted for in financial statements upon their acquisition, and after they have been initially recognized in the financial statements. The provisions of this Statement are effective for fiscal years beginning after December 15, 2001. The Company will adopt SFAS No. 142 during the first quarter of fiscal year 2002, and this adoption is not expected to have any material impact on the Company's financial statements.

In August 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations," which is effective for fiscal years beginning after June 15, 2002. This Statement addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. SFAS No. 143 requires, among other things, that the retirement obligations be recognized when they are incurred and displayed as liabilities on the balance sheet. In addition, the asset's retirement costs are to be capitalized as part of the asset's carrying amount and subsequently allocated to expense over the asset's useful life. The Company believes that the adoption of SFAS No. 143 will not have a significant impact on the Company's financial statements.

In October 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which is effective for fiscal years beginning after December 15, 2001 and interim periods within those fiscal years. This Statement develops one accounting model for long-lived assets that are to be disposed of by sale, as well as addressing the principal implementation issues. The Company believes that the adoption of SFAS No. 144 will not have a significant impact on the Company's financial statements.

ALTUS MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

NOTE 3--BALANCE SHEET DETAIL:

Inventory

Inventory consists of the following (in thousands):

	December 31,		September 30,
	1999	2000	2001
Raw materials	$246	$457	$681
Work-in-process	82	1	6
Finished goods	--	21	139
	$328	$479	$826

Property and equipment, net

Property and equipment, net consists of the following (in thousands):

	December 31,		September 30,
	1999	2000	2001
Leasehold improvements	$ 21	$ 76	$ 104
Office equipment and furniture	128	426	599
Machinery and equipment	104	157	343
Demonstration units	23	196	465
	276	855	1,511
Less: Accumulated depreciation and amortization	(33)	(210)	(476)
	$243	$ 645	$1,035

Depreciation and amortization expense related to property and equipment was $1,000, $31,000 and $177,000 for the period from August 10, 1998 (date of inception) to December 31, 1998 and the years ended December 31, 1999 and 2000, respectively, and $291,000 for the nine months ended September 30, 2001.

Accrued liabilities

Accrued liabilities consist of the following (in thousands):

	December 31,		September 30,
	1999	2000	2001

Warranty	$ 8	$260	$ 952
Income tax	--	--	899
Payroll and related expenses	37	294	294
Other	70	132	66
	$115	$686	$2,211

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

NOTE 4--LINE OF CREDIT:

At December 31, 1999 and 2000, the Company had $163,000 and $118,000, respectively, outstanding under a line of credit. This line of credit provided for equipment based lease borrowings up to $300,000, collateralized by certain assets of the Company. The interest rates on these borrowings ranged between 11.99% to 12.50% per annum. This line of credit was amended in May 2000 to include a revolving line facility which expired in May 2001. At September 30, 2001, the Company had no amounts outstanding under these borrowing facilities.

NOTE 5--COMMITMENTS AND CONTINGENCIES:

Facility lease

The Company leases its office and manufacturing facilities under a non-cancelable operating lease which expires in September 2005. The future minimum rental payments required under the noncancelable operating lease as of September 30, 2001 are as follows (in thousands):

Years ending December 31,	
2001	$ 46
2002	187
2003	193
2004	199
2005	152
Future minimum rental payments	$777

Rent expense was $12,000, $63,000 and $130,000 for the period from August 10, 1998 (date of inception) to December 31, 1998 and for the years ended December 31, 1999 and 2000, respectively, and $136,000 for the nine months ended September 30, 2001.

Contingencies

In October 2001, a third party filed a lawsuit against the Company, alleging patent infringement. Management believes that the claim is without merit and will not have a material adverse effect on the financial position, results of operations or cash flows of the Company. However, litigation is unpredictable and the Company may not prevail in successfully defending its position.

From time to time, the Company may become involved in litigation relating to

claims arising from the ordinary course of business. Management does not believe the final disposition of these matters will have a material adverse effect on the financial position, results of operations or cash flows of the Company.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

NOTE 6--REDEEMABLE CONVERTIBLE PREFERRED STOCK:

Redeemable convertible preferred stock

As of December 31, 1999, 2000 and September 30, 2001, the Company had redeemable convertible preferred stock outstanding as follows (in thousands):

	December 31,		September 30,
	1999	2000	2001
Total authorized shares	4,734	4,784	4,784
Outstanding shares:			
Series A	2,000	2,000	2,000
Series B	2,675	2,675	2,675
Total outstanding shares	4,675	4,675	4,675
Liquidation and redemption amount:			
Series A	$2,000	$2,000	$2,000
Series B	5,350	5,350	5,350
Total liquidation and redemption amount	$7,350	$7,350	$7,350
Proceeds, net of issuance costs:			
Series A	$1,945	$1,945	$1,945
Series B	5,327	5,327	5,327
Total proceeds, net of issuance costs	$7,272	$7,272	$7,272

Dividend rights

The holders of shares of Series A and Series B preferred stock are entitled to receive dividends at the rate of $0.08 and $0.16 per share respectively, per annum. Dividends on preferred stock are in preference to and prior to any payment of any dividend on common stock. Such dividends are payable when and if declared by the board of directors, and are not cumulative. As of September 30, 2001, no dividends had been declared.

Liquidation rights

In the event of any liquidation, dissolution or winding up of the Company, the holders of shares of preferred stock are entitled to receive, prior and in preference to any distribution of any of the assets of the Company to the holders of common stock, an amount per share equal to $1.00 and $2.00 for each outstanding share of Series A and Series B preferred stock, respectively (as adjusted for any stock dividends, combinations, or splits) plus any declared but unpaid dividends on such shares. In the event that upon liquidation or dissolution, the assets and funds of the Company are insufficient to permit the payment to preferred stockholders of the full preferential amounts, then the

entire assets and funds of the Company legally available for distribution are to be distributed ratably among the holders of the shares of preferred stock in proportion to the full preferential amount each such holder is otherwise entitled to receive.

Conversion rights

Each share of preferred stock, at the option of the holder, is convertible into a number of fully paid shares of common stock as determined by dividing the respective preferred stock issue price by the

conversion price in effect at the time. The initial conversion price per share of Series A and Series B preferred stock is $1.00 and $2.00, respectively, and is subject to adjustment in accordance with conversion provisions contained in the Company's Certificate of Incorporation. Conversion is automatic immediately upon closing of a firm commitment underwritten public offering in which the public offering price equals or exceeds $8.00 per share (adjusted to reflect subsequent stock dividends, stock splits or recapitalization) and the aggregate proceeds raised exceed $15,000,000.

Voting rights

Each holder of Series A and Series B preferred stock is entitled to one vote for each share of common stock into which it could be converted.

Redemption rights

The holders of the Series A and Series B preferred stock are entitled at any time after November 10, 2004 with the approval of 50% of the then outstanding Series A and Series B preferred stockholders to require the Company to redeem all shares of Series A and Series B preferred stock in three annual installments.

The redemption price for Series A and Series B preferred stock is $1.00 and $2.00 per share, respectively, plus an amount equal to declared and unpaid dividends on such shares.

As of September 30, 2001, the Company is required, upon approval, to redeem the preferred stock as follows:

Years ending	Series A		Series B		Total	
December 31,	Shares	Amount	Shares	Amount	Shares	Amount
2004.....	666,667	$ 666,667	891,667	$1,783,334	1,558,334	$2,450,001
2005.....	666,667	666,667	891,667	1,783,334	1,558,334	2,450,001
2006.....	666,666	666,666	891,666	1,783,332	1,558,332	2,449,998
	2,000,000	$2,000,000	2,675,000	$5,350,000	4,675,000	$7,350,000

Stock warrants

In February 1999, in connection with the line of credit agreement, the Company

issued a warrant to purchase 9,000 shares of Series A preferred stock at $1.00 per share. The warrant may be exercised within five years of the date of grant. The value of the warrant was calculated using the Black-Scholes option pricing model and deemed insignificant. The warrant was outstanding at September 30, 2001.

In September 1999, the Company issued warrants to purchase 50,000 shares of Series B preferred stock at $2.00 per share. The warrants may be exercised within four years of the date of grant. The warrants terminate upon the effective date of an initial public offering of the Company's shares or a consolidation, merger or sale of all or substantially all the Company's assets. The value of the warrants was calculated using the Black-Scholes option pricing model and deemed insignificant. The warrants were outstanding at September 30, 2001.

In May 2000, in connection with the amended line of credit agreement, the Company issued a warrant to purchase 11,000 shares of Series B preferred stock at $2.00 per share. The warrant may be exercised

within seven years of the date of grant. The value of the warrant was calculated using the Black-Scholes option pricing model and deemed insignificant. The warrant was outstanding at September 30, 2001.

NOTE 7--STOCKHOLDERS' EQUITY (DEFICIT):

Common stock

Each share of common stock is entitled to one vote. The holders of common stock are also entitled to receive dividends whenever funds are legally available and when declared by the board of directors, subject to the prior rights of the preferred stockholders.

Shares of common stock were issued to founders and other key persons under purchase agreements. Some of these agreements contain provisions for the repurchase of unvested shares by the Company upon the termination of employment or services to the Company. The number of shares subject to repurchase is generally reduced by 25% of the initial number issued at the vesting commencement date and 1/36/th/ of the remaining shares each month thereafter that the holder continues to serve as an employee, director or consultant. At September 30, 2001, 236,873 shares of common stock remained subject to repurchase at the original purchase price of $0.001 per share.

Stock option plan

In 1998, the Company adopted the 1998 Stock Plan (the "Plan") under which 3,430,472 shares of the Company's common stock have been reserved for issuance to employees, directors and consultants. Options granted under the Plan may be incentive stock options or non-statutory stock options. Stock purchase rights may also be granted under the Plan. Incentive stock options may only be granted to employees. The board of directors determines the period over which options become exercisable, however, except in the case of options granted to officers, directors and consultants, options shall become exercisable at a rate of no less than 20% per year over five years from the date the options are granted. Options are to be granted at an exercise price not less than the fair market value per share on the grant date for incentive options or 85% of fair market value for nonqualified stock options. For employees holding more than 10% of the voting rights of all classes of stock, the exercise price shall not be less than 110% of the fair market value per share on the grant date. Options granted

under the Plan generally become exercisable 25% on the first anniversary of the vesting commencement date and an additional 1/48/th/ of the total number of shares subject to the option shares shall become exercisable on the last day of each calendar month thereafter until all of the shares have become exercisable. Unvested options that have been exercised are subject to repurchase upon termination of the holder's status as an employee, director or consultant. At September 30, 2001, none of the shares of common stock issued under the plan are subject to the Company's repurchase rights. The term of the options is ten years.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

Activity under the Plan is summarized as follows:

	Shares available for grant	Options outstanding: Number of options	Options outstanding: Weighted average exercise price per share
Shares reserved at plan inception	2,000,000	--	
Balances, December 31, 1998	2,000,000	--	
Additional shares reserved	750,000	--	
Options granted	(2,022,000)	2,022,000	$0.10
Balances, December 31, 1999	728,000	2,022,000	$0.10
Options granted	(743,000)	743,000	$0.38
Options exercised	--	(20,750)	$0.14
Options cancelled	98,500	(98,500)	$0.15
Balances, December 31, 2000	83,500	2,645,750	$0.18
Additional shares reserved	680,472	--	
Options granted	(965,150)	965,150	$3.36
Options exercised	--	(209,365)	$0.16
Options cancelled	201,178	(201,178)	$0.45
Balances, September 30, 2001	--	3,200,357	$1.12

The following table summarizes information concerning outstanding and exercisable options as at September 30, 2001:

	Options outstanding			Options exercisable	
Exercise price	Number outstanding	Weighted-average remaining contractual life (in years)		Number outstanding	Weighted-average exercise price
$0.10	1,763,000	7.93		545,907	$0.10
$0.20	165,907	8.36		53,468	$0.20
$0.50	314,500	8.81		110,360	$0.50
$0.75	155,750	9.52		--	$0.75
$2.50	310,200	9.69		21,400	$2.50

$3.00	72,000	9.84	10,000	$3.00
$4.50	189,000	9.89	--	$4.50
$5.50	230,000	9.98	--	$5.50
	3,200,357	8.40	741,135	$0.28

Stock-based compensation

During the nine months ended September 30, 2001, the Company issued options to certain employees and directors under the Plan with exercise prices below the estimated fair value, determined with

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

hindsight, of the Company's common stock on the date of grant. In accordance with the requirements of APB No. 25, the Company has recorded deferred stock-based compensation for the difference between the exercise price of the stock options and the estimated fair value of the Company's stock on the date of grant. This deferred stock-based compensation is being amortized to expense on a straight-line basis over the period during which the Company's right to repurchase the stock lapses or the options become vested, generally four years. At September 30, 2001, the Company had recorded deferred stock-based compensation in the amount of $2,024,000, of which $183,000 was amortized to expense during the nine months ended September 30, 2001.

Stock-based compensation expense related to stock options granted to non-employees is recognized on a straight-line basis as the stock options are earned in accordance with SFAS No. 123. The Company believes that the fair values of the stock options are more reliably measurable than the fair values of the services received. The estimated fair values of the stock options granted are calculated at each reporting date using the Black-Scholes option pricing model, as prescribed by SFAS No. 123, using the following weighted average assumptions: contractual life of 10 years; weighted average risk-free rate of 5.18%; expected dividend yield of 0%; volatility of 80% and estimated fair values of common stock between $0.09 and $7.28 per share.

The stock-based compensation expense related to non-employees will fluctuate as the deemed fair market value of the common stock fluctuates. In connection with the grants of stock options to non-employees during the nine months ended September 30, 2001, the Company recorded deferred stock-based compensation of $194,000, which was fully amortized during the period.

Pro forma stock-based compensation

With respect to stock options granted to employees, the Company has adopted the disclosure only provisions of SFAS No. 123. The following table discloses the Company's net income (loss) on a pro forma basis, had compensation expense been determined based on the estimated fair value of the options on the date of grant (in thousands, except per share amounts):

	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	2000	Nine months ended September 30, 2000 (unaudited)	2001
Net income (loss):					
As reported	$ (246)	$(2,714)	$1,037	$ 749	$1,907
Pro forma	$ (246)	$(2,721)	$1,008	$ 774	$1,390

Net income (loss) per common share:					
Basic:					
As reported	$(1.06)	$ (3.04)	$ 0.97	$0.72	$ 1.35
Pro forma	$(1.06)	$ (3.05)	$ 0.95	$0.75	$ 0.98
Diluted:					
As reported	$(1.06)	$ (3.04)	$ 0.13	$0.09	$ 0.22
Pro forma	$(1.06)	$ (3.05)	$ 0.13	$0.10	$ 0.16

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

Such pro forma disclosures may not be representative of future stock-based compensation expense because options vest over several years, and additional grants may be made each year. The value of each option granted is estimated on the date of grant using the minimum value method with the following weighted average assumptions:

	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	2000	Nine months ended September 30, 2000 (unaudited)	2001
Risk-free interest rate	4.22%	5.72%	6.01%	6.13%	5.05%
Expected life (in years)	4	4	4	4	4
Dividend yield	--	--	--	--	--

Based on the above assumptions, the weighted average estimated minimum values of options granted were $0.00, $0.02, $0.13 and $3.94 per share for the years ended December 31, 1998, 1999, 2000 and the nine months ended September 30, 2001, respectively.

NOTE 8--INCOME TAXES:

The components of the provision for income taxes are as follows (in thousands):

	Period from August 10, 1998 (date of inception) to December 31, 1998	December 31, 1999	2000	Nine months ended September 30, 2001
Current:				
Federal	$ --	$ --	$ --	$ 964
State	--	--	--	--
	--	--	--	964
Deferred:				
Federal	--	--	--	(521)
State	--	--	--	(73)
	--	--	--	(594)
Total provision for income taxes	$ --	$ --	$ --	$ 370

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

The Company's deferred tax asset consists of the following (in thousands):

	December 31,		Nine months ended September 30,
	1999	2000	2001
Net operating loss carryforwards	$ 1,086	$ 380	$ --
Capitalized start-up costs	53	36	23
Credits	106	196	--
Accruals and reserves	44	148	550
Depreciation and amortization	--	--	21
Gross deferred tax asset	1,289	760	594
Less: Valuation allowance	(1,289)	(760)	--
Net deferred tax asset	$ --	$ --	$594

The provision for income taxes reconciles to the amount computed by applying the statutory federal rate of 34% to income (loss) before taxes as follows:

	Period from August 10, 1998 (date of inception) to December 31,	Years ended December 31,		Nine months ended September 30,
	1998	1999	2000	2001
Tax at federal statutory rate	(34.00)%	(34.00)%	34.00 %	34.00 %
State, net of federal benefit	(5.83)%	(5.83)%	5.83 %	5.83 %
Meals and entertainment	0.00 %	0.50 %	1.50 %	2.19 %
Benefit for research and development credit	(2.62)%	(2.30)%	(5.00)%	(1.77)%
Deferred stock-based compensation expense	0.00 %	0.00 %	0.00 %	5.63 %
Other	(2.25)%	(1.77)%	(0.33)%	3.75 %
Change in valuation allowance	44.70 %	43.40 %	(36.00)%	(33.38)%
Provision for taxes	-- %	-- %	-- %	16.25 %

The Company did not record an income tax charge during 2000 due to the utilization of net operating loss carryforwards from prior periods. The Company had no net operating loss carryforwards and no research and development credits remaining at September 30, 2001. During the nine months ended September 30, 2001, the Company released its valuation allowance against its deferred tax asset and recorded a benefit of $594,000 that, in the opinion of management, is more likely than not to be realized.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

NOTE 9--NET INCOME (LOSS) PER SHARE:

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share is computed by giving effect to all dilutive potential common shares, including options, common stock subject to repurchase, warrants and redeemable convertible preferred stock. A reconciliation of the numerator and denominator used in the calculation of historical basic and diluted net income (loss) per share follows (in thousands):

	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	Years ended December 31, 2000	Nine months ended September 30, 2000 (unaudited)	Nine months ended September 30, 2001
Numerator:					
Net income (loss)	$ (246)	$(2,714)	$1,037	$ 749	$1,907
Denominator:					
Weighted-average number of common shares outstanding	1,000	2,000	1,701	1,705	1,778
Less: Weighted-average shares subject to repurchase	(769)	(1,108)	(637)	(671)	(366)
Weighted-average number of common shares outstanding used in computing basic net income (loss) per share	231	892	1,064	1,034	1,412
Dilutive potential common shares used in computing diluted net income (loss) per share	--	--	6,944	6,967	7,256
Total weighted-average number of shares used in computing diluted net income (loss) per share	231	892	8,008	8,001	8,668

Anti-dilutive securities

The following weighted-average number of outstanding options, common stock subject to repurchase and warrants (prior to the application to the treasury stock method) and redeemable convertible preferred stock (on an as-converted basis) were excluded from the computation of diluted net income (loss) per common share for the period ended December 31, 1998, the years ended December 31, 1999 and 2000 and for the nine months ended September 30, 2000 (unaudited) and 2001 because including them would have had an antidilutive effect (in thousands):

	Period from August 10, 1998 (date of inception) to December 31, 1998	Years ended December 31, 1999	Years ended December 31, 2000	Nine months ended September 30, 2000 (unaudited)	Nine months ended September 30, 2001
Options to purchase common stock	--	--	442	335	230
Common stock subject to repurchase	1,437	915	--	--	--
Redeemable convertible preferred stock	231	2,360	--	--	--
Warrants to purchase preferred stock	--	59	70	70	--

1,668	3,334	512	405	230

NOTE 10--EMPLOYEE BENEFIT PLANS:

In April 1999, the Company adopted a defined contribution retirement plan, which qualifies under Section 401(k) of the Internal Revenue Code. The plan covers essentially all employees. Eligible employees make voluntary contributions to the plan up to 15% of their annual compensation, subject to statutory annual limitations, and the employer is allowed to make discretionary contributions. During the years ended December 31, 1999 and 2000 and the nine month period ended September 30, 2001, the Company made contributions of $0, $0 and $94,000, respectively, under the plan.

NOTE 11--SUBSEQUENT EVENTS:

Initial public offering

In December 2001, the Company's board of directors authorized the filing of a registration statement with the Securities and Exchange Commission to permit the Company to sell its common stock to the public. Upon the effective completion of the Company's initial public offering, assuming the conditions described in Note 6 are met, all of the outstanding shares of the Company's redeemable convertible preferred stock will be automatically converted into 4,675,000 shares of common stock (see Notes 2 and 6).

Deferred stock-based compensation

During the period from October 1, 2001 through December 14, 2001, the Company recorded deferred stock-based compensation of $2,996,000 in connection with options granted to employees. The deferred stock-based compensation will be amortized to expense on a straight-line basis over the vesting period of the options.

Part II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by Altus Medical in connection with the sale of the common stock being registered hereby, other than underwriting commissions and discounts. All amounts are estimates except the SEC Registration Fee and the NASD filing fee.

SEC registration fee	$ 14,340
NASD filing fee	6,500
Nasdaq National Market listing fee	95,000
Blue Sky fees and expenses	10,000
Printing and engraving expenses	250,000
Legal fees and expenses	450,000
Accounting fees and expenses	400,000
Transfer agent and registrar fees	5,000
Miscellaneous	69,160
Total	$1,300,000

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Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law permits a corporation to include in its charter documents, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by the current law.

Article VII of our Amended and Restated Certificate of Incorporation provides for the indemnification of directors to the fullest extent permissible under Delaware law.

Article VI of our Bylaws provides for the indemnification of officers, directors and third parties acting on our behalf if such person acted in good faith and in a manner reasonably believed to be in and not opposed to our best interest and, with respect to any criminal action or proceeding, the indemnified party had no reason to believe his or her conduct was unlawful.

We intend to enter into indemnification agreements with our directors and executive officers, in addition to indemnification provided for in the our Bylaws, and intend to enter into indemnification agreements with any new directors and executive officers in the future.

The Underwriting Agreement (Exhibit 1.1 hereto) provides for indemnification by the Underwriters of us and our executive officers and directors, and by us of the underwriters for certain liabilities, including liabilities arising under the Securities Act, in connection with matters specifically provided in writing by the Underwriters for inclusion in the Registration Statement.

We intend to purchase and maintain insurance on behalf of any person who is or was a director or officer against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

See also the undertakings set out in response to Item 17 herein.

Part II

Item 15. Recent Sales of Unregistered Securities.

We have issued and sold the following securities:

1. From August 1998 through September 2001, we granted and issued 230,115 shares of our common stock at prices ranging from $0.10 to $0.50 per share to employees and consultants upon exercise of stock options pursuant to our 1998 Stock Plan, as amended.

2. On November 12, 1999, we issued and sold to 6 private investors an aggregate of 2,675,000 shares of Series B preferred Stock convertible into an aggregate of 2,675,000 shares of common stock at a purchase price per share of common stock of $2.00

3. On November 19, 1998, we issued and sold to 18 private investors an aggregate of 2.0 million shares of Series A preferred Stock convertible into an aggregate of 2.0 million shares of common stock at a purchase price per share of common stock of $1.00.

The sales of the above securities were deemed to be exempt from registration under the Securities Act with respect to items 2 and 3 above in reliance on Section 4(2) of the Securities Act, or Regulation D promulgated thereunder, and

with respect to Item 1 above Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving a public offering or transactions pursuant to compensatory benefit plans and contracts relating to compensation as provided under such Rule 701. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates and warrants issued in such transactions. All recipients had adequate access, through their relationships with us, to information about us.

Part II

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits.

Exhibit number	Description
1.1*	Form of Underwriting Agreement.
3.1	Amended and Restated Certificate of Incorporation of the Registrant (Delaware) as currently in effect and Certificate of Amendment thereto.
3.2*	Amended and Restated Certificate of Incorporation of the Registrant (Delaware) to be effective upon closing of the offering.
3.3	Bylaws of the Registrant as currently in effect.
3.4*	Bylaws of the Registrant to be effective upon the closing of the offering.
4.1*	Specimen Common Stock certificate of the Registrant.
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
10.1*	Form of Indemnification Agreement for directors and executive officers.
10.2	1998 Stock Plan.
10.3*	2002 Stock Plan.
10.4*	2002 Director Option Plan.
10.5*	2002 Employee Stock Purchase Plan.
10.6	Amended and Restated Investor Rights Agreement dated November 12, 1999 by and among the Registrant and certain stockholders.
10.7	Lease dated October 1, 2000 for office space located at 819-831 Cowan Road, Burlingame, California 94010.
10.8+	Distribution Agreement by and between the Registrant and Hoya Photonics, Inc., a California corporation doing business as Continuum, Continuum Electro-Optics, Inc. and as Continuum Biomedical, effective September 1, 2001.
23.1	Consent of Independent Accountants.
23.2*	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (See Exhibit 5.1).
24.1	Power of Attorney (see page II-5).

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* Documents to be filed by amendment.
\+ Portions of the Exhibit have been omitted pursuant to a request for confidential treatment.

(b) Financial statement schedules:

None.

Part II

Item 17. Undertakings.

We hereby undertake to provide to the Underwriters at the closing specified in the Underwriting Agreement certificates in such denominations and registered in such names as required by the Underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification by us for liabilities arising under the Securities Act may be permitted of our directors, officers and controlling persons pursuant to the provisions described in Item 14 or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

We hereby undertake that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of Prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Part II

SIGNATURES

Under the requirements of the Securities Act of 1933, Altus Medical, Inc. has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Burlingame, State of California, on the 4th day of January, 2002.

ALTUS MEDICAL, INC.

By: /s/ Kevin P. Connors

Name: Kevin P. Connors
Title: President and Chief Executive Officer

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Kevin P. Connors and Ronald J. Santilli, and each of them acting individually, as his true and lawful attorneys-in-fact and agents, with full power of each to act alone, with full powers of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign the Registration Statement filed herewith and any and all amendments to said Registration Statement (including post-effective

amendments and any related registration statements thereto filed pursuant to Rule 462 and otherwise), and file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this amendment to registration statement has been signed by the following persons in the capacities and on the dates indicated:

Name and Signature	Title	Date
/s/ Kevin P. Connors Kevin P. Connors	President, Chief Executive Officer and Director (Principal Executive Officer)	January 4, 2002
/s/ Ronald J. Santilli Ronald J. Santilli	Vice President, Finance and Chief Financial Officer (Principal Accounting Officer)	January 4, 2002
/s/ David A. Gollnick David A. Gollnick	Vice President, Research and Development and Director	January 4, 2002
David B. Apfelberg	Director	
/s/ Annette J. Campbell-White Annette J. Campbell-White	Director	January 4, 2002
/s/ Guy P. Nohra Guy P. Nohra	Director	January 4, 2002

EXHIBIT INDEX

Exhibit number	Description
1.1*	Form of Underwriting Agreement.
3.1	Amended and Restated Certificate of Incorporation of the Registrant (Delaware) as currently in effect and Certificate of Amendment thereto.
3.2*	Amended and Restated Certificate of Incorporation of the Registrant (Delaware) to be effective upon closing of the offering.
3.3	Bylaws of the Registrant as currently in effect.
3.4*	Bylaws of the Registrant to be effective upon the closing of the offering.
4.1*	Specimen Common Stock certificate of the Registrant.
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
10.1*	Form of Indemnification Agreement for directors and executive officers.
10.2	1998 Stock Plan.
10.3*	2002 Stock Plan.
10.4*	2002 Director Option Plan.
10.5*	2002 Employee Stock Purchase Plan.
10.6	Amended and Restated Investor Rights Agreement dated November 12, 1999 by and among the Registrant and certain stockholders.
10.7	Lease dated October 1, 2000 for office space located at 819-831 Cowan Road, Burlingame, California 94010.

10.8+	Distribution Agreement by and between the Registrant and Hoya Photonics, Inc., a California corporation doing business as Continuum, Continuum Electro-Optics, Inc. and as Continuum Biomedical, effective September 1, 2001.
23.1	Consent of Independent Accountants.
23.2*	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (See Exhibit 5.1).
24.1	Power of Attorney (see page II-5).

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* Documents to be filed by amendment.

+ Portions of the Exhibit have been omitted pursuant to a request for confidential treatment.

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

ALTUS MEDICAL, INC.

Altus Medical, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

A. The name of the corporation is Altus Medical, Inc. The original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on August 10, 1998 under the name of Acme Medical, Inc.

B. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of this corporation.

C. The text of the Certificate of Incorporation as heretofore amended or supplemented is hereby amended and restated in its entirety to read as follows:

ONE. The name of this corporation is Altus Medical, Inc.

TWO. The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such office is The Corporation Trust Company.

THREE. The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOUR. This corporation is authorized to issue two classes of stock to be designated Common Stock and Preferred Stock. The total number of shares which this corporation is authorized to issue is 24,784,000 shares. 20,000,000 shares shall be Common Stock with a par value of $0.001 per share. 4,784,000 shares shall be Preferred Stock with a par value of $0.001 per share, of which 2,009,000 shall be designated Series A Preferred Stock, and 2,775,000 are designated Series B Preferred Stock.

The relative powers, preferences, special rights, qualifications, limitations and restrictions granted to or imposed on the respective classes of the shares of capital stock or the holders thereof are as follows:

1. Dividends.

(a) Dividends.

(i) The holders of the Series A Preferred Stock and the Series B Preferred Stock, on a pari passu basis, shall be entitled to receive dividends, out of any assets legally available therefor at the rate of $0.08 and $0.16 per share per annum (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), respectively. No dividends (other than those payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) shall be paid on any other stock of this corporation during any fiscal year of the corporation until dividends in the total amount of $0.08 and $0.16 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) on the Series A Preferred Stock and the Series B Preferred Stock, respectively, shall have been paid or declared and set apart during that fiscal year.

(ii) After November 10, 2002, no dividends shall be paid on any share of Common Stock unless a dividend (including the amount of any dividends paid pursuant to the above provisions of this Section 1(a)(i) is paid with respect to all outstanding shares of Series A Preferred Stock and Series B Preferred Stock in an amount for each such share of Series A Preferred Stock and Series B Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Series A Preferred Stock and Series B Preferred Stock could then be converted.

(b) Dividends Noncumulative. Dividends on shares of Common Stock, the Series A Preferred Stock and the Series B Preferred Stock under this Section 1 shall be payable when, as and if declared by the board of directors of the corporation, and shall not be cumulative, and no right shall accrue to holders of Common Stock, the Series A Preferred Stock and the Series B Preferred Stock under this Section 1 by reason of the fact that dividends on said shares are not declared in any prior period.

2. Liquidation Preference.

(a) Preferred Stock Preference. In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the corporation to the holders of Common Stock by reason of their ownership thereof, (A) in the case of the Series A Preferred Stock, an amount per share equal to the sum of (i) $1.00 for each outstanding share of Series A Preferred Stock (the "Series A Preference") and (ii) an amount equal to declared but unpaid dividends on such share and (B) in the case of the Series B Preferred Stock, an amount per share equal to the sum of (i) $2.00 for each outstanding share of Series B Preferred Stock (the "Series B Preference") and (ii) an amount equal to declared

but unpaid dividends on such share. The per share amounts in the preceding sentence shall be adjusted for any stock dividends, combinations, splits or the like with respect to such shares, and upon the occurrence of any such event the Series A Preferred Stock and Series B Preferred Stock shall rank on parity with respect to the receipt of their respective preference amounts. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the corporation legally available for distribution shall be distributed ratably among the

holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to their aggregate liquidation preference.

(b) Remaining Assets.

(i) If the liquidation, dissolution, or winding up of the corporation occurs prior to November 10, 2002, then upon the completion of the distribution required by subparagraph (a) of this Section 2, the remaining assets of the corporation available for distribution to stockholders shall be distributed to the holders of the Common Stock of the corporation pro rata in proportion to the number of shares of Common Stock held by each.

(ii) If the liquidation, dissolution, or winding up of the corporation occurs on or after November 10, 2002, then upon the completion of the distribution required by subparagraph (a) of this Section 2, the remaining assets of the corporation available for distribution to stockholders shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock (and Common Stock into which the shares of Series A Preferred Stock and Series B Preferred Stock could be converted at the time of distribution) held by each stockholder until, (A) with respect to the holders of Series A Preferred Stock, such holders shall have received an aggregate of $1.50 per share (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares and including amounts paid pursuant to subsection (a) of this Section 2) plus an amount equal to declared but unpaid dividends on such share, (B) with respect to the holders of the Series B Preferred Stock, such holders shall have received an aggregate of $3.00 per share (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares and including amounts paid pursuant to subsection (a) of this Section 2) plus an amount equal to declared but unpaid dividends on such share, thereafter, any assets available for distribution shall be distributed to the holders of the Common Stock of the corporation pro rata in proportion to the number of shares of Common Stock held by each.

(c) Reorganization or Merger. A merger or reorganization of the corporation with or into any other corporation or corporations or a sale of all or substantially all of the assets of the corporation, in which transaction the corporation's stockholders immediately prior to such transaction own immediately after such transaction less than 50% of the equity securities of the surviving corporation or its parent, shall be deemed to be a liquidation within the meaning of this Section 2; provided that the holders of Preferred Stock and Common Stock shall be paid in cash or in securities received or in a combination thereof; provided, further that holders of the Preferred Stock shall be paid all in cash if the cash received in the transaction is sufficient to permit such payment and otherwise shall be paid all the cash consideration received in the transaction with the balance of the Series A Preference and the Series B Preference paid in securities received in the transaction. Any

securities to be delivered to the holders of the Preferred Stock and Common Stock upon a merger, reorganization or sale of substantially all of the assets of the corporation shall be valued as follows:

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) business days prior to the closing;

(ii) If actively traded over-the counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the board of directors of the corporation and the holders of not less than a majority of the outstanding shares of Preferred Stock, provided that if the board of directors of the corporation and the holders of a majority of the outstanding shares of Preferred Stock are unable to reach agreement, then by independent appraisal by an investment banker hired and paid by the corporation, but acceptable to the holders of a majority of the outstanding shares of Preferred Stock.

(iv) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (ii), or (iii) to reflect the approximate fair market value thereof, as mutually determined by the board of directors of the corporation and the holders of not less than a majority of the outstanding shares of Preferred Stock.

3. Voting Rights. Except as otherwise required by law or by Section 6 hereof, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Series A Preferred Stock and each share of Series B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of the corporation having general voting power and not separately as a class. Fractional votes by the holders of Series A Preferred Stock and the holders of Series B Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Series A Preferred Stock and shares of Series B Preferred Stock held by each holder could be converted) be rounded to the nearest whole number (with one-half rounded upward to one). The holders of Series A Preferred Stock shall be entitled to elect two (2) directors of the corporation provided that at least 500,000 shares of Series A Preferred Stock are outstanding at the time of the election; the holders of Series B Preferred Stock shall be entitled to elect one (1) director of the corporation provided that at least 500,000 shares of Series B Preferred Stock are outstanding at the time of election; the holders of Common Stock shall be entitled to elect three (3) directors of the corporation; and the holders of Common Stock and Preferred Stock, voting together, shall be entitled to elect all remaining directors of the Corporation. Notwithstanding any bylaw provision to the contrary, the stockholders entitled to elect a particular director shall solely be entitled to remove such

director or to fill a vacancy in the seat formerly held by such director, all in accordance with the applicable provisions of the Delaware General Corporation Law.

4. Redemption.

(a) Restriction on Redemption. Except as expressly provided in this paragraph 4, the corporation shall not have the obligation or right to redeem or otherwise acquire for value any or all of the Preferred Stock.

(b) Redemption on Demand. In the event that (i) the corporation shall have received written notice from the holders of more than 50% of the outstanding shares of Series A Preferred Stock and (ii) the corporation shall have received written notice from the holders of more than 50% of the outstanding shares of Series B Preferred Stock at any time after November 10,

2004, the corporation will on the date 30 days after such notice is given (a "Redemption Date") to the extent legally permitted, repurchase such shares of both Series A Preferred Stock and Series B Preferred Stock by payment of the Series A Redemption Price and Series B Redemption Price, respectively, (as defined below) in three annual installments. The number of shares of Series A Preferred Stock that the Company shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series A Preferred Stock outstanding immediately prior to the Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). The number of shares of Series B Preferred Stock that the Company shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series B Preferred Stock outstanding immediately prior to the Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 4 shall be redeemed from each holder of Series A Preferred Stock and each holder of Series B Preferred Stock on a pro rata basis.

(c) Redemption Price. The Redemption Price for Series A Preferred Stock ("Series A Redemption Price") and Series B Preferred Stock ("Series B Redemption Price") shall be $1.00 per share and $2.00 per share, respectively, (appropriately adjusted for stock splits, stock dividends, recapitalizations and similar events), plus an amount equal to declared and unpaid dividends on such share.

(d) Redemption Procedure. At least 20 days prior to the Redemption Date, written notice (the "Redemption Notice") shall be mailed first class, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock and the Series B Preferred Stock, at the address last shown on the records of the corporation for such holder or given by the holder to the corporation for the purpose of notice or if no such address appears or is given, at the place where the principal executive office of the corporation is located, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed, the Redemption Date, the Series A Redemption Price, the Series B Redemption Price, the place at which payment may be obtained and the date on which such holder's right to convert Series A Preferred Stock and Series B Preferred Stock into Common Stock as to such shares terminates and calling upon such holder to surrender to the corporation, in the manner and at the place designated, its certificate or certificates representing the

shares to be redeemed. Except as provided in paragraph 4(e), on or after the Redemption Date, each holder of Series A Preferred Stock and Series B Preferred Stock to be redeemed shall surrender to the corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon, the aggregate Series A Redemption Price and Series B Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(e) Effect of Redemption. From and after the Redemption Date, unless there has been a default in payment of either the Series A Redemption Price or the Series B Redemption Price, all rights of the holders of such shares as holders of Series A Preferred Stock and Series B Preferred Stock (except the right to receive their respective Series A Redemption Price and Series B Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the corporation or be deemed to be

outstanding for any purpose whatsoever. If the funds of the corporation legally available for redemption of shares of Series A Preferred Stock and Series B Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock and Series B Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares pro rata among each holder of Series A Preferred Stock and Series B Preferred Stock. The shares of Series A Preferred Stock and Series B Preferred Stock not redeemed shall remain outstanding and be entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of shares of Series A Preferred Stock and Series B Preferred Stock, such funds will immediately be set aside for the redemption of the balance of the shares which the corporation has become obligated to redeem on any Redemption Date but which it has not redeemed; provided that the holders of Series A Preferred Stock and the holders of Series B Preferred Stock shall receive at least 10 days notice of such redemption.

(f) Redemption Funding. On or prior to the Redemption Date, the corporation shall deposit the Series A Redemption Price and Series B Redemption Price of all shares of Series A Preferred Stock and Series B Preferred Stock, respectively, designated for redemption in the Redemption Notice, with a bank or trust company located in the State of California having aggregate capital and surplus in excess of $50,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed. Simultaneously, the corporation shall deposit irrevocable instructions and authority to such bank or trust company to pay, on and after the date fixed for redemption or prior thereto, the Series A Redemption Price and Series B Redemption Price of the Series A Preferred Stock and the Series B Preferred Stock, respectively, to the holders thereof upon surrender of their certificates. Any money or notes deposited by the corporation pursuant to this subsection remaining unclaimed at the expiration of six months following the Redemption Date shall thereafter be returned to the corporation, provided that the stockholder to which such money would be payable hereunder shall be entitled, upon proof of its ownership of the Series A Preferred Stock or Series B Preferred Stock and payment of any bond requested by the corporation, to receive such monies but without interest from the Redemption Date.

5. Conversion. The holders of the Preferred Stock have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Preferred Stock shall be convertible upon the written request of (i) at least a majority of the outstanding shares of Series A Preferred Stock so long as 500,000 shares of Series A Preferred Stock is outstanding, and (ii) at least a majority of the outstanding shares of Series B Preferred Stock so long as 500,000 shares of Series B Preferred Stock is outstanding, at the office of the corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price (as hereinafter defined) by the Conversion Price, determined as hereinafter provided, in effect at the time of the conversion (the "Conversion Rate"). The Issuance Price for the Series A Preferred Stock and the Series B Preferred Stock shall be $1.00 and $2.00, respectively. The price at which shares of Common Stock shall be deliverable upon conversion (the "Conversion Price") for the Series A Preferred Stock and for the Series B Preferred Stock shall initially be $1.00 and $2.00, per share respectively. Such initial Conversion Price shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price immediately prior to the closing of a firm commitment

underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the corporation to the public in which the public offering price exceeds (prior to underwriter's discounts or commissions and offering expenses) $8.00 per share (adjusted for any subsequent stock splits, stock dividends, reclassifications or recapitalizations) and the aggregate proceeds raised exceeds $15,000,000 (net of underwriter's discounts or commissions and offering expenses). In the event of the automatic conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion. Before any holder of the Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 5(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the corporation or its transfer agent, and provided further that the corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the corporation or its transfer agent as provided above, or the holder notifies the corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the corporation to indemnify the corporation from any loss incurred by it in connection with such certificates. The corporation shall, as soon as practicable after such delivery, or such agreement and

indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of automatic conversion on the date of closing of the offering and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Fractional Shares. In lieu of any fractional shares to which the holder of the Preferred Stock would otherwise be entitled, the corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of such series of Preferred Stock as determined by the board of directors of the corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(e) Adjustment of Conversion Price. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If the corporation shall issue (or, pursuant to Section 5(e)(i)(B)(3) hereof, shall be deemed to have issued) any Common Stock other than "Excluded Stock" (as defined below) for a consideration per share less than

the Conversion Price in effect immediately prior to the issuance of such Common Stock (excluding stock dividends, subdivisions, split-ups, combinations, dividends or recapitalizations which are covered by Sections 5(e) (iii), (iv), (v) and (vi)), the Conversion Price in effect immediately after each such issuance shall forthwith (except as provided in this Section 5(e)) be adjusted to a price equal to the quotient obtained by dividing:

(A) an amount equal to the sum of

(x) the total number of shares of Common Stock outstanding (including any shares of Common Stock issuable upon conversion of outstanding shares of the Preferred Stock, or deemed to have been issued pursuant to subdivision (3) of this clause (i) and to clause (ii) below) immediately prior to such issuance multiplied by the Conversion Price for such series of Preferred Stock in effect immediately prior to such issuance, plus

(y) the aggregate consideration received by the corporation upon such issuance, by

(B) the total number of shares of Common Stock outstanding immediately prior to such issuance of Common Stock (including any shares of Common Stock issuable upon conversion of the outstanding Preferred Stock or deemed to have been issued pursuant to subdivision (3) of this clause (i) and to clause (ii) below) plus the number of shares of Common Stock issued in the transaction which resulted in the adjustment pursuant to this Section 5(e)(i).

For the purposes of any adjustment of the Conversion Price for any series of Preferred Stock pursuant to this clause (i), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor after deducting any discounts or commissions paid or incurred by the corporation in connection with the issuance and sale thereof.

(2) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the board of directors of the corporation, in accordance with generally accepted accounting treatment; provided, however, that such fair market value as
determined by the board of directors of the corporation shall not exceed the aggregate "Current Market Price" (as defined below) of the shares of Common Stock being issued.

(3) In the case of the issuance of (i) options to purchase or rights to subscribe for Common Stock, (ii) securities by their terms convertible into or exchangeable for Common Stock, or (iii) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(a) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subdivisions (1) and (2) above), if any, received by the corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(b) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time

such securities were issued or such options or rights were issued and for a consideration equal to the consideration received by the corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional minimum consideration, if any, to be received by the corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subdivisions (1) and (2) above);

(c) on any change in the number of shares of Common Stock deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, other than a change resulting from the antidilution provisions of such options, rights or securities, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon (x) the issuance of such options, rights or securities not exercised, converted or exchanged prior to such change or (y) the options or rights

related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

(d) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon the issuance of such options, rights, convertible or exchangeable securities or options or rights relate to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

(ii) "Excluded Stock" shall mean:

(A) all shares of Common Stock issued and outstanding on the date this certificate is filed with the Secretary of State of the State of Delaware;

(B) all shares of Series A Preferred Stock and Series B Preferred and the Common Stock into which such shares of Preferred Stock are convertible;

(C) up to 3,350,000 shares of Common Stock, warrants or options to purchase Common Stock or other securities issued, upon the approval of the board of directors of the corporation, to employees, officers, directors and consultants of the corporation pursuant to any plan or arrangement; and

(D) all securities issued to lending or leasing institutions in connection with commercial credit arrangements, equipment financing and similar transactions approved by the board of directors of the corporation including at least one of the representatives designated by holders of the Preferred Stock.

All outstanding shares of Excluded Stock (including shares issuable upon conversion of the Series A Preferred Stock) shall be deemed to be outstanding for all purposes of the computations of Section 5(e)(i) above.

(iii) If the number of shares of Common Stock outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Conversion Price

of the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of the Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(iv) If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, then, on the effective date of such combination, the Conversion Price of the Preferred Stock shall be

appropriately increased so that the number of shares of Common Stock issuable on conversion of any shares of the Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(v) In case the corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the corporation convertible into or exchangeable for Common Stock), then, in each such case, the holders of shares of the Preferred Stock shall, concurrent with the distribution to holders of Common Stock, receive a like distribution based upon the number of shares of Common Stock into which such Preferred Stock is then convertible.

(vi) In case, at any time after the date hereof, of any capital reorganization, or any reclassification of the stock of the corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the corporation with or into another person (other than a consolidation or merger in which the corporation is the continuing entity and which does not result in any change in the Common Stock or a consolidation or merger where Section 2 applies), the shares of the Preferred Stock shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition such holder had converted its shares of Preferred Stock into Common Stock. The provisions of this clause (vi) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(vii) All calculations under this Section 5 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(viii) For the purpose of any computation pursuant to this Section 5(e), the "Current Market Price" at any date of one share of Common Stock, shall be deemed to be the average of the highest reported bid and the lowest reported offer prices on the preceding business day as furnished by the National Quotation Bureau, Incorporated (or equivalent recognized source of quotations); provided, however, that if the Common Stock is not traded in such
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manner that the quotations referred to in this clause (viii) are available for the period required hereunder, Current Market Price shall be determined in good faith by the board of directors of the corporation, but if challenged by the holders of more than 50% of the outstanding Preferred Stock, then as determined by an independent appraiser selected by the board of directors of the corporation, the cost of such appraisal to be borne by the challenging parties unless the Current Market Price determined by such appraisal is greater than 130% of the Current Market Price as determined by the board of directors of the corporation, then the cost of such appraisal shall be borne by the corporation.

(f) Minimal Adjustments. No adjustment in the Conversion Price for any series of Preferred Stock need be made if such adjustment would result in a change in the Conversion Price of less than $0.01. Any adjustment of less than $0.01 which is not made shall be carried forward and

shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of $0.01 or more in the Conversion Price.

(g) No Impairment. The corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment. This provision shall not restrict the corporation's right to amend its Certificate of Incorporation with the requisite stockholder consent.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate for any series of Preferred Stock pursuant to this Section 5, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon written request at any time of any holder of any series of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments, (ii) the Conversion Rate at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Preferred Stock.

(i) Notices of Record Date and Proposed Liquidation Distribution. In the event of any taking by the corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property or to receive any other right, the corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right.

(j) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of the Preferred Stock shall be deemed given upon personal delivery, upon delivery by nationally recognized courier or three business days after deposit in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the corporation's books.

(k) Reservation of Stock Issuable Upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding

shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the corporation will take such corporate action as may, in the opinion of its counsel,

be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(l) Reissuance of Converted Shares. No shares of Preferred Stock which have been converted into Common Stock after the original issuance thereof shall ever again be reissued and all such shares so converted shall upon such conversion cease to be a part of the authorized shares of the corporation.

6. General Covenants. In addition to any other rights provided by law, without first obtaining the vote or written consent of the holders of (i) at least a majority of the outstanding shares of Series A Preferred Stock so long as 500,000 shares of Series A Preferred Stock is outstanding and (ii) at least a majority of the outstanding shares of Series B Preferred Stock so long as 500,000 shares of Series B Preferred Stock is outstanding, this corporation shall not:

(a) alter or change the rights, preferences or privileges of the Preferred Stock;

(b) create (by amendment of the Certificate of Incorporation, reclassification, certificate of designation or otherwise) any new class or series of shares having rights, preferences or privileges senior to or on a parity with the Preferred Stock;

(c) increase or decrease the authorized number of shares of Common Stock or Preferred Stock;

(d) undertake any act which would result in taxation under Section 305 of the Internal Revenue Code;

(e) effect a reorganization, merger or sale of all or substantially all of the assets of the corporation or effect any transfer or series of related transfers in which the stockholders of the corporation immediately prior to the transaction possess less than 50% of the voting power of the surviving entity (or its parent) immediately after the transaction;

(f) pay or declare a dividend or other distribution on any shares of Common Stock or Preferred Stock;

(g) redeem any shares of Common Stock (other than pursuant to equity incentive agreements which granted the corporation the right to repurchase shares upon termination of a person's service with the corporation);

(h) increase or decrease the authorized number of directors;

(i) amend or waive any provisions in this Certificate of Incorporation or the Bylaws of the corporation which relate to Preferred Stock; or

(j) amend the provisions of this paragraph 6.

FIVE. The corporation is to have perpetual existence.

SIX. In furtherance and not in limitation of the powers conferred by statute, the board of directors of the corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the corporation.

SEVEN. The number of directors which will constitute the whole board of directors of the corporation shall be as specified in the Bylaws of the corporation.

EIGHT. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the corporation may be kept (subject to any provisions contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors of the corporation or in the Bylaws of the corporation. Election of directors need not be by written ballot unless the Bylaws of the corporation so provide.

NINE. To the fullest extent permitted by the Delaware General Corporation Law, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article NINE, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article NINE, shall eliminate or reduce the effect of this Article NINE in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article NINE, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

TEN. (a) The corporation shall indemnify each of the corporation's directors in each and every situation where, under Section 145 of the General Corporation Law of the State of Delaware, as amended from time to time ("Section 145"), the corporation is permitted or empowered to make such indemnification. The corporation may, in the sole discretion of the board of directors of the corporation, indemnify any other person who may be indemnified pursuant to Section 145 to the extent the board of directors deems advisable, as permitted by Section 145. The corporation shall promptly make or cause to be made any determination required to be made pursuant to Section 145.

(b) No person shall be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is subsequently amended to further eliminate or limit the liability of a director, then a director of the corporation, in addition to the circumstances in which a director is not personally liable as set forth in the preceding sentence, shall not be liable to the fullest extent permitted by the amended General Corporation Law of the State of Delaware. For purposes of this Article TEN, "fiduciary duty as a director" shall include any fiduciary duty arising out of serving at the corporation's request as a director of another corporation, partnership, joint venture or other enterprise, and "personal liability to the corporation or its stockholders" shall include any liability to such other corporation, partnership, joint venture, trust or other enterprise, and any liability to the corporation in its capacity as a

security holder, joint venturer, partner, beneficiary, creditor or investor of

or in any such other corporation, partnership, joint venture, trust or other enterprise.

ELEVEN. Advance notice of new business and stockholder nominations for the election of directors shall be given in the manner and to the extent provided in the Bylaws of the corporation.

TWELVE. Subject to Article Five, Paragraph 6, the corporation reserves the right to amend, alter, change or repeal any provisions contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

THIRTEEN. This Amended and Restated Certificate of Incorporation has been duly approved by the board of directors of the corporation.

FOURTEEN. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the Board of Directors and the stockholders of the corporation. The consent of the stockholders of the corporation was duly obtained in accordance with Section 228 of the General Corporation Law of the State of Delaware at which time the requisite number of shares as required by statute and the Certificate of Incorporation were voted in favor of the amendment and restatement of this Certificate of Incorporation and written notice of such was given by the corporation in accordance with said Section 228.

IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Kevin Connors, its President on this 30th day of January 2001.

ALTUS MEDICAL, INC.

By: /s/ Kevin Connors

Kevin Connors, President

CERTIFICATE OF AMENDMENT OF

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF ALTUS MEDICAL, INC.

Kevin Connors certifies that:

1. He is the President and Chief Executive Officer of Altus Medical, Inc., a Delaware corporation.

2. Article IV, Section 5(e)(ii)(C) of the Amended and Restated Certificate of Incorporation of the corporation shall be amended in its entirety to read as follows:

" (C) up to 3,850,000 shares of Common Stock, warrants or options to purchase Common Stock or other securities issued, upon the approval of the board of directors or the corporation, to employees, officers directors and consultants of the corporation pursuant to any plan or arrangement; and"

3. The foregoing Certificate of Amendment of the Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors and by the required vote of stockholders in accordance with Section 242 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the corporation has caused this Certificate to be signed by its President and Chief Executive Officer, this 15th day of October, 2001.

/s/ Kevin Connors

Kevin Connors
President and Chief Executive Officer

Exhibit 3.3

BYLAWS

OF

ACME MEDICAL, INC.

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BYLAWS

OF

ACME MEDICAL, INC.

ARTICLE I

CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of the corporation shall be in the City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent of the corporation at such location is The Corporation Trust Company.

1.2 OTHER OFFICES

The board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the corporation.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors. In the absence of such designation, the annual meeting of stockholders shall be held on the second Tuesday of May in each year at 10:00 a.m. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 SPECIAL MEETING

A special meeting of the stockholders may be called at any time by the board of directors, or by the chairman of the board, or by the president, or by one or more stockholders holding shares in the aggregate entitled to cast not more stockholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

If a special meeting is called by any person or persons other than the board of directors or the president or the chairman of the board, then the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board, the president, any vice president or the secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5 of these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting, so long as that time is not less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty

(20) days after receipt of the request, then the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

2.4 NOTICE OF STOCKHOLDERS' MEETINGS

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE

Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 QUORUM

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of

the stockholders, then the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as provided in the last paragraph of this Section 2.8, or as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

At a stockholders' meeting at which directors are to be elected, or at elections held under special circumstances, a stockholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes which such stockholder normally is entitled to cast). Each holder of stock, or of any class or classes or of a series or series thereof, who elects to cumulate votes shall be entitled to as many votes as equals the number of votes which (absent this provision as to cumulative voting) he would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them, as he may see fit.

2.9 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such

meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the board of directors does not so fix a record date:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, shall be the day on which the first written consent is expressed.

(iii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by a written proxy, signed by the stockholder and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(c) of the General Corporation Law of Delaware.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

ARTICLE III

DIRECTORS

3.1 POWERS

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares,

the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2 NUMBER OF DIRECTORS

The authorized number of directors shall consist of one (1) member. This number may be changed by a duly adopted amendment to the certificate of incorporation or by an amendment to this bylaw adopted by the vote or written consent of the holders of a majority of the stock issued and outstanding and entitled to vote or by resolution of a majority of the board of directors.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his successor is elected and qualified or until his earlier resignation or removal.

Elections of directors need not be by written ballot.

3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon written notice to the corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship,

the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten (10) percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 FIRST MEETINGS

The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and

place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

3.7 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

3.8 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two (2) directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the

meeting, if the meeting is to be held at the principal executive office of the corporation.

3.9 QUORUM

At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.10 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully

called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

3.11 ADJOURNED MEETING; NOTICE

If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.12 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the board or committee.

3.13 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.14 APPROVAL OF LOANS TO OFFICERS

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without

interest and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

3.15 REMOVAL OF DIRECTORS

Unless otherwise restricted by statute, by the certificate of incorporation or by these bylaws, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE IV

COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, with each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) amend the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in Section 151(a) of the General Corporation Law of Delaware, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation), (ii) adopt an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of Delaware, (iii) recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, (iv) recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution, or (v) amend the bylaws of the corporation; and, unless the board resolution establishing the committee, the bylaws or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of Delaware.

4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings and meetings by

telephone), Section 3.7 (regular meetings), Section 3.8 (special meetings and notice), Section 3.9 (quorum), Section 3.10 (waiver of notice), Section 3.11 (adjournment and notice of adjournment), and Section 3.12 (action without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V

OFFICERS

5.1 OFFICERS

The officers of the corporation shall be a president, one or more vice presidents, a secretary, and a treasurer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, one or more assistant vice presidents, assistant secretaries, assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws. Any number of offices may be held by the same person.

5.2 ELECTION OF OFFICERS

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these bylaws, shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or empower the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise

specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the board of directors.

5.6 CHAIRMAN OF THE BOARD

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws. If there is no president, then the chairman of the board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.7 of these bylaws.

5.7 PRESIDENT

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction, and control of the business and the officers of the corporation. He shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the board of directors. He shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

5.8 VICE PRESIDENT

In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president or the chairman of the board.

5.9 SECRETARY

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall

show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders

and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. He shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

5.10 TREASURER

The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The treasurer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his transactions as treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

5.11 ASSISTANT SECRETARY

The assistant secretary, or, if there is more than one, the assistant secretaries in the order determined by the stockholders or board of directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors or the stockholders may from time to time prescribe.

5.12 ASSISTANT TREASURER

The assistant treasurer, or, if there is more than one, the assistant treasurers, in the order determined by the stockholders or board of directors (or if there be no such determination, then in the

order of their election), shall, in the absence of the treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of directors or the stockholders may from time to time prescribe.

5.13 AUTHORITY AND DUTIES OF OFFICERS

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors or the stockholders.

ARTICLE VI

INDEMNITY

6.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS

The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.1, a "director" or "officer" of the corporation includes any person (I) who is or was a director or officer of the corporation, (ii) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.2 INDEMNIFICATION OF OTHERS

The corporation shall have the power, to the extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (I) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.3 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of the General Corporation Law of Delaware.

ARTICLE VII

RECORDS AND REPORTS

7.1 MAINTENANCE AND INSPECTION OF RECORDS

The corporation shall, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to

inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

7.2 INSPECTION BY DIRECTORS

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

7.3 ANNUAL STATEMENT TO STOCKHOLDERS

The board of directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

7.4 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairman of the board, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

ARTICLE VIII

GENERAL MATTERS

8.1 CHECKS

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications,

limitations or restrictions of such preferences and/or rights.

8.5 LOST CERTIFICATES

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

8.7 DIVIDENDS

The directors of the corporation, subject to any restrictions contained in the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock pursuant to the General Corporation Law of Delaware. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

8.8 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

8.9 SEAL

This corporation may have a corporate seal, which may be adopted or altered at the pleasure of the Board of Directors, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 TRANSFER OF STOCK

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11 RESTRICTIONS ON TRANSFER OF STOCK

Before there can be a valid sale or transfer for consideration of any of the shares (the term "shares" shall include any securities convertible into shares) of the corporation by any holder thereof, he shall first offer those shares to the corporation and then to the other holders of common shares in the following manner:

(a) The offering shareholder shall deliver a notice in writing by mail or otherwise to the secretary of the corporation stating the price, terms, and conditions of such proposed sale or transfer, the number of shares to be sold or transferred, and his intention so to sell or transfer the shares. Within ten (10) days thereafter, the corporation shall have the prior right to purchase all (but not less than all unless this requirement is waived by the seller) of the shares offered at the price and upon the terms and conditions stated in such notice. Should the corporation fail to purchase all of said shares, then, at the expiration of said ten (10) day period or prior thereto upon the determination of the corporation to purchase none of such shares so offered, the secretary of the corporation shall, within two (2) days thereafter, mail or deliver to each of the other shareholders a notice setting forth the particulars concerning the shares not purchased by the corporation described in the notice received from the offering shareholder. The other shareholders shall have the right to purchase all (but not less than all unless this requirement is waived by the seller) of the shares specified in the secretary's notice. Each shareholder shall deliver to the secretary by mail or otherwise a written offer or offers to purchase all or any specified number of shares upon the terms described in the secretary's notice within eighteen (18) days after the secretary's notice was mailed or delivered to the other shareholders. If the total number of shares specified in such offers received within such period by the secretary exceeds the number of shares referred to in the secretary's notice, then each offering shareholder shall be entitled to purchase such portion of the shares referred to in the secretary's notice as the number of shares of the corporation which he holds bears to the total number of shares held by all shareholders desiring to purchase the shares referred to in the secretary's notice.

(b) If all of the shares referred to in the secretary's notice are not disposed of under such apportionment, then each shareholder desiring to purchase shares in a number in excess of his proportionate share, as provided above, shall be entitled to purchase such proportion of those shares which remain thus undisposed of as the total number of shares which he holds bears to the total number of shares held by all of the shareholders desiring to purchase shares in excess of those to which they are entitled under such apportionment. Such apportionment shall be made successively until all of the shares offered have been allocated to purchasing shareholders.

(c) If none or only a part of the shares in the offering shareholder's notice to the secretary is purchased by the corporation or by other shareholders within a thirty (30) day period from the date of delivery of the notice by the offering shareholder, the offering shareholder may sell or transfer to any person or persons all shares of stock referred to in his notice to the secretary that were not purchased by the corporation or by the other shareholders, but only within a period of one hundred twenty (120) days from the date of his first notice; provided, however, that he shall not sell or transfer such shares at a lower price or on terms more favorable to the purchaser or transferee than those specified in his notice to the secretary. After said 120-day period, the foregoing procedure for first offering shares to the corporation and shareholders shall again apply.

(d) Within the limitations herein provided, the corporation may purchase the shares of this corporation from any offering shareholder; provided, however, that at no time shall the corporation be permitted to purchase all of its outstanding voting shares. Any sale or transfer or purported sale or transfer of the shares of the corporation shall be null and void unless the terms, conditions, and provisions of this Section 8.11 are strictly observed and followed.

(e) The corporation shall place an appropriate legend on all

certificates for its shares referring to the provisions of this Section 8.11 restricting the transfer of shares.

8.12 REGISTERED STOCKHOLDERS

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE IX

AMENDMENTS

The original or other bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

ARTICLE X

DISSOLUTION

If it should be deemed advisable in the judgment of the board of directors of the corporation that the corporation should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

At the meeting a vote shall be taken for and against the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon votes for the proposed dissolution, then a certificate stating that the dissolution has been authorized in accordance with the provisions of Section 275 of the General Corporation Law of Delaware and setting forth the names and residences of the directors and officers shall be executed, acknowledged, and filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such certificate's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved.

Whenever all the stockholders entitled to vote on a dissolution consent in writing, either in person or by duly authorized attorney, to a dissolution, no meeting of directors or stockholders shall be necessary. The consent shall be filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such consent's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved. If the consent is signed by an attorney, then the original power of attorney or a photocopy thereof shall be attached to and filed with the consent. The consent filed with the Secretary of State shall have attached to it the affidavit of the secretary or some other officer of the corporation stating that the consent has been signed by or on behalf of all the stockholders entitled to vote on a dissolution; in addition, there shall be attached to the consent a certification by the secretary or some other officer of the corporation setting forth the names and residences of the directors and officers of the corporation.

ARTICLE XI

CUSTODIAN

11.1 APPOINTMENT OF A CUSTODIAN IN CERTAIN CASES

The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for the corporation when:

(i) at any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(ii) the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

(iii) the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

11.2 DUTIES OF CUSTODIAN

The custodian shall have all the powers and title of a receiver appointed under Section 291 of the General Corporation Law of Delaware, but the authority of the custodian shall be to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court of Chancery otherwise orders and except in cases arising under Sections 226(a)(3) or 352(a)(2) of the General Corporation Law of Delaware.

CERTIFICATE OF ADOPTION OF BYLAWS

OF

ACME MEDICAL, INC.

Adoption by Incorporator

The undersigned person appointed in the Certificate of Incorporation to act as the Incorporator of Acme Medical, Inc. hereby adopts the foregoing bylaws, comprising twenty-two (22) pages, as the Bylaws of the corporation.

Executed this 10th day of August 1998.

/s/ Kevin P. Connors

Kevin P. Connors

Certificate by Secretary of Adoption by Incorporator

The undersigned hereby certifies that he is the duly elected, qualified, and acting Secretary of U-Systems, Inc. and that the foregoing Bylaws, comprising twenty-two (22) pages, were adopted as the Bylaws of the corporation

on the 10th day of August, 1998, by the person appointed in the Certificate of Incorporation to act as the Incorporator of the corporation.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and affixed the corporate seal this 10th day of August 1998.

/s/ J. Casey McGlynn

J. Casey McGlynn, Secretary

CERTIFICATE OF AMENDMENT

OF BYLAWS OF

ACME MEDICAL, INC.

The undersigned, being the Secretary of Acme Medical, Inc., hereby certifies that Article III, Section 3.2 of the Bylaws of this corporation was amended, effective November 19, 1998, and Article VIII, Section 8.11 was deleted, effective October 15, 1998 by the Board of Directors of the corporation as follows:

(1) Section 3.2 of Article III is hereby amended in its entirety to read as follows:

"3.2 NUMBER OF DIRECTORS

The authorized number of directors shall consist of five (5) members. This number may be changed by a duly adopted amendment to the certificate of incorporation or by an amendment to this bylaw adopted by the vote or written consent of the holders of a majority of the stock issued and outstanding and entitled to vote or by resolution of a majority of the board of directors.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires."

(2) Section 8.11 of Article VIII is hereby deleted in its entirety

Dated: October 15, 1998

/s/ J. Casey McGlynn

J. Casey McGlynn,
Secretary

CERTIFICATE OF AMENDMENT

OF BYLAWS OF

ALTUS MEDICAL, INC.

The undersigned, being the Secretary of Acme Medical, Inc., hereby certifies that Article III, Section 3.2 of the Bylaws of this corporation was amended, effective October 29, 1999, by the Board of Directors of the corporation as follows:

Section 3.2 of Article III is hereby amended in its entirety to read as follows:

"3.2 NUMBER OF DIRECTORS

The authorized number of directors shall consist of seven (7) members. This number may be changed by a duly adopted amendment to the certificate of incorporation or by an amendment to this bylaw adopted by the vote or written consent of the holders of a majority of the stock issued and outstanding and entitled to vote or by resolution of a majority of the board of directors.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires."

Dated: October 29, 1999

/s/ J. Casey McGlynn

J. Casey McGlynn,
Secretary

Exhibit 10.2

ALTUS MEDICAL, INC.

1998 STOCK PLAN

1. Purposes of the Plan. The purposes of this Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights may also be granted under the Plan.

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

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan in accordance with Section 4 hereof.

(b) "Applicable Laws" means the requirements relating to the administration of stock option plans under US state corporate laws, US federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

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

(e) "Committee" means a committee of Directors appointed by the Board in accordance with Section 4 hereof.

(f) "Common Stock" means the Common Stock of the Company.

(g) "Company" means Altus Medical, Inc., a Delaware corporation.

(h) "Consultant" means any person who is engaged by the Company or any Parent or Subsidiary to render consulting or advisory services to such entity.

(i) "Director" means a member of the Board of Directors of the Company.

(j) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code.

(k) "Employee" means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety days,

unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 181st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

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

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

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the last market trading day prior to the time of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

(n) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(o) "Nonstatutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(p) "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.

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

(r) "Option Agreement" means a written or electronic agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(s) "Option Exchange Program" means a program whereby outstanding Options are exchanged for Options with a lower exercise price.

(t) "Optioned Stock" means the Common Stock subject to an Option or a Stock Purchase Right.

(u) "Optionee" means the holder of an outstanding Option or Stock Purchase Right granted under the Plan.

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

(w) "Plan" means this 1998 Stock Plan.

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

(y) "Service Provider" means an Employee, Director or Consultant.

(z) "Share" means a share of the Common Stock, as adjusted in accordance with Section 12 below.

(aa) "Stock Purchase Right" means a right to purchase Common Stock pursuant to Section 11 below.

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

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be subject to option and sold under the Plan is 2,000,000 Shares. The Shares may be authorized but unissued, or reacquired Common Stock.

If an Option or Stock Purchase Right expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). However, Shares that have actually been issued under the Plan, upon exercise of either an Option or Stock Purchase Right, shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if Shares of Restricted Stock are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan.

4. Administration of the Plan.

(a) Administrator. The Plan shall be administered by the Board or a Committee appointed by the Board, which Committee shall be constituted to comply with Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan and, in the case of a Committee, the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options and Stock Purchase Rights may from time to time be granted hereunder;

(iii) to determine the number of Shares to be covered by each such award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions, of any Option or Stock Purchase Right granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options or Stock Purchase Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Stock Purchase Right or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to determine whether and under what circumstances an Option may be settled in cash under subsection 9(e) instead of Common Stock;

(vii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option has declined since the date the Option was granted;

(viii) to initiate an Option Exchange Program;

(ix) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(x) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option or Stock Purchase Right that number of Shares having a Fair Market Value equal to the amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Optionees to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable; and

(xi) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan.

(c) Effect of Administrator's Decision. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Optionees.

5. Eligibility.

(a) Nonstatutory Stock Options and Stock Purchase Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

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

(c) Neither the Plan nor any Option or Stock Purchase Right shall confer upon any Optionee any right with respect to continuing the Optionee's relationship as a Service Provider with the Company, nor shall it interfere in any way with his or her right or the Company's right to terminate such relationship at any time, with or without cause.

6. Term of Plan. The Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 14 of the Plan.

7. Term of Option. The term of each Option shall be stated in the Option Agreement; provided, however, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to an Optionee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

8. Option Exercise Price and Consideration.

(a) The per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

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

(ii) In the case of a Nonstatutory Stock Option

(A) granted to a Service Provider who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any other Service Provider, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant.

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

(b) The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of (1) cash, (2) check, (3) promissory note, (4) other Shares which (x) in the case of Shares acquired upon exercise of an Option, have been owned by the Optionee for more than six months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to

which such Option shall be exercised, (5) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan, or (6) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company.

9. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted hereunder shall be exercisable according to the terms hereof at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. Except in the case of Options granted to Officers, Directors and Consultants, Options shall become exercisable at a rate of no less than 20% per year over five (5) years from the date the Options are granted. Unless the Administrator provides otherwise, vesting of Options granted hereunder to Officers and Directors shall be tolled during any unpaid leave of absence. An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee

and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

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

(b) Termination of Relationship as a Service Provider. If an Optionee ceases to be a Service Provider, such Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement (of at least thirty (30) days) to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement (of at least six (6) months) to the extent the Option is vested on the date of

termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. If an Optionee dies while a Service Provider, the Option may be exercised within such period of time as is specified in the Option Agreement (of at least six (6) months) to the extent that the Option is vested on the date of death (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement) by the Optionee's estate or by a person who acquires the right to exercise the Option by bequest or inheritance. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, at the time of death, the Optionee is not vested as to the entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

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

10. Non-Transferability of Options and Stock Purchase Rights. The Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

11. Stock Purchase Rights.

(a) Rights to Purchase. Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing or electronically of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. The terms of the offer shall comply in all respects with Section 260.140.42 of Title 10 of the California Code of Regulations. The offer shall be accepted by execution of a Restricted Stock purchase agreement in the form determined by the Administrator.

(b) Repurchase Option. Unless the Administrator determines otherwise, the Restricted Stock purchase agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock purchase agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine. Except with respect to Shares purchased by

Officers, Directors and Consultants, the repurchase option shall in no case lapse at a rate of less than 20% per year over five (5) years from the date of purchase.

(c) Other Provisions. The Restricted Stock purchase agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Shareholder. Once the Stock Purchase Right is exercised, the purchaser shall have rights equivalent to those of a shareholder and shall be a shareholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 12 of the Plan.

12. Adjustments Upon Changes in Capitalization, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option or Stock

Purchase Right, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options or Stock Purchase Rights have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option or Stock Purchase Right, as well as the price per share of Common Stock covered by each such outstanding Option or Stock Purchase Right, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company. The conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option or Stock Purchase Right.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. The Administrator in its discretion may provide for an Optionee to have the right to exercise his or her Option or Stock Purchase Right until fifteen (15) days prior to such transaction as to all of the Optioned Stock covered thereby, including Shares as to which the Option or Stock Purchase Right would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option applicable to any Shares purchased upon exercise of an Option or Stock Purchase Right shall lapse as to all such Shares, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised, an Option or Stock Purchase Right will terminate immediately prior to the consummation of such proposed action.

(c) Merger or Asset Sale. In the event of a merger of the Company with

or into another corporation, or the sale of substantially all of the assets of the Company, each outstanding Option and Stock Purchase Right shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the Option or Stock Purchase Right, the Optionee shall fully vest in and have the right to exercise the Option or Stock Purchase Right as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option or Stock Purchase Right becomes fully vested and exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Administrator shall notify the Optionee in writing or electronically that the Option or Stock Purchase Right shall be fully exercisable for a period of fifteen (15) days from the date of such notice, and the Option or Stock Purchase Right shall terminate upon the expiration of such period. For the purposes of this paragraph, the Option or Stock Purchase Right shall be considered assumed if, following the merger or sale of assets, the option or right confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option or Stock Purchase Right immediately prior to the merger or sale of assets, the consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock for each Share held on the effective date of the

transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option or Stock Purchase Right, for each Share of Optioned Stock subject to the Option or Stock Purchase Right, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets.

13. Time of Granting Options and Stock Purchase Rights. The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Administrator. Notice of the determination shall be given to each Service Provider to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Shareholder Approval. The Board shall obtain shareholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options granted under the Plan prior to the date of such termination.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Administrator may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any

liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

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

18. Shareholder Approval. The Plan shall be subject to approval by the shareholders of the Company within twelve (12) months after the date the Plan is adopted. Such shareholder approval shall be obtained in the degree and manner required under Applicable Laws.

19. Information to Optionees and Purchasers. The Company shall provide to each Optionee and to each individual who acquires Shares pursuant to the Plan, not less frequently than annually during the period such Optionee or purchaser has one or more Options or Stock Purchase Rights outstanding, and, in the case of an individual who acquires Shares pursuant to the Plan, during the period such individual owns such Shares, copies of annual financial statements. The Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.

Exhibit 10.6

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

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AMENDED AND RESTATED RIGHTS AGREEMENT

This Amended and Restated Rights Agreement ("Agreement") is entered into as of November 12, 1999 by and among Altus Medical, Inc., a Delaware corporation (the "Company") and the investors set forth on Exhibit A hereto (the "Investors").

WHEREAS, the Company and certain of the Investors have entered into an Investor Rights Agreement dated as of November 19, 1998 (the "Previous Investor Rights Agreement");

WHEREAS, the Company and the Investors desire to amend and restate and replace in its entirety the Previous Investor Rights Agreement with the terms and conditions of this Agreement;

WHEREAS, certain of the Investors are purchasing the Company's Series B Preferred Stock pursuant to a Series B Preferred Stock Purchase Agreement of even date herewith (the "Series B Agreement"); and

WHEREAS, in order to induce the Investors to consummate their purchase of the Series B Preferred Stock of the Company, the parties have agreed to enter into this Agreement upon the terms and conditions set forth below.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Certain Definitions. All terms not otherwise defined in this Agreement shall have the meaning set forth in the Series B Agreement. As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "Commission" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

1.2 "Holder" shall mean the Investors holding Registrable Securities and any person holding such securities to whom the rights under this Agreement have been transferred in accordance with Section 3. 9 hereof.

1.3 "Initiating Holders" shall mean any Holder or Holders who in the aggregate hold at least 50% of the Registrable Securities.

1.4 "Registrable Securities" means (1) the Common Stock issuable or issued upon conversion of the Series A Preferred Stock and Series B Preferred Stock and (2) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in

replacement of, the shares referenced in (1) above, excluding in all cases, however, (i) any

Registrable Securities sold by a person in a transaction in which such person's rights under this Agreement are not assigned, or (ii) any Registrable Securities sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction.

1.5 The terms "register," "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

1.6 "Registration Expenses" shall mean all expenses, except Selling Expenses as defined below, incurred by the Company in complying with Sections 3.1, 3.2 and 3.3 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, fees and disbursements of one special counsel to the Holders not to exceed $25,000, blue sky fees and expenses, the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company).

1.7 "Restricted Securities" shall mean the securities of the Company required to bear the legend set forth in Section 2.2 hereof.

1.8 "Securities Act" shall mean the Securities Act of 1933, as amended, or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

1.9 "Selling Expenses" shall mean all underwriting discounts, selling commissions and stock transfer taxes.

2. Transferability

2.1 Restrictions on Transferability. The Registrable Securities shall not be sold, assigned, transferred or pledged except upon the conditions specified in this Section 2, which conditions are intended to ensure compliance with the provisions of the Securities Act. The Investors will cause any proposed purchaser, assignee, transferee, or pledgee of the Registrable Securities held by the Investors to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Section 2.

2.2 Restrictive Legend. Each certificate representing (i) Registrable Securities and (ii) any other securities issued in respect of the Registrable Securities upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of Section 2.3 below) be stamped or otherwise imprinted with legends in the following forms (in addition to any legend required under applicable state securities laws):

(a) THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR

TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SUCH ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.

(b) THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Investors and Holders consent to the Company making a notation on its records and giving instructions to any transfer agent of the Registrable Securities in order to implement the restrictions on transfer established in this Section 2.

2.3 Notice of Proposed Transfers. The holder of each certificate representing Restricted Securities by acceptance thereof agrees to comply in all respects with the provisions of this Section 2.3. Prior to any proposed sale, assignment, transfer or pledge of any Restricted Securities (other than (i) a transfer not involving a change in beneficial ownership, (ii) in transactions involving the distribution without consideration of Restricted Securities by the holders to any of its partners, or retired partners, or to the estate of any of its partners or retired partners, (iii) a transfer to an affiliated fund, partnership or company, which is not a competitor of the Company, subject to compliance with applicable securities laws, (iv) a corporation to its stockholders in accordance with their interest in the corporation, (v) a limited liability company to its members or former members in accordance with their interest in the limited liability company, (vi) or the transfer by gift, will or intestate succession of any holder to his spouse or lineal descendants or ancestors), unless there is in effect a registration statement under the Securities Act covering the proposed transfer, the holder thereof shall give written notice to the Company of such holder's intention to effect such transfer, sale, assignment or pledge. Each such notice shall describe the manner and circumstances of the proposed transfer, sale, assignment or pledge in sufficient detail, and shall be accompanied, at such holder's expense and if reasonably requested by the Company by either (i) an unqualified written opinion of legal counsel who shall, and whose legal opinion shall be, reasonably satisfactory to the Company addressed to the Company, to the effect that the proposed transfer of the Restricted Securities may be effected without registration under the Securities Act, or (ii) a "no action" letter from the Commission to the effect that the transfer of such securities without registration will not result in a recommendation by the staff of the Commission that action be taken with respect thereto, whereupon the holder of such Restricted Securities shall be entitled to transfer such Restricted Securities in accordance with the terms of the notice delivered by the holder to the Company; provided, however, that the Company will not require an opinion of legal counsel or a no action letter for transactions made pursuant to Rule 144(k) under the Securities Act except in unusual circumstances. Each certificate evidencing the Restricted Securities transferred as above provided shall bear the appropriate restrictive legend set forth in Section 2.2 above, except that such certificate shall not bear such restrictive legend if in the opinion of counsel for such holder

and in the reasonable opinion of the Company such legend is not required in order to establish compliance with any provision of the Securities Act.

2.4 Removal of Restrictions on Transfer of Securities. Any legend referred to in Section 2.2 hereof stamped on a certificate evidencing (i) the Registrable Securities or (ii) any other securities issued in respect of the Registrable Securities upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event and the stock transfer instructions and record notations with respect to such security shall be removed and the Company

shall issue a certificate without such legend to the holder of such security if such security is registered under the Securities Act, or if such holder provides the Company with an opinion of counsel (which may be counsel for the Company) reasonably acceptable to the Company to the effect that a public sale or transfer of such security may be made without qualification, legend, or registration under the Securities Act.

3. Registration Rights.

3.1 Requested Registration.

(a) Requested Registration. If the Company shall receive from Initiating Holders a written request that the Company effect any registration (other than a registration on Form S-3 or any related form of registration statement) with respect to Registrable Securities and the anticipated aggregate offering price to the public, excluding underwriting discounts and commissions, is at least eight million dollars ($8,000,000), the Company will:

(i) within thirty days of the receipt by the Company of such notice, give written notice of the proposed registration, qualification or compliance to all other Holders; and

(ii) as soon as practicable, use its best efforts to effect such registration, qualification or compliance (including, without limitation, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act and any other governmental requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within 20 days after receipt of such written notice from the Company;

Provided, however, that the Company shall not be obligated to take any action to effect any such registration, qualification or compliance pursuant to this Section 3.1:

(A) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(B) Prior to the earlier of November 12, 2002 or one hundred eighty (180) days following the effective date of the registration statement pertaining to a firm commitment underwritten initial public offering (an "IPO");

(C) If the Company delivers a written notice to the Initiating Holders, within thirty (30) days of its receipt of a registration request from such Initiating Holders, of its intent to file a registration statement for an IPO within ninety (90) days;

(D) If the Company's Common Stock is not listed on a national securities exchange (as defined in the Securities Exchange Act of 1934, as amended (the "Exchange Act")) and the Initiating Holders do not request that such offering be firmly underwritten by underwriters selected by the Company (subject to the consent of the Holders of a majority of the Registrable Securities proposed to be included in the underwriting);

(E) During the period starting with the date sixty (60) days prior to the Company's estimated date of filing of, and ending on the date one hundred eighty (180) days immediately following the effective date of, any registration statement pertaining to securities of the Company (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan), provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective;

(F) After the Company has effected two such registrations pursuant to this Section 3.1(a) (counting for this purpose only registrations which have been declared or ordered effective and registrations which have been withdrawn by the Holders as to which the Holders have not elected to bear the Registration Expenses);

(G) If the Initiating Holders propose to dispose of shares of Registrable Securities which may be immediately registered on Form S-3 pursuant to a request under Section 3.3 hereof;

(H) If the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a registration statement to be filed at such time, then the Company's obligation to use its best efforts to register, qualify or comply under this Section 3.1 shall be deferred for a period not to exceed ninety (90) days from the date of receipt of written request from the Initiating Holders; provided, however, that the Company shall not exercise such right more than once in any twelve-month period.

Subject to the foregoing clauses (A) through (H), the Company shall file a registration statement covering the Registrable Securities so requested to be registered as soon as practicable, after receipt of the request or requests of the Initiating Holders.

(b) Underwriting. In the event that a registration pursuant to Section 3.1 is for a registered public offering involving an underwriting, the Company shall so advise the Holders

as part of the notice given pursuant to Section 3.1(a)(i). In such event, the right of any Holder to registration pursuant to Section 3.1 shall be conditioned upon such Holder's participation in the underwriting arrangements required by this Section 3.1, and the inclusion of such Holder's Registrable Securities in the underwriting to the extent requested shall be limited to the extent provided herein.

The Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the managing underwriter of recognized national standing selected for such underwriting by the Company and acceptable to the Holders of a majority of the Registrable Securities proposed to be included in such underwriting. Notwithstanding any other provision of this Section 3.1, if the managing underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated among all Holders thereof in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders at the time of filing the registration statement or in such other manner as shall be agreed to by the Company and Holders of a majority of the Registrable Securities proposed to be included in such registration. No Registrable Securities excluded from the underwriting by reason of the underwriter's marketing limitation shall be included in such registration;

provided, however, that the number of shares of Registrable Securities to be included in such underwriting and registration shall not be reduced unless all other securities of the Company are first entirely excluded from the underwriting and registration. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares.

If any Holder of Registrable Securities disapproves of the terms of the underwriting, such Holder may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders. The Registrable Securities and/or other securities so withdrawn shall also be withdrawn from registration.

3.2 Company Registration.

(a) Notice of Registration. If at any time or from time to time the Company shall determine to register any of its securities, either for its own account or the account of a security holder or holders, other than (i) a registration relating solely to employee benefit plans, (ii) a registration relating solely to a Commission Rule 145 transaction, or (iii) a registration pursuant to Section 3.1 hereof, the Company will:

(i) promptly give to each Holder of Registrable Securities written notice thereof; and

(ii) use its best efforts to include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved

therein, all the Registrable Securities specified in a written request or requests, made within 10 days after receipt of such written notice from the Company, by any Holder of Registrable Securities, subject to Section 3.2(b) hereof.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 3.2(a)(i). In such event the right of any Holder to registration pursuant to Section 3.2 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by the Company. Notwithstanding any other provision of this Section 3.2, if the managing underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, the managing underwriter may limit the Registrable Securities and other securities to be distributed through such underwriting, but in no event shall (i) any shares being sold by a stockholder exercising a demand registration right similar to that granted in Section 3.1 be excluded from such offering, (ii) the number of Registrable Securities to be included in such offering be less than 25% of the total number of securities to be included in such offering, unless such offering is the IPO and such registration does not include shares of any other selling stockholder in which event any or all of the Registrable Securities of the Holders may be excluded from such offering or (iii) the number of Registrable Securities to be included in such offering be reduced below the number of Registrable Securities requested to be registered pursuant to Section 3.2(a) above in order for shares of other selling stockholders to be included, unless Holders of at least two thirds (2/3) of the Registrable Securities proposed to be sold in such offering agree to include the

shares held by such selling stockholders. The Company shall so advise all Holders distributing their securities through such underwriting of such limitation, and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders at the time of filing the registration statement or in such other manner as shall be agreed to by the Company and Holders of a majority of the Registrable Securities proposed to be included in such registration. To facilitate the allocation of shares in accordance with the above provisions, the Company may round the number of shares allocated to any Holder or holder to the nearest 100 shares. If any Holder or holder disapproves of the terms of any such underwriting, such Holder or holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 3.2 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 3.4 hereof.

3.3 Registration on Form S-3.

(a) If any Holder of the Registrable Securities requests that the Company file a registration statement on Form S-3 (or any successor form to Form S-3), or any similar short-form registration statement, for a public offering of Registrable Securities, the reasonably anticipated aggregate price to the public, excluding underwriting discounts and commissions, is not less than $500,000 and the Company is a registrant entitled to use Form S-3 to register the Registrable Securities for such an offering, the Company shall use its best efforts to cause such Registrable Securities to be registered on such form for the offering as soon as practicable after receipt of the request or requests of the Holders and to cause such Registrable Securities to be qualified in such jurisdictions as the Holder or Holders may reasonably request. After the Company's first public offering of its securities, the Company will use its best efforts to qualify for Form S-3 registration or a similar short-form registration. The provisions of Section 3.1(b) shall be applicable to each registration initiated under this Section 3.3.

(b) Notwithstanding the foregoing, the Company shall not be obligated to take any action pursuant to this Section 3.3: (i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act; (ii) if the Company, within thirty (30) days of the receipt of the request of the initiating Holders, gives notice of its bona fide intention to effect the filing of a registration statement with the Commission within sixty (60) days of receipt of such request (other than with respect to a registration statement relating to a Rule 145 transaction, or an offering solely to employees); (iii) during the period starting with the date sixty (60) days prior to the Company's estimated date of filing of, and ending on the date three (3) months immediately following, the effective date of any registration statement pertaining to securities of the Company (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan), provided that the Company is actively employing in good faith reasonable efforts to cause such registration statement to become effective; or (iv) if the Company shall furnish to such Holder a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for registration statements to be filed in the

near future, then the Company's obligation to use its best efforts to file a registration statement shall be deferred for a period not to exceed 90 days from the receipt of the request to file such registration by such Holder; provided, however, that the Company shall not exercise such right more than once in any twelve-month period.

3.4 Expenses of Registration. All Registration Expenses incurred in connection with registrations pursuant to Sections 3.1, 3.2 and 3.3 shall be borne by the Company, provided that all Registration Expenses incurred in connection with registrations pursuant to Section 3.3 in excess of five (5) shall be borne by the holders of securities included in such registration pro rata on the basis of the number of shares so registered. All Selling Expenses relating to securities registered pursuant to Sections 3.1, 3.2 and 3.3 shall be borne by the holders of securities included in such registration pro rata on the basis of the number of shares so registered.

3.5 Registration Procedures. In the case of each registration, qualification or compliance effected by the Company pursuant to this Section 3, the Company will keep each Holder

advised in writing as to the initiation of each registration, qualification and compliance and as to the completion thereof. The Company will use its best efforts to:

(a) Prepare and file with the Commission a registration statement with respect to such securities and use its best efforts to cause such registration statement to become and remain effective until the earlier to occur of (i) ninety (90) days or (ii) the distribution described in the Registration Statement has been completed;

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement;

(c) Furnish to the Holders participating in such registration and to the underwriters of the securities being registered, if any, such reasonable number of copies of the registration statement, preliminary prospectus, final prospectus and such other documents they may reasonably request in order to facilitate the disposition of Registrable Securities by them;

(d) Register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering;

(f) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed;

(g) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) Notify each Holder covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing. The Company will use its best efforts to amend or supplement such prospectus in order to cause such prospectus not to include any untrue statement of a material or

omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing; and

(i) Furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering addressed to the underwriters.

3.6 Indemnification.

(a) The Company will indemnify each Holder, each of its officers, directors, partners and legal counsel, and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification or compliance has been effected pursuant to this Section 3, and each underwriter, if any, and each person who controls any underwriter within the meaning of Section 15 of the Securities Act, against all expenses, claims, losses, damages or liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of the Securities Act or any rule or regulation promulgated under the Securities Act or any state securities laws applicable to the Company in connection with any such registration, qualification or compliance, and the Company will reimburse each such Holder, each of its officers, directors, partners, and legal counsel and each person controlling such Holder, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission or alleged untrue statement or omission, made in reliance upon and in conformity with written information furnished to the Company by such Holder, controlling person or underwriter and stated to be specifically for use therein.

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify the Company, each of its directors, officers, and legal counsel, each

underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, and each other Holder, each of its officers, directors,

partners and legal counsel and each person controlling such Holder within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company, such Holders, such directors, officers, persons, underwriters or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein if it is judicially determined that there was such an untrue statement (or alleged untrue statement) or omission (or alleged omission) made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein; provided however, that the indemnity provision contained in this Section 3.6(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the liability of each Holder under this sub Section (b) shall be limited in an amount equal to the net proceeds to each such Holder of Registrable Securities sold as contemplated herein, unless such liability resulted from willful misconduct or gross negligence by such Holder.

(c) Each party entitled to indemnification under this Section 3.6 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 3 unless the failure to give such notice is materially prejudicial to an Indemnifying Party's ability to defend such action and provided further, that the Indemnifying Party shall not assume the defense for matters as to which there is a conflict of interest or separate and different defenses but shall bear the expense of such defense nevertheless. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(d) If the indemnification provided for in this Section 3.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to

herein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission, provided that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 3.6 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 3, and otherwise.

3.7 Information by Holder. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders, the Registrable Securities held by them, and the distribution proposed by such Holder or Holders as the Company may request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Section 3.

3.8 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission which may at any time permit the sale of the Restricted Securities to the public without registration, after such time as a public market exists for the Common Stock of the Company, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times after the effective date that the Company becomes subject to the reporting requirements of the Securities Act or the Exchange Act;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements); and

(c) So long as a Holder owns any Restricted Securities to furnish to the Holder forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company and other information in the possession of or reasonably obtainable by the Company as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

3.9 Transfer of Registration Rights. The rights to cause the Company to register securities granted Holders under Sections 3.1, 3.2 and 3.3 may be assigned to a transferee or assignee who acquires at least 100,000 shares of Registrable Securities, to another Holder, to a transferee or assignee acquiring 10% or more of the outstanding stock of the Company, or to any transferee or assignee who is or was a subsidiary, parent organization, partner, limited partner, limited liability company member, retired partner, family member or trust of a Holder or the estate of such person or entity, provided that any such transfers may otherwise be effected in accordance with applicable securities laws and such transferee or assignee agrees to be subject to all restrictions set forth in this Agreement.

3.10 Standoff Agreement. Each Holder agrees, upon request of the Company or the underwriters managing any underwritten offering of the Company's securities, not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Registrable Securities (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for a period of time not to exceed 180 days from the effective date of such registration, provided that:

(a) such agreement shall only apply to the IPO; and

(b) all officers, directors and holders of more than one percent (1%) of the Company's outstanding voting stock have entered into similar agreements.

3.11 Limitation on Subsequent Registration Rights. After the date of this Agreement, the Company shall not, without the prior written consent of the Holders of at least seventy-five percent (75%) of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would grant such holder registration rights pari passu or senior to those granted to the Holders hereunder.

3.12 Termination of Registration Rights. The rights granted under this Section 3 shall terminate on the earlier of (i) the fifth anniversary of the closing of the IPO pursuant to a registration statement filed under the Securities Act or (ii) on such date as all Registrable Securities may be sold under Rule 144 during any 90-day period (without regard to Rule 144(k)).

4. Right of First Offer.

4.1 Right of First Offer Upon Issuances of Securities by the Company.

(a) The Company hereby grants on the terms set forth in this Section 4.1 to each Investor who holds at least 250,000 shares of Registrable Securities (as adjusted for stock splits, stock dividends, recapitalizations and the like) (a "Major Investor"), the right of first offer to purchase all or any part of such Major Investor's pro rata share of the New Securities (as defined in Section 4.1(b)) which the Company may, from time to time, propose to sell and issue. The Major Investors may purchase said New Securities on the same terms and at the same price at which the Company proposes to sell the New Securities. The pro rata share of each Major Investor, for purposes of this right of first offer, is the ratio of the total number of shares of Common Stock held by such Major Investor, including any shares of Common Stock into which shares of

Preferred Stock held by such Major Investor are convertible, to the total number of shares of Common Stock outstanding immediately prior to the issuance of the New Securities (including any shares of Common Stock into which outstanding shares of Preferred Stock are convertible).

(b) "New Securities" shall mean any capital stock of the Company, whether now authorized or not, and any rights, options or warrants to purchase said capital stock, and securities of any type whatsoever that are, or may become, convertible into said capital stock; provided that "New Securities" does not include (i) shares purchased under the Series B Agreement or the Registrable Securities, (ii) securities offered pursuant to a registration statement filed under the Securities Act, (iii) securities issued pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets, or other reorganization approved by the Board of Directors of the Company including at least one of the representatives designated by the Investors, (iv) all shares of Common Stock or other securities hereafter issued or issuable to officers, directors, employees, scientific advisors or consultants of the Company pursuant to any employee or consultant stock offering, plan or arrangement approved by the Board of Directors of the Company, (v) securities issued pursuant to any rights or agreements outstanding as of the date of this Agreement and options and warrants outstanding as of the date of this Agreement, (vi) all shares of Common Stock or other securities hereafter issued in connection with or as consideration for acquisition or licensing of technology approved by the Board of Directors of the Company including at least one of the representatives designated by the Investors and (vii) all shares of Common Stock or other securities issued in connection with equipment leasing or equipment financing arrangements and similar transactions approved by the Board of Directors of the Company including at least one of the representatives designated by the Investors.

(c) In the event the Company proposes to undertake an issuance of New Securities, it shall give to the Major Investors written notice (the "Notice") of its intention, describing the type of New Securities, the price, the terms upon which the Company proposes to issue the same, and a statement as to the number of days from receipt of such Notice within which the Major Investors must respond to such Notice. The Major Investors shall have thirty (30) days from the date of receipt of the Notice to purchase any or all of the New Securities for the price and upon the terms specified in the Notice by giving written notice to the Company and stating therein

the quantity of New Securities to be purchased and forwarding payment for such New Securities to the Company if immediate payment is required by such terms.

(d) If not all of the Major Investors elect to purchase their pro rata share of the New Securities, then the Company shall promptly notify in writing the Major Investors who do so elect and shall offer such Major Investors the right to acquire such unsubscribed shares. The Major Investors shall have five (5) days after receipt of such notice to notify the Company of its election to purchase all or a portion thereof of the unsubscribed shares. In the event the Major Investors fail to exercise in full the right of first offer within said period, the Company shall have ninety (90) days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within thirty (30) days from date of said agreement) to sell the New Securities respecting which the Major Investor rights were not exercised, at a price and upon general terms no more favorable to the purchasers thereof than specified in the Notice. In the event the Company has not sold the New Securities within said ninety (90) day period (or sold and issued New Securities in accordance with the foregoing within thirty (30) days from the date of said agreement), the Company shall not thereafter issue or sell any New Securities without first offering such securities to the Major Investors in the manner provided above.

(e) The right of first offer granted under this Section 4.1 shall expire upon:

(i) The date upon which a registration statement filed by the Company under the Securities Act (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan) in connection with an underwritten public offering of its securities, at a per share price not less than $8.00 (as adjusted for stock splits, stock dividends, recapitalizations and the like) per share and for a total offering of not less than $15.0 million (before deduction of underwriters' commissions and expenses) (a "Qualified Offering"), first becomes effective and the securities registered thereunder are sold.

(ii) For each Major Investor, the date on which such Major Investor no longer holds a minimum of 250,000 Registrable Securities (as adjusted for stock splits, stock dividends, recapitalizations and the like).

(iii) The tenth anniversary of the date of this Agreement.

(f) The right of first offer granted under this Section 4.1 is assignable by the Investors to any transferee of a minimum of 100,000 Registrable Securities (as adjusted for stock splits, stock dividends, recapitalizations and the like).

5. Covenants of the Company.

5.1 Financial Information for all Investors. The Company will provide each Investor the following reports for so long as the Investor is a holder of Registrable Securities, including for purposes of this Section 5 any such Registrable Securities which have been transferred to a constituent partner of an Investor:

(a) The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

(b) As soon as practicable after the end of each fiscal year, and in any event within 90 days thereafter, consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of such fiscal year, and consolidated statements of income, stockholders' equity and cash flows of the Company and its subsidiaries, if any, for such year, prepared in accordance with generally accepted accounting principles and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, audited by independent public accountants of national standing selected by the Board of Directors of the Company.

(c) As soon as practicable after the end of each quarter and in any event within 30 days thereafter, a consolidated balance sheet of the Company and its subsidiaries, if any, as of the end of each such quarter, consolidated statements of income, consolidated statements of changes in financial condition, and a consolidated statement of cash flow of the Company and its subsidiaries for such period and for the current fiscal year to date, prepared in accordance with generally accepted accounting principles (other than for accompanying notes) subject to changes resulting from year-end audit adjustments, all in reasonable detail and signed by the principal financial or accounting officer of the Company.

5.2 Financial Information for Major Investors. The Company will

provide each Major Investor the following reports for so long as such Major Investor is a holder of at least 250,000 Registrable Securities, including for purposes of this Section 5 any such shares of Registrable Securities which have been transferred to a constituent partner of a Major Investor:

(a) As soon as practicable after the end of each month and in any event within 30 days thereafter, a consolidated balance sheet of the Company and its subsidiaries, if any, as of the end of each such month, consolidated statements of income, consolidated statements of changes in financial condition, and a consolidated statement of cash flow of the Company and its subsidiaries for such period and for the current fiscal year to date, and setting forth in each case in comparative form the figures for corresponding periods in the budget, prepared in accordance with generally accepted accounting principles (other than for accompanying notes), subject to changes resulting from year-end audit adjustments, all in reasonable detail and signed by the principal financial or accounting officer of the Company.

(b) A copy of the annual budget for the next fiscal year of the Company containing profit and loss projections, cash flow projections, and capital expenditures, as soon as it is available but in any event within thirty (30) days prior to the end of the current fiscal year.

5.3 Inspection. Upon providing the Company thirty (30) days written notice, each Major Investor shall have full and free access to visit and inspect the Company's properties during

normal business hours and to discuss the affairs, finances and accounts of the Company with its officers, and to review such information as is reasonably requested all at such reasonable times and as often as may be reasonably requested.

5.4 Confidentiality. Each Investor agrees that any information obtained by such Investor pursuant to this Section 5 which is identified by the Company as being proprietary to the Company or otherwise confidential will not be disclosed without the prior written consent of the Company. Each Investor further acknowledges and understands that any information so obtained which may be considered "inside" non-public information will not be utilized by such Investor in connection with purchases and/or sales of the Company's securities except in compliance with applicable state and federal anti-fraud statutes.

5.5 Qualified Small Business. The Company will use its commercially reasonable efforts to comply with the reporting and recordkeeping requirements of Section 1202 of the Internal Revenue Code of 1986 (the "Code"), as amended, any regulations promulgated thereunder and any similar state laws and regulations, and except as provided otherwise herein, in the Series B Agreement, or in the Company's Restated Certificate of Incorporation, the Company agrees not to repurchase any stock of the Company if such repurchase would cause the Series A Preferred Stock, the Series B Preferred Stock or the Registrable Securities not to qualify as "qualified small business stock" as defined in Section 1202(c) of the Code.

5.6 Stock Vesting. Unless otherwise approved by the Board of Directors of the Company, all stock options and other stock equivalents issued after the date of this Agreement to employees, directors, consultants and other service providers shall be subject to vesting as follows: (a) twenty-five percent (25%) of such stock shall vest at the end of the first year following the earlier of the date of issuance or such person's services commencement date with the company, and (b) seventy-five percent (75%) of such stock shall vest over the remaining three (3) years. With respect to any shares of stock purchased by any such person, the Company's repurchase option shall provide that

upon such person's termination of employment or service with the Company, with or without cause, the Company or its assignee (to the extent permissible under applicable securities laws and other laws) shall have the option to purchase at cost any unvested shares of stock held by such person.

5.7 Restrictions on Sales; Assignment of Right of First Refusal.

The Company's Bylaws shall contain a right of first refusal on all transfers of Common Stock. In the event the Company elects not to exercise such right of first refusal the Company may have on a proposed transfer of any of the Company's outstanding capital stock pursuant to the Company's charter documents, by contract or otherwise, the Company shall assign such right of first refusal to each Major Investor. In the event of such assignment, each Major Investor shall have a right to purchase its pro rata portion of the capital stock proposed to be transferred.

5.8 Indemnification. The Company will indemnify members of the

Board of Directors of the Company to the broadest extent permitted by applicable law and will indemnify

each Investor for any claims brought against the Investors by any third party (including any other stockholder of the Company) as a result of the Series B Preferred Stock financing.

5.9 Termination of Covenants. The covenants of the Company set

forth in this Section 5 shall terminate in all respects on the earlier to occur of (i) date of the closing of an initial firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of the Company's Common Stock and (ii) the tenth anniversary of the date of this Agreement.

6. General Provisions.

6.1 Amendment and Waiver. Except as otherwise expressly provided,

any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of at least seventy-five percent (75%) of the Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this Section 6.1 shall be binding upon each holder of any Registrable Securities at the time outstanding, each future holder of all such securities and the Company.

6.2 Governing Law. This Agreement shall be governed by and

construed under the internal laws of the State of California without regard to conflict of laws provisions.

6.3 Successors and Assigns. Except as otherwise expressly provided,

the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties.

6.4 Severability. In case any provision of this Agreement becomes

or is declared by a court of competent jurisdiction to be unenforceable, this Agreement shall continue in full force and effect without said provision; provided, however, that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

6.5 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery, by facsimile, by courier or overnight delivery or upon deposit with the United States Post Office, by first class mail, postage prepaid, addressed: (a) if to the Investors, at the Investor address as set forth on Exhibit A hereto, or at such other address as the Investors shall have furnished to the Company in writing, or (b) if to the Company, at its current address or at such other address as the Company shall have furnished to the Investors in writing. Notices that are mailed shall be deemed received five (5) days after deposit in United States mail.

6.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which is an original, and all of which together shall constitute one instrument.

6.7 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.8 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.9 Aggregation of Stock. All shares of Registrable Securities held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

6.10 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any Holder, upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Holder's part of any breach, default or noncompliance under the Agreement or any waiver on such Holder's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to Holders, shall be cumulative and not alternative.

IN WITNESS WHEREOF, this Amended and Restated Rights Agreement has been executed as of the date first above written.

ALTUS MEDICAL, INC., INC.

By: /s/ Kevin P. Connors

Kevin P. Connors, President

Address:

1181 Chess Drive, Suite B
Foster City, CA 94404

INVESTORS:

ALTA CALIFORNIA PARTNERS II, L.P.
By: Alta California Management Partners II, LLC

By: /s/ Guy Nohra

General Partner

ALTA EMBARCADERO PARTNERS II, LLC

By: /s/ Guy Nohra

Member

MEDVENTURE ASSOCIATES III, L.P.

By: /s/ Annette J. Campbell-White

Name: Annette J. Campbell-White

Title: Managing Member of MedVenture

Associates Asset Management III Co.

L.L.C.
---
the General Partner of MedVenture

Associates III, L.P.

/s/ Joe Davin

JOE DAVIN

/s/ Clare M. Meister

CLARE M. MEISTER

ADAM VENTURES L.P.
a Delaware limited partnership

By: ADAM VENTURES MANAGEMENT, L.L.C.

By:

Name: J. Casey McGlynn
Title: General Partner

DR. HENRI CARLE, P.C.

Name:

Title:

RICHARD G. CARO TRUST

By:

Name: Richard G. Caro
Title: Trustee

JOHN J. CONNORS

/s/ Kevin P. Connors

KEVIN P. CONNORS

ANN MARIE FITZPATRICK

FURBERSHAW REVOCABLE TRUST

By:

Gerard A. Furbershaw, Trustee

By:

Michelle A.B. Furbershaw, Trustee

DONALD W. GROOT, M.D.

DAVID R. HOLBROOKE

LUNAR FUND LLC

By:

Name:

Title:

MEDVEN AFFILIATES III, L.P.

By: /s/ Annette J. Campbell-White

Name: /s/ Annette J. Campbell-White

Title: Managing Member of MedVenture Associates Asset Management III Co. L.L.C. the General Partner of MedVenture Associates III, L.P.

DR. SERGE NADEAU, P.C.

Name:

Title:

NUR OWEN PREMO

By:

Name:

Title:

OSTOICH TRUST FUND

By:

Vladimir Ostoich, Trustee

By:

Liliana Ostoich, Trustee

JEFF SMITH

TRUSTEE, WSGR RETIREMENT PLAN
FBO J. CASEY MCGLYNN

By:

Name:

Title:

WS INVESTMENT COMPANY 98B

By:

Name: _____

Title: _____

EXHIBIT A

SCHEDULE OF INVESTORS

Investors	Series A Preferred Stock	Purchase Price
Adam Ventures L.P. c/o J. Casey McGlynn, Esq. 650 Page Mill Road Palo Alto, CA 94304	50,000	$50,000
Richard G. Caro Trust 830 Dubuque Avenue South San Francisco, CA 94080	20,000	$20,000
Dr. Henri Carle, P.C. Attn: Patricia Johnston 207 11523 100th Avenue Edmonton, Alberta Canada P5K0J8	33,000	$33,000
John J. Connors 2138 1/2 Camino Los Cerros Menlo Park, CA 94025	50,000	$50,000
Kevin P. Connors 1181 Chess Drive, Suite B Foster City, CA 94404	38,000	$38,000
Ann Marie Fitzpatrick 924 West Fremont Sunnyvale, CA 94087	6,000	$6,000

Investors	Series A Preferred Stock	Purchase Price
Furbershaw Revocable Trust Gerard A. Furbershaw Michelle A.B. Furbershaw 214 Pope Street Menlo Park, CA 94025	20,000	$20,000
Donald W. Groot, M.D. 207 11523 100th Avenue Edmonton, Alberta Canada P5K0J8	57,000	$57,000
David R. Holbrooke 120 Bulkey Avenue #405 Sausalito, CA 94964	25,000	$25,000

Lunar Fund LLC 537 Hamilton Avenue Palo Alto, CA 94301	10,000	$10,000
MedVenture Associates III, L.P. MedVen Affiliates III, L.P. 4 Orinda Way, Building D, #150 Orinda, CA 94563 Attn: Annette J. Campbell-White	1,439,759 61,241	$1,439,759 $61,241
Nur Owen Premo 544 South Eighth Street San Jose, CA 95112	100,000	$100,000

Investors	Series A Preferred Stock	Purchase Price
Dr. Serge Nadeau, P.C. 2709-8210 111 St. Edmonton, Alberta Canada T6G2C7	10,000	$10,000
Jeff Smith 182 Warren Road San Mateo, CA 94401	20,000	$20,000
Vladimir and Liliana Ostoich Trust Fund 61 Coronado Avenue Los Altos, CA 94022	10,000	$10,000
WS Investment Company 98B 650 Page Mill Road Palo Alto, CA 94304 Attn: J. Casey McGlynn	25,000	$25,000
WSGR Retirement Plan FBO J. Casey McGlynn 650 Page Mill Road Palo Alto, CA 94304 Attn: J. Casey McGlynn	25,000	$25,000

Investors	Series B Preferred Stock	Purchase Price
Joe Dorin	25,000	$50,000
Clare M. Meister	25,000	$50,000
Alta California Partners II, L.P. 1 Embarcadero Center Suite 4050 San Francisco, CA 94111	1,357,846	$2,715,692
Alta Embarcadero Partners II, LLC 1 Embarcadero Center Suite 4050	17,154	$34,308

San Francisco, CA 94111

MedVenture Associates III, L.P. 4 Orinda Way, Building D, #150 Orinda, California 94563	1,199,000	$2,398,000
MedVen Affiliates III, L.P. 4 Orinda Way, Building D, #150 Orinda, California 94563	51,000	$102,000

EXHIBIT D

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

ALTUS MEDICAL, INC.

November 12, 1999

Exhibit 10.7

STANDARD INDUSTRIAL/COMMERCIAL SINGLE TENANT LEASE - GROSS
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions")

1.1 Parties. This Lease ("Lease"), dated for reference purposes only October 1, 2000, is made by and between Robert Gordon, Trustee of the Robert Gordon Trust ("Lessor") and ACME Medical Inc., a Delaware corporation dba Altus Medical ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 Premises. That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 819-831 Cowan Road, Burlingame, located in the County of San Mateo, State of California, and generally described as (describe briefly the nature of the property and, if applicable, the "Project," if the property is located within a Project) approximately 11,559 sq. ft. offices and warehouse ("Premises"). (See also Paragraph 2)

1.3 Term. Five (5) years and 0 months ("Original Term") commencing October 1, 2000 ("Commencement Date") and ending September 30, 2005 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession. See Addendum Paragraph 58 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent. $15,027 per month ("Base Rent"), payable on the 1st day each month commencing October 1, 2000. (See also Paragraph 4)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted and/or for common area maintenance charges.

1.6 Bass Rent Paid Upon Execution. $15,027 as Base Rent for the period October 1-October 31, 2000.

1.7 Security Deposit. $15,027 ("Security Deposit"). (See also Paragraph 5)

1.8 Agreed Use. General office training, research & development, light manufacturing, assembly & storage of medical devices and any other legally permitted use. (See also Paragraph 6)

1.9 Insuring Party. Lessor is the "Insuring Party". The annual "Base Premium" is $_____. (See also Paragraph 8)

1.10 Real Estate Brokers. (See also Paragraph 15)

(a) Representation: The following real estate brokers (collectively, the "Brokers") and brokerage relationships exist in transaction (check applicable boxes):

[_] _____ represents Lessor exclusively ("Lessors Broker");

[_] _____ represents Lessee exclusively ("Lessees Broker"); or

[_] _____ represents both Lessor and Lessee ("Dual Agency").

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement (or if there is no such agreement, the sum of _____% of the total Base Rent for the brokerage services rendered by said Broker).

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.12 Addenda and Exhibits. Attached hereto is an Addendum or Addenda consisting of Paragraphs 49 through 63 and Exhibits A, all of which constitute a part of this Lease.

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2.2 Condition. Lessor shall deliver the Premises broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, if any, and all other such elements of the building, in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects. If a non-compliance with said warranty exists as of the Start Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense.

2.3 Compliance. Lessor warrants that the improvements on the Premises comply with all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances ("Applicable Requirements") in effect on the Start Date. See Addendum Para. 53. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the zoning is appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such

non-compliance, rectify the same at Lessor's expense. If the Applicable Requirements are hereafter changed (as opposed to being in existence at the Start Date, which is addressed in Paragraph 6.2(e) below) so as to require during the term of this Lease the construction of an addition to or an alteration of the Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last two (2) years of this Lease and the cost thereof exceeds six (6) months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within ten (10) days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to six (6) months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to

Lessor written notice specifying a termination date at least ninety (90) days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for such costs pursuant to the provisions of Paragraph 7.1 (c); provided, however, that if such Capital Expenditure is required during the last two years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon ninety (90) days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within ten (10) days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall be fully responsible for cost thereof, and Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use; (b) Lessee has made such

investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises; and (c) neither Lessor, Lessor's agents, nor any Broker has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (a) Broker has made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises; and (b) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease shall, however, be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until it receives possession of the Premises. If possession is not delivered within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing within ten (10) days after the end of such sixty (60) day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said ten (10) day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within four (4) months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is

required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. Rent for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result

thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on said change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within fourteen (14) days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within thirty (30) days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to neighboring properties. Lessor shall

not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within five (5) business days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in use.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, for environmental, health, or safety reasons. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c)Lessee Remediation. Lessee shall not release or spill any Hazardous Substance in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably

recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) Lessee Indemnification. Lessee shall indemnity, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) Lessor Indemnification. Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which existed as a result of Hazardous Substances on the Premises prior to the Start Date or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) Investigations and Remediations. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Start Date, unless such remediation measure is required as a result of Lessee's use (including alterations) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) Lessor Termination Option. If a Hazardous Substance Condition occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and

remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event

this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds twelve (12) times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within ten (10) days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to twelve (12) times the then monthly Bass Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, which relate in any manner to Lessee's particular use of the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall Immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30 below) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination.

7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) In General. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage and Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations, and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring

repairs, or the means of repairing the same, are reasonably ore readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, skylights, landscaping, driveways, parking lots, fences, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g., graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(c) Replacement. Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if the Basic Elements described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such Basic Elements, then such Basic Elements shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the number of months of the useful life of such replacement as such useful life is specified pursuant to Federal income tax regulations or guidelines for depreciation thereof (including interest on the unamortized balance as is then commercially reasonable in the judgment of Lessor's accountants), with Lessee reserving the right to prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) Definitions; Consent Required. The term "Utility Installations" refers to all floor and window coverings, air lines, power panels, electrical distribution, security and fire protection systems and signs, communication systems, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than

Utility Installations or Trade Fixtures, whether by addition or deletion. "Losses Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a). Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, and the cost thereof does not exceed $10,000.

(b) Consent. Any Alterations or Utility installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount equal to the greater of one month's Base Rent, or $10,000, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) Indemnification. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself. Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to one and one-half times the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) Ownership. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of

Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per Paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) Removal. By delivery to Lessee of written notice from Lessor not earlier than ninety (90) and not later than thirty (30) days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lease Owned Alterations or Utility Installations made without the required consent.

(c) Surrender/Restoration. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the Improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee Owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or groundwater contaminated by Lessee. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) Lessee shall pay to Lessor any insurance cost increase ("Insurance Cost Increase") occurring during the term of this Lease. "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a), and 8.3(b) ("Required Insurance"), over and above the Base Premium as hereinafter defined calculated on an annual basis. "Insurance Cost Increase" shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in Paragraph 1.9 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.9, then the Base Premium shall be the annual premium applicable to the twelve (12)-month period following the Commencement Date. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.1(b) in excess of $2,000,000 per occurrence.

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within thirty (30) days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

8.2 Liability Insurance.

(a) Carried by Lessee. Lessee shall obtain and keep in force a CommercialGeneral Liability Policy of Insurance protecting Lessee and Lessor against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $2,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The Policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the

liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) Carried by Lessor. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance--Building, Improvements and Rental Value.

(a) Building and Improvements. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any groundlessor, and to any Lender(s) insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. Lessor's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted US Department

of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located.

(b) Rental Value. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one (1) year. Said insurance shall provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of Rent from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next twelve (12) month period.

(c) Adjacent Premises. If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises, other than the permitted uses.

8.4 Lessee's Property/Business Interruption Insurance.

(a) Property Damage. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage. The proceeds from any such insurance may be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) Business Interruption. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) No Representation of Adequate Coverage. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to reduction except after thirty (30) days prior written notice to Lessor. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and

charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fall to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities to the extent arising out of, involving, or in connection with, the use of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a

part, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations, Utility Installations and Trade Fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect; or (ii) have this Lease terminate thirty (30) days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial

Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make

the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last six (6) months of this Lease there is damage to the Premises for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving a written termination notice to Lessee within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by exercising such option on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) Abatement. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) Remedies. If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within ninety (90) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such

repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning at the actual work on the Premises, whichever first occurs.

9.7 Termination-Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

9.8 Waive Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

10.1 Definition of "Real Property Taxes." As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason or events occurring during the term of this Lease.

10.2

(a) Payment of Taxes. Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date occurs ("Tax Increase"). Subject to Paragraph 10.2b), payment of any such Tax Increase shall be made by Lessee to Lessor within thirty (30) days after receipt of Lessor's written statement setting forth the amount due and the computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect.

(b) Advance Payment. In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option, estimate the current Real Property Taxes, and require that

the Tax increase be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the amount due, at least twenty (20) days prior to the applicable delinquency date; or (ii) monthly in advance with the payment of the Bass Rent. If Lessor elects to require payment monthly in advance, the monthly

payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. All moneys paid to Lessor under this Paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may at the option of Lessor, be treated as an additional Security Deposit.

(c) Additional Improvements. Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 Personal Property Taxes. Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) A change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than twenty-five percent (25%) of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to

which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice, increase the monthly Base Rent to one hundred ten percent (110%) of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to one hundred ten percent (110%) of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to One Hundred Ten Percent (110%) of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations hereunder; or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. See Addendum Paragraph 60.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or rules under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, and/or Security Deposit or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of five (5) business days following written notice to Lessee.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) a Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such

failure continues for a period of thirty (30) days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. ss. 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days;

provided, however, in the event that any provision of this subparagraph (a) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was intentionally materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor; (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty; (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing; (iv) a Guarantor's refusal to honor the guaranty; or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within sixty (60) days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within the time set forth above (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require payments during the following 12-month period to be made by Lessee to be by cashier's check. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have

been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises reasonable attorneys' fees. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12.

If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue this Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within five (5) days after such amount shall be due,

then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a one-time late charge equal to ten percent (10%) of each such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's

Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within thirty (30) days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the thirty-first (31st) day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus 4%, but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) Notice of Breach. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing of written notice for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

(b) Performance by Lessee on Behalf of Lessor. In the event that neither Lessor nor Lender cures said breach within thirty (30) days after receipt of said written notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent an amount equal to the greater of one month's Base Rent or the Security Deposit, and to pay an excess of such expense under protest, reserving Lessee's right to reimbursement from Lessor. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of any building portion of the premises, or more than twenty-five percent (25%) of the land area portion of the premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease

shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokers' Fee.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option; (b) if Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located; (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease; or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of said Brokers in effect at the time of the execution of this Lease.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Each Broker shall be a third party beneficiary of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to a Broker any amounts due as and for commissions pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within ten (10) days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker.

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finders fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the American Industrial Real Estate Association, plus such additional information,

confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party; (ii) there are no uncured defaults in the Requesting Party's performance; and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 20 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 6 above.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. Subject to the provisions of Paragraph 17 above, the obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, the individual partners of Lessor or its or their individual partners, directors, officers or shareholders, and Lessee shall look to

the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against the individual partners of Lessor, or its or their individual partners, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or US Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given two (2) business days after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given one business day after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection

therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Recording. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees applicable thereto.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to one hundred twenty-five percent (125%) of the Base Rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions.

In construing this Lease, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee whereupon this Lease and such Options shall be deemed prior to such Security Device notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior

to acquisition of ownership except continuing defaults; (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor; or (iii) be bound by prepayment of more than one (1) month's rent.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within sixty (60) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said sixty (60) days, then Lessee may, at Lessee's option, directly contact Lessor's lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such

fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach.

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any ordinary "For Sale" signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary "For Lease" signs. Lessee may at any time place on or about the Premises any ordinary "For Sublease" sign.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Except for ordinary "For Sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within ten (10) days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any than existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within ten (10) business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the American Industrial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) a Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options.

39.1 See Addendum Paragraph 63.

39.2 Options Personal To Original Lessee. Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured; (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee); (iii) during the time Lessee is in Breach of this Lease; or (iv) in the event that Lessee has been given three (3) or more notices of separate Default, whether or not the Defaults are cured, during the twelve (12) month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after such Rent becomes due (without any necessity of Lessor to give notice thereof), (ii) Lessor gives to Lessee three (3) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness at the grounds and including the parking, loading and unloading of vehicles, and that Lessee will pay its fair share of common expenses incurred in connection therewith.

41. Security Measures. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

44. Authority. If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, such party represents that each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its be behalf. Each party shall, within thirty (30) days after request, deliver to the other party satisfactory evidence of such authority.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time at the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. Multiple Parties. If more than one person or entity is named herein as either Lessor or Lessee, such multiple Parties shall have joint and several responsibility to comply with the terms of this Lease.

49. Mediation and Arbitration of Disputes. An Addendum requiring the Mediation and/or the Arbitration of certain disputes between the Parties and/or Brokers arising out at this Lease [x] is [ ] is not attached to this Lease. See Addendum Paragraph 63.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR

INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____	Executed at: _____
on: _____	on: _____
By LESSOR:	By LESSEE:
GORDON FAMILY TRUST /s/ Robert Gordon	ACME MEDICAL INC., a Delaware corporation dba Altus Medical
By: ROBERT GORDON, Trustee	By: /s/ Kevin Connors
Name Printed: Robert D. Gordon	Name Printed: Kevin Connors
Title: President	Title: CEO
By: _____	By: _____
Name Printed: _____	Name Printed: _____
Title: _____	Title: _____
Address: _____	Address: _____
_____	_____
Telephone: ( ) _____	Telephone: ( ) _____
Facsimile: ( ) _____	Facsimile: ( ) _____

Federal ID No. _____ Federal ID No. _____

NOTE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION, 700 So. Flower Street, Suite 600, Los Angeles, California 90017 (213) 687-8777. Fax No. (213) 687-8616

FORM STG-6-2/97

ADDENDUM TO STANDARD INDUSTRIAL/COMMERCIAL
SINGLE-TENANT LEASE--GROSS

819-831 COWAN ROAD
BURLINGAME, CALIFORNIA

Lessor and Lessee hereby agree that, notwithstanding anything contained in the Standard Industrial/Commercial Single-Tenant Lease--Gross (the "Lease"), to the contrary, the provisions set forth below shall be deemed part of the Lease, and shall supersede, to the extent appropriate, any contrary provision in the Lease. All references in the Lease and in this Addendum to the "Lease," shall be construed to mean the Lease as amended and supplemented by this Addendum, and all capitalized terms not otherwise defined in this Addendum shall have the meanings ascribed to them in the Lease.

50. Monthly Base Rent.

Year 1:	$15,027.00
Year 2:	$15,478.00
Year 3:	$15,942.00
Year 4:	$16,420.00
Year 5:	$16,913.00

51. Current Lease's Effect. The current Standard Industrial/Commercial Multi-Tenant Lease--Gross, dated June 28, 1999, or 821-829 Cowan Road (the "Current Lease"), shall remain in effect through and including September 30, 2000, at which time the Current Lease shall superseded by the Lease, and the Current Lease shall thenceforth be of no further effect.

52. Tenant Improvements. Lessor, at Lessor's sole cost and expense, shall provide the following tenant improvements to the Premises:

(a) With respect to 819 Cowan Road, new paint and new carpet for the office area, including patching, base, repair of all broken and damaged outlet and network wall fixtures, and repair of all damaged or destroyed ceiling tiles.

(b) With respect to 831 Cowan Road, new carpet and or new floor tiling (with PCT), installation of integrated air conditioning, and a $10,000.00 allowance for moving walls.

53. Condition of Premises. Notwithstanding Paragraph 2.2 of the Lease, Lessor warrants and represents that as of the Commencement Date: (a) the Premises, the Building and the Industrial Center shall comply with all applicable laws, rules, regulations, codes, ordinances, underwriters' requirements, covenants, conditions and restrictions (collectively, "Laws"); (b) the Premises shall be in good and clean operating condition and repair; (c) the electrical, mechanical, heating, plumbing, sewer, elevator, and other systems serving the Premises and the Building shall be in good operating condition and repair, except for the integrated air conditioning for 831 Cowan Road, (see Paragraph 52(b); (d) the roof of the Building shall be in good condition and water tight. Lessor further warrants and represents that the Tenant Improvements shall be completed as soon as practicable after the full execution and delivery of the Lease, in a good and workmanlike manner using new materials of good quality. Lessee's acceptance of the Premises shall not be deemed a waiver of Lessee's right to have patent defects in the Tenant Improvements or the Premises repaired at Lessor's sole expense, provided that Lessee shall have ten (10) business days after receipt of the Premises to deliver a list to Lessor (and, with respect to the newly installed integrated air conditioning, ten (10) business days after installation), which Lessor shall remedy within a reasonable time at Lessor's sole cost and expense.

54. Hazardous Substances.

(a) To the best knowledge of Lessor: a) no Hazardous Substances are present on the Industrial Center or the soil, surface water, or groundwater thereof, except that Lessor has no knowledge of the activities of Lessee with respect Hazardous Substance at 821-829 Cowan Road during Lessee's occupancy under the Current Lease (as defined in Paragraph 51 above); (b) no underground storage tanks or asbestos containing building materials are present on the Industrial Center; and (c) no action, proceeding, or claim is pending or threatened involving the Industrial Center concerning any Hazardous Substances or pursuant to any Applicable Law or Requirement. Under no circumstances shall Lessee be liable for or indemnify Lessor from, and Lessor shall indemnify, defend, and hold harmless Lessee, its agents, contractors, stockholders, directors, successors, representatives, and assigns from and against, all losses, costs, claims, liabilities and damages (including attorneys' and consultants' fees) of every type and nature, directly or indirectly arising out of or in connection with any Hazardous Substance present at any time on or about the Industrial Center, Lease, or the soil, air, improvements, groundwater or surface water thereof, or the violation of any Applicable Laws or Requirements, relating to any such Hazardous Substance, except to the extent that any of the foregoing actually results from the release or emission of Hazardous Substances on or about the Premises by Lessee, its agents, contractors, stockholders, directors, or employees in violation of any Applicable Law or Requirement, including, but not limited to the time of Lessee's occupancy under the Current Lease.

(b) For the purposes of Paragraph 6.2 of the Lease only, the term "Applicable Requirements," as defined in Paragraph 2.3 of the Lease, is modified to the effect that reportable uses requiring consent (i) with respect to environmental conditions, apply to environmental conditions on, in, under, or about the Premises, including soil and groundwater conditions, only those created by Lessee; and (ii) with respect to the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance, apply only those by Lessee.

55. Lessee's Compliance with Requirements. Lessee shall not be required to comply, cause the Premises to comply, or pay the cost of complying with any

Requirement properly capitalized under generally accepted accounting principles, unless such compliance is necessitated solely as a result of Lessee's use of the Premises.

56. Lessor's Access to Premises. Lessor and its agents, except in the case of an emergency, shall provide Lessee with at least twenty-four (24) hours' notice prior to entering the Premises. Any entry by Lessor or Lessor's agents shall comply with Lessee's reasonable security measures and shall not impair Lessee's operations more than is reasonably necessary.

57. Rules and Regulations. Lessee shall not be required to comply with any new rule or regulation which unreasonably interferes with Lessee's use of the Premises or Lessee's parking rights and or which materially increases the obligations or decreases the rights of Lessee under the Lease.

58. Early Entry. Upon the full execution and delivery of the Lease, and at no additional cost to Lessee, Lessee shall be permitted immediate access to the portion of the Premises not currently leased to Lessee under the Current Lease for the purposes of planning, constructing, installing and outfitting the Premises for Lessee's use.

59. Signage. Lessee, at Lessee's sole cost and expense, shall have the right to eyebrow signage on the Building and on a monument sign, as approved by the City of Burlingame.

60. Assignment and Subletting. As a condition of Lessor's consent to an assignment or sublease under the Lease, Lessee shall reimburse Lessor for its actual attorneys' and accountants' fees in connection with such assignment or subletting.

61. Option to Renew. Provided Lessee is not in default of the terms and conditions of the Lease at such time, Lessee shall be entitled to renew the Lease for one (1) additional five (5)-year term. If Lessee desires to exercise its option to renew, it must provide written notice to Lessor of its intention to renew no earlier than one hundred and twenty (120) days, and no later than thirty (30) days prior to the expiration of the term of the Lease. All of the terms and conditions of the Lease shall apply during the extended term, except that the monthly Base Rent for the first year of the renewal term shall be adjusted to the then "Fair Market Rent;" provided, however, that in no event shall the monthly Base Rent for the first year of the renewal term be less than the monthly Base Rent for the calendar month preceding the expiration of the Lease term plus three percent (3%).

62. Parking. Lessee shall have access to the exclusive use of not less than thirty-five (35) reserved parking spaces to be designated by Lessor.

63. Mediation and Arbitration.

(a) Mediation of Disputes. Notwithstanding anything to the contrary contained in this Lease, with the exception of unlawful detainer proceedings for the non-payment of rent, which shall not be subject to prior mediation nor arbitration, with respect to any claim or controversy arising out of or relating to the Lease, a breach of it, or the

transactions contemplated under the Lease, the parties shall first attempt in good faith to settle any such

dispute by mediation before proceeding to arbitration. A party that refuses to mediate in good faith shall not be entitled to recover any attorneys' fees it may incur in litigation or arbitration.

(b) Arbitration of Disputes. Except as otherwise provided in this Paragraph 63, any claim or controversy arising out of or relating to this Agreement, a breach of it, or the transactions contemplated under it shall be settled by arbitration in accordance with the Rules of the American Arbitration Association in the County of Santa Mateo, State of California, and the judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction. In addition to a monetary award, the Arbitrator(s)' shall have the power to order any other applicable remedy. The parties shall have the right to discovery as provided by California Code of Civil Procedure Section 1283.05. The prevailing party in the arbitration may be awarded its reasonable attorneys' fees and costs in the discretion of the Arbitrator(s). The parties agree to expedite arbitration and the American Arbitration Association is to be instructed that any arbitration proceeding conducted pursuant to the Agreement shall be expedited.

NOTICE: BY INITIALING THE SPACE BELOW, YOU ARE AGREEING TO HAVE DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND YOU ARE SURRENDERING YOUR RIGHT TO HAVE ANY SUCH DISPUTE LITIGATED IN A COURT OF LAW, INCLUDING BY JURY TRIAL. YOU ARE ALSO SURRENDERING YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. AGREEING TO THIS ARBITRATION PROVISION IS VOLUNTARY.

THE UNDERSIGNED HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT TO NEUTRAL ARBITRATION DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

LESSOR: /s/ Robert Gordon LESSEE: /s/ Kevin Connors

Exhibit 10.8

ALTUS MEDICAL, INC. and Continuum

Distribution Agreement

This Distribution Agreement (the "Agreement") is effective as of September 1, 2001 (the "Effective Date") by and between HOYA PHOTONICS, INC., a California corporation doing business as CONTINUUM, CONTINUUM ELECTRO-OPTICS, INC. and as CONTINUUM BIOMEDICAL, having its principal place of business located at 3150 Central Expressway, Santa Clara, CA 95051 ("CONTINUUM") and Altus Medical Inc., a Delaware corporation having its principal place of business at 821 Cowan Road, Burlingame, CA 94010 ("ALTUS").

RECITALS

WHEREAS, ALTUS desires to serve as a distributor for and on behalf of CONTINUUM and CONTINUUM's Q-switched Medical Products, in the territories and for the accounts or types of accounts designated below;

WHEREAS, CONTINUUM wishes to appoint ALTUS as CONTINUUM's brand name distributor for such purposes.

NOW, THEREFORE, the parties hereby agree as follows:

AGREEMENT

1. Appointment. Subject to the terms and conditions of the Agreement and except as otherwise provided herein, CONTINUUM hereby appoints ALTUS as CONTINUUM's distributor in the defined territories of the United States exclusively, Puerto Rico exclusively and Canada co-exclusively (the other authorized distributors in Canada are set forth in Section 3 ("Co-Distributors in Canada") of Annex I ("Products and Territory")) (collectively the "Territory"), for the Medlite and MultiLight branded products listed in Section 1 (the "Products") of Annex I ("Products"), for the limited purpose of selling Products to customers within the Territory who have certified to ALTUS in writing that they are adequately licensed by the applicable state or federal medical licensing authority to buy such Products and who buy the Products for personal or ordinary business use and not for further distribution or resale ("End Users") and providing support to such End Users in accordance with this Agreement, and for the limited purpose of selling Products to "ALTUS Distributors" (as defined in Section 3.2 ("No Authority to Bind") below) in compliance with the terms and conditions of this Agreement. ALTUS hereby accepts such appointment and agrees to sell and support the Products within the Territory in accordance with the terms and conditions set forth herein. Notwithstanding the forgoing, CONTINUUM reserves the non-exclusive right to sell the Products to the house accounts in existence prior to the Effective Date, which house accounts are listed in Section 2 ("Continuum House Accounts") of Annex I ("Products"). CONTINUUM additionally reserves the non-exclusive right to negotiate with and sell the Products directly and indirectly to federal, state and local government agencies in the Territory. CONTINUUM further reserves the right to sell the Medlite II branded product in the Territory for a period of six (6) months following the Effective Date and Medlite IV branded Products in the Territory for a period of

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three (3) months following receipt of initial FDA clearance on the Medlite C6 Product. Following such periods, should CONTINUUM desire that CONTINUUM's remaining inventory of Medlite II and/or Medlite IV Products be sold in the

Territory, CONTINUUM will allow ALTUS to sell such products, and ALTUS agrees to use its best efforts to distribute the balance of the Medlite II and Medlite IV product line within the Territory at a negotiated transfer price to be mutually agreed upon at a later date.

2. Good Faith and Fair Dealing. In carrying out each of their respective obligations under the terms of this Agreement the parties will act in accordance with the principles of good faith and fair dealing. The provisions of this Agreement, as well as any statements made by the parties in connection with this relationship, shall be interpreted in good faith.

3. ALTUS Functions.

3.1 Marketing. ALTUS agrees to use its best efforts to promote and support the Products within the markets in the Territory in accordance with CONTINUUM's reasonable instructions and shall protect CONTINUUM's interests with the diligence of a responsible businessperson. ALTUS will use its best efforts to promote and market the Products in the Territory and further agrees that its marketing and advertising efforts will be of the same quality as ALTUS' marketing and advertising for ALTUS products, in good taste, and will preserve the professional image and reputation of CONTINUUM and the Products. ALTUS agrees not to remove any of the CONTINUUM trade names, trademarks, copyright notices or other legends from the Products. CONTINUUM agrees to provide to ALTUS, as requested by ALTUS, a reasonable amount of the promotional material that is in existence on the Effective Date, for use by ALTUS in ALTUS' efforts to market the Products. In the event an ALTUS marketing project is determined by the parties to be mutually beneficial to both ALTUS and CONTINUUM, both parties will define the scope of the project as well as the associated budget requirements ("Joint Marketing Project"). Upon written consent by both parties, all authorized costs associated with the production of the Joint Marketing Project will be divided equally between both parties.

3.2 No Authority to Bind. ALTUS shall have no authority to execute any agreements or conclude or assume any contractually binding commitments on behalf of, or in any way to bind, CONTINUUM with third parties. ALTUS' authority shall only be to market and solicit orders from End Users, sell Products to End Users, collect payment from End Users, provide installation and clinical instruction for the Products and provide warranty support as directed by CONTINUUM in accordance with Section 3.6 ("Authorized Warranty Center") of this Agreement. ALTUS is authorized to offer the Medlite C products through ALTUS' distributors within the Territories ("ALTUS Distributors"), provided that, prior to receipt, promotion or sale of any Products, such ALTUS Distributors have executed an agreement with ALTUS ("Distributor Agreement") which Distributor Agreement contains the minimum terms set forth on Annex VII ("ALTUS Distributor Minimum Terms"). In addition, all pricing and commissions to ALTUS Distributors are the sole responsibility of ALTUS. Finally, ALTUS hereby does and will designate CONTINUUM as a third party beneficiary of such Distributor Agreements and hereby agrees to indemnify, defend and hold CONTINUUM harmless from any third party claim arising out of an ALTUS Distributor's promotion, marketing, sale or support of

any Product which is based on or is the result of a breach by the ALTUS Distributor of the Distribution Agreement or the negligence of the ALTUS Distributor.

3.3 FDA Compliance. When negotiating with any third parties, ALTUS shall offer the Products strictly in accordance with the United States Food and Drug Administration ("FDA") cleared applications, capabilities and indications for use for the Products. In order to assist ALTUS with this requirement, CONTINUUM agrees to promptly provide ALTUS with copies of any notices received by CONTINUUM from the FDA which relate to the Products.

3.4 Sales and Support Organization. ALTUS shall provide an

adequate organization for sales and support, with all necessary means and personnel, in order to ensure the fulfillment of ALTUS' obligations throughout the Territory under this Agreement. ALTUS shall maintain an office in the United States and shall be solely responsible for the acts and expenses of its employees and ALTUS Distributors.

3.5 Distributor Prohibitions. ALTUS agrees not to distribute the Products (i) by mail order to any party that is not an End User and who has not signed an agreement with ALTUS for the purchase of Products in compliance with the terms of this Agreement prior to shipment of the Product to such End User, (ii) by rental (iii) with knowledge or reason to know that the Products will be transported outside the Territory. ALTUS shall not (i) use the Products to provide any services, (ii) translate the user manuals (in printed or media form or otherwise), or (iii) do any other act with respect to the Products not specifically authorized by this Agreement.

3.6 Authorized Warranty Center.

(a) ALTUS Obligations. ALTUS shall function as a CONTINUUM authorized warranty center and shall be responsible for interfacing with the End User for any Product warranty claims under the warranty provided by CONTINUUM to the End User ("End User Warranty"). In the event that an End User contacts ALTUS regarding a claim under a current End User Warranty, ALTUS will notify CONTINUUM that ALTUS has received a warranty claim, which notice will be via facsimile transmission sent no later than one (1) business day from the End User's notice to ALTUS, which facsimile is confirmed received by CONTINUUM. Such notice is to contain such information as CONTINUUM reasonably requests, including without limitation the following minimum information: the End User name, End User contact information, related Product ID number and any available error codes on the Product that the End User is able to relay to ALTUS following ALTUS' request for such information.

(b) CONTINUUM Obligations. CONTINUUM agrees to use best efforts to maintain service parts inventory for the Products for the term of the Agreement. CONTINUUM further agrees to use best efforts to contact any End User making a claim under a current End User Warranty within one (1) business day of CONTINUUM's receipt of notice from ALTUS of such End User's reported End User Warranty claim. In the event of a claim under a valid End User Warranty which requires, in CONTINUUM's reasonable discretion, CONTINUUM to service the End User's Product at the End User site ("Field Incident"), CONTINUUM agrees to use best efforts to maintain service response to such Field Incidents within two (2) business days of ALTUS' report of the

incident to CONTINUUM. If an End User has a persistent product performance problem or extended down time which problems are covered by a valid End User Warranty, CONTINUUM may agree, based on the circumstances, to provide a unit on loan at no charge to the customer or ALTUS until product performance can be restored. In the event CONTINUUM cannot provide any service to an End User for a valid End User Warranty claim within two (2) business days of CONTINUUM's receipt of notice from ALTUS about the claim in compliance with Section 3.0(a) ("ALTUS Obligations") above, and such failure is not the result of End User withholding reasonable cooperation from CONTINUUM in the provision of the service, ALTUS reserves the right to dispatch a qualified ALTUS engineer or qualified 3rd party service engineer to the site; provided, however, that CONTINUUM is notified in advance of any such event as well as estimated associated cost of dispatching an ALTUS or qualified 3rd party service engineer and CONTINUUM consents to such dispatch, which consent will not be unreasonably withheld, conditioned or delayed. If the claim is under a valid CONTINUUM End User Warranty, or, if not under such a warranty, has been deemed to be covered by CONTINUUM on the basis

that ALTUS received written confirmation from CONTINUUM that the claim would be covered by such a warranty, CONTINUUM will absorb all approved, reasonable and customary expenses and costs incurred from the corresponding Product repair.

3.7 In Service. ALTUS will perform the End User in-service for any newly installed Product(s) consistent with the agreed upon order processing procedure and CONTINUUM standards, including, at a minimum, visiting the End User site and training the End User on the use of the Product(s), operator related troubleshooting and responding to End User questions related to the Product(s).

4. Undertaking Not to Compete. Without the prior written authorization of CONTINUUM, ALTUS shall not represent, manufacture or distribute any [*] during the term of this Agreement. If at any time ALTUS wishes to represent, manufacture or distribute any product(s) that may directly compete with the Medlite C3 and Medlite C6 series based on current FDA cleared applications, ALTUS must provide CONTINUUM with a written notification of ALTUS' intent to do so no later than ninety (90) days before commencement of distribution of such new product(s). After such notification, if CONTINUUM determines in its reasonable discretion that such new product(s) will adversely affect or impact the sales of the Medlite C3 and/or the Medlite C6 product line, CONTINUUM may so notify ALTUS in writing. In the case where ALTUS has received written notice from CONTINUUM, ALTUS may choose to distribute such competing products and CONTINUUM, may elect, at its discretion, by means of written notice effective as of the date received by ALTUS to make the appointment in Section 1 ("Appointment") non-exclusive or to terminate this Agreement as of the effective date of CONTINUUM's notice. Notwithstanding the foregoing definition of competing products, ALTUS shall be permitted to manufacture, market and distribute the ALTUS CoolGlide or CoolGlide Excel for any FDA-cleared application; provided, however, that ALTUS agrees to provide CONTINUUM with written notification of any additional FDA clearances received after the Effective Date for the CoolGlide or CoolGlide Excel, which clearances will be subject to CONTINUUM's review procedures and remedies for

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competition described above in this Section 4 ("Undertaking Not to Compete"). Also, ALTUS may represent, distribute or manufacture any products that are not competitive with the Products, provided that ALTUS first informs CONTINUUM in advance of such activity and CONTINUUM agrees in writing that such Products are not competitive. ALTUS declares that it presently represents, distributes and/or manufactures, directly or indirectly, the products listed on Annex III ("Products and Principals Represented by ALTUS") as of the Effective Date. If ALTUS makes any changes to ALTUS' representation during the term of this Agreement, including any additions to or deletions from the products or entities represented, ALTUS shall notify CONTINUUM of those changes in writing within thirty (30) days of any such change. Written notification of additions to the list shall identify the entities being added by name (including itself) and shall describe each of the products of that entity to be so represented.

5. Purchase Requirements, Sales Targets and Forecasts.

5.1 Minimum Purchase Requirement. Upon the initial FDA clearance of the Medlite C6 Product, ALTUS will issue a binding purchase order to CONTINUUM for a minimum number of Products as set forth under Annex V ("Minimum Purchase Requirement"). The Products ordered through such binding purchase order will ship during the second three month period (Q2), third three month period (Q3) and fourth three month period (Q4) of the one (1) year period following the date of the initial FDA clearance of the Medlite C6 Product (the "Forecast Year") as set forth under Annex V ("Minimum Purchase Requirement"). ALTUS will make its

best effort to determine the exact system mix at the time the first rolling forecast is submitted by ALTUS pursuant to Section 5.4 ("Forecasts"). ALTUS will not be penalized for adjustments in the mix during the "Planning Zone" in compliance with Section 5.4 ("Forecasts"). The first [*] of the Forecast Year, however, will be considered a [*] period for ALTUS. During the [*] period, it is expected that [*] units will be purchased or shipped. If ALTUS is unable to purchase the number of units required under the Minimum Purchase Requirement as a result of the failure of fifty one percent (51%) of the Products shipped to ALTUS to substantially conform to their specifications during the first thirty (30) days following shipment to ALTUS, ALTUS shall give notice to CONTINUUM and allow CONTINUUM thirty (30) days to remedy such claimed deficiencies. In the event such claimed deficiencies cannot be cured within thirty (30) days, the remaining balance of the purchase order for the Minimum Purchase Requirement shall be postponed by the amount of additional time required by CONTINUUM to cure the deficiency, or, if CONTINUUM elects in its sole discretion, the remaining balance of the purchase order will be cancelled without penalty or liability.

5.2 CONTINUUM mayrequest an increase of such Minimum Purchase Requirement at the end of each contract year. In the event that CONTINUUM makes a request for an increase, which request is not agreed upon by ALTUS within thirty (30) days of the start of the new contract year, then both parties may negotiate a mutually acceptable Minimum Purchase Requirement. If both parties can not arrive at an mutually acceptable Minimum Purchase Requirement then either party may elect to terminate the Agreement effective the first day of the fourth (4th) month of the new contact year.

5.3 Sales Target. The parties will meet and agree upon a minimum annual sales target at least thirty days prior to commencement of each contract year. ALTUS shall use

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its best efforts to attain the forecasted targets agreed upon. Failure by ALTUS to meet the forecasted sales targets shall not be deemed to be a breach of a contractual obligation on the part of ALTUS, but if ALTUS fails to achieve the forecasted annual sales targets for a given twelve month period, such failure may allow CONTINUUM to elect, in CONTINUUM's sole discretion, to either remove the exclusivity conditions in Section 1 ("Appointment") or to terminate this Agreement

5.4 Forecasts. At least thirty (30) days following the date that initial FDA clearance is provided on the Medlite C6 Product, ALTUS will provide CONTINUUM with a written [*] month rolling forecast for ALTUS' purchase of Products which forecast, at a minimum, will, if followed, result in the purchase of the Minimum Purchase Requirement for each contract [*]. The first [*] months of each forecast ("Firm Period") shall at all times be binding and ALTUS agrees to place firm purchase orders in accordance with such Firm Period forecast at least sixty (60) days prior to the scheduled delivery dates described in such purchase order. ALTUS may, at its discretion, provide tentative delivery dates and delivery destinations in such purchase orders, which tentative delivery dates and tentative delivery destinations will be confirmed or revised by the mutual agreement of the parties within forty five (45) days of such purchase order. If delivery dates and times are not confirmed or revised within such period, then CONTINUUM shall ship the ordered Products to ALTUS' principal place of business on the date sixty (60) days following the date the purchase order is placed. Notwithstanding the foregoing, CONTINUUM will not ship the ordered Products if CONTINUUM receives written notice (the "Warehouse Notice") from ALTUS before the date sixty (60) days following the date the purchase order is placed (i) requesting that CONTINUUM hold the ordered Products at CONTINUUM's facilities until such time as the tentative delivery

dates and tentative delivery destinations are confirmed or revised by the mutual agreement of the parties; (ii) stating that ALTUS accepts the ordered Products as of the date the Warehouse Notice is received by CONTINUUM; and (iii) confirming that all risk of loss, title and insurance obligations transfer to ALTUS as of the date CONTINUUM receives the Warehouse Notice. The parties acknowledge and agree that upon CONTINUUM's receipt of the Warehouse Notice, (i) ALTUS will be deemed to have accepted the ordered Products; (ii) all risk of loss, title and insurance obligations will be deemed to transfer to ALTUS; and (iii) in no event will CONTINUUM be liable to ALTUS or any third party for any loss or damage to the ordered Products or any claims relating to losses or damages caused by the Products or loss of use of the Products. ALTUS will update the forecast by the first day of each month by providing CONTINUUM with a revised [*] month rolling forecast. As each "[*] month" in the rolling forecast moves into the Firm Period, the number of Products forecasted shall not change (increase or decrease) by more than fifty percent (50%) from the quantity forecasted when such month became the [*] month in the forecast. Accordingly, month [*] and month [*] will be referred to as the "Semi-firm Zone." Months [*] through [*] will be referred to as the "Planning Zone" and will be nonbinding estimates only, although the quantities described shall be provided in good faith and consistent with ALTUS' current knowledge of its requirements as updated internally by ALTUS. Notwithstanding the nonbinding nature of the Planning Zone forecast, CONTINUUM may apprise ALTUS in writing as to certain strategic advance purchases of components or materials which may be advisable to ensure a timely delivery of Products or to obtain more favorable economic terms. Based on ALTUS' prior written approval, CONTINUUM may make such additional purchases and ALTUS shall be obligated to reimburse CONTINUUM for such costs if such components or

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materials are not subsequently used in the Products, provided that such components or materials are not usable by CONTINUUM in other products or are not sold to other CONTINUUM End Users. Each time the forecast is republished, all of the Product forecast quantities included in the Planning Zone, may be increased or decreased by ALTUS as such quantities roll forward within the Planning Zone based on ALTUS' updated knowledge of ALTUS' requirements.

6. Order and Shipment Terms.

6.1 Order Procedure. The terms and conditions of this Agreement shall apply to all orders for the Products and shall supersede any conflicting, different or additional terms on purchase orders submitted to CONTINUUM by ALTUS. All purchase orders placed by ALTUS shall reference this Agreement and shall be deemed to incorporate and be subject to the terms and conditions set forth in this Agreement, and neither party shall seek to introduce any terms or conditions in purchase or acknowledgment documents which could be interpreted to add to, alter or conflict with the terms and conditions of this Agreement. Purchase orders submitted to CONTINUUM will conform to the Firm Period forecast, will be provided sixty (60) days or more before the requested delivery date and are solely for the purpose of requesting delivery dates, quantities and specifying destination. All orders placed with CONTINUUM shall be subject to acceptance by CONTINUUM at CONTINUUM's principal place of business. Unless CONTINUUM rejects a purchase order by written notice to ALTUS within two (2) working days after receipt, such purchase order will be deemed accepted.

6.2 Shipment; Acceptance. CONTINUUM will ship all ordered Products F.O.B. CONTINUUM such that risk of loss, title and insurance obligations transfer to ALTUS, and such Products are deemed accepted by ALTUS, when CONTINUUM or its agent makes the Products available for shipment at CONTINUUM's facilities. CONTINUUM will use commercially reasonable efforts to meet shipping schedules on accepted purchase orders. In no event shall CONTINUUM be liable to

ALTUS for any loss or financial compensation arising from late delivery or errors in filling any order, unless such compensation is negotiated and agreed upon on a case-by-case basis in a prior written agreement signed by the parties. If orders for Products exceed CONTINUUM'S inventory, CONTINUUM shall allocate available inventory on a basis CONTNUUM, in its sole discretion deems equitable.

6.3 Packaging. CONTINUUM will provide commercial packing adequate under normal conditions to protect the Products in shipment and to identify the contents. ALTUS agrees that any Products sold to End Users shall be provided in the packaging and with each of the contents, including without limitation any CONTINUUM warranty, initially provided by CONTINUUM to ALTUS. Should ALTUS request any special packaging, it shall be provided by CONTINUUM at ALTUS' expense.

6.4 Product Discontinuance. Nothing herein is intended to limit CONTINUUM's right to discontinue or modify any Products. Should CONTINUUM elect to discontinue production and/or sale of any Product which is the subject of this Agreement prior to CONTINUUM's delivery of units of the Product ordered by ALTUS, CONTINUUM may elect in CONTINUUM's sole discretion to cancel ALTUS' order of such Product as to the unshipped units by providing written notice within ninety (90) days of discontinuance to ALTUS, at which point any order as to unshipped units of such Product placed by ALTUS under this Agreement

will be cancelled without liability to CONTINUUM; provided, however, that any amounts paid by ALTUS to CONTINUUM towards the purchase of such unshipped units of such Product will be refunded by CONTINUUM within thirty (30) days of the date of notice of discontinuance.

6.5 Installation. All installations of Products must be performed by CONTINUUM or a CONTINUUM certified installer. ALTUS will request for installation assistance from CONTINUUM by sending a written notice to CONTINUUM with the corresponding Product order which notice sets forth the Products, installation location and requested installation period. Installation services will be performed by CONTINUUM for ALTUS in a professional, workmanlike manner for the installation/warranty fees set forth on Annex IV ("Pricing to ALTUS") within five (5) working days of the requested date. In the event such services are not performed in a professional, workmanlike manner, ALTUS sole and exclusive remedy will be to notify CONTINUUM in writing and to describe the portion of the services which did not meet the required standard and for CONTINUUM to subsequently reperform the installation services at no additional cost to ALTUS.

7. Records and Reports.

7.1 Records. ALTUS shall maintain complete and accurate books and records (including, but not limited to, records containing the information required to be supplied in the reports provided by ALTUS to CONTINUUM in accordance with Paragraph 7.2 ("Reports")). ALTUS shall retain originals or copies of all relevant correspondence, quotations, orders and other documents relating to ALTUS' obligations (and the performance thereof) under this Agreement and ALTUS Distributors' obligations under their related agreement for a minimum of one (1) year following the termination of this Agreement. CONTINUUM and its agents shall have the right, no more than once every quarter, during the term of this Agreement and for a period of one (1) year following termination of this Agreement, to examine such books, records, correspondence, quotations, orders and other documents as CONTINUUM may deem necessary or appropriate upon reasonable advance notice to ALTUS. During any such examination, CONTINUUM may make copies of the examined materials for its records, provided that such copies are treated as the "Confidential Information" of ALTUS pursuant to the provisions of Section 11 ("Protection of Confidential Information" below.)

7.2 Reports. ALTUS shall exercise due diligence to keep CONTINUUM informed about ALTUS activities, market conditions and the state of competition

within the markets in the Territory. ALTUS shall promptly answer any reasonable request for information made by CONTINUUM. In addition ALTUS shall comply with the Code of Federal Regulations Title 21, CFR Part 803, Medical Device Reporting. Each party agrees to comply with all relevant provisions of the United States Food, Drug and Cosmetic Act (the "Act").

8. Continuum Intellectual Property. For purposes of this Agreement, the term "CONTINUUM Intellectual Property" means any and all rights, including, but not limited to, all copyrights (whether patents are pending or issued), rights to inventions and discoveries (whether or not patentable) and trademark, trade name, service mark, service name and any trade secrets the ownership of or right of use to which belongs to CONTINUUM, and which are utilized by CONTINUUM in the Products or production, manufacture, assembly and/or repair of the Products. ALTUS hereby acknowledges that nothing contained in this Agreement is or shall be

construed to confer upon ALTUS any license or ownership rights to utilize the CONTINUUM Intellectual Property; and ALTUS agrees that ALTUS shall not reverse engineer the Products at any time, or design a Q-switched product that has significant similar technology attributes during the term of the Agreement, nor make any use whatsoever of the CONTINUUM Intellectual Property or CONTINUUM Confidential Information at any time during or after the term of the Agreement. ALTUS shall also protect all CONTINUUM Intellectual Property with the same degree of care as ALTUS regularly utilizes with respect to the protection by ALTUS of its own confidential proprietary intellectual property, but in no event less than reasonable care.

9. Pricing and Payment Terms.

9.1 Pricing. Prices for the Products are set forth in Annex IV ("Pricing to ALTUS"). Pricing and volume discounts for Products purchased under this Agreement will be adjusted in accordance with increased sales volume as set forth in Annex IV ("Pricing to ALTUS") of this Agreement. Prices will be reviewed by the parties every twelve (12) months for the sole purpose of determining the extent to which, if any, of an increase or decrease in the prices charged to ALTUS is required in order to reflect any increases or decreases in production costs incurred by CONTINUUM as determined by CONTINUUM. In the event the parties cannot agree to renew the existing prices, or to approve new prices, by the end of the month following the twelfth month, then ALTUS will place orders pursuant to the existing prices for the second, third and fourth month of the new contract year which comply with the "Firm Period" forecast in effect for the twelve (12) months following such thirteenth month and thereafter the Agreement will automatically terminate as of the last day of the fourth month of such current contract year unless the parties otherwise agree in writing. In the event the parties do agree on new pricing, such new pricing will apply to any purchase orders issued by ALTUS after the date of the agreement on pricing.

9.2 Payment. All payments are due thirty (30) days from (i) shipment to ALTUS or to such location in the Territory as ALTUS directs; or (ii) receipt by CONTINUUM of a Warehouse Notice pursuant to Section 5.4 ("Forecasts"). Payment of the relevant purchase price set forth in Annex IV ("Pricing to ALTUS") will be sent pursuant to Annex II ("Lock Box Payments").

9.3 Taxes and Duties. Unless ALTUS has provided CONTINUUM with an exemption resale certificate in the appropriate form for the jurisdiction of ALTUS' place of business and any jurisdiction to which Products are to be directly shipped hereunder or unless such sale is otherwise exempt from such taxes, in addition to any payments due under this Agreement, ALTUS shall pay any taxes, duties or other amounts, however designated, which are levied or based upon such payments, or upon this Agreement, provided, however, that ALTUS shall not be liable for taxes based on CONTINUUM's net income. ALTUS agrees to indemnify and hold harmless CONTINUUM for any liability for such tax as well as

the collection or withholding thereof, including penalties and interest thereon. When applicable, such transportation, insurance and taxes shall appear as separate items on CONTINUUM's invoice.

9.4 Credit. CONTINUUM reserves the right to establish and/or change credit and payment terms extended to ALTUS when, in CONTINUUM's sole opinion, ALTUS' financial condition or previous payment record warrants such action. Further, should ALTUS'

account be delinquent on a repeated or continuing basis CONTINUUM shall not be obligated to ship Products or otherwise continue performance under this Agreement with ALTUS until such time as ALTUS' account is brought current.

9.5 Security Interest. CONTINUUM retains a security interest in the Products delivered to ALTUS, and in their accessories, replacements, accessions, proceeds and products, including accounts receivable (collectively, the "Collateral") to secure payment of all amounts due under this Agreement. If ALTUS fails to pay any amount when due, CONTINUUM shall have the rights and remedies of a secured creditor under the California Commercial Code and other applicable laws including but not limited to the right to retain or repossess and remove all or any part of the Collateral from ALTUS, but not from ALTUS' customers. CONTINUUM's failure to request any such document shall not be deemed to be a waiver of any of the rights granted to CONTINUUM herein. Any repossession or removal shall be without prejudice to any other remedy of CONTINUUM hereunder, at law or in equity. ALTUS agrees, from time to time, to take any act and execute and deliver any document, including but not limited to such UCC-1 financing statements and other instruments as CONTINUUM may reasonably deem necessary to transfer, create, perfect, preserve, protect and enforce this security interest.

10. Continuum's Trademarks.

10.1 Limited Right to Use Trademark. CONTINUUM hereby grants to ALTUS a non-exclusive, non-transferable limited right to use the CONTINUUM trademarks, as designated in Annex VI ("CONTINUUM Trademarks") or as otherwise designated by CONTINUUM from time to time, in ALTUS' Product marketing, advertising and promotional materials. ALTUS agrees that prior to ALTUS use, or any ALTUS Distributor's use, of any literature, promotion or advertising concerning the Products literature, promotion and advertising for the Products, ALTUS will provide CONTINUUM with copies of such materials and ALTUS will obtain "CONTINUUM's prior written consent for the use of such materials, which consent will not be unreasonably withheld, conditioned or delayed. ALTUS may permit ALTUS Distributors to utilize CONTINUUM trademarks with respect to promotional and advertising activities for the Products subject to ALTUS Distributor's agreement to use the trademarks in compliance with CONTINUUM's current Trademark Usage Guidelines, which guidelines, once received by ALTUS, ALTUS shall provide to each ALTUS Distributor.

10.2 ALTUS' Use. ALTUS' use of CONTINUUM's trademarks shall be in accordance with applicable trademark law and CONTINUUM's policies regarding advertising and trademark usage as established and amended from time to time, a current copy of which is attached hereto as Annex VII ("CONTINUUM Trademark Usage Guidelines"). ALTUS agrees not to attach additional trademarks, logos or trade designations to the Products. ALTUS further agrees not to affix any CONTINUUM trademark to products other than the genuine Products. ALTUS agrees not to use any other trademark or service mark in proximity to any of the CONTINUUM trademarks or combine the marks without the prior written approval of CONTINUUM.

10.3 Trademark Obligations. ALTUS agrees that whenever CONTINUUM's trademarks are used in advertising or in any other manner, they shall clearly

indicate CONTINUUM as the trademark owner. ALTUS shall not do or cause to be done any act or

anything contesting or in any way impairing or reducing CONTINUUM's right, title, and interest in the trademarks. ALTUS agrees not to register any CONTINUUM trademarks or confusingly similar trademarks. ALTUS understands and agrees that use of the CONTINUUM trademarks in connection with the Products shall not create any right, title, or interest, in or to the use of the CONTINUUM trademarks and that all such uses and goodwill associated with the CONTINUUM trademarks will inure to the benefit of CONTINUUM. ALTUS shall take all necessary steps to ensure its employees comply with all the terms and conditions applicable to the CONTINUUM trademarks described herein. ALTUS agrees that the nature and quality of any products or services ALTUS supplies in connection with the CONTINUUM trademarks shall conform to the standards set by CONTINUUM. ALTUS agrees to cooperate with CONTINUUM in facilitating CONTINUUM's monitoring and control of the nature and quality of such products and services, and to supply CONTINUUM with specimens of use of the CONTINUUM trademarks upon request. Should CONTINUUM notify ALTUS in writing that the use of the CONTINUUM trademarks by ALTUS or an ALTUS Distributor does not conform to the standards set by CONTINUUM, ALTUS shall have forty-five (45) days to bring such use into conformance and to provide CONTINUUM with specimens of such conforming use.

10.4 Infringement Proceedings. ALTUS agrees to use reasonable efforts to promptly notify CONTINUUM of any unauthorized use of the CONTINUUM trademarks by others as it comes to ALTUS' attention. CONTINUUM shall have the sole right and discretion to bring legal or administrative proceedings to enforce CONTINUUM's trademark rights including actions for trademark infringement or unfair competition proceedings involving the CONTINUUM trademarks.

10.5 Trademark Registrations. ALTUS, at CONTINUUM's request and expense, shall provide CONTINUUM with any specimens, execute all applications for trademark registrations, trademark assignments or similar documents, and shall perform any other similar act reasonably necessary (i) for CONTINUUM to secure or maintain any and all CONTINUUM trademark rights in any country, provided that ALTUS is marketing the Products in association with such trademarks in such country or (ii) to effectuate the lawful right to use product names, designations or trademarks in the Territory as reasonably required by CONTINUUM.

10.6 Termination of Trademark License. ALTUS' right to use CONTINUUM'S trademarks, trade names or logos, as provided under Section 10.1 ("Limited Rights to Use Trademarks"), shall cease immediately upon the expiration or termination, for any reason, of this Agreement.

11. Protection of Confidential Information. During the term of this Agreement certain information of a confidential nature may be provided by one party to the other party, which information may pertain to subjects which either or both parties may wish to remain confidential. "Confidential Information" means all nonpublic information, whether in oral, written or other tangible form that the party disclosing the information (the "Disclosing Party") designates to the receiving party ("Recipient") as being confidential, including without limitation, the terms and conditions of this Agreement, or which information has a reasonable basis for being presumed confidential, such as price lists, marketing strategies, and gross and net profit margins. Notwithstanding the foregoing, Confidential Information does not include

information that: (a) is or becomes generally available to the public other than (i) as a result of a disclosure by Recipient or its employees or any other person who directly or indirectly receives such information from Recipient or its employees or (ii) in violation of a confidentiality obligation to Disclosing Party known to Recipient; (b) is or becomes available to Recipient on a nonconfidential basis from a source which is entitled to disclose it to Recipient; (c) was developed by employees or agents of the Recipient independently of and without reference to any information communicated to Recipient by the Disclosing Party; or (d) is required by law to be disclosed by the Recipient. A disclosure of Confidential Information which is (x) in response to a valid order by a court or other governmental body, (y) otherwise required by law, or (z) necessary to establish the rights of either party under this Agreement, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided however, that the Recipient disclosing such information shall provide prompt written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure. Recipient shall hold the Confidential Information of the Disclosing Party in confidence, disclosing the Confidential Information only to such of Recipient's employees, contractors and advisors who have a need to know for the purpose of fulfilling Recipient's obligations under this Agreement. Recipient shall advise any such individuals that the Confidential Information is confidential and that by receiving such information such individuals are agreeing to be bound by the terms of this Section 11 ("Protection of Confidential Information"), and to not use such information for any purpose other than as authorized herein. Recipient shall employ all reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure or use, including, without limitation, all steps that Recipient takes to protect Recipient's own information that Recipient considers a trade secret.

12. Complaints by End Users. ALTUS shall immediately inform CONTINUUM of any observations or complaints received by ALTUS or ALTUS Distributors from End Users and/or any "adverse events," as such term is utilized by the FDA, in respect to the Products. The parties shall deal promptly and properly with such complaints as directed by the Act. ALTUS shall have no authority to engage CONTINUUM in any way unless ALTUS has received a specific prior written authorization to such effect.

13. ALTUS to be Kept Informed. CONTINUUM shall provide ALTUS with written information relating to the Products as well as with the information reasonably required in CONTINUUM's opinion by ALTUS to carry out ALTUS' obligations under the Agreement.

14. Referrals. If ALTUS, when dealing with customers in the Territory, obtains an order which would result in sales for shipment outside of the Territory, and if CONTINUUM accepts such order, then ALTUS shall be entitled to receive a sales commission in the amount of [*] of the amount paid by the customer for such Products net of shipping charges and related sales taxes. If CONTINUUM requests ALTUS to perform after-sale follow-up with such customer, the parties will mutually agree upon the terms and additional commission applicable to such services. Commissions are deemed to cover all additional costs of sale of ALTUS for such services.

15. Additional Discounts. A reduced discount applicable solely to a specific customer sale may be mutually agreed upon in advance between CONTINUUM and ALTUS in a

* Indicates that information has been omitted pursuant to a request for confidential information and filed separately with the United States Securities and Exchange Commission.

signed writing in appropriate circumstances where an End User is to be granted terms or conditions that are more favorable than ALTUS' standard terms

and conditions of sale.

16. No Further CONTINUUM Obligation for Expenses. Unless otherwise agreed in writing, the discounts provided by CONTINUUM to ALTUS with respect to the CONTINUUM Product list prices are intended to cover and compensate ALTUS for all expenses incurred by ALTUS in fulfilling ALTUS' obligations under this Agreement and CONTINUUM shall have no obligation with regard to such expenses.

17. Demonstration Units. ALTUS may purchase a maximum of [*] "demo" units (combined total of Medlite C3 and Medlite C6) per twelve (12) month period. These demo units will be purchased for [*] for the Medlite C3 Product and [*] for the Medlite C6 Product. In consideration of the installation/warranty fees invoiced to ALTUS, CONTINUUM shall be required to perform one (1) installation service within the Territory on the related demo unit for ALTUS. All payments for demo units are net thirty (30) days from delivery to ALTUS, FOB CONTINUUM's facility in Santa Clara, Ca. Payments will be sent by ALTUS per Annex II ("Lock Box Payments"). These demo purchases, and any others agreed to by the parties from time to time shall not be included in the calculation of volume discounts contained in Annex IV ("Transfer Pricing to ALTUS"), nor the thirty (30) unit purchase requirement contained in Annex V ("Forecast for First Year After Effective Date"). ALTUS understands and agrees that any installations of demo units, whether for ALTUS, an End User or otherwise, must be performed by CONTINUUM or a CONTINUUM certified installer for Medlite Products. If CONTINUUM has already performed any required installation service on a particular demo unit, ALTUS may request, and CONTINUUM may agree in its discretion to perform, additional installation services on a time and materials basis.

18. Sale of Demo Products. Demo units may be sold to End Users during the term of this Agreement after a minimum of six (6) months of field use by ALTUS. Upon such sale, ALTUS shall pay to CONTINUUM [*] of the sale price, minus the prepaid demo price, not to exceed the full transfer price. ALTUS understands and agrees that any sale of "demo" units of the Product will constitute a sale of used goods, that such sales and corresponding installations shall be the sole obligation of ALTUS and that any warranty originally provided by CONTINUUM on any Product demo unit will apply for the remainder of the Product's original warranty period regardless of ownership. If a customer wishes to have warranty coverage outside the original warranty period, additional coverage may be provided by ALTUS at its discretion, which additional coverage will be the obligation of ALTUS and will be provided solely at ALTUS' expense. ALTUS agrees that all sales of Product demo units will comply with the rules and regulations of the United States Federal Trade Commission, as well as all applicable laws or regulations of any other state or federal government or agency having jurisdiction over the sales. ALTUS further agrees that it will clearly disclose on the used Product, Product packaging, related invoices, and in any related advertising that the Product is used.

19. Product Recalls and Retrofits. CONTINUUM agrees to assume full responsibility for all costs associated, including materials, manpower, handling and travel

* Indicates that information has been omitted pursuant to a request for confidential information and filed separately with the United States Securities and Exchange Commission.

expenses for any product recall or mandatory product retrofit, which recall or retrofit is required to be performed by product manufacturers by the FDA during the term of the Agreement.

20. Term of Agreement.

20.1 Term. This Agreement shall be effective as of the Effective Date, and shall continue for an initial period of three (3) years unless earlier terminated in accordance with this Section 20 ("Term of Agreement") or as

otherwise provided in the Agreement. Thereafter, unless notice of termination is provided by either party no less than sixty (60) days prior to the end of the initial term, any renewal term, the Agreement shall automatically renew for additional one (1) year renewal periods until terminated by either party as provided below or as otherwise provided in the Agreement.

20.2 Termination. Either party shall have the right to terminate this Agreement upon a ninety (90) day written notice, or as soon thereafter as applicable law permits, or take such other action as specified below, upon the occurrence of any of the following events:

(a) The commission or sufferance of any material breach or default by the other party of any of the terms, obligations, covenants, representations or warranties under this Agreement which breach or default is not waived, in writing, by the non-defaulting party, where such breach or default, if curable, is not cured within sixty (60) days following notice, or if not susceptible to cure, then upon the occurrence of the breach or default.

(b) The other party is declared insolvent or bankrupt or makes an assignment for the benefit of creditors, or a receiver is appointed for substantially all of the business and assets of the other party, or if the other party files a voluntary petition in bankruptcy or reorganization or suffers the filing of an involuntary petition against it to have itself declared bankrupt or reorganized and such involuntary petition is not vacated within thirty (30) days from the date of the filing, or if the other party discontinues the active conduct of its business for more than thirty (30) days, or if the other party assigns substantially all of its assets for the benefit of its creditors.

(c) If ALTUS fails to satisfy the agreed upon Minimum Purchase Requirement for any twelve month period, as formulated pursuant to Section 5 ("Purchase Requirements, Sales Targets and Forecasts") above.

(d) In the event either party provides written notice of termination of this Agreement to the other party following the assignment of this Agreement by either party in accordance with Section 25.6 ("Assignment").

20.3 Survival. The provisions of Section 7 ("Records and Reports"), Section 8 ("Continuum Intellectual Property"), Section 9 ("Pricing and Payment Terms"), Section 10.5 ("Trademark Registrations"), Section 11 ("Protection of Confidential Information"), Section 12 ("Complaints by End Users"), Section 21 ("Activities After Termination"), Section 22 ("Indemnity for Termination"), Section 23 ("Return of Documents and Samples"), Section 24 ("Indemnification") and Section 25 ("Miscellaneous") shall survive any expiration or termination of this Agreement.

21. Activities After Termination. ALTUS agrees to use best efforts to sell all of ALTUS' inventory of Products prior to termination or expiration of this Agreement, and shall provide CONTINUUM with a list of inventory remaining after termination, whereupon CONTINUUM may, at its discretion, elect to purchase all or some of such Products at a price agreed upon by the parties, but in no event more than the initial purchase price paid by ALTUS to CONTINUUM for such Products. Promptly upon expiration of the term or other termination for any reason of this Agreement, ALTUS shall, and shall instruct ALTUS Distributors of their obligation to, immediately cease to solicit orders for Products or represent in any manner that ALTUS is an authorized CONTINUUM distributor. Any amounts due by CONTINUUM or ALTUS to the other party pursuant to the terms of this Agreement shall remain due and payable notwithstanding such termination, and termination shall not relieve either of the parties from any obligations arising prior to or upon such termination except as expressly set forth herein. Any orders placed by ALTUS with CONTINUUM pursuant to the terms of this

Agreement before expiration or termination of this Agreement will be fulfilled by CONTINUUM but may be subject to prepayment by ALTUS if placed within sixty (60) days prior to expiration or termination of this Agreement.

22. Indemnity for Termination. Neither CONTINUUM, ALTUS nor any ALTUS Distributor shall be entitled to an indemnity for goodwill or similar compensation ("goodwill indemnity") upon the termination of this Agreement.

23. Return of Documents and Samples. Upon expiration or termination of this Agreement, ALTUS shall return to CONTINUUM all advertising material and other documents and samples which have been supplied to ALTUS by CONTINUUM and which are in ALTUS' possession or under ALTUS' control.

24. Indemnification.

24.1 By ALTUS. Except at to those losses (as hereafter defined) caused solely by proven defects in material and workmanship of the products existing during the period of Continuum's warranty obligations pursuant to this Agreement, ALTUS assumes liability for, and hereby agrees, at ALTUS' expense, to defend, indemnify, protect and hold harmless CONTINUUM and its successors and assigns and their respective agents, employees, officers, directors, parents, subsidiaries and stockholders, from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, actions, costs and expenses (including actual attorney fees and costs) of whatsoever kind and nature (collectively "Losses"), arising out of (i) ALTUS extending representations or warranties regarding the Products beyond those authorized by CONTINUUM hereunder; (ii) ALTUS' customer training regarding use of the Products not in accordance with CONTINUUM's specifications; (iii) ALTUS' support of the Products outside the scope of CONTINUUM'S instruction; (iv) the modification of any Product by ALTUS or an End User or any damages resulting from any such modification; or (v) any action of the FDA related to any duty or obligation of distributors. The foregoing described in (i)-(v) shall be referred to as the "ALTUS Indemnity".

24.2 By CONTINUUM. CONTINUUM assumes liability for, and hereby agrees, at CONTINUUM's expense, to defend, indemnify, protect and hold harmless ALTUS and ALTUS' successors and assigns and their respective agents, employees, officers, directors,

parents, subsidiaries and stockholders, from and against any and all Losses, directly arising out of: (i) an allegation that any Product or any part thereof, standing alone and as delivered by CONTINUUM, infringes any patent, copyright, trade secret or any other intellectual property right of any third party; (ii) any action of the FDA for an obligation or duty of manufacturers in connection with the Products as delivered by CONTINUUM; (iii) any use of CONTINUUM trademarks by ALTUS in compliance with this Agreement infringes a third party's trademark; or (iv) a product liability claim on a Product as delivered by CONTINUUM to ALTUS, with the exception of Product Liability claims that arise from a failure to warn by ALTUS (the "CONTINUUM Indemnity").

24.3 The foregoing indemnity obligations are subject to the party to be indemnified: (a) giving the indemnifying party prompt written notice of any such claim; (b) allowing the indemnifying party to control the defense and settlement of such claim; (c) not entering into any settlement or compromise of such claim which would subject the indemnifying party to liability; and (d) providing all reasonable assistance requested by the indemnifying party in the defense or settlement of such claim, at the indemnifying party expense.

25. Miscellaneous.

25.1 Arbitration. With the exception of a breach by ALTUS of any of ALTUS' obligations related to CONTINUUM's intellectual property rights, three arbitrators, one designated by ALTUS, one by CONTINUUM and the third by the two

arbitrators selected by the parties, shall finally and on a binding basis settle any dispute arising out of or in connection with this Agreement in Santa Clara County, California and in accordance with the rules of the American Arbitration Association ("AAA"). Except as set forth herein, this Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, without regard to its conflicts of laws principles. The United Nations Convention on the International Sale of Goods shall specifically not apply to transactions taking place pursuant to this Agreement.

25.2 Annexes Form an Integral Part. The annexes attached to this Agreement form an integral part of the Agreement.

25.3 Entire Agreement. This Agreement and the annexes attached hereto are the entire agreement between the parties with regard to the subject matter set forth herein and supersede any other preceding or contemporaneous agreement or understanding between the parties.

25.4 Modification; Waiver. No additions to or modifications of this Agreement shall be valid unless made in writing and signed by the parties. No provision of this Agreement may be waived orally or by any course of conduct.

25.5 Severability. The nullity of a particular clause of this Agreement shall not entail the nullity of the whole Agreement unless such clause is to be considered as material, i.e., if the clause is of such importance that the parties (or the party to the benefit of which such clause is made) would not have entered into the Agreement if that party had known that the

clause would not be valid, in which case the parties will work together and agree upon a replacement clause that sets forth the intent of the null clause in a lawful manner.

25.6 Assignment. This Agreement may not be assigned without the prior written agreement between the parties. Notwithstanding the foregoing, either party may assign this Agreement without the other party's prior written consent in the event of merger, acquisition or sale of assets. This Agreement will be binding on all successors and permitted assigns.

25.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by a party, and all of which together shall constitute one instrument. Delivery may be effected by facsimile transmittal of a signed counterpart.

25.8 Attorneys' Fees. In the event of any litigation, arbitration or proceeding or other dispute arising as a result of this Agreement, the prevailing party shall be entitled, in addition to any other damages assessed, to its reasonable attorneys' fees and all other costs and expenses incurred in connection with settling or resolving such dispute. The attorneys' fees which the prevailing party shall be entitled to recover shall include any fees for prosecuting or defending any appeal and supplemental proceedings until the final judgment is satisfied in full, and for any post-judgment proceedings to collect or enforce the judgment. Subject to the provisions of local law, the prevailing party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the prevailing party.

25.9 No Warranty. ALTUS UNDERSTANDS AND AGREES THAT THE PRODUCTS ARE PROVIDED TO ALTUS AS IS AND WITHOUT WARRANTY. ANY WARRANTY PROVIDED WITH ANY PRODUCT RUNS TO THE END USER ONLY AND NOT TO ALTUS, UNLESS ALTUS IS ACQUIRING THE PRODUCT FOR USE AS A DEMO UNIT AS SET FORTH IN SECTION 17 ("DEMONSTRATION UNITS"). CONTINUUM AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND

NONINFRINGEMENT.

25.10 Consequential Damages Waiver; Limitation of Liability. EXCEPT FOR LIABILITY ARISING FROM A BREACH OF ALTUS' DUTIES SET FORTH IN SECTION 3.6(a) ("ALTUS OBLIGATIONS"), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF THE SAME. EXCEPT FOR LIABILITY ARISING UNDER SECTIONS 11 ("PROTECTION OF CONFIDENTIAL INFORMATION") AND 24 ("INDEMNIFICATION"), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED AMOUNTS PAID BY ALTUS TO CONTINUUM HEREUNDER.

25.11 Force Majeure. If performance of this Agreement, or any obligation hereunder (other than the making of payments), is prevented,restricted or interfered with by any

act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that in the event such non-performance extends beyond a period of ninety (90) days, the performing party will have the right to terminate the Agreement upon written notice to the non-performing party.

25.12 Headings. The headings used herein and in any of the documents attached hereto as annexes are descriptive only and for the convenience of identifying provisions, and are not determinative of the meaning or effect of any such provisions.

25.13 Notices. All notices required under this Agreement shall be in writing, and sent by prepaid certified or registered airmail, return receipt requested, personally delivered, or sent by facsimile with receipt of transmission, and shall be effective as of the date on which personally delivered, or on the fifth business day after the day when stamped and deposited in the mail addressed to a party at its respective address set forth in this Agreement or to any other address which the party may from time to time designate in writing as an address for the purpose of notice, or on the date when sent by facsimile to the respective facsimile numbers set forth below the names of the parties at their signatures below or to such other facsimile numbers of which one party shall have given notice to the other party in the manner prescribed herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last signed below.

CONTINUUM:	ALTUS:
HOYA PHOTONICS, INC.	ALTUS MEDICAL, INC.
By /s/ Gerald W. Bottero	By /s/ Kevin Connors
Print Name Gerald W. Bottero	Print Name: Kevin Connors
Title President and CEO	Title CEO
Date 31 August 2001	Date 8/31/01

ANNEX I

PRODUCTS

1.	Products:	Part Number
	Medlite C3	
	Medlite C6	
	MultiLite Dye Laser Handpiece for Medlite C6	
	All parts and supplies for above	
2.	CONTINUUM House Accounts:	
	[*]	
3.	Co-Distributors in Canada	
	[*]	

* Indicates that information has been omitted pursuant to a request for confidential information and filed separately with the United States Securities and Exchange Commission.

ANNEX II

LOCK BOX PAYMENTS

Continuum
P.O. Box 515183
Los Angeles, CA
90051-5183

ANNEX III

PRODUCTS AND PRINCIPALS REPRESENTED BY ALTUS

This Annex shall be applicable only if filled in by the parties

ALTUS hereby declares that ALTUS represents (and/or distributes or manufactures) the following products, directly or indirectly, at the time of the execution of the Agreement. ALTUS shall provide amendments to this form within thirty (30) days of adding any new products during the term of the Agreement.

Principal	Products

ALTUS COOLGLIDE
ALTUS COOLGLIDE EXCEL

ANNEX IV

Pricing to ALTUS

Product	Description	Annual (Contract Year) Volume	Price Per Unit
Medlite C3 Order Number 624-A Suggested List [*] ASP=[*]	Laser system, Accessory Kit with Operators Manual, Safety Warning Sign, Handpiece Kit, Printer Paper	[*] [*] [*] Note: Demo units shall not be included in volume calculations.	[*] [*] [*]
Medlite C6 Order Number 647/646-A Suggested List [*] ASP=[*]	Laser System,(647) 532/1064nm Accessory Kit with Operators Manual, Safety Warning Sign, Multi-Spot Handpiece, Printer Paper, Multilite Dye Laser Handpiece Kit(646) 585/650nm	[*] [*] [*] Note: Demo units shall not be included in volume calculations.	[*] [*] [*]
Telescopic Lens Order Number #_____ Order Number To be determined			[*]
Installation and Twelve (12) Month Warranty To End User- Applies to Medlite C3 & Medlite C6			[*]
Multilite Dye Laser Handpiece Order Number (646-0020A) Suggested List [*]	585/650nm laser		[*]
All other parts and supplies			[*]

* Indicates that information has been omitted pursuant to a request for confidential information and filed separately with the United States Securities and Exchange Commission.

ANNEX V

MINIMUM PURCHASE REQUIREMENT
FOR TWELVE MONTHS AFTER EFFECTIVE DATE

1. Total minimum purchase of [*] units for the first 12 months of the Forecast Year as follows: First three-month ("Q1") distribution purchase requirement of units of Products due to ramp up of training, sales and marketing;

second three-month ("Q2") distribution purchase requirement of [*] units of Products; third three-month ("Q3") distribution purchase requirement of [*] units of Products; and fourth three-month ("Q4") distribution purchase requirement of [*] units of Products.

- Q1 to begin first day of the next calendar month following the Effective Date.

Minimum Purchase Requirement

Quarter ("Q")	Units	$ (Annex IV)
[*]	[*]	
[*]	[*]	
[*]	[*]	
[*]	[*]	
[*] Months	[*]	

2. ALTUS may have access, at CONTINUUM's sole discretion, to the installed base of CONTINUUM Medlite products, as well as all open leads or sales quotes for additional upgrades and marketing opportunities.
3. CONTINUUM is open to discussions concerning field service management with ALTUS.

* Indicates that information has been omitted pursuant to a request for confidential information and filed separately with the United States Securities and Exchange Commission.

ANNEX VI

CONTINUUM Trademarks

[TO BE INSERTED]

ANNEX VII

CONTINUUM Trademark Usage Guidelines

Trademark Usage Guidelines

Rule	Explanation
When used in print, the trademarks must always be distinguished from other words.	(Insert font type/size); Color restricted to Altus corporate blue.
The trademarks must always be used as an adjective accompanied by the common word identifying the product.	If a trademark is used as a noun, it runs the risk of becoming an unprotectable (generic) product name.
Always use the singular form.	
Never use trademarks possessively.	

The trademarks should never be used as a verb or in a contractual form.	
Presentation of the trademarks must always be consistent.	Spell the trademark as one word and never hyphenate or split on separate lines of copy.
The trademarks should indicate the source of the product.	Place an asterisk (*) after the trademark or identify the trademark with a TM or(R), as appropriate, in advertising, publications or marketing materials and refer the reader to a footnote which states that the trademark is owned by the Company.

ANNEX VIII

ALTUS Distributor Minimum Terms

Any terms not defined herein shall have the meaning set forth in the Agreement.

The following terms shall appear in substantially similar language in each ALTUS agreement for distribution of the Products with an ALTUS Distributor ("ALTUS Distributor Agreement"):

1. FDA Compliance. When negotiating with any third parties, ALTUS' Distributor shall offer the Products strictly in accordance with the United States Food and Drug Administration ("FDA") cleared applications, capabilities and indications for use for the Products.

2. End Users. ALTUS' Distributor agrees to only sell or otherwise distribute the Products to End Users within the Territory.

3. Distributor Prohibitions. ALTUS' Distributor agrees not to distribute the Products (i) by mail order to any party that is not an End User and who has not signed an agreement with ALTUS' Distributor for the purchase of Products in compliance with the terms of this Agreement prior to shipment of the Product to such End User, (ii) by rental (iii) with knowledge or reason to know that the Products will be transported outside the Territory. ALTUS' Distributor shall not (i) use the Products to perform any service, (ii) translate the user manuals (in printed or media form or otherwise), or (iii) do any other act with respect to the Products not specifically authorized by this Agreement.

4. Product Packaging. ALTUS' Distributor agrees that any Products sold to End Users shall be provided in the packaging and with each of the contents, including without limitation any CONTINUUM warranty, initially provided by CONTINUUM to ALTUS.

5. Marketing. ALTUS Distributor shall protect CONTINUUM's interests with the diligence of a responsible businessperson. ALTUS Distributor agrees that its marketing and advertising efforts will be of the same quality as ALTUS' marketing and advertising for ALTUS products, in good taste, and will preserve the professional image and reputation of CONTINUUM and the Products. ALTUS Distributor agrees not to remove any of the CONTINUUM trade names, trademarks, copyright notices or other legends from the Products and agrees not to apply any ALTUS, ALTUS Distributor or other third party trademarks or logos to the Products.

6. End User Warranty Claims. ALTUS Distributor will promptly notify ALTUS of any warranty claim under a CONTINUUM warranty by an End User.

7. In Service. ALTUS Distributor agrees to cooperate with ALTUS in the

performance of ALTUS' obligation to provide End User in-service for any newly installed Products.

8. CONTINUUM Trademarks. CONTINUUM has agreed to permit ALTUS Distributor to utilize the CONTINUUM trademarks in conjunction with the promotional and advertising

activities ALTUS Distributor conducts with respect to the Products, subject to ALTUS Distributor's compliance with the current CONTINUUM Trademark Guidelines which have been provided to ALTUS Distributor by ALTUS. ALTUS Distributor understands that CONTINUUM has the right to contact ALTUS Distributor directly to notify ALTUS Distributor of any misuse of a CONTINUUM trademark and ALTUS Distributor agrees that it shall cease or correct such misuse upon such notification by CONTINUUM.

9. Complaints by End Users. ALTUS Distributor agrees to immediately inform ALTUS of any observations or complaints received by ALTUS Distributor from End Users and/or any "adverse events," as such term is utilized by the FDA, in respect to the Products.

10. Records. ALTUS Distributor shall maintain complete and accurate books and records related to the Products. ALTUS Distributors shall retain originals or copies of all relevant correspondence, quotations, orders and other documents relating to ALTUS Distributor's obligations (and the performance thereof) under the ALTUS Distributor Agreement for a minimum of one (1) year following the termination of the ALTUS Distributor Agreement. CONTINUUM and its agents shall have the right, no more than once every quarter, during the term of this Agreement and for a period of one (1) year following termination of this Agreement, to examine such books, records, correspondence, quotations, orders and other documents as CONTINUUM may deem necessary or appropriate upon reasonable advance notice to ALTUS Distributor. During any such examination, CONTINUUM may make copies of the examined materials for its records, provided that such copies are treated as the Confidential Information of ALTUS Distributor for which CONTINUUM agrees to employ all reasonable steps to protect from unauthorized or inadvertent disclosure or use, including, without limitation, all steps that CONTINUUM takes to protect CONTINUUM's own information that CONTINUUM considers a trade secret.

11. Confidential Information. CONTINUUM may from time to time provide ALTUS Distributor with Confidential Information of CONTINUUM, which information ALTUS Distributor agrees to hold in confidence during and after the term of the ALTUS Distributor Agreement. To this end, ALTUS Distributor agrees to employ all reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure or use, including, without limitation, all steps that ALTUS Distributor takes to protect ALTUS Distributor's own information that ALTUS Distributor considers a trade secret.

12. Third Party Beneficiary. ALTUS' Distributor understands and agrees that CONTINUUM is a third party beneficiary of this ALTUS Distributor Agreement and has the right to enforce the terms thereof for CONTINUUM's benefit.

EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated December 14, 2001 relating to the financial statements of Altus Medical, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PRICEWATERHOUSECOOPERS LLP

January 4, 2002
San Jose, California