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As filed with the Securities and Exchange Commission on January 15, 2004

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT

Under

The Securities Act of 1933

CUTERA, 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)

3240 Bayshore Blvd.
Brisbane, California 94005
(415) 657-5500

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kevin P. Connors
President and Chief Executive Officer
Cutera, Inc.
3240 Bayshore Blvd.
Brisbane, California 94005
(415) 657-5500

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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650 Page Mill Road
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William C. Davisson
LATHAM & WATKINS LLP
135 Commonwealth Drive
Menlo Park, California 94025
(650) 328-4600

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 Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price[1] [2]	Amount of Registration Fee[3]
Common Stock, par value $0.001	$ 71,875,000	$ 5,814.69

(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.
(3) A registration fee of $5,520 was previously paid in connection with the Registration Statement on Form S-1 (No. 333-76300) filed by the Registrant on January 4, 2002 and withdrawn on June 14, 2002. An additional amount of $828 was paid in a subsequent filing on February 12, 2002 relating to an increase in the aggregate offering amount. Thus, pursuant to Rule 457(p) under the Securities Act, the total filing fee of $5,814.69 is offset against the entire filing fee for this Registration Statement. As a result, no filing fee is due in connection with this filing.

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 prospectus is not complete and may be changed. We may not sell these securities until the Securities and Exchange Commission declares our registration statement effective. This 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.

Subject to completion, dated January 15, 2004

Shares

CUTERA, INC.

Common Stock

$ per share

- Cutera, Inc. is offering shares and selling stockholders are offering shares of common stock. We will not receive any proceeds from the sale of our common stock sold by the selling stockholders.
- We anticipate that the initial public offering price will be between $ and $ per share.
- This is our initial public offering and no public market currently exists for our shares.
- Proposed trading symbol: Nasdaq National Market — CUTR.

This investment involves risk. See " Risk Factors" beginning on page 5.

	Per Share	Total
Initial public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to Cutera, Inc.	$	$
Proceeds, before expenses, to Selling Stockholders	$	$

The underwriters have a 30-day option to purchase up to additional shares of common stock from us to cover over-allotments, if any.

Neither the Securities and Exchange Commission nor any state securities commission has approved of anyone's investment in these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Piper Jaffray

SG Cowen

RBC Capital Markets

The date of this prospectus is , 2004.

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Cutera Artwork — Edgar Descriptions

Inside Front Cover

Many Procedures. Any Patient. One Platform.

[Image of CoolGlide Xeo system with text boxes describing and pointing to various features on the CoolGlide Xeo image, stating: “Clearview Handpiece provides an unobstructed view of the treatment area,” “Ergonomic Handpieces are lightweight to minimize user fatigue,” “Easy-to-use Interface simplifies control while allowing a variety of procedures,” “Long-pulse Nd:YAG Laser lets practitioners treat all skin types and a range of conditions,” and “Advanced Technology allows a wide range of parameters in an upgradeable platform.”]

CUTERA™
www.cutera.com

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You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. This prospectus is not an offer to sell, nor is it seeking an offer to buy, these securities in any state where the offer or solicitation is not permitted. The information in this prospectus is complete and accurate as of the date on the front cover, but the information may have changed since that date.

SUMMARY

The items in the following summary are described in more detail later in this prospectus. This summary provides an overview of selected information and does not contain all of the information you should consider. Therefore, you should also read the more detailed information set out in this prospectus, including the financial statements and the related notes appearing elsewhere in this prospectus. References in this prospectus to "we," "us" and "our" refer to Cutera, Inc. and its subsidiaries.

Our Business

We design, develop, manufacture and market the CoolGlide family of laser and other light-based products for aesthetic treatments. Our easy-to-use products enable dermatologists, plastic surgeons, gynecologists, primary care physicians and other qualified practitioners to offer safe, effective and non-invasive aesthetic procedures to their patients. We commercially launched our first CoolGlide product in March 2000 for hair removal, and every year since then we have introduced at least one new CoolGlide product. Our family of products offers our customers the ability to select the CoolGlide system that best fits their practice. We design our products to allow our customers to cost-effectively upgrade to our newest products, which enables them to add applications to their aesthetic practice and provides us with a source of recurring revenue.

Each of our CoolGlide products consists of one or more handpieces and a console that incorporates a universal graphic user interface, an Nd:YAG laser module, control system software and high voltage electronics. To date, we have received U.S. Food and Drug Administration clearance to market our CoolGlide products for hair removal and the permanent reduction of hair, for the treatment of vascular lesions, including leg and facial veins, for the treatment of wrinkles, and for the treatment of benign pigmented lesions. We currently sell, market and distribute our products in the United States through a 25-person direct sales force supported by a team of technical service specialists. Internationally, we sell our products through a direct sales force of 13 employees in Australia, Canada, France, Germany, Japan, Spain and the United Kingdom, and through distributors in over 25 additional countries. As of December 31, 2003, we had sold over 1,200 systems and over 240 upgrades, including, in some instances, multiple upgrades to the same customer. We have been profitable since 2000.

Our Opportunity

The market for aesthetic procedures has grown significantly over the past several years. The American Society of Plastic Surgeons estimates that its members treated approximately 2.0 million people in 2002, a 95% increase over 1998. We believe there are several factors contributing to the growth of aesthetic procedures, including:

- *Aging of the U.S. Population.* The large "baby boomer" demographic segment has driven growth in aesthetic procedures.
- *Broader Range of Safe and Effective Treatments.* Technical developments have improved the effectiveness of aesthetic treatments, while reducing side effects.
- *Changing Practitioner Economics.* Managed care and government payor reimbursement restrictions are motivating practitioners to expand their elective aesthetic practices with procedures that are paid for directly by patients.

There are a number of aesthetic procedures that have been developed to improve the appearance of the skin. Many popular treatments require injections or the use of abrasive agents for the removal of hair, treatment of leg and facial veins, and skin rejuvenation. Alternatively, laser and other light-based procedures can non-invasively affect structures within the skin for similar aesthetic results. According to an industry report, an estimated 2.6 million aesthetic laser procedures were performed in the United States in 2002 and an estimated 4.4 million such procedures will be performed in the United States in 2005. This growth in the demand for aesthetic laser and light-based procedures has resulted in an established and growing market for products and technologies that allow physicians to perform these treatments.

Our Solution

Our unique CoolGlide family of products provides the benefits of laser and other light-based aesthetic procedures, and is designed to allow our customers to expand their aesthetic practices. Key features of our products include:

- *Multiple Applications Available in a Single System.* Our technology platforms enable our customers to perform multiple aesthetic procedures using a single system. This capability can provide significant economic benefit to our customers.
- *Technology and Design Leadership.* We believe that we offer the most innovative and advanced laser and other light-based technologies for the aesthetic market. Our products provide our customers the ability to select the appropriate combination of treatment parameters to customize treatment for each patient or condition.
- *Upgradeable Platform.* Owners of our systems may cost-effectively upgrade to add applications as their aesthetic practices expand.
- *Treatments for Broad Range of Skin Types and Conditions.* Our products can remove hair safely and effectively on patients of all skin types and hair thicknesses, and can be used to treat large leg veins and small facial veins.
- *Ease of Use.* We design our products to be easy to use. Our systems incorporate a universal graphic user interface and one or more ergonomic and lightweight handpieces.

Our Strategy

Our goal is to become the worldwide leading provider of laser and other light-based systems to the aesthetic market by:

- continuing to develop new products and applications;
- increasing sales of existing products in the United States;
- expanding our international presence;
- broadening our customer base;
- leveraging our installed base with sales of upgrades; and
- acquiring complementary products, technologies and businesses.

Our Products and Applications

Our CoolGlide family of products consists of a control console and one or more handpieces. Our products allow the practitioner to adjust the combination of energy level, spot size and pulse duration delivered. The ability to manipulate the combination of these parameters allows our customers to treat a broad range of conditions with a single light-based system. These treatments include hair removal, vein treatments, skin rejuvenation and the treatment of pigmented lesions. Additionally, our products are designed to allow our customers to cost-effectively upgrade to our newest products, which provides us with a source of recurring revenue.

Corporate Information

We were incorporated in Delaware in August 1998 as Acme Medical, Inc. We changed our name to Altus Medical, Inc. in July 1999, and to Cutera, Inc. in January 2004. Our principal executive offices are located at 3240 Bayshore Blvd., Brisbane, California 94005. Our telephone number is (415) 657-5500. Our website is located at *www.cutera.com*. The information contained on our website is not a part of this prospectus.

The Offering

Common stock offered:	
By us	shares
By Selling Stockholders	shares
Total	shares
Common stock outstanding after this offering	shares
Initial public offering price	$ per share
Use of proceeds	We intend to use the net proceeds received by us from this offering for sales and marketing operations, product research and development, and general corporate purposes, including potential acquisitions of complementary products, technologies or businesses. See “Use of Proceeds.”
Proposed Nasdaq National Market symbol	CUTR

The number of shares of common stock that will be outstanding after this offering is based on shares outstanding as of December 31, 2003, and excludes:

- 20,000 shares of common stock issuable upon the exercise of outstanding warrants at a weighted-average exercise price of $1.55 per share;
- 3,791,913 shares of common stock issuable upon the exercise of options outstanding under our 1998 Stock Plan at a weighted-average exercise price of $2.83 per share;
- 1,973,550 shares of common stock to be reserved for future issuance upon the exercise of options available for future grant under our 2004 Equity Incentive Plan; and
- 200,000 shares to be reserved for future issuance under our 2004 Employee Stock Purchase Plan.

Unless otherwise indicated, all information in this prospectus assumes:

- the underwriters do not exercise their over-allotment option;
- the conversion of all outstanding shares of our preferred stock into 4,725,000 shares of our common stock; and
- the adoption of our Amended and Restated Certificate of Incorporation and Bylaws.

Summary Consolidated Financial Data

The following table presents summary historical and unaudited pro forma as adjusted financial data. We derived the summary consolidated statements of operations data for the years ended December 31, 2000, 2001 and 2002 from our audited consolidated financial statements. We derived the summary consolidated statements of operations data for the nine months ended September 30, 2002 and 2003, and the summary consolidated balance sheet data as of September 30, 2003, from our unaudited consolidated financial statements. The unaudited consolidated financial statement data includes, in our opinion, all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation. Our historical results are not necessarily indicative of the operating results that may be expected in the future. You should read this data together with our consolidated financial statements and related notes included elsewhere in this prospectus and the information under "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
	(in thousands, except per share data)				
Consolidated Statements of Operations Data:					
Net revenue[1]	$ 9,531	$ 19,328	$ 28,327	$ 20,318	$ 26,639
Cost of revenue[1]	3,365	6,941	9,991	7,364	8,606
Gross profit	6,166	12,387	18,336	12,954	18,033
Operating expenses:					
Sales and marketing	2,794	5,693	8,602	5,941	9,343
Research and development	1,539	2,221	2,988	2,087	2,432
General and administrative	989	1,963	5,416	4,085	3,390
Total operating expenses[1]	5,322	9,877	17,006	12,113	15,165
Income from operations	844	2,510	1,330	841	2,868
Interest and other income, net	193	171	85	68	28
Income before income taxes	1,037	2,681	1,415	909	2,896
Provision for income taxes	—	(342)	(755)	(485)	(1,175)
Net income	$ 1,037	$ 2,339	$ 660	$ 424	$ 1,721
Net income per share:					
Basic	$ 0.97	$ 1.58	$ 0.36	$ 0.24	$ 0.83
Diluted	$ 0.13	$ 0.27	$ 0.07	$ 0.05	$ 0.19
Weighted-average number of shares used in per share calculations:					
Basic	1,064	1,480	1,810	1,760	2,073
Diluted	8,008	8,731	8,811	8,902	8,924
Pro forma net income per share (unaudited):					
Basic			$ 0.10		$ 0.26
Diluted			$ 0.07		$ 0.19
Weighted-average number of shares used in pro forma per share calculations (unaudited):					
Basic			6,485		6,748
Diluted			8,811		8,924
[1] Includes the following stock-based compensation charges:					
Net revenue	$ —	$ 164	$ —	$ —	$ —
Cost of revenue	—	93	234	175	189
Total operating expenses	—	495	963	562	810
	$ —	$ 752	$ 1,197	$ 737	$ 999

	As of September 30, 2003	
	Actual	Pro Forma As Adjusted[1]
	(in thousands)	
Consolidated Balance Sheet Data:		
Cash and cash equivalents	$ 8,852	
Working capital	11,752	
Total assets	20,270	
Redeemable convertible preferred stock	7,372	
Retained earnings	2,797	
Total stockholders' equity	5,911	

[1] On a pro forma as adjusted basis to give effect to the automatic conversion of all outstanding shares of preferred stock into 4,725,000 shares of common stock upon closing of this offering, and to reflect the sale by us of shares of our common stock in this initial public offering at an assumed initial public offering price of $ per share, the mid-point of the range on the front cover of this prospectus,

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. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our operations.

Risks Related to Our Business

We have a limited history of operations, which could impair our ability to grow significantly.

We were incorporated in 1998 and commercially launched our first product in 2000. Consequently, we have a limited history of operations. The future success of our business will depend on our ability to increase product sales, successfully introduce new products, expand our sales force and distribution network, and control costs, which we may be unable to do. As a result, we may not be able to continue our revenue growth and maintain 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 control costs if we significantly expand our manufacturing capacity. 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 our projected growth and our financial results will suffer.

It is difficult to predict future performance, and our success is dependent on a number of factors over which we have limited control. As a result, our financial results may fluctuate unpredictably.

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. Due to the high dollar revenue per system sold, variations in unit sales may cause revenue to vary significantly from quarter to quarter. As a result, it is difficult for us to accurately predict sales for subsequent periods. In addition, we base our production, inventory and operating expenditure levels on anticipated orders. If orders are not received when expected in any given quarter, expenditure levels could be disproportionately high in relation to revenue for that quarter. A number of additional factors, over which we have limited control, may contribute to fluctuations in our financial results, such as:

- delays in introductions and acceptance of our future products;
- delays in, or failure of, delivery of components by our suppliers;
- introductions of new and improved products by competitors;
- performance of our independent distributors;
- increases in the length of our sales cycle;
- fluctuations in foreign currency;
- changes in our ability to obtain and maintain regulatory approvals; and
- reductions in the efficiency of our manufacturing processes.

In the event our actual revenue and operating results do not meet our forecasts for a particular period, the market price of our common stock may decline substantially.

Our ability to compete depends upon our ability to innovate, to develop and commercialize new products and product enhancements, and to identify new markets for our technology.

We have created products to apply our technology to hair removal, treatment of veins, skin rejuvenation and the treatment of pigmented lesions. Currently, these applications represent the majority of laser and other light-based aesthetic procedures. To be successful in the future, we must develop new and innovative applications of laser and other light-based technology, identify new markets for our existing technology, and develop new technology that is not light-based. To successfully expand our product offerings, we must:

- develop or acquire new products that either add to or significantly improve our current products;
- convince our target customers that our new products or product upgrades would be an attractive revenue-generating addition to their practices;
- sell our products to non-traditional customers;
- protect our products with defensible intellectual property; and
- satisfy and maintain all regulatory requirements for commercialization.

Every year since 2000, we have introduced at least one new product and a corresponding upgrade to our existing products. Historically, these introductions have been a significant component of our financial performance. Our business strategy is based, in part, on our expectation that we will continue to make annual product introductions that we can sell to new customers and to existing customers as upgrades. We may be unable, however, to continue to develop new products and technologies annually, or at all, which could adversely affect our expected growth rate.

Our success depends on market acceptance of our products, many of which have been recently introduced.

All of our products have been introduced within the last four years. It is difficult for us to predict how successful recently introduced products will be over the long term. Our failure to significantly penetrate current or new markets with our products could negatively impact our business, financial condition and results of operations. The market for aesthetic devices is highly competitive and dynamic, and marked by rapid and substantial technological development and product innovations. Demand for our products could be diminished by equivalent or superior products and technologies offered by competitors. Decreases in forecasted demands could leave us with excess inventory, which could become obsolete and have to be written off.

We are involved in costly intellectual property litigation with Palomar Medical Technologies that may hurt our competitive position and may prevent us from selling many of our products and generating revenue.

We are currently involved in a lawsuit brought by one of our public company competitors, Palomar Medical Technologies, which alleges that the manufacture, use and sale of our products for hair removal infringes a patent it has licensed. In the lawsuit, Palomar is attempting to stop us from selling our products for hair removal and to obtain compensatory and treble damages. We are defending ourselves by claiming that we do not infringe the patent and that the patent is invalid and unenforceable. Although we believe that these defenses are meritorious, litigation is unpredictable and we may not prevail. If we do not prevail, we may be ordered to pay substantial damages for past sales and an ongoing royalty for future sales of products found to infringe. If found liable, we could also be ordered to stop selling any products that perform hair removal, currently representing substantially all our revenue. If found liable, we do not know whether we could redesign our products to avoid future infringement. Any public announcement concerning the litigation that is unfavorable to us may result in a decline in our stock price.

This litigation has been and will continue to be expensive and protracted, and our intellectual property position may be weakened as a result of an adverse ruling. Whether or not we are successful in this lawsuit, this litigation consumes substantial amounts of our financial resources and diverts management's attention away from our core business. Palomar may file additional claims against us, or we may file additional claims against Palomar, which could increase the risk, expense and duration of the litigation. For more information regarding this litigation, see "Business — Litigation."

We may be involved in future costly intellectual property litigation, which could impact our future business and financial performance.

Our industry has been characterized by frequent demands for licenses and litigation. As with Palomar, our competitors or other patent holders may assert that our products and the methods we employ are covered by their patents. In addition, we do not know whether our competitors will apply for and obtain patents that will prevent, limit or interfere with our ability to make, use, sell or import our products. Although we may seek to resolve any potential future claims or actions, we may not be able to do so on reasonable terms, or at all. If, following a successful third-party action for infringement, we cannot obtain a license or redesign our products, we may have to stop manufacturing and marketing our products, and our business would suffer as a result.

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. We have and may hereafter become involved in litigation to protect the trademark rights associated with our company name or the names of our products. We have only recently adopted the name "Cutera," and do not know whether others will assert that our company name infringes their trademark rights. In addition, names we choose for our products, such as CoolGlide, may be claimed to infringe names held by others. If we have to change the name of our company or products, we may experience a loss in goodwill associated with our brand name, customer confusion and a loss of sales.

Infringement and other intellectual property claims, with or without merit, can be expensive and time-consuming to litigate, and could divert management's attention from our core business. We do not know whether necessary licenses would be available to us on satisfactory terms, or whether we could redesign our products or processes to avoid infringement. If we lose this kind of litigation, a court could require us to pay substantial damages, and prohibit us from using technologies essential to our products, any of which would have a material adverse effect on our business, results of operations and financial condition.

Intellectual property rights may not provide adequate 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, and confidentiality agreements to protect our technology and products. As of December 31, 2003, we had four issued U.S. patents, mostly covering our ClearView handpiece design and cooling method. Some of our other components, such as our laser module, electronic control system and high-voltage electronics, are not, and in the future 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. Consequently, competitors could market products, and use manufacturing processes that are substantially similar to, or superior to, ours. 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 generally of confidentiality agreements and other contractual restrictions. Monitoring unauthorized uses and disclosures of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property will be effective. 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.

The absence of complete intellectual property protection exposes us to a greater risk of direct competition. Competitors could purchase one of our products and attempt to replicate some or all of the competitive advantages we derive from our development efforts, design around our protected technology, or develop their own competitive technologies that fall outside of our intellectual property rights. If our intellectual property is not adequately protected against competitors' products and methods, our competitive position could be adversely affected, as could our business.

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

Our products compete against similar products offered by public companies, such as Candela, Laserscope, Lumenis and Palomar Medical Technologies, as well as other smaller, specialized private companies. Competition with these companies could result in price-cutting, reduced profit margins and loss of market share, any of which would harm our business, financial condition and results of operations. We also face competition from medical products, such as Botox and collagen injections, and aesthetic procedures, such as sclerotherapy, electrolysis and chemical peels, that are unrelated to laser and other light-based technologies. We may also face competition from manufacturers of pharmaceutical and other products that have not yet been developed. Our ability to compete effectively depends upon our ability to distinguish our company and our products from our competitors and their products, and includes such factors as:

- product performance;
- product pricing;
- intellectual property protection;
- quality of customer support;
- success and timing of new product development and introductions; and
- development of successful distribution channels, both domestically and internationally.

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 encountered, and expect to continue to encounter, situations where, due to pre-existing relationships, potential customers decided to purchase additional products from our competitors. 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 purchases. If we are unable to achieve continued market penetration, we will be unable to compete effectively and our business will be harmed.

In addition, some of our current and potential 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 enhanced name recognition and market share, as well as new technologies or products that could effectively compete with our existing product lines. For example, ESC Medical purchased Coherent's medical business in 2001 and the surviving company, Lumenis, incorporated competitive product lines and technologies of the predecessor companies into its current products. Given the relatively few competitors currently in the market, any business combination could exacerbate any existing competitive pressures, which could harm our business.

We must continuously innovate to compete successfully.

Competition among providers of laser and other light-based devices for the aesthetic market is characterized by rapid innovation. While we attempt to protect our products through patents and other intellectual property, there are few barriers to entry that would prevent new entrants or existing competitors from developing products that compete directly with ours. For example, while our CoolGlide product was the first long-pulse Nd:YAG laser system cleared by the FDA for permanent hair reduction on all skin types, competitors have subsequently introduced systems that utilize Nd:YAG lasers, and received FDA clearances to market these products as treating

all skin types. We expect that any competitive advantage we may enjoy from other current and future innovations, such as combining multiple handpieces in a single system to treat a variety of applications, may diminish over time, as companies successfully respond to our, or create their own, innovations. Consequently, we believe that we will have to continuously innovate and improve our products and technology to compete successfully. If we are unable to innovate successfully, our products could become obsolete and our business could be harmed.

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

To successfully market and sell our products internationally, we must address many issues with which we have little or no experience. We currently depend on third-party distributors and a relatively new direct sales operation to sell our products internationally, and if these distributors or direct sales personnel underperform we may be unable to increase or maintain our level international revenue. We will need to attract additional distributors to grow our business and expand the territories in 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, or we are unable to locate distributors in particular geographic areas, we may not realize expected international revenue growth. Additionally, we expect to expand our direct sales force in Europe and Asia. If we are unable to do so successfully, our revenue from international operations will be adversely affected.

International sales accounted for 19% of our revenue for 2002 and 23% of our revenue for the nine months ended September 30, 2003. We believe that an increasing percentage of our future revenue will come from international sales as we expand our overseas operations and develop opportunities in additional international territories. International sales are subject to a number of risks, including:

- difficulties in staffing and managing our foreign operations;
- difficulties in penetrating markets in which our competitors' products are more established;
- reduced protection for intellectual property rights in some countries;
- export restrictions, trade regulations and foreign tax laws;
- fluctuating foreign currency exchange rates;
- foreign certification and regulatory requirements;
- lengthy payment cycles and difficulty in collecting accounts receivable;
- customs clearance and shipping delays;
- political and economic instability; and
- preference for locally-produced products.

If one or more of these risks were realized, it could harm our financial condition and results of operations.

The expense and potential unavailability of insurance coverage for our customers and our company could adversely affect our ability to sell our products and our financial condition.

Some of our customers and prospective customers have had difficulty in procuring or maintaining liability insurance to cover their operation and use of our products. Medical malpractice carriers are withdrawing coverage in certain states or substantially increasing premiums. If this trend continues or worsens, our customers may discontinue using our products and, industry-wide, potential customers may opt against purchasing laser and other light-based products due to the cost and inability to procure insurance coverage.

We have been experiencing steep increases in our product liability insurance premiums. If our premiums continue to rise, we may no longer be able to afford adequate insurance coverage. If we are unable to maintain

adequate coverage, potential product liability claims would be paid out of cash reserves, harming our financial condition, operating results and profitability.

If we fail to obtain and maintain necessary U.S. Food and Drug Administration clearances for our products and indications, if clearances for future products and indications are delayed or not issued, or if there are federal or state level regulatory changes, our commercial operations would be harmed.

Our products are medical devices that are subject to extensive regulation in the United States by the Food and Drug Administration, or FDA, for manufacturing, labeling, sale, promotion, distribution and shipping. Before a new medical device, or a new use of or claim for an existing product, can be marketed in the United States, it must first receive either 510(k) clearance or premarketing approval from the FDA, unless an exemption applies. Either process can be expensive and lengthy. The FDA's 510(k) clearance process usually takes from three to twelve months, but it can last longer. The process of obtaining premarketing approval is much more costly and uncertain than the 510(k) clearance process and it generally takes from one to three years, or even longer, from the time the application is filed with the FDA.

Medical devices may be marketed only for the indications for which they are approved or cleared. We have obtained 510(k) clearance for the current treatments for which we offer our products. However, our clearances can be revoked if safety or effectiveness problems develop. Any modifications to an FDA-cleared device that would significantly affect its safety or effectiveness or that would constitute a major change in its intended use would require a new 510(k) clearance or possibly a premarket approval. We may not be able to obtain additional 510(k) clearances or premarket approvals for new products or for modifications to, or additional indications for, our existing products in a timely fashion, or at all. Delays in obtaining future clearances would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our revenue and future profitability. We have made modifications to our devices in the past and may make additional modifications in the future that we believe do not or will not require additional clearances or approvals. If the FDA disagrees, and requires new clearances or approvals for the modifications, we may be required to recall and to stop marketing the modified devices. 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 products are also subject to state regulations, which are, in many instances, in flux. Changes in state regulations may impede sales. For example, federal regulations allow our products to be sold to, or on the order of, "licensed practitioners," as determined on a state-by-state basis. As a result, in some states, non-physicians may legally purchase and operate our products. However, a state could change its regulations at any time disallowing sales to particular types of end users. We cannot predict the impact or effect of future legislation or regulations at the federal or state levels.

The FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following sanctions:

- warning letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recall or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- refusing our requests for 510(k) clearance or premarket approval of new products, new intended uses, or modifications to existing products;
- withdrawing 510(k) clearance or premarket approvals that have already been granted; and
- criminal prosecution.

If any of these events were to occur, they could harm our business.

If we fail to comply with the FDA's Quality System Regulation and laser performance standards, our manufacturing operations could be halted, 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 is a complex regulatory scheme that covers the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. 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 specific record-keeping, reporting, product testing and product labeling requirements. These requirements include affixing warning labels to laser products, as well as incorporating certain safety features in the design of laser products. The FDA enforces the QSR and laser performance standards through periodic unannounced inspections. We have been, and anticipate in the future to be, subject to such inspections. 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, including a public warning letter, a shutdown of our manufacturing operations, a recall of our products, civil or criminal penalties, or other sanctions, such as those described in the preceding paragraph, which would cause our sales and business to suffer.

We may be unable to obtain or maintain international regulatory qualifications or approvals for our current or future products and indications, which could harm our business.

Sales of our products outside the United States are subject to foreign regulatory requirements that vary widely from country to country. In addition, exports of medical devices from the United States are regulated by the FDA. Complying with international regulatory requirements can be an expensive and time-consuming process and approval is not certain. The time required to obtain clearance or approvals, if required by other countries, may be longer than that required for FDA clearance or approvals, and requirements for such clearances or approvals may significantly differ from FDA requirements. We may be unable to obtain or maintain regulatory qualifications, clearances or approvals in other countries. We may also incur significant costs in attempting to obtain and in maintaining foreign regulatory approvals or qualifications. If we experience delays in receiving necessary qualifications, clearances or approvals to market our products outside the United States, or if we fail to receive those qualifications, clearances or approvals, we may be unable to market our products or enhancements in international markets effectively, or at all.

Because we do not require training for users of our products, and sell our products to non-physicians, there exists an increased potential for misuse of our products, which could harm our reputation and our business.

Federal regulations allow us to sell our products to or on the order of "licensed practitioners." The definition of "licensed practitioners" varies from state to state. As a result, our products may be purchased or operated by physicians with varying levels of training, and in many states by non-physicians, including nurse practitioners, chiropractors and technicians. Outside the United States, many jurisdictions do not require specific qualifications or training for purchasers or operators of our products. We do not supervise the procedures performed with our products, nor do we require that direct medical supervision occur. We, and our distributors, offer but do not require purchasers or operators of our products to attend training sessions. In addition, we sometimes sell our systems to companies that rent our systems to third parties and that provide a technician to perform the procedure. The lack of training and the purchase and use of our products by non-physicians may result in product misuse and adverse treatment outcomes, which could harm our reputation and expose us to costly product liability litigation.

Product liability suits could be brought against us due to a defective design, material or workmanship, or misuse of our products and 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, manufactured or labeled, contain defective components or are misused, we may become subject to substantial and costly litigation by our customers or their patients. Misusing our products or failing to adhere to operating guidelines could cause significant eye and skin damage, and underlying

tissue damage. In addition, if our operating guidelines are found to be inadequate, we may be subject to liability. We have been involved, and may in the future be involved, in litigation related to the use of our products. Product liability claims could divert management's attention from our core business, be expensive to defend and result in sizable damage awards against us. We may not have sufficient insurance coverage for all future claims. 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 continuing coverage, could harm our reputation in the industry and reduce product sales. Product liability claims in excess of our insurance coverage would be paid out of cash reserves harming our financial condition and reducing our operating results.

Our manufacturing operations are 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 suppliers. A supply interruption or an increase in demand beyond our current suppliers' capabilities, could harm our ability to manufacture our products until a new source of supply is identified and qualified. Our reliance on these suppliers subjects us to a number of risks that could harm our business, including:

- interruption of supply resulting from modifications to or discontinuation of a supplier's operations;
- delays in product shipments resulting from uncorrected defects, reliability issues or a supplier's variation in a component;
- a lack of long-term supply arrangements for key components with our suppliers;
- inability to obtain adequate supply in a timely manner, or on commercially reasonable terms;
- difficulty locating and qualifying alternative suppliers for our components in a timely manner;
- production delays related to the evaluation and testing of products from alternative suppliers, and corresponding regulatory qualifications;
- delay in delivery due to our suppliers prioritizing other customer orders over ours; and
- fluctuation in delivery by our suppliers due to changes in demand from us or their other customers.

Any interruption in the supply of components or materials, or our inability to obtain substitute components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers, which would have an adverse effect on our business.

Components used in our products are complex in design, and any defects may not be discovered prior to shipment to customers, which could result in warranty obligations, 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 suppliers fail to produce components to specification, or if the suppliers, or we, use defective materials or workmanship in the manufacturing process, the reliability and performance of our products will be compromised.

If our products contain defects that cannot be repaired easily and inexpensively, we may experience:

- loss of customer orders and delay in order fulfillment;
- damage to our brand reputation;
- increased cost of our warranty program due to product repair or replacement;
- inability to attract new customers;

- diversion of resources from our manufacturing and research and development departments into our service department; and
- legal action.

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

We forecast sales to determine requirements for components and materials used in our products and if our forecasts are incorrect, we may experience either delays in shipments or increased inventory costs.

We keep limited materials and components on hand. To manage our manufacturing operations with our suppliers, we forecast anticipated product orders and material requirements to predict our inventory needs up to six 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 accurately predict future demand. If our business expands, our demand for components and materials would increase and our suppliers may be unable to meet our demand. 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, delay or prevent delivery of our products to our customers. Any of these occurrences would negatively affect our financial performance and the level of satisfaction our customers have with our business.

If there is not sufficient demand for the procedures performed with our products, practitioner demand for our products could be inhibited, resulting in unfavorable operating results.

Most procedures performed using our products are not reimbursable through government or private health insurance and are therefore elective procedures, 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, safety and effectiveness of alternative treatments;
- the success of our sales and marketing efforts; and
- consumer confidence, which may be impacted by economic and political conditions.

If, as a result of these factors, there is not sufficient demand for the procedures performed with our products, practitioner demand for our products could be reduced, resulting in unfavorable operating results.

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

Our success largely depends on the skills, experience and efforts of our officers and other key employees. We do not have employment contracts with any of our officers or other key employees. Any of our officers and other key 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 senior management team members could weaken our management expertise and harm our business.

Our ability to retain our skilled labor force and our success in attracting and hiring new skilled employees will be a critical factor in determining whether we will be successful in the future. 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 and sales and marketing employees, as well as independent distributors, most 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.

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

We expect to evaluate potential strategic acquisitions of complementary businesses, products or technologies. We may also consider joint ventures and other collaborative projects. We may not be able to identify appropriate acquisition candidates or strategic partners, or successfully negotiate, finance or integrate any businesses, products or technologies that we acquire. Furthermore, the integration of any acquisition and management of any collaborative project may divert management's time and resources from our core business and disrupt our operations. We do not have any experience with acquiring companies or products. If we decide to expand our product offerings beyond laser and other light-based products, we may spend time and money on projects that do not increase our revenue. Any cash acquisition we pursue would diminish the proceeds from this offering available to us for other uses, and any stock acquisition would be dilutive to our stockholders. While we from time to time evaluate potential collaborative projects and acquisitions of businesses, products and technologies, and anticipate continuing to make these evaluations, we have no present understandings, commitments or agreements with respect to any acquisitions or collaborative projects.

Our recent name change may lead to customer confusion and increased marketing expense, which would affect our operating results.

Our recent name change from Altus Medical, Inc. to Cutera, Inc. may confuse customers and potential customers who associate our products with our former name. If our customers are confused by the name change, they may not order our products and our operating results would suffer. In addition, we will incur marketing costs in order to promote our new name, which will reduce our overall operating results in the near term.

Risks Related to This Offering

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 our common stock after this offering. The market price for our common stock after this offering will be affected by a number of factors, including:

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

In addition, the stock prices of many companies in the medical device industry 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.

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

The initial public offering price will be substantially higher than the book value per share of our common stock. If you purchase common stock in this offering, you will incur immediate dilution of $ in net tangible book value per share of common stock, based on an assumed initial public offering price of $ per share. In addition, the number of shares available for issuance under our stock option and employee stock purchase plans will automatically increase annually without further stockholder approval. Investors will incur additional dilution upon the exercise of stock options and warrants. See "Dilution."

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 options or warrants, the market price of our common stock could decline. There will be approximately 6,954,514 shares of common stock eligible for sale beginning 180 days after the date of this prospectus upon the expiration of lock-up arrangements between our stockholders and underwriters. 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."

Our directors, 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 each holding more than 5% of our common stock collectively 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 most 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 interests of our other stockholders.

We have broad discretion in the use of proceeds of this offering.

The net proceeds of this offering will be used, as determined by management in its sole discretion, for working capital and general corporate purposes, including expansion of sales and marketing efforts, research and development, as well as potential acquisitions of complementary businesses, products or technologies. However, we have not determined the specific allocation of the net proceeds of this offering. Our management will have broad discretion over the use and investment of the net proceeds of this offering, and accordingly investors in this offering will need to rely upon the judgment of our management with respect to the use of proceeds, with only limited information concerning management's specific intentions.

Anti-takeover provisions in our Amended and Restated Certificate of Incorporation and Bylaws, and Delaware law, contain provisions that could discourage a takeover.

Our Amended and Restated Certificate of Incorporation and Bylaws, and Delaware law, contain provisions that might enable our management to resist a takeover, and might make it more difficult for an investor to acquire a substantial block of our common stock. These provisions include:

- a classified board of directors;
- advance notice requirements to stockholders for matters to be brought at stockholder meetings;
- a supermajority stockholder vote requirement for amending certain provisions of our Amended and Restated Certificate of Incorporation and Bylaws;
- limitations on stockholder actions by written consent; and
- the right to issue preferred stock without stockholder approval, which could be used to dilute the stock ownership of a potential hostile acquiror.

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 our 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.

INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements under “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, implied or inferred by these 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,” “would,” “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. 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 shares of common stock that we are selling in this offering will be approximately $ million, based on an assumed initial public offering price of $ per share, the mid-point of the range on the front cover of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' over-allotment option is exercised in full, we estimate that we will receive net proceeds of approximately $ million.

Of the net proceeds that we will receive from the offering, we expect to use approximately:

- $15.0 million for our sales and marketing operations; and
- $5.0 million for product research and development.

We intend to use the remainder of the net proceeds for 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. 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. Pending these uses, we intend to invest the net proceeds of this offering primarily in short-term, investment-grade, interest-bearing instruments.

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 earnings, capital requirements, financial condition, prospects and other factors that our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our capitalization as of September 30, 2003:

- on an actual basis; and
- on a pro forma as adjusted basis to give effect to the automatic conversion of all outstanding shares of our preferred stock into 4,725,000 shares of common stock, and the sale by us of shares of common stock at an assumed initial public offering price of $ per share, the mid-point of the range on the front cover of this prospectus, less underwriting discounts and commissions and estimated offering expenses.

	As of September 30, 2003	
	Actual	Pro Forma As Adjusted
	(in thousands, except share data) (unaudited)	
Redeemable convertible preferred stock, $0.001 par value; 4,784,000 shares authorized, 4,725,000 shares issued and outstanding, actual; no shares issued and outstanding, pro forma as adjusted	$ 7,372	$
Stockholders' equity:		
Common stock, $0.001 par value; 20,000,000 shares authorized, 2,155,267 shares issued and outstanding, actual; and shares issued and outstanding, pro forma as adjusted	2	
Additional paid-in capital	8,206	
Deferred stock-based compensation	(5,094)	
Retained earnings	2,797	
Total stockholders' equity	5,911	
Total capitalization	$ 13,283	$

The table above excludes, as of December 31, 2003:

- 20,000 shares of common stock issuable upon the exercise of outstanding warrants at a weighted-average exercise price of $1.55 per share;
- 3,791,913 shares of common stock issuable upon the exercise of options outstanding under our 1998 Stock Plan at a weighted-average exercise price of $2.83 per share;
- 1,973,550 shares of common stock to be reserved for future issuance upon the exercise of options available for future grant under our 2004 Equity Incentive Plan; and
- 200,000 shares to be reserved for future issuance under our 2004 Employee Stock Purchase Plan.

The table should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this prospectus.

DILUTION

If you invest in our common stock, your interest will be diluted immediately to the extent of the difference between the initial 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 net tangible book value as of September 30, 2003 was $12.8 million. Our pro forma net tangible book value per share set forth below represents our total tangible assets less total liabilities divided by the number of shares of our common stock outstanding on September 30, 2003, and assumes the automatic conversion of all of our outstanding shares of preferred stock into 4,725,000 shares of our common stock immediately prior to the closing of this offering.

Dilution per share to new investors represents the difference between the amount per share paid by new investors who purchase shares of common stock in this offering and the pro forma as adjusted net tangible book value per share of common stock immediately after the completion of this offering. Giving effect to the sale of shares of our common stock offered by us at the assumed initial public offering price of $ per share, the midpoint of the range on the front cover of this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma net tangible as adjusted book value as of September 30, 2003, would have been approximately $. This amount represents an immediate increase in pro forma net tangible book value of $ per share to our existing stockholders, and an immediate dilution in pro forma net tangible book value of $ per share to new investors purchasing shares of our common stock in this offering. The following table illustrates this dilution:

Assumed initial public offering price per share		$
Net tangible book value per share as of September 30, 2003	$ 5.95	
Decrease per share due to assumed conversion of all shares of preferred stock	(4.09)	
Pro forma net tangible book value per share as of September 30, 2003	1.86	
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 as adjusted basis, as of September 30, 2003, the differences between the number of shares of common stock purchased from us, the total consideration paid, and the average price per share paid by existing stockholders and new investors purchasing shares of our common stock in this offering, before deducting underwriting discounts and commissions and estimated expenses at an assumed initial public offering price of $ per share.

	Shares Purchased		Total Consideration		
	Number	Percent	Amount	Percent	Average Price Per Share
Existing stockholders		%	$	%	$
New investors					
Total		100.00%	$	100.00%	

The tables above exclude, as of December 31, 2003:

- 20,000 shares of common stock issuable upon the exercise of outstanding warrants at a weighted-average exercise price of $1.55 per share;
- 3,791,913 shares of common stock issuable upon the exercise of options outstanding under our 1998 Stock Plan at a weighted-average exercise price of $2.83 per share;
- 1,973,550 shares of common stock to be reserved for future issuance upon the exercise of options available for future grant under our 2004 Equity Incentive Plan; and
- 200,000 shares to be reserved for future issuance under our 2004 Employee Stock Purchase Plan.

The exercise of options having an exercise price less than the assumed initial public offering price would increase the dilution to new investors an additional $ per share, to $ per share.

SELECTED CONSOLIDATED FINANCIAL DATA

The selected consolidated financial data set forth below should be read in conjunction with our consolidated financial statements, and the related notes thereto, and "Management's Discussion and Analysis of Financial Condition and Results of Operations," included in this prospectus. We derived the consolidated statements of operations data for the period from August 1998 (inception) to December 31, 1998, and for the year ended December 31, 1999 and the consolidated balance sheet data as of December 31, 1998, 1999 and 2000, from our audited consolidated financial statements not included in this prospectus. We derived the consolidated statements of operations data for the years ended December 31, 2000, 2001 and 2002, and the consolidated balance sheet data as of December 31, 2001 and 2002, from our audited consolidated financial statements included elsewhere in this prospectus. We derived the consolidated statements of operations data for the nine months ended September 30, 2002 and 2003, and the consolidated balance sheet data as of September 30, 2003 from our unaudited consolidated financial statements included elsewhere in this prospectus. The unaudited consolidated financial statement data includes, in our opinion, all adjustments, consisting of normal occurring adjustments, necessary for a fair presentation. The historical results are not necessarily indicative of future operating results.

	Period from August 1998 (Inception) to December 31, 1998	Years Ended December 31,				Nine Months Ended September 30,	
		1999	2000	2001	2002	2002	2003
	(in thousands, except per share data)						
Consolidated Statements of Operations Data:							
Net revenue[1]	$ —	$ 100	$ 9,531	$ 19,328	$ 28,327	$ 20,318	$ 26,639
Cost of revenue[1]	—	413	3,365	6,941	9,991	7,364	8,606
Gross profit (loss)	—	(313)	6,166	12,387	18,336	12,954	18,033
Operating expenses:							
Sales and marketing[1]	26	706	2,794	5,693	8,602	5,941	9,343
Research and development[1]	188	1,333	1,539	2,221	2,988	2,087	2,432
General and administrative[1]	43	419	989	1,963	5,416	4,085	3,390
Total operating expenses	257	2,458	5,322	9,877	17,006	12,113	15,165
Income (loss) from operations	(257)	(2,771)	844	2,510	1,330	841	2,868
Interest and other income, net	11	57	193	171	85	68	28
Income (loss) before income taxes	(246)	(2,714)	1,037	2,681	1,415	909	2,896
Provision for income taxes	—	—	—	(342)	(755)	(485)	(1,175)
Net income (loss)	$ (246)	$ (2,714)	$ 1,037	$ 2,339	$ 660	$ 424	$ 1,721
Net income (loss) per share:							
Basic	$ (1.06)	$ (3.04)	$ 0.97	$ 1.58	$ 0.36	$ 0.24	$ 0.83
Diluted	$ (1.06)	$ (3.04)	$ 0.13	$ 0.27	$ 0.07	$ 0.05	$ 0.19
Weighted-average number of shares used in per share calculations:							
Basic	231	892	1,064	1,480	1,810	1,760	2,073
Diluted	231	892	8,008	8,731	8,811	8,902	8,924
[1] Includes the following stock-based compensation charges:							
Net revenue	$ —	$ —	$ —	$ 164	$ —	$ —	$ —
Cost of revenue	—	—	—	93	234	175	189
Sales and marketing	—	—	—	262	366	116	233
Research and development	—	—	—	113	287	214	257
General and administrative	—	—	—	120	310	232	320
	$ —	$ —	$ —	$ 752	$ 1,197	$ 737	$ 999

	As of December 31,					As of September 30, 2003
	1998	1999	2000	2001	2002	
	(in thousands)					
Consolidated Balance Sheet Data:						
Cash and cash equivalents	$ 1,781	$ 4,184	$ 3,562	$ 6,354	$ 8,276	$ 8,852
Working capital	1,690	4,180	4,768	7,854	8,896	11,752
Total assets	1,690	4,913	7,038	12,475	15,426	20,270
Redeemable convertible preferred stock	1,945	7,272	7,272	7,272	7,272	7,372
Retained earnings (deficit)	(246)	(2,960)	(1,923)	416	1,076	2,797
Total stockholders' equity (deficit)	(244)	(2,958)	(1,918)	1,226	3,106	5,911

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 consolidated financial statements and the related notes to those statements included elsewhere in this prospectus. In addition to historical consolidated financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed under "Risk Factors" and elsewhere in this prospectus.

Overview

We design, develop, manufacture and market the CoolGlide family of laser and other light-based products for aesthetic treatments. Our products enable our customers to remove hair, treat leg and facial veins, rejuvenate skin and treat pigmented lesions. Our customers consist generally of dermatologists, plastic surgeons, gynecologists, primary care physicians and other qualified practitioners. From inception in August 1998 through the fourth quarter of 1999, we were principally engaged in developing our first product, CoolGlide CV, for hair removal. Since 2000, we have continued to develop new products and have introduced at least one new CoolGlide product each year, and we anticipate adding a new product in 2004. Our products are designed to allow our customers to cost-effectively upgrade to our newest products. As of December 31, 2003, we had sold over 1,200 systems and over 240 upgrades, including, in some instances, multiple upgrades to the same customer. We have been profitable since 2000 and, as of September 30, 2003, had retained earnings of $2.8 million.

We derive revenue primarily from the sale of our aesthetic laser and other light-based products and upgrades. For the nine months ended September 30, 2002 and 2003, we derived 92% and 83%, respectively, of our revenue from product sales, and 5% and 12%, respectively, of our revenue from product upgrades. The balance of our revenue is derived from product service, which we expect to increase over time as our installed base grows and related warranties expire. As we introduce new products with greater functionality, our revenue tends to shift towards these newer products. Due to the high dollar revenue per system sold, variations in unit sales may significantly impact revenue in a given quarter.

We sell our products directly in the United States, Canada, Australia, Japan and major European markets, and use distributors to sell our products in countries where we do not have a direct presence, or to complement our direct sales force in selected countries. For the nine months ended September 30, 2003, we derived 23% of our revenue from sales of our products outside the United States through a combination of direct and distributor sales. We expect to generate a greater percentage of our revenue from international sales in the future. As of December 31, 2003, we had approximately 40 employees in sales worldwide, and distributors located in more than 25 countries. As our international sales increase, currency fluctuations may affect our international revenue.

We incurred net operating losses from inception through 1999. As of December 31, 2001, we had used all of our operating loss carryforwards. We recorded a provision for income taxes during 2001 and 2002, and for the nine months ended September 30, 2003. The effective tax rates during the nine-month periods ended September 30, 2002 and 2003 were 53% and 41%, respectively. These rates reflect stock-based compensation charges on incentive stock options that are not tax deductible.

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 delays in introduction and acceptance of future products, delays in our manufacturing operations, introduction of new and improved products by competitors, and the performance of our direct sales force and distributors. 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 costs of being a public company. Our limited history makes accurate predictions of future operating results difficult.

Results of Operations

Nine Months Ended September 30, 2002 and September 30, 2003

Net Revenue. Revenue is derived from the sale of new products and upgrades, and product service. Net revenue increased $6.3 million, from $20.3 million for the nine months ended September 30, 2002 to $26.6 million for the nine months ended September 30, 2003. Sales in the United States and international sales accounted for $4.7 million and $1.6 million, respectively, of the increase. The increase was primarily attributable to sales resulting from the introduction of our CoolGlide Xeo product in March 2003, including sales of upgrades to our installed base, which together accounted for $11.5 million in net revenue, partially offset by a decrease of $5.9 million in sales of our other products. Service revenue increased $683,000 between these two nine-month periods.

Cost of Revenue. Our cost of revenue consists primarily of material, labor and manufacturing overhead expenses. Cost of revenue increased $1.2 million, from $7.4 million for the nine months ended September 30, 2002 to $8.6 million for the nine months ended September 30, 2003. The increase was primarily attributable to increases of $784,000 in labor and overhead costs associated with greater sales of our products and $375,000 in higher material costs. As a percentage of net revenue, cost of revenue decreased from 36% for the nine months ended September 30, 2002 to 32% for the nine months ended September 30, 2003. The improved margin is the result of higher average selling prices of our new products.

Sales and Marketing. Sales and marketing expenses consist primarily of personnel costs, and costs related to customer-attended workshops, trade shows and advertising. Sales and marketing expenses increased $3.4 million, from $5.9 million for the nine months ended September 30, 2002 to $9.3 million for the nine months ended September 30, 2003. The increase was primarily attributable to an increase of $1.9 million in personnel costs associated with the expansion of our sales force, $677,000 in higher promotional expenses and $496,000 in additional travel expenses. As a percentage of net revenue, sales and marketing expenses increased from 29% for the nine months ended September 30, 2002 to 35% for the nine months ended September 30, 2003.

Research and Development. Research and development expenses consist primarily of personnel costs, clinical and regulatory costs, and material costs. Research and development expenses increased $345,000, from $2.1 million for the nine months ended September 30, 2002 to $2.4 million for the nine months ended September 30, 2003. The increase was primarily attributable to an increase of $161,000 in personnel costs related to hiring additional engineers, higher material cost of $88,000 and additional industrial design consulting service costs of $61,000. As a percentage of net revenue, research and development expenses decreased from 10% for the nine months ended September 30, 2002 to 9% for the nine months ended September 30, 2003.

General and Administrative. General and administrative expenses consist primarily of personnel costs, legal and accounting fees, and other general operating expenses. General and administrative expenses decreased $695,000, from $4.1 million for the nine months ended September 30, 2002 to $3.4 million for the nine months ended September 30, 2003. The decrease was primarily attributable to a $1.2 million write-off of costs associated with our withdrawn initial public offering in June 2002, partially offset by higher labor costs of $270,000 and additional legal expenses of $214,000. As a percentage of net revenue, general and administrative expenses decreased from 20% for the nine months ended September 30, 2002 to 13% for the nine months ended September 30, 2003.

Interest and Other Income, Net. Interest and other income, net decreased from $68,000 for the nine months ended September 30, 2002 to $28,000 for the nine months ended September 30, 2003. The decrease was attributable to lower interest rates, partially offset by higher average cash and cash equivalents balances.

Provision for Income Taxes. Provision for income taxes increased $690,000 from $485,000 for the nine months ended September 30, 2002 to $1.2 million for the nine months ended September 30, 2003. The increase was attributable to an increase in pre-tax income resulting from increased net revenue.

Years Ended December 31, 2001 and December 31, 2002

Net Revenue. Net revenue increased $9.0 million, from $19.3 million in 2001 to $28.3 million in 2002. Sales in the United States accounted for $9.1 million of the increase, offset by a decrease of $54,000 in international sales. The increase was primarily attributable to U.S. sales resulting from the introduction of our CoolGlide Vantage product in March 2002, including sales of upgrades to our installed base, which together accounted for $13.7 million in net revenue, partially offset by a decrease of $5.4 million in sales of our other products. Service revenue increased $704,000 between these two years.

Cost of Revenue. Cost of revenue increased $3.1 million, from $6.9 million in 2001 to $10.0 million in 2002. The increase was primarily attributable to an increase of $2.0 million in labor and overhead costs associated with greater sales of our products and $1.4 million in higher material costs. As a percentage of net revenue, cost of revenue decreased from 36% in 2001 to 35% in 2002.

Sales and Marketing. Sales and marketing expenses increased $2.9 million, from $5.7 million in 2001 to $8.6 million in 2002. The increase was primarily attributable to an increase of $1.3 million in personnel costs associated with the expansion of our sales force, $1.2 million in higher promotional expenses and $311,000 in additional travel expenses. As a percentage of net revenue, sales and marketing expenses increased from 29% in 2001 to 30% in 2002.

Research and Development. Research and development expenses increased $767,000, from $2.2 million in 2001 to $3.0 million in 2002. The increase was primarily attributable to an increase in consulting service costs of $215,000 and higher material costs of $181,000 related to the development of our CoolGlide Vantage product, deferred stock-based compensation charges of $174,000, and higher personnel costs of approximately $139,000 related to hiring additional engineers and regulatory staff. As a percentage of net revenue, research and development expenses were 11% in each of 2001 and 2002.

General and Administrative. General and administrative expenses increased $3.4 million, from $2.0 million in 2001 to $5.4 million in 2002. The increase was primarily attributable to $1.9 million of higher legal expenses in connection with two lawsuits, and $1.2 million in higher legal, accounting and printing fees associated with our withdrawn initial public offering. As a percentage of net revenue, general and administrative expenses increased from 10% in 2001 to 19% 2002.

Interest and Other Income, Net. Interest and other income, net decreased $86,000, from $171,000 in 2001 to $85,000 in 2002. The decrease was attributable to lower interest rates, partially offset by higher average cash and cash equivalents balances.

Provision for Income Taxes. Provision for income taxes increased $413,000, from $342,000 in 2001 to $755,000 in 2002. During 2001, we fully utilized all of our net operating loss carryforwards and released the $760,000 valuation allowance against our deferred tax asset. The provision for income taxes in 2002 was comprised of a current income tax charge of approximately $1.1 million, offset by a change in our deferred tax asset of $310,000.

Years Ended December 31, 2000 and December 31, 2001

Net Revenue. Net revenue increased $9.8 million, from $9.5 million in 2000 to $19.3 million in 2001. Sales in the United States and international sales accounted for $6.9 million and $2.9 million, respectively, of the increase. The increase was primarily attributable to U.S. sales resulting from the introduction of our CoolGlide Excel product in March 2001, including sales of upgrades to our installed base, which together accounted for $13.5 million in net revenue, partially offset by a decrease of $3.8 million in sales of our other products.

Cost of Revenue. Cost of revenue increased $3.5 million, from $3.4 million in 2000 to $6.9 million in 2001. The increase was primarily attributable to $2.2 million in additional labor and overhead costs associated with sales of our products and an increase of $1.2 million in material costs. As a percentage of net revenue, cost of revenue increased from 35% in 2000 to 36% in 2001.

Sales and Marketing. Sales and marketing expenses increased $2.9 million, from $2.8 million in 2000 to $5.7 million in 2001. The increase was primarily attributable to an increase of $2.3 million in additional labor costs, travel and other expenses related to the expansion of our sales force. As a percentage of net revenue, sales and marketing expenses were 29% in each of 2000 and 2001.

Research and Development. Research and development expenses increased $682,000 from $1.5 million in 2000 to $2.2 million in 2001. The increase was primarily attributable to an increase of personnel costs of $450,000 and higher consulting service costs of $183,000. As a percentage of net revenue, research and development expenses decreased from 16% in 2000 to 11% in 2001.

General and Administrative. General and administrative expenses increased $1.0 million, from $1.0 million in 2000 to $2.0 million in 2001. The increase was primarily attributable to higher personnel costs due to increased staffing. As a percentage of net revenue, general and administrative expenses were 10% in each of 2000 and 2001.

Interest and Other Income, Net. Interest and other income, net decreased from $193,000 in 2000 to $171,000 in 2001. The decrease was attributable to lower interest rates, partially offset by higher average cash and cash equivalents balances.

Provision for Income Taxes. We recorded a provision for income taxes of $342,000 during 2001. This was comprised of a current income tax charge of $1.2 million offset by a deferred tax benefit of $859,000. We did not record any provision for income taxes during 2000 due to the availability of net operating loss carryforwards.

Deferred Stock-Based Compensation

We record deferred stock-based compensation for financial reporting purposes as the difference between the exercise price of options granted to employees and the estimated fair value of our common stock at the time of grant. Deferred stock-based compensation is amortized on a straight-line basis to cost of revenue, sales and marketing expenses, research and development expenses, and general and administrative expenses. Deferred stock-based compensation recorded through September 30, 2003 was $7.6 million, with accumulated amortization of $2.5 million. The remaining $5.1 million will be amortized over the vesting periods of the options, generally four years from the date of grant. We currently expect to record amortization expense for employee deferred stock-based compensation as follows:

Period	Amount
Fourth quarter 2003	$ 0.5 million
2004	$ 1.9 million
2005	$ 1.5 million
2006	$ 1.0 million
2007	$ 0.2 million

Stock-based compensation expenses related to stock options granted to non-employees are recognized as the stock options are earned. The amount of stock-based compensation expenses to be recorded in future periods may decrease if unvested options are subsequently cancelled. Our stock-based compensation expenses will fluctuate as the fair market value of our common stock fluctuates.

Liquidity and Capital Resources

Since our inception, we have funded our operations principally from two private placements of preferred stock during 1998 and 1999 that resulted in aggregate net proceeds of $7.3 million, and through cash flow from operations.

As of September 30, 2003, we did not have any outstanding or available debt financing arrangements, we had working capital of $11.8 million, and our primary source of liquidity was $8.9 million in cash and cash equivalents.

The following table discloses aggregate information about our contractual obligations and the periods in which payments are due as of September 30, 2003, excluding the redeemable convertible preferred stock to be converted into common stock upon completion of this offering:

	Payments Due by Period				
Contractual Obligations	**Total**	**Less Than 1 Year**	**1-3 Years**	**3-5 Years**	**More Than 5 Years**
Operating leases	$ 9,879,000	$ 557,000	$ 1,937,000	$ 2,821,000	$ 4,564,000

The long-term commitments under operating leases shown above consist of payments related to our real estate lease in Brisbane, California, expiring January 2014, and our real estate lease in Burlingame, California, expiring September 2005.

Nine Months Ended September 30, 2002 and September 30, 2003

Net Cash Provided by Operating Activities. Net cash provided by operating activities was $1.4 million and $1.1 million for the nine months ended September 30, 2002 and 2003, respectively. During the nine months ended September 30, 2003, net cash provided by operating activities primarily resulted from $1.7 million of net income, adjusted for non-cash stock-based compensation expenses, an increase in accounts payable and an increase in deferred revenue, offset by an increase in accounts receivable. The stock-based compensation expense primarily relates to employee stock options granted during 2001 and 2003, at below estimated fair value. The increase in deferred revenue is primarily due to the sale of additional service contracts. The increase in accounts receivable is primarily due to an increase in revenues.

Net Cash Used in Investing Activities. Net cash used in investing activities was $722,000 and $574,000 for the nine months ended September 30, 2002 and 2003, respectively. 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 Financing Activities. Net cash provided by financing activities was $10,000 and $85,000 for the nine months ended September 30, 2002 and 2003, respectively. The cash provided by financing activities in these two nine-month periods was attributable to proceeds from the exercise of stock options and warrants.

Years Ended December 31, 2000, 2001 and 2002

Net Cash Provided by (Used in) Operating Activities. Net cash provided by (used in) operating activities was $(1,000) in 2000, $3.2 million in 2001 and $2.7 million in 2002. During 2001 and 2002, net cash provided by operating activities resulted primarily from net income adjusted for stock-based compensation expense, increases in accounts receivable and deferred tax assets and accrued liabilities. The increases in accounts receivable and accrued expenses were primarily due to increases in revenues and warranty reserves, respectively. The increase in our deferred tax asset in 2001 was primarily due to the release of a valuation allowance against the asset. During 2000, net cash used in operating activities primarily resulted from net income and increases in accruals and deferred revenue, offset by an increase in accounts receivable.

Net Cash Used in Investing Activities. Net cash used in investing activities was $579,000 in 2000, $313,000 in 2001 and $778,000 in 2002. In 2002, we acquired a licensing agreement for our CoolGlide products in the amount of $538,000. Other investing activities consist 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. Net cash provided by (used in) financing activities was $(42,000) in 2000, $(65,000) in 2001 and $23,000 in 2002. The cash used by financing activities in 2000 and 2001 was primarily attributable to repayments of a line of credit.

We expect to continue to generate positive cash flows from operations in the future. Our future capital requirements depend on a number of factors, including the rate of market acceptance of our current and future products, the resources we devote to developing and supporting our products, and continued progress of our research and development of new products. We may need to pay a substantial amount in back royalties on sales of our products and royalties for sales of our products hereafter in the event that we are unsuccessful in defending against pending litigation.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenue and expenses, and disclosures at the date of the financial statements. On a periodic basis, we evaluate our estimates, including those related to accounts receivable, inventories, warranty reserve, income taxes and deferred stock-based compensation. We use authoritative pronouncements, historical experience and other assumptions as the basis for making estimates. Actual results could differ from those estimates.

We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our consolidated financial statements.

Revenue Recognition. We recognize distributor and non-distributor revenue in accordance with Securities and Exchange Commission Staff Accounting Bulletin, or SAB, No. 101, Revenue Recognition in Financial Statements, as amended by SAB Nos. 101A and 101B. SAB No. 101 requires that four basic criteria must be met before revenue can be recognized: persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the fee is fixed and determinable; and collectibility is reasonably assured. Determination of whether persuasive evidence of an arrangement exists and whether delivery has occurred or services have been rendered are based on management's judgments regarding the fixed nature of the fee charged for services rendered and products delivered, and the collectibility of those fees. Service revenue is recognized as the services are provided and, for service contracts, is recognized over the period of the applicable contract. Should changes in conditions cause management to determine these criteria are not met for certain future transactions, revenue recognized for any reporting period could be adversely affected.

Accounts Receivable. We perform periodic credit evaluations of our customers and adjust credit limits based upon payment history and the customer's current creditworthiness, as determined by our review of current credit information. We monitor collections and payments from our customers and maintain an allowance for doubtful accounts based upon our historical experience and any specific customer collection issues that we have identified. While our credit losses have historically been within our expectations and the allowance established, we may not continue to experience the same credit loss rates that we have in the past.

Warranty Reserve. We provide for the estimated cost of product warranties at the time revenue is recognized. As we sell new products to our customers, we must exercise considerable judgment in estimating the expected failure rates. Should actual product failure rates, material usage or service delivery costs differ from our estimates, revisions to the estimated warranty liability would be required.

Inventory Reserve. We state our inventories at the lower of cost or market, computed 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. The reserves are equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory reserves may be required.

Accounting for Income Taxes. We account for income taxes under the provisions of Statement of Financial Accounting Standards, or SFAS, No. 109, "Accounting for Income Taxes." Under this method, we determine deferred tax assets and liabilities based upon the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. The tax consequences of most events recognized in the current year's financial statements are included in determining income taxes currently payable. However, because tax laws and financial accounting standards differ in their recognition and measurement of assets, liabilities, equity, revenue, expenses, gains and losses, differences arise between the amount of taxable income and pretax financial income for a year and between the tax bases of assets or liabilities and their reported amounts in the financial statements. Because we assume that the reported amounts of assets and liabilities will be recovered and settled, respectively, a difference between the tax basis of an asset or a liability and its reported amount in the balance sheet will result in a taxable or a deductible amount in some future years when the related liabilities are settled or the reported amounts of the assets are recovered, giving rise to a deferred tax asset. We then assess the likelihood that our deferred tax assets will be recovered from future taxable income and, to the extent we believe that recovery is not likely, we establish a valuation allowance.

Stock-Based Compensation. We have stock option plans to reward our employees. We account for these plans under the recognition and measurement principles of Accounting Principles Board, or APB, Opinion No. 25 and related interpretations and apply the disclosure provisions of SFAS No. 123, as amended by SFAS No. 148. We have recorded employee stock-based compensation based upon the difference between the estimated fair value of common stock on the date of grant and the option exercise price. We estimated the fair value of our common stock based upon several factors, including progress and milestones attained in our business, sales of convertible preferred stock, changes in valuations of existing comparable public companies and the expected valuation we would obtain in an initial public offering. We amortize employee stock-based compensation on a straight-line basis over the vesting terms of the underlying options. We issue stock options to non-employees, generally for services, which we account for under the provisions of SFAS No. 123 and Emerging Issues Task Force, or EITF, No. 96-18. These options are valued using the Black-Scholes option valuation model and are subject to periodic adjustment as the underlying options vest. Changes in fair value are amortized over the vesting period on a straight-line basis.

Quantitative and Qualitative Disclosures About Market Risk

We invest our excess cash primarily in U.S. government securities and investment-grade marketable debt securities of financial institutions and corporations. 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 U.S. dollars, future fluctuations in the value of the U.S. 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 January 2003, the Financial Accounting Standards Board, or FASB, issued FASB Interpretation No. 46, or FIN 46, "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51." FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. During December 2003, the FASB issued FIN 46R, a revision to FIN 46. FIN 46R provides a broad deferral of the latest date by which all public entities must apply FIN 46 to certain variable interest entities, to the first reporting period ending after March 15, 2004. We do not expect the adoption of FIN 46 to have a material impact upon our financial position, cash flows or results of operations.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability or an asset in some circumstances. Many of those instruments were previously classified as equity. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. It is to be implemented by reporting the cumulative effect of a change in an accounting principle for financial instruments created before the issuance date of SFAS No. 150 and still existing at the beginning of the interim period of adoption. While the effective date of certain elements of SFAS No. 150 has been deferred, we do not expect the adoption of SFAS No. 150 to have a material impact upon our financial position, cash flows or results of operations.

BUSINESS

Overview

We design, develop, manufacture and market our CoolGlide products for aesthetic treatments. Our easy-to-use family of laser and other light-based products enables dermatologists, plastic surgeons, gynecologists, primary care physicians and other qualified practitioners to perform safe, effective and non-invasive aesthetic procedures for their patients. We commercially launched our first CoolGlide product in March 2000 for hair removal, and every year since then we have introduced at least one new CoolGlide product. To date, we have received FDA clearance to market our CoolGlide products for hair removal and the permanent reduction of hair, for the treatment of vascular lesions, including leg and facial veins, for the treatment of wrinkles, and for the treatment of benign pigmented lesions.

Each of our CoolGlide products consists of one or more handpieces and a console that incorporates a universal graphic user interface, an Nd:YAG laser module, control system software and high voltage electronics. We offer our customers the ability to select the CoolGlide system that best fits their practice. We design our products to allow our customers to cost-effectively upgrade to our newest products, which enables them to add applications to their aesthetic practice and provides us with a source of recurring revenue.

Millennium Research Group's 2002 Aesthetic Lasers Report estimates that over 2.6 million aesthetic laser procedures were performed in the United States in 2002 and an estimated 4.4 million such procedures will be performed in the United States in 2005. This growth in the demand for aesthetic laser and other light-based procedures has resulted in an established and growing market for products and technologies that allow practitioners to perform these treatments.

We currently sell, market and distribute our products in the United States through a direct sales force of 25 representatives. Internationally, we sell our products through a direct sales force of 13 employees in seven countries, and through distributors in over 25 additional countries. As of December 31, 2003, we had sold over 1,200 systems and over 240 upgrades, including, in some instances, multiple upgrades to the same customer. We have been profitable since 2000.

The Structure of Skin and Conditions that Affect Appearance

The skin is the body's largest organ and is comprised of layers called the epidermis and dermis. The epidermis is the outer layer, and serves as a protective barrier for the body. It contains cells that determine pigmentation, or skin color. The underlying layer of skin, the dermis, contains hair follicles and large and small blood vessels that are found at various depths below the epidermis. Collagen, also found within the dermis, provides strength and flexibility to the skin.

Many factors, such as age, sun damage and the human body's diminished ability to repair and renew itself over time, can result in aesthetically unpleasant changes in the appearance of the skin. These changes can include undesirable hair growth. Additionally, blood vessels can enlarge or swell due to circulatory changes and become visible at the skin's surface in the form of unsightly veins. Collagen can deteriorate, thereby weakening the skin, leading to wrinkles and looseness. Long-term sun exposure can result in uneven pigmentation, or sun spots.

People with undesirable hair growth or the above mentioned skin conditions often seek aesthetic treatments to improve their appearance.

The Market for Aesthetic Procedures

The market for aesthetic procedures has grown significantly over the past several years. The American Society of Plastic Surgeons estimates that its members treated approximately 2.0 million people in 2002, representing a 95% increase since 1998. We believe there are several factors contributing to the growth of aesthetic procedures, including:

- *Aging of the U.S. Population.* The "baby boomer" demographic segment, currently ages 39 to 57, represents over 27% of the U.S. population. The size of this aging segment, and its desire to retain a youthful appearance, have driven the growth for aesthetic procedures.
- *Broader Range of Safe and Effective Treatments.* Technical developments have led to safe, effective, easy-to-use and low-cost treatments with fewer side effects, resulting in broader adoption of aesthetic procedures by practitioners. In addition, technical developments have enabled practitioners to offer a broader range of treatments. Finally, these technical developments have reduced the required treatment and recovery time, which in turn has led to greater patient demand.
- *Changing Practitioner Economics.* Managed care and government payor reimbursement restrictions in the United States, and similar payment related constraints outside the United States, are motivating practitioners to establish or expand their elective aesthetic practices with procedures that are paid for directly by patients. As a result, in addition to the traditional users such as dermatologists and plastic surgeons, other practitioners, such as gynecologists and primary care physicians, have begun to perform these procedures.

Aesthetic Procedures for Improving the Skin's Appearance and Their Limitations

Many alternative therapies are available for treatment of conditions that affect a person's appearance by treating specific structures within the skin. These procedures utilize injections or abrasive agents to reach different depths of the dermis and the epidermis. In addition, non-invasive treatments have been developed that employ laser and other light-based technologies to achieve similar therapeutic outcomes. Some of these more common therapies and their limitations are described below.

Hair Removal. Techniques for hair removal include waxing, depilatories, tweezing, shaving, electrolysis and laser and other light-based hair removal. The only techniques that provide a long-lasting solution are electrolysis and laser and other light-based hair removal. Electrolysis is usually painful, time-consuming and expensive for large areas, but is the only permanent method for removing light-colored hair. During electrolysis, an electrologist inserts a needle directly into a hair follicle and activates an electric current in the needle. Since electrolysis only treats one hair follicle at a time, the treatment of an area as small as an upper lip may require numerous visits and up to ten hours of treatment. In addition, electrolysis can cause blemishes and infection related to needle use. Despite the time-consuming and painful nature of electrolysis, approximately 1.0 million procedures were performed in the United States in 2001, according to the Millenium Research Group's 2002 Aesthetic Lasers Report.

Leg and Facial Veins. The current aesthetic treatment methods for leg and facial veins include sclerotherapy and laser-based treatments. With these treatments, patients seek to eliminate visible veins and improve overall skin appearance. Sclerotherapy requires a skilled practitioner to inject a saline or detergent-based solution into the target vein, which breaks down the vessel causing it to collapse and be absorbed into the body. The need to correctly position the needle on the inside of the vein makes it difficult to treat smaller veins, which limits the treatment of facial vessels and small leg veins. The American Society of Plastic Surgeons estimates that its members performed over 500,000 sclerotherapy procedures in 2002.

Skin Rejuvenation. Non-light-based skin rejuvenation treatments include a broad range of popular alternatives, including Botox and collagen injections, chemical peels and microdermabrasions. With these treatments, patients

hope to improve overall skin tone and texture, reduce pore size, and remove other signs of aging, including mottled pigmentation, diffuse redness and wrinkles. All of these procedures are temporary solutions and must be repeated within several weeks or months to sustain their effect, thereby increasing the cost and inconvenience to patients. For example, the body absorbs Botox and collagen and patients require supplemental injections every three to six months to maintain the benefits of the treatment.

Other skin rejuvenation treatments, such as chemical peels and microdermabrasions, can have undesirable side effects. Chemical peels use acidic or caustic solutions to peel away the epidermis, and microdermabrasion generally utilizes sand crystals to resurface the skin. These techniques can lead to post-procedure stinging, redness, irritation and scabbing. In addition, more serious complications, such as changes in skin color, can result from deeper chemical peels. Patients that undergo these deep chemical peels are also advised to avoid exposure to the sun for several months following the procedure. The American Society of Plastic Surgeons estimates that in 2002 its members performed over 1.1 million Botox and over 400,000 collagen injection procedures, over 900,000 chemical peels and over 900,000 microdermabrasion procedures.

Laser and Other Light-Based Aesthetic Treatments

Laser and other light-based aesthetic treatments can achieve therapeutic results by non-invasively affecting structures within the skin. The development of safe and effective aesthetic treatments has created a well-established and growing market for these procedures. The 2002 Epilation Market Report, published by Michael Moretti, Medical Insight, estimates a $2.4 billion worldwide market for laser and other light-based hair removal procedures in 2002, and projects this market will grow to over $3.3 billion by 2005. Millennium Research Group estimates that over 2.6 million aesthetic laser procedures were performed in the United States in 2002, and estimates that this number will increase to over 4.4 million in 2005, as follows:

	Estimated Procedures	
Laser and Other Light-Based Aesthetic Procedures	**2002**	**2005**
Hair Removal	1,100,000	1,520,000
Non-Ablative Skin Resurfacing	708,000	1,267,000
Pigmented Lesion or Tattoo Removal	327,500	386,500
Vascular Lesion Removal	270,000	300,000
Ablative Skin Resurfacing	125,500	134,500
Acne Treatment	92,400	795,600

Practitioners use laser and other light-based technologies to selectively target hair follicles, veins or collagen in the dermis, as well as cells responsible for pigmentation in the epidermis, without damaging surrounding tissue. Safe and effective laser and other light-based treatments require an appropriate combination of the following four parameters:

- *Energy Level*: the amount of light emitted to heat a target;
- *Pulse Duration*: the time interval over which the energy is delivered;
- *Spot Size*: the diameter of the energy beam, which affects treatment depth and area; and
- *Wavelength*: the color of light, which impacts the effective depth and absorption of the energy delivered.

For example, in the case of hair removal, by utilizing the correct combination of these parameters, a practitioner can use a laser to selectively target melanin within the hair follicle to absorb the laser energy and destroy the follicle, without damaging other delicate structures in the surrounding tissue. Wavelength and spot size permit the practitioner to target melanin in the base of the hair follicle, which is found in the dermis. The combination of pulse duration and energy level may vary, depending upon the thickness of the targeted hair follicle. A shorter pulse length with a high energy level is optimal to destroy fine hair, whereas coarse hair is best treated with a longer pulse length with lower energy levels. If treatment parameters are improperly set, non-targeted structures

within the skin may absorb the energy thereby eliminating or reducing the therapeutic effect. In addition, improper setting of the treatment parameters or failure to protect the surface of the skin may cause burns, which can result in blistering, scabbing and skin discoloration.

The growth in the demand for aesthetic laser and other light-based procedures has resulted in a significant market for products and technologies that allow practitioners to perform these treatments. However, the most widely-available systems have been, and in many cases remain, single-application devices. Practitioners interested in treating hair, veins and wrinkles have had to incur the expense of purchasing multiple systems and maintaining them in an often confined clinical office space. The need for multiple devices for different applications is primarily a result of technology constraints of most competing systems. Most competing systems cannot combine the wide range of energy levels, pulse durations and spot sizes with an effective wavelength to perform a broad variety of aesthetic laser and other light-based applications using a single system.

The Cutera Solution

Our unique CoolGlide family of products provides the long-lasting benefits of laser and other light-based aesthetic procedures. Our technology combines the widest variety of applications available in a single system. Key features of our solution include:

- *Multiple Applications Available in a Single System.* Our technology platforms enable practitioners to perform multiple aesthetic procedures using a single device. These procedures include hair removal, treatment of unsightly veins, skin rejuvenation and treatment of pigmented lesions. Because practitioners can use our systems for multiple indications, the cost of a unit may be spread across a potentially greater number of patients and procedures, and therefore may be more rapidly recovered.
- *Technology and Design Leadership.* We believe that we offer the most innovative and advanced laser and other light-based solutions for the aesthetic market. Our technology combines long wavelength, adjustable energy levels, variable spot sizes and a wide range of pulse durations, allowing our users to customize treatment for each patient and condition. Our proprietary Optimized Pulse Spectrum, or OPuS, pulsed-light handpiece for the treatment of pigmented lesions, optimizes the wavelength used for treatments and incorporates a monitoring system to increase safety.
- *Upgradeable Platform.* We design our products to allow our customers to cost-effectively upgrade to our newest products, which provides our customers the option to add additional applications to their existing systems and provides us with a source of recurring revenue. We believe that product upgradeability is a competitive advantage because it allows our users to take advantage of our latest product offerings and provide additional treatment options to their patients, thereby expanding the opportunities for their aesthetic practices.
- *Treatments for Broad Range of Skin Types and Conditions.* Our products remove hair safely and effectively on patients of all skin types, including harder-to-treat patients with dark or tanned skin. In addition, the wide parameter range of our systems allows practitioners to effectively treat patients with both fine and coarse hair. Practitioners may also use our products to treat spider and reticular leg veins, as well as small facial veins. The ability to customize treatment parameters enables our customers to offer safe and effective therapy to a broad base of their patients.
- *Ease of Use.* We design our products to be easy to use. Our proprietary handpieces are lightweight and ergonomic, minimizing user fatigue. Our ClearView handpiece allows practitioners to view an area as it is being treated, reducing the possibility of unintended damage to the skin and increasing the speed of application. Our control console contains a universal graphic user interface with three simple, independently adjustable controls from which to select a wide range of treatment parameters to suit each patient’s profile.

Risks involved in the use of our products include risks common to laser and other light-based aesthetic procedures.

Strategy

Our goal is to become the worldwide leading provider of laser and other light-based medical devices to the aesthetic market by:

- *Continuing to Develop New Products.* We have introduced at least one new CoolGlide product every year since 2000. Our products are currently marketed for hair removal, treatment of veins, skin rejuvenation and the treatment of pigmented lesions, and we are developing our existing technology platforms to treat additional conditions.
- *Increasing Sales of Existing Products in the United States.* We believe there is significant growth potential for our current products in the United States, and we plan to continue to expand our domestic sales force to capitalize on this opportunity.
- *Expanding our International Presence.* We believe the size of the international market is comparable to the U.S. market, and we are focused on increasing our market penetration overseas and building global brand-recognition. For the nine months ended September 30, 2003, only approximately 23% of our revenue originated outside of the United States. We intend to add international direct sales employees, distributors and support staff to increase sales and strengthen customer relationships in international markets.
- *Broadening our Customer Base.* We believe we have an opportunity for significant growth targeting non-traditional aesthetic practitioners. Dermatologists and plastic surgeons have generally been regarded as the traditional customers for laser and other light-based aesthetic equipment. For the nine months ended September 30, 2003, however, we derived over half of our revenue from sales of our products to gynecologists, primary care physicians and other qualified practitioners. We plan to continue to focus sales and marketing efforts on this broader customer base.
- *Leveraging our Installed Base with Sales of Upgrades.* Each time we have introduced a new product, we have designed it so existing customers may upgrade their previously purchased systems to offer additional capabilities. We believe the ability to provide upgrades to our existing installed base of customers represents a significant opportunity for recurring revenue. We also believe that our upgrade program aligns our interest in generating revenue with our customers' interest in improving the return on their investment by expanding the range of applications they can perform.
- *Acquiring Complementary Products, Technologies or Businesses.* We intend to pursue opportunities to expand our core business, offering a broad range of laser and other light-based products for the aesthetic market, by acquiring complementary products, technologies or businesses.

Products

Our CoolGlide family of products allows for the delivery of multiple laser and other light-based aesthetic applications from a single system. The following table lists our CoolGlide products and the aesthetic applications that can be performed by each.

	Year Introduced	Hair Removal	Vein Treatment	Skin Rejuvenation	Pigmented Lesion Treatment
CoolGlide CV	2000	X			
CoolGlide Excel	2001	X	X		
CoolGlide Vantage	2002	X	X	X	
CoolGlide Genesis	2002			X	
CoolGlide Genesis Plus	2003			X	X
CoolGlide Xeo	2003	X	X	X	X

Each of our products consists of a control console and one or more handpieces, depending on the model.

Control Console

Our control console includes a universal graphic user interface, a 1064-nanometer Nd:YAG laser module, control system software and high voltage electronics. The interface allows the practitioner to set the appropriate laser or flashlamp parameters for each procedure through a user-friendly format. Our laser module consists of electronics, a visible aiming beam, a focusing lens and an Nd:YAG laser that functions at a wavelength that permits penetration over a wide range of depths and is effective across all skin types. The control system software ensures that the operator's instructions are properly communicated from the graphic user interface to the other components within the system. Our high voltage electronics produce over 10,000 watts of peak laser energy, which permits therapeutic effects at very short pulse durations.

Handpieces

ClearView Handpiece. Our patented ClearView handpiece delivers laser energy to the treatment area for hair removal, leg and facial vein treatment, and skin rejuvenation procedures. The ClearView handpiece consists of an energy-delivery component, consisting of an optical fiber and lens, and a copper cooling plate with imbedded temperature monitoring. The handpiece weighs approximately 14 ounces, which is light enough to be held with one hand. The lightweight nature and ergonomic design of the handpiece minimizes user fatigue, a common problem associated with other competing system's heavier handpieces. Its patented design allows the practitioner an unobstructed view of the treatment area, which reduces the possibility of unintended damage to the skin and can increase the speed of treatment. The ClearView handpiece also incorporates our patented cooling system, providing integrated pre- and post-cooling of the treatment area through a temperature-controlled copper plate to protect the outer layer of the skin. The handpiece is available in either a fixed 10 millimeter spot size, for our CoolGlide CV, or a user-controlled variable 3, 5, 7 and 10 millimeter spot size, for our other models.

OPuS Handpiece. Our OPuS handpiece is designed to produce a pulse of light over a narrow wavelength spectrum to treat pigmented lesions, such as age and sun spots. The OPuS handpiece consists of a custom flashlamp, wavelength filter, closed-loop power control and imbedded temperature monitor, and weighs approximately 13 ounces. The proprietary filter eliminates long and short wavelengths, transmitting only the therapeutic range required for safe and effective treatment. Our power control includes a monitoring system to ensure that the desired energy level is delivered. Since cooling of the dermis is not necessary for treating pigmented lesions, the OPuS handpiece does not contain the same cooling features as the ClearView handpiece, but protects the epidermis by regulating the temperature of the handpiece window through the embedded temperature monitor. Our OPuS handpiece is offered with the CoolGlide Genesis Plus and the CoolGlide Xeo.

CoolGlide Applications and Procedures

Our products are designed to allow the practitioner to select an appropriate combination of energy level, spot size and pulse duration. The ability to manipulate the combinations of these parameters allows our customers to treat the broadest range of conditions available with a single light-based system.

Hair Removal. Our CoolGlide technology allows our customers to treat all skin types and hair thicknesses. Our Nd:YAG laser permits energy to safely penetrate through the epidermis of any skin type and into the dermis where the hair follicle is located. Using the universal graphic user interface on our control console, the practitioner sets parameters to deliver therapeutic energy with a large spot size and variable pulse durations, allowing the practitioner to treat fine or coarse hair.

To remove hair, the treatment site on the skin is first cleaned and shaved. The practitioner applies a thin layer of gel to allow the ClearView handpiece to glide across the skin. The practitioner next applies the ClearView handpiece directly to the skin to cool the area to be treated and then delivers a laser pulse to the pre-cooled area. Delivery of the energy destroys the hair follicles and prevents hair regrowth. This procedure is then repeated at the next treatment site on the body, and can be done in a gliding motion to increase treatment speed. Patients receive on average three to six treatments. Each treatment can take between five minutes and one hour depending on the size of the area and the condition being treated. On average, there are six to eight weeks between treatments.

Leg and Facial Veins. Our CoolGlide technology allows our customers to treat the widest range of aesthetic vein conditions, including spider veins, reticular leg veins and small facial veins. Our ClearView handpiece's adjustable spot size of 3, 5, 7 or 10 millimeters allows the practitioner to control treatment depth to target different sized veins. Selection of the appropriate energy level and pulse duration ensures effective treatment of the intended target.

The vein treatment procedure is performed in a substantially similar manner to the hair removal procedure. In addition to pre-cooling the area to be treated, the handpiece is also used to cool the treatment area after the practitioner applies the laser pulse. The delivered energy damages the vein and, over time, it is absorbed by the body. Patients receive on average between one and six treatments, with six weeks or longer between treatments.

Skin Rejuvenation. Our CoolGlide technology allows our customers to perform non-invasive treatments that improve facial skin tone and texture by reducing redness and pore size, and treating other aesthetic conditions. Our products deliver a combination of high laser energy and a very short pulse duration to affect the desired target, minimizing risk of damage to the surrounding tissue.

To perform a skin rejuvenation procedure, cooling is not applied and the handpiece is held directly above the skin. A large number of pulses are directed at the treatment site, repeatedly covering an area, such as the cheek. By delivering many pulses of laser light to a treatment area, a gentle heating of the dermis occurs and collagen growth is stimulated to rejuvenate the skin and reduce wrinkles. Patients typically receive four to six treatments for this procedure. The treatment typically takes less than a half hour and there are typically two to four weeks between treatments.

Pigmented Lesions. The initial application of our flashlamp technology platform safely and effectively treats pigmented lesions, such as age spots and sun spots. The practitioner delivers a narrow spectrum of light to the surface of the skin through our OPuS pulsed light handpiece. The handpiece includes our proprietary wavelength filter, which reduces the energy level required for therapeutic effect and minimizes the risk of skin injury.

In treating pigmented lesions, the OPuS handpiece is placed directly on the skin and then the light pulse is triggered. The cells forming the pigmented lesion absorb the light energy and will darken and then flake off over the course of two to three weeks. Several treatments may be required to completely remove the lesion. The treatment takes a few minutes per area treated and there are typically three to four weeks between treatments.

Product Upgrades

Our products are designed to allow our customers to cost-effectively upgrade to our newest technologies, which provides our customers the option to add applications to their CoolGlide system and provides us with a source of recurring revenue. When we introduce a new product, we notify our customers of the upgrade opportunity through a sales call or mailing. In most cases, a field service representative can install the upgrade at the customer site in a matter of hours, which results in very little downtime for practitioners. In a few cases, where substantial upgrades are necessary, the customer will receive a fully-refurbished system before sending their prior system back to our headquarters.

Sales and Marketing

We sell, market and distribute our products in the United States through a direct sales force supported by a team of technical service specialists. Our strategy to increase U.S. market penetration relies on selling directly to our historic customer base of plastic surgeons and dermatologists. In addition, we are targeting a newer aesthetic practice opportunity consisting of gynecologists, primary care physicians and other qualified practitioners. As of December 31, 2003, we had a 25-person U.S. direct sales force, three of whom were regional managers. We plan to continue hiring additional sales representatives. In addition, we recently entered into a distribution arrangement with PSS World Medical, an organization of over 700 U.S. medical product sales representatives covering a wide range of medical specialties. PSS sales representatives work in coordination with our sales force to locate additional customers for our products.

As of December 31, 2003, we had a direct sales force of 13 employees in Australia, Canada, France, Germany, Japan, Spain and the United Kingdom, and distributors in over 25 additional countries. We require our distributors to invest in service training and equipment, to attend certain exhibitions and industry meetings, and in some instances, to commit to minimum sales amounts to gain or retain exclusivity.

We seek to establish strong ongoing relationships with our customers through the upgradeability of our products and through ongoing training and support. We primarily target our marketing efforts to practitioners through office visits, workshops, trade shows and trade journals. We also market to potential patients through brochures and our website. We offer clinical forums with recognized expert panelists to promote advanced treatment techniques using the CoolGlide family of products to further enhance customer loyalty and uncover new sales opportunities.

Competition

Our industry is subject to intense competition. Our products compete against conventional non-light-based treatments, such as electrolysis, Botox and collagen injections, chemical peels, microdermabrasion and sclerotherapy. Our products also compete against laser and other light-based products offered by public companies, such as Candela, Laserscope, Lumenis and Palomar Medical Technologies, as well as several smaller specialized private companies.

Competition among providers of laser and other light-based devices for the aesthetic market is characterized by extensive research efforts and technological progress. While we attempt to protect our products through patents and other intellectual property rights, there are few barriers to entry that would prevent new entrants or existing competitors from developing products that would compete directly with ours. There are many companies, both public and private, that are developing innovative devices that use both light-based and alternative technologies. 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. To compete effectively, we have to demonstrate that our products are attractive alternatives to other devices and treatments by differentiating our products on the basis of performance, brand name, reputation and price. We have encountered and expect to continue to encounter potential customers who, 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 and reduced margins over time for our products.

Research and Development

Our research and development group develops new products to address unmet or underserved market needs. The major focus of this group is to leverage our existing technology platforms for new aesthetic applications. We are currently developing products that target new clinical applications to meet the needs of our broadening customer base, with our next introduction anticipated in 2004. Since our initial product offering in March 2000, we have introduced at least one new CoolGlide product each year. As of December 31, 2003, our research and development activities were conducted by a staff of 11 employees with a broad base of experience in lasers and optoelectronics. We have developed relationships with outside contract engineering and design consultants, giving our team additional technical and creative breadth. We work closely with thought leaders and customers, both individually and through our sponsored seminars, to understand unmet needs and emerging applications in aesthetic medicine.

Services and Support

Our products are engineered to enable quick and efficient service and support. There are several separate components of our products, 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 disruptions for our customers. As of December 31, 2003, we had seven domestic service engineers, each of whom covers various regions of the United States. Internationally, we provide direct service support in combination with distributors and third-party service providers.

We provide initial warranties on our products to cover parts and service and offer extended warranty packages that vary by the type of product and the level of service desired. Customers are notified before their initial warranty expires and are able to choose from two different extended warranty plans covering preventative maintenance and replacement parts and labor. One plan allows the customer to pay only for time and materials at a reduced rate and a second provides yearly preventative maintenance for a fixed fee. In the event one of our customers declines an additional warranty, we will still service our products and charge for time and materials.

Manufacturing

We manufacture our products with components and subassemblies supplied by vendors. We assemble and test each of our products at our Brisbane, California facility. Quality control, cost reduction and inventory management are top priorities of our manufacturing operations.

We purchase certain components and subassemblies from a limited number of suppliers. We have flexibility with our suppliers to adjust the number of components and subassemblies as well as the delivery schedules. The forecasts we use are based on historical demands. Lead times for components and subassemblies may vary significantly depending on the size of the order, time required to fabricate and test the components or subassemblies, specific supplier requirements and current market demand for the components and subassemblies. We reduce the potential for disruption of supply by maintaining sufficient inventory and identifying additional suppliers. The time required to qualify new suppliers for some components, or to redesign them, could cause delays in our manufacturing. To date, we have not experienced significant delays in obtaining any of our components or subassemblies.

We use small quantities of common cleaning products in our manufacturing operations, which are lawfully disposed of through a normal waste management program. We do not forecast any material costs due to compliance with environmental laws or regulations.

We are required to manufacture our products in compliance with the FDA’s Quality System Regulation, or QSR. The QSR covers the methods and documentation of the design, testing, control, manufacturing, labeling, quality

assurance, packaging, storage and shipping of our products. The FDA enforces the QSR through periodic unannounced inspections. We were inspected by the FDA in 2000 and again in 2001. There were no significant findings as a result of these audits and our responses have been accepted by the FDA. 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 fails to maintain compliance with our quality requirements, we may have to qualify a new supplier and could experience manufacturing delays as a result. We have opted to maintain quality assurance and quality management certifications to enable us to market our products in the member states of the European Union, the European Free Trade Association and countries which have entered into Mutual Recognition Agreements with the European Union. In February 2000, our former facility was awarded the ISO 9001 and EN 46001 certification. In March 2003, we received our ISO 9001 updated certification as well as our certification for ISO 13485 which replaced our EN 46001 certification. We are in the process of transferring these certifications to our new facility.

Patents and Proprietary Technology

We rely on a combination of patent, copyright, trademark and trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights. As of December 31, 2003, we had four issued U.S. patents primarily covering our ClearView handpiece design and cooling method, eleven pending U.S. 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, Canada, the European Union and Japan. CoolGlide Excel is a registered trademark in the United States. Our other trademarks include CoolGlide Genesis, CoolGlide Genesis Plus, CoolGlide Vantage, CoolGlide Xeo and Cutera.

All employees and technical consultants are required to execute confidentiality agreements in connection with their employment and consulting relationships with us. We also require them to agree to disclose and assign to us all inventions conceived in connection with the relationship. We cannot provide any assurance that employees and consultants will abide by the confidentiality or assignability terms of their agreements. Despite measures taken to protect our intellectual property, unauthorized parties may copy aspects of our products or obtain and use information that we regard as proprietary.

Our patent applications may not result in issued patents, and we cannot assure you that any 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.

Government Regulation

Our products are medical devices subject to extensive and rigorous regulation by the U.S. Food and Drug Administration, as well as other regulatory bodies. FDA regulations govern the following activities that we perform and will continue to perform to ensure that medical products distributed domestically or exported internationally are safe and effective for their intended uses:

- product design and development;
- product testing;
- product manufacturing;
- product safety;
- product labeling;
- product storage;
- recordkeeping;
- premarket clearance or approval;

- advertising and promotion;
- production; 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 risk 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. All of our current products are class II devices.

510(k) Clearance Pathway

When a 510(k) clearance is required, 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. By regulation, the FDA is required to clear or deny a 510(k), premarket notification within 90 days of submission of the application. As a practical matter, clearance often takes significantly longer. The FDA may require further information, including clinical data, to make a determination regarding substantial equivalence.

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 our CoolGlide products for the treatment of vascular lesions in June 1999, for hair removal in March 2000, and for permanent hair reduction in January 2001. In addition, in June 2002, we received FDA clearance to market our CoolGlide products for the treatment of benign pigmented lesions, for the treatment of pseudofolliculitis barbae, commonly referred to as razor bumps, and for the reduction of red pigmentation in scars. In October 2002, we received FDA clearance to market our CoolGlide products for the treatment of wrinkles, which we have utilized to market our products for skin rejuvenation. In March 2003, we received FDA clearance to market our CoolGlide pulsed-light handpiece for the treatment of pigmented lesions.

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 the FDA's satisfaction the safety and effectiveness of the device.

No device that we have developed has required premarket approval, nor do we currently expect that any future device or indication will require premarket approval.

Product Modifications

We have modified aspects of our CoolGlide products since receiving regulatory clearance, but we believe that new 510(k) clearances are not required for these modifications. After a device receives 510(k) clearance or a PMA, 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 clearance or 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 our determination not to seek a new 510(k) clearance or PMA, the FDA may retroactively require us to seek 510(k) clearance or premarket approval. The FDA could also require us to cease marketing and distribution and/or recall the modified device until 510(k) clearance or premarket approval is obtained. Also, in these circumstances, we may be subject to significant regulatory fines or penalties.

Clinical Trials

When FDA approval of a class I, class II or class III device requires human clinical trials, and if the device presents a "significant risk," as defined by the FDA, to human health, the device sponsor is required to file an investigational device exemption, or IDE, application with the FDA and obtain IDE approval prior to commencing the human clinical trial. If the device is considered a "non-significant" risk, IDE submission to the FDA is not required. Instead, only approval from the Institutional Review Board overseeing the clinical trial is required. Human clinical studies are generally required in connection with approval of class III devices and may be required for class I and II devices. The IDE 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 IDE must be approved in advance by the FDA for a specified number of patients. 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 FDA, and the Institutional Review Board at each institution at which a clinical trial is being performed, may suspend a clinical trial at any time for various reasons, including a belief that the subjects are being exposed to an unacceptable health risk.

We have conducted a clinical trial to support regulatory submissions to the FDA. We evaluated the performance of our CoolGlide products in a hair removal clinical trial involving the treatment of 25 subjects. We followed the subjects for 15 months. Short-term adverse effects were observed, which included infrequent blistering and change in pigmentation of the skin. There were no long-term adverse effects observed.

Pervasive and Continuing Regulation

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

- quality system regulations, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the manufacturing process;
- labeling regulations and FDA prohibitions against the promotion of products for uncleared, unapproved or "off-label" uses;
- 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 the malfunction were to recur; and
- post-market surveillance regulations, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device.

The FDA has broad post-market and regulatory enforcement powers. 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 QSR 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, and we believe that we are in substantial compliance with the QSR.

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.

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, consent decrees 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.

The FDA also has the authority to require us to repair, replace or refund the cost of any medical device that we have manufactured or distributed. If any of these events were to occur, they could have a material adverse effect on our business.

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. Three member states of the European Free Trade Association have voluntarily adopted laws and regulations that mirror those of the European Union with respect to medical devices. Other countries, such as Switzerland, have entered into Mutual Recognition Agreements and allow the marketing of medical devices that meet European Union requirements. The European Union has adopted numerous directives and European Standardization Committees have promulgated voluntary 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 the member states of the European Union, the member states of the European Free Trade Association and countries which have entered into a Mutual Recognition Agreement. The method of assessing conformity varies depending on the type and class of the product, but normally involves a combination of self-assessment by the manufacturer and a third-party assessment by a Notified Body, an independent and neutral institution appointed by a country to conduct the conformity assessment. 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 member state of the European Union, the European Free Trade Association or one country which has entered into a Mutual Recognition Agreement is required in order for a manufacturer to commercially distribute the product throughout these countries. ISO 9001 and ISO 13845 certification are voluntary harmonized standards. Compliance establishes the presumption of conformity with the essential requirements for a CE Marking. In February 2000, our facility was awarded the ISO 9001 and EN 46001 certification. In March 2003, we received our ISO 9001 updated certification as well as our certification for ISO 13485 which replaced our EN 46001 certification.

Employees

As of December 31, 2003, we had 105 employees, with 43 employees in sales and marketing, 20 employees in technical service, 16 employees in manufacturing operations, 11 employees in research and development, 9 employees in general and administrative, and 6 employees in clinical, regulatory and quality control. 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

In January 2004, we moved to a 66,000 square foot facility in Brisbane, California, under a ten-year lease. We also have a building in Burlingame, California, the site of our former headquarters, under a lease expiring September 30, 2005. In addition, we have offices located in Germany and Japan where we lease facilities of approximately 1,500 square feet and 1,800 square feet, respectively. The remaining terms on each of these leases is less than two years.

Litigation

In February 2002, Palomar Medical Technologies filed a lawsuit against us in the United States District Court, District of Massachusetts. The plaintiff alleges that by making, using, selling or offering for sale our CoolGlide CV, CoolGlide Excel, CoolGlide Vantage and CoolGlide Xeo products, we are willfully and deliberately infringing U.S. Patent No. 5,735,844. This patent concerns a method and apparatus for removing hair with light energy. Massachusetts General Hospital, or MGH, later joined the lawsuit as an additional plaintiff, since Palomar is the exclusive licensee, and MGH is the owner, of the patent at issue in the lawsuit. Palomar and MGH are seeking to enjoin us from selling products found to infringe the patent, and to obtain compensatory and treble damages. We are defending the action vigorously, claiming that our products do not infringe the patent, and that the patent is invalid and unenforceable. Additionally, we have filed a counterclaim alleging that the patent should be declared unenforceable because of inappropriate actions taken by the plaintiffs during that patent's prosecution with the U.S. Patent and Trademark Office. The litigation is currently active and we are awaiting a ruling from the judge on a claims construction, or "Markman," hearing held in June 2003 involving disputed claims terms of the patent. We believe that we have meritorious defenses of non-infringement and invalidity in this action. However, litigation is unpredictable and we may not prevail in successfully defending or asserting our position. If we do not prevail, we may be ordered to pay substantial damages for past sales and an ongoing royalty for future sales of products found to infringe. We could also be ordered to stop selling any products that perform hair removal, currently representing substantially all our revenues.

In April 2002, Allied Health Association, a privately-held distributor of healthcare and beauty products, filed a lawsuit against us in the United States District Court, District of Colorado. The plaintiff claims that we wrongfully terminated a contract providing for the plaintiff to act as the exclusive U.S. distributor for our CoolGlide product to non-physician markets, by terminating the contract and distributing the products directly to the non-physician U.S. market. The plaintiff also claims unjust enrichment. We have filed counterclaims, alleging fraud and breach of contract. The litigation is currently in an active discovery phase. We believe the plaintiff's claims are without merit and intend to defend the action vigorously.

In addition, we are subject to legal proceedings, claims and litigation arising in the ordinary course of business. While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our consolidated financial position, results of operations, or cash flows.

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information concerning our executive officers and directors, as of December 31, 2003:

Name	Age	Position
Kevin P. Connors[1]	42	President, Chief Executive Officer and Director
Ronald J. Santilli	44	Chief Financial Officer and Vice President of Finance and Administration
David A. Gollnick	39	Vice President of Research and Development and Director
Michael J. Levernier	42	Vice President of Clinical Development
Kathleen A. Maynor	50	Vice President of Regulatory Affairs and Quality Assurance
David B. Apfelberg, M.D.[2]	62	Director
Annette J. Campbell-White[1][2]	56	Director
Guy P. Nohra[1][2]	43	Director

[1]Member of audit committee.
[2]Member of compensation committee.

Kevin P. Connors has served as our President and Chief Executive Officer and as 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, and 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 a B.S. in Business Administration from San Jose State University and an M.B.A. in Finance from Golden Gate 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 B.S. in Mechanical Engineering from Fresno State University.

Michael J. Levernier has served as our Vice President of Clinical Development since December 2001. From September 1998 to December 2001, Mr. Levernier 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 B.S. in Electronic Engineering from California Polytechnic State University, San Luis Obispo and an M.S. in Electrical Engineering from Stanford University.

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 and 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 B.A. in Natural Sciences, Chemistry from the University of South Florida and a J.D. from Lincoln University School of Law.

David B. Apfelberg, M.D. has served as a member of our board of directors since November 1998. Dr. Apfelberg 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 B.M.S., Bachelor of Medical Science, and an M.D. from Northwestern University Medical School.

Annette J. Campbell-White has served as a member of our board of directors since November 1998. Since May 1986, Ms. Campbell-White has been the Managing General Partner of MedVenture Associates I-IV, which are venture partnerships investing primarily in early stage businesses in the healthcare field. Ms. Campbell-White currently serves on the boards of a number of privately-held companies. Ms. Campbell-White holds a B.S. in Chemical Engineering and an M.S. in Chemistry, both from the University of Cape Town, South Africa.

Guy P. Nohra has served as a member of our board of directors since November 1999. Since February 1996, Mr. Nohra has been a partner at Alta Partners, a venture partnership that invests in information technology and life science companies. Mr. Nohra currently serves as a director on the boards of several privately-held companies. Mr. Nohra holds a B.A. in History from Stanford University and an M.B.A. from the University of Chicago.

Technical Advisory Board

We currently have nine members on our Technical Advisory Board who consult with us to provide advice, assistance and consultation in the fields of dermatology and plastic surgery. We consider our technical advisory board members to be opinion leaders in their respective fields, and they offer us advice and feedback regarding the following:

- unmet needs and opportunities;
- clinical feedback on existing products;
- assessment of new technologies and their applications; and
- assessment of new clinical applications.

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 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 2005 annual meeting of stockholders. Dr. Apfelberg and Mr. Nohra have been designated as Class II directors, whose terms expire at the 2006 annual meeting of stockholders. Ms. Campbell-White has been designated as a Class III director whose term expires at the 2007 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 and Bylaws.”

Board Committees

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

Audit Committee. The audit committee of our board of directors recommends the appointment of our independent auditors, reviews our internal accounting procedures and financial statements, and consults with and reviews the services provided by our independent auditors, including the results and scope of their audit. The audit committee currently consists of Ms. Campbell-White and Messrs. Connors and Nohra. The Sarbanes-Oxley Act and Nasdaq rules require that the members of the audit committee satisfy specified independence tests,

which only Mr. Nohra currently satisfies. We plan to appoint new independent directors to the audit committee upon their appointment to the board of directors to replace any non-independent members, as required by applicable law.

Compensation Committee. The compensation committee of our board of directors reviews and recommends to our board of directors the compensation and benefits for all of our executive officers, administers our stock plans, and establishes and reviews general policies relating to compensation and benefits for our employees. The compensation committee is currently comprised of Ms. Campbell-White, Dr. Apfelberg and Mr. Nohra.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has, at any time, been one of our officers or employees. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

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. Our 2004 Equity Incentive Plan provides for the automatic grant of options to our non-employee directors. See "—Employee Benefit Plans."

Executive Compensation

The following table sets forth the compensation of our chief executive officer and each of the other four most highly compensated executive officers for the past three years. We refer to these persons as our named executive officers elsewhere in this prospectus. None of our named executive officers received any other compensation required to be disclosed by law or in excess of 10% of their total annual compensation.

Summary Compensation Table

		Annual Compensation		Long-term Compensation (Securities Underlying Options)
Name and Position	Year	Salary	Bonus	
Kevin P. Connors	2003	$ 223,934	$ 87,244	40,000
President, Chief Executive Officer and Director	2002	207,210	71,576	40,000
	2001	201,083	113,535	40,000
Ronald J. Santilli[1]	2003	$ 145,750	$ 79,606	50,000
Chief Financial Officer and Vice President of Finance and Administration	2002	128,354	49,029	23,125
	2001	41,565	349	140,000
David A. Gollnick	2003	$ 144,082	$ 75,143	20,000
Vice President of Research and Development and Director	2002	139,904	38,121	23,125
	2001	135,078	42,257	23,400
Kathleen A. Maynor[2]	2003	$ 132,443	$ 74,253	20,000
Vice President of Regulatory Affairs and Quality Assurance	2002	117,049	47,166	18,500
	2001	46,007	801	110,000
Michael J. Levernier	2003	$ 126,481	$ 55,252	20,000
Vice President of Clinical Development	2002	116,824	33,465	13,875
	2001	118,700	37,178	11,700

(1) Mr. Santilli's employment with us began in September 2001.
(2) Ms. Maynor's employment with us began in August 2001.

Option Grants in Last Fiscal Year

In 2003, we granted options to purchase an aggregate of 944,500 shares of our common stock to our employees and consultants. These options generally vest at the rate of 25% after one year of service from the date of grant, and monthly thereafter, in equal amounts, generally over 36 additional months. These 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. See "—Employee Benefit Plans" for more details regarding these options.

The following table sets forth certain information with respect to stock options granted to each of our named executive officers during 2003.

2003 Option Grants

Name	Number of Securities Underlying Options Granted	Percent of Total Net Options Granted to Employees	Exercise Price Per Share	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
Kevin P. Connors	40,000	4.2%	$ 4.25	8/13/13	$	$
Ronald J. Santilli	50,000	5.3	4.25	8/13/13		
David A. Gollnick	20,000	2.1	4.25	8/13/13		
Michael J. Levernier	20,000	2.1	4.25	8/13/13		
Kathleen A. Maynor	20,000	2.1	4.25	8/13/13		

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 based on an assumed initial public offering price of $, and assume 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.

Aggregated Option Exercises in 2003 and Year-End Option Values

The following table sets forth certain information concerning the number, and value, of unexercised options held by each of the named executive officers, as of December 31, 2003. No options were exercised by the named executive officers in 2003. 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 assumed initial public offering price minus the exercise price per share.

2003 Aggregated Option Exercises and Year-End Values

Name	Number of Securities Underlying Unexercised Options at December 31, 2003		Value of Unexercised In-The-Money Options at December 31, 2003	
	Exercisable	Unexercisable	Exercisable	Unexercisable
Kevin P. Connors	843,750	86,250	$	$
Ronald J. Santilli	87,422	125,703		
David A. Gollnick	445,172	46,353		
Michael J. Levernier	229,716	35,559		
Kathleen A. Maynor	71,104	77,396		

Employee Benefit Plans

1998 Stock Plan

Our sole director at the time adopted our 1998 Stock Plan in August 1998, and our stockholders approved our 1998 Plan in November 1998. Our board of directors has determined not to grant any additional awards under the 1998 Plan after the completion 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 4,650,000 shares of our common stock are authorized for issuance under the 1998 Plan. As of December 31, 2003, options to purchase a total of 3,791,913 shares of our common stock were issued and outstanding, and a total of 634,537 shares of our common stock had been issued upon the exercise of 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 only to our employees. Our board of directors, or a committee of our board, administers the 1998 Plan. The administrator has the authority to determine the terms and conditions of the options and stock purchase rights granted under the 1998 Plan, and may reduce the exercise price of an option to the then current fair market value of our common stock or institute a program whereby outstanding options are exchanged for options with a lower exercise price.

Our 1998 Plan does not allow for the transfer of awards other than by will or the laws of descent and distribution and only the recipient of an award may exercise such award during his or her lifetime.

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 or its parent or subsidiary will assume or substitute each stock purchase right and option. If the outstanding stock purchase rights or options are not assumed or substituted, they will become fully vested and exercisable for a 15-day period from the date the administrator provides notice of such transaction and shall terminate at the end of such 15-day period.

2004 Equity Incentive Plan

Our board of directors adopted, and our stockholders approved, our 2004 Equity Incentive Plan in January 2004. The 2004 Equity Incentive Plan became effective upon its adoption by our board of directors, but is not expected to be utilized until shortly prior to the completion of this offering. Our 2004 Equity Incentive 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, stock purchase rights, restricted stock, stock appreciation rights, performance units and performance shares to our employees, directors and consultants.

As of January 2004, a total of 1,750,000 shares of our common stock were reserved for issuance pursuant to the 2004 Equity Incentive Plan, of which no options were issued and outstanding. In addition, the shares reserved for issuance under our 2004 Equity Incentive Plan include (a) shares reserved but unissued under the 1998 Plan as of the effective date of the first registration statement filed by us and declared effective with respect to any class of our securities, (b) shares returned to the 1998 Plan as the result of termination of options or the repurchase of shares, and (c) annual increases in the number of shares available for issuance on the first day of each fiscal year beginning in 2005, equal to the lesser of:

- 5% of the outstanding shares of common stock on the first day of such year;
- 2,000,000 shares; or
- an amount our board of directors may determine.

Our board of directors, or a committee of our board, administers our 2004 Equity Incentive 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 awards, including the exercise price, the number of shares subject to each such award, the exercisability of the awards and the form of consideration, if any, payable upon exercise. The administrator also has the authority to institute an exchange program by which outstanding awards may be surrendered in exchange for awards with a lower exercise price.

The administrator determines the exercise price of options granted under our 2004 Equity Incentive 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 may not exceed ten years, except that with respect to any participant who owns 10% of the voting power of all classes of our outstanding stock, the term must not exceed five years and the exercise price must equal at least 110% of the fair market value on the grant date. The administrator determines the term of all other options.

No optionee may be granted an option to purchase more than 500,000 shares in any year. However, in connection with his or her initial service, an optionee may be granted an additional option to purchase up to 500,000 shares.

After termination of service of an employee, director or consultant, 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 three months following termination of service. However, in no event may an option be exercised later than the expiration of its term.

Stock appreciation rights may be granted under our 2004 Equity Incentive Plan. Stock appreciation rights allow the recipient to receive the appreciation in the fair market value of our common stock between the exercise date and the date of grant. The administrator determines the terms of stock appreciation rights, including when such rights become exercisable and whether to pay the increased appreciation in cash or with shares of our common stock, or a combination thereof.

Restricted stock may be granted under our 2004 Equity Incentive Plan. Restricted stock awards are grants of shares of our common stock that vest in accordance with terms and conditions established by the administrator. The administrator will determine the number of shares of restricted stock granted to any employee, director or consultant. The administrator may impose whatever conditions to vesting it determines to be appropriate. For example, the administrator may set restrictions based on the achievement of specific performance goals. Shares of restricted stock that do not vest are subject to our right of repurchase or forfeiture.

Performance units and performance shares may be granted under our 2004 Equity Incentive Plan. Performance units and performance shares are awards that will result in a payment to a participant only if performance goals established by the administrator are achieved or the awards otherwise vest. The administrator will establish organizational or individual performance goals in its discretion, which, depending on the extent to which they are met, will determine the number and/or the value of performance units and performance shares to be paid out to participants. Performance units shall have an initial dollar value established by the administrator prior to the grant date. Performance shares shall have an initial value equal to the fair market value of our common stock on the grant date.

Our 2004 Equity Incentive Plan also provides for the automatic grant of options to our non-employee directors. Each non-employee director appointed to the board of directors after the completion of this offering, except for those directors who become non-employee directors by ceasing to be employee directors, will receive an initial option to purchase 30,000 shares of common stock upon such appointment. In addition, beginning in 2005, non-employee directors who have been directors for at least the preceding six months will receive a subsequent

option to purchase 10,000 shares of common stock immediately following each annual meeting of our stockholders. All options granted under the automatic grant provisions will have a term of ten years and an exercise price equal to fair market value on the date of grant. Each option to purchase 30,000 shares will become 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 10,000 shares will become 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.

Our 2004 Equity Incentive Plan generally does not allow for the transfer of awards and only the recipient of an award may exercise an award during his or her lifetime.

Our 2004 Equity Incentive Plan provides that in the event of our "change in control," the successor corporation or its parent or subsidiary will assume or substitute an equivalent award for each outstanding award. If there is no assumption or substitution of outstanding awards, the administrator will provide notice to the recipient that he or she has the right to exercise the option and stock appreciation right as to all of the shares subject to the award, all restrictions on restricted stock will lapse, and all performance goals or other vesting requirements for performance shares and units will be deemed achieved, and all other terms and conditions met. The award will terminate upon the expiration of the period of time the administrator provides in the notice. In the event the service of an outside director is terminated on or following a change in control, other than pursuant to a voluntary resignation, his or her options will fully vest and become immediately exercisable.

Our 2004 Equity Incentive Plan will automatically terminate in 2014, unless we terminate it sooner. In addition, our board of directors has the authority to amend, suspend or terminate the 2004 Equity Incentive Plan provided such action does not impair the rights of any participant.

2004 Employee Stock Purchase Plan

Our board of directors adopted, and our stockholders approved, our 2004 Employee Stock Purchase Plan in January 2004. The 2004 Employee Stock Purchase Plan will become effective soon after the completion of this offering.

A total of 200,000 shares of our common stock will be made available for sale. In addition, our 2004 Employee Stock Purchase Plan provides for annual increases in the number of shares available for issuance under the 2004 Employee Stock Purchase Plan on the first day of each fiscal year beginning in 2005, equal to the lesser of:

- 2% of the outstanding shares of our common stock on the first day of such year;
- 600,000 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 2004 Employee Stock Purchase Plan. Our board of directors, or its committee, has full and exclusive authority to interpret the terms of the 2004 Employee Stock Purchase Plan and determine eligibility to participate.

All of our employees are eligible to participate if they are employed by us, or any participating subsidiary, for at least 20 hours per week and more than 5 months in any calendar year. However, an employee may not be granted an option to purchase stock under the 2004 Employee Stock Purchase Plan 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 2004 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 completion of this offering and will end on the first trading day on or after May 1, 2005.

Our 2004 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 remuneration paid directly to the employee. A participant may purchase a maximum of 2,500 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 purchase price is 85% of the lower of the fair market value of our common stock at the beginning of an offering period or on the end date of a purchase period within such offering period. If the fair market value of our common stock 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 accrued payroll deductions that have not yet been used to purchase shares of common stock. Participation ends automatically upon termination of employment with us.

A participant may not transfer rights granted under the 2004 Employee Stock Purchase Plan other than by will, the laws of descent and distribution, or as otherwise provided under the 2004 Employee Stock Purchase Plan.

If the successor corporation refuses to provide for the continuation or substitution of each outstanding right, the offering period then in progress will be shortened upon at least ten business days written notice to participants, and will terminate at the end of the shortened offering period.

Our 2004 Employee Stock Purchase Plan will automatically terminate in 2014, unless we terminate it sooner. Our board of directors has the authority to amend or terminate our 2004 Employee Stock Purchase Plan, except that, subject to certain exceptions described in the 2004 Employee Stock Purchase Plan, no such action may adversely affect any outstanding rights to purchase stock under our 2004 Employee Stock Purchase Plan.

Limitations on Liability and Indemnification

Our Amended and Restated Certificate of Incorporation and 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 are also 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 have procured and intend to maintain 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 have entered into indemnification agreements with our directors, executive officers and others. Under these agreements, we are required to indemnify them against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any actual or threatened proceeding, if any of them may be made a party to such proceeding 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 and for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, 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, and is, therefore, unenforceable.

There is no pending litigation or proceeding naming 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.

RELATED PARTY TRANSACTIONS

On September 27, 1999, we issued and sold to MedVenture Associates III, LP a warrant to purchase 47,960 shares of Series B preferred stock and MedVen Affiliates III, LP a warrant to purchase 2,040 shares of Series B preferred stock, both at an exercise price of $2.00 per share. On September 10, 2003, we issued and sold to MedVenture Associates III, LP 47,960 shares of Series B preferred stock and MedVen Affiliates III, LP 2,040 shares of Series B preferred stock upon their exercise of the warrants. One of our board members, 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.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth certain information with respect to beneficial ownership of our common stock, as of December 31, 2003, by:

- each beneficial owner of 5% or more of the outstanding shares of our common stock;
- each of our directors;
- each of our executive officers;
- all of our executive officers and directors as a group; and
- each selling stockholder.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. 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 31, 2003 are deemed outstanding, but are not deemed outstanding for computing the percentage ownership of any other person. Percentage of beneficial ownership is based upon 6,954,514 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 31, 2003. 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 c/o Cutera, Inc., 3240 Bayshore Blvd., Brisbane, California 94005.

	Shares Beneficially Owned Prior to Offering		Shares to be Sold in the Offering	Shares Beneficially Owned After the Offering	
Name and Address of Beneficial Owner	Number	Percent		Number	Percent
Entities affiliated with MedVenture Associates 5980 Horton Street, Suite 390 Emeryville, CA 94608	2,960,471[1]	42.6%			
Funds Affiliated with Alta Partners One Embarcadero Center Suite 4050 San Francisco, CA 94111	1,375,000[2]	19.8			
Annette J. Campbell-White	2,960,471[1]	42.6			
Guy P. Nohra	1,375,000[2]	19.8			
David B. Apfelberg, M.D.[3]	55,000	*			
Kevin P. Connors[4]	1,253,607	16.1			
David A. Gollnick[5]	716,149	9.7			
Michael J. Levernier[6]	510,816	7.1			
Ronald J. Santilli[7]	94,701	1.3			
Kathleen A. Maynor[8]	76,844	1.1			
All executive officers and directors as a group (8 persons)[9]	7,042,588	97.7			

*Indicates ownership of less than 1%.

(1) Includes 2,839,683 shares held by MedVenture Associates III, LP and 120,788 shares held by MedVen Affiliates III, LP (collectively "MedVenture Associates"). Ms. Campbell-White is a member of MedVentures Associates Management III Co., LLC, which is the general partner of MedVenture 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. Ms. Campbell-White and Mr. George Choi, both general partners of MedVenture Associates, share voting and investment control in MedVen Affiliates III, LP and MedVentures Associates III, LP.

(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.

(3) Includes 20,000 shares subject to options exercisable within 60 days of December 31, 2003.

(4) Includes 851,875 shares subject to options exercisable within 60 days of December 31, 2003.

(5) Includes 449,642 shares subject to options exercisable within 60 days of December 31, 2003.

(6) Includes 232,564 shares subject to options exercisable within 60 days of December 31, 2003.

(7) Represents shares subject to options exercisable within 60 days of December 31, 2003.

(8) Represents shares subject to options exercisable within 60 days of December 31, 2003.

(9) Includes 1,554,081 shares subject to options exercisable within 60 days of December 31, 2003.

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 Securities and Exchange Commission 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 55,000,000 shares of capital stock, $0.001 par value, to be divided into two classes designated common stock and preferred stock. Of such authorized shares, 50,000,000 shares will be designated as common stock, and 5,000,000 shares will be designated as preferred stock.

Common Stock

As of December 31, 2003, there were 6,954,514 shares of common stock outstanding that were held of record by 52 stockholders, assuming conversion of all shares of preferred stock into 4,725,000 shares of common stock. After giving effect to the sale of common stock offered in this offering, there will be shares of common stock outstanding. As of December 31, 2003, there were outstanding options to purchase a total of 3,791,913 shares of our common stock under our 1998 Stock Plan.

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 therefore. 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 could 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. Upon completion of this offering, no shares of preferred stock will be outstanding, and we have no present plan to issue any shares of preferred stock.

Warrants

As of December 31, 2003, there were outstanding warrants to purchase 9,000 shares of our Series A convertible preferred stock and 11,000 shares of our Series B convertible preferred stock at an exercise price of $1.00 and $2.00 per share, respectively. 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 for 9,000 shares of common stock at an exercise price of $1.00 per share, and the warrant to purchase Series B preferred stock will be exercisable for 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 warrants to Silicon Valley Bank in connection with a line of credit.

Registration Rights

After the closing of this offering, the holders of approximately 4,745,000 shares of our common stock, including 20,000 shares issuable upon exercise of the outstanding warrants described above, 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 on Form S-1 under the Securities Act in order to register the resale of their shares of 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 the resale of 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 and Bylaws

Our Amended and Restated Certificate of Incorporation, 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. Because our stockholders do not have cumulative voting rights, our stockholders representing a majority of the shares of common stock outstanding will be able to elect all of our directors. Our Amended and Restated Certificate of Incorporation and Bylaws, to be effective upon completion of this offering, will 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, chief executive officer, or president (in the absence of a chief executive officer) may call a special meeting of stockholders.

The combination of the classification of our board of directors 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 our 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 our 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 completion 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 voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or 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.

In general, 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 “CUTR.”

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, Inc. Its address is 350 Indiana Street, Suite 800, Golden, Colorado 80401, and its telephone number is (303) 262-0600.

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 promulgated under the Securities Act. The remaining 6,954,514 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.

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 Piper Jaffray & Co. See "Underwriting." After the 180-day lock-up period, these shares may be sold, subject to applicable securities laws.

After the offering, the holders of approximately 4,745,000 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 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 31, 2003 that will become eligible for sale without registration pursuant to Rule 144 or Rule 701 under the Securities Act are as follows:

- 1,378,548 shares will be immediately eligible for sale in the public market without restriction pursuant to Rule 144(k); and
- 5,575,966 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.

Upon completion 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 2004 Equity Incentive Plan and the 2004 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 statement will become effective immediately upon filing.

Prior to the completion of 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

The underwriters named below have agreed to buy, subject to the terms of the purchase agreement, the number of shares listed opposite their names below. Piper Jaffray & Co. is acting as book-running manager for this offering and, together with SG Cowen Securities Corporation and RBC Dain Rauscher Inc., is acting as representative of the underwriters. The underwriters are committed to purchase and pay for all of the shares if any are purchased, other than those shares covered by the over-allotment option described below.

Underwriters	Number of Shares
Piper Jaffray & Co.	
SG Cowen Securities Corporation	
RBC Dain Rauscher Inc.	
Total	

The underwriters have advised us and the selling stockholders that they propose to offer the shares to the public at $ per share. The underwriters propose to offer the shares to certain dealers at the same price less a concession of not more than $ per share. The underwriters may allow and the dealers may reallow a concession of not more than $ per share on sales to certain other brokers and dealers. After the offering, these figures may be changed by the underwriters.

We have granted to the underwriters an option to purchase up to an additional shares of common stock from us at the same price to the public, and with the same underwriting discount, as set forth above. The underwriters may exercise this option any time during the 30-day period after the date of this prospectus, but only to cover over-allotments, if any. To the extent the underwriters exercise the option, each underwriter will become obligated, subject to certain conditions, to purchase approximately the same percentage of the additional shares as it was obligated to purchase under the purchase agreement.

The following table shows the underwriting fees to be paid to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the over-allotment option.

	No Exercise	Full Exercise
Per share	$	$
Total to be paid by us	$	$
Total to be paid by the selling stockholders	$	$

We and the selling stockholders have agreed to indemnify the underwriters against certain liabilities, including civil liabilities under the Securities Act, or to contribute to payments that the underwriters may be required to make in respect of those liabilities.

The underwriters have informed us that neither they, nor any other underwriter participating in the distribution of the offering, will make sales of the common stock offered by this prospectus to accounts over which they exercise discretionary authority without the prior specific written approval of the customer.

The offering of our shares of common stock is made for delivery when, as and if accepted by the underwriters and subject to prior sale and to withdrawal, cancellation or modification of the offering without notice. The underwriters reserve the right to reject an order for the purchase of shares in whole or part.

We and each of our directors, executive officers and stockholders, including the selling stockholders, have agreed to certain restrictions on the ability to sell shares of our common stock for a period of 180 days after the date of this prospectus. We have also agreed not to directly or indirectly offer for sale, sell, contract to sell, grant any option for the sale of, or otherwise issue or dispose of, any shares of common stock, options or warrants to acquire shares of common stock, or any related security or instrument, without the prior written consent of Piper

Jaffray for a period of 180 days after the date of this prospectus. The agreement provides exceptions for sales to the underwriters pursuant to the purchase agreement, the granting of options to purchase shares under our existing stock option plan and other common exceptions.

Prior to the offering, there has been no established trading market for our common stock. The initial public offering price for the shares of common stock offered by this prospectus will be negotiated by us and the underwriters. The factors considered in determining the initial public offering price include:

- the history of and the prospects for the industry in which we compete;
- our past and present operations;
- our historical results of operations;
- our prospects for future earnings;
- the recent market prices of securities of generally comparable companies; and
- the general condition of the securities markets at the time of the offering and other relevant factors.

There can be no assurance that the initial public offering price of the common stock will correspond to the price at which the common stock will trade in the public market subsequent to this offering or that an active public market for the common stock will develop and continue after this offering.

To facilitate the offering, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock during and after the offering. Specifically, the underwriters may over-allot or otherwise create a short position in the common stock for their own account by selling more shares of common stock than have been sold to them by us and the selling stockholders. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares in the offering. The underwriters may close out any covered short position by either exercising their option to purchase additional shares 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 this 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 common stock in the open market after pricing that could adversely affect investors who purchase in the offering.

In addition, the underwriters may stabilize or maintain the price of the common stock by bidding for or purchasing shares of common stock in the open market and may impose penalty bids. If penalty bids are imposed, selling concessions allowed to syndicate members or other broker-dealers participating in the offering are reclaimed if shares of common stock previously distributed in the offering are repurchased, whether in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price of the common stock at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also effect the price of the common stock to the extent that it discourages resales of the common stock. The magnitude or effect of any stabilization or other transactions is uncertain. These transactions may be effected on the Nasdaq National Market or otherwise and, if commenced, may be discontinued at any time.

LEGAL MATTERS

The validity of the shares of common stock offered hereby will be passed upon for Cutera by Wilson Sonsini Goodrich & Rosati, Palo Alto, California. Certain members of Wilson Sonsini Goodrich & Rosati, Palo Alto, California maintain beneficial ownership of 114,000 shares of our common stock. Latham & Watkins LLP, Menlo Park, California, is counsel for the underwriters in connection with this offering.

EXPERTS

The financial statements as of December 31, 2000, 2001 and 2002 and for each of the three years in the period ended December 31, 2002, 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 a registration statement on Form S-1 with the SEC for the stock we are offering by this prospectus. This prospectus does not include all of the information contained in the registration statement. You should refer to the registration statement and its exhibits for additional information. Whenever we make reference in this prospectus to any of our contracts, agreements or other documents, the references are not necessarily complete and you should refer to the exhibits attached to the registration statement for copies of the actual contract, agreement or other document. When we complete this offering, we will also be required to file annual, quarterly and special reports, proxy statements and other information with the SEC.

You can read our SEC filings, including the registration statement, over the Internet at the SEC's web site at www.sec.gov. You may also read and copy any document we file with the SEC at its public reference facilities at 450 Fifth Street, NW, Washington, DC 20549. You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, NW, Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

CUTERA, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and Stockholders of
Cutera, Inc.

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Cutera, Inc. and its subsidiaries at December 31, 2001 and 2002, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule appearing under Item 16(b) on page II-3 presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule 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 audit 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.

/s/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
April 4, 2003, except for note 11,
as to which the date is January 12, 2004

CUTERA, INC.

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

	December 31,		September 30,	Pro Forma Stockholders' Equity at September 30,
	2001	2002	2003	2003
			(unaudited)	
Assets				
Current assets:				
Cash and cash equivalents	$ 6,354	$ 8,276	$ 8,852	
Restricted cash	100	60	250	
Accounts receivable, net of allowance for doubtful accounts in 2001, 2002 and 2003 of $81, $140 and $299, respectively	2,367	3,178	6,543	
Inventory	1,227	1,366	1,901	
Deferred cost of revenue	30	—	—	
Current portion of deferred tax asset	859	763	763	
Other current assets	894	301	430	
Total current assets	11,831	13,944	18,739	
Property and equipment, net	644	569	659	
Intangibles, net	—	507	466	
Deferred tax asset, net of current portion	—	406	406	
Total assets	$ 12,475	$ 15,426	$ 20,270	
Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Equity				
Liabilities:				
Accounts payable	$ 809	$ 925	$ 1,558	
Accrued liabilities	2,840	3,795	4,384	
Deferred revenue	328	328	1,045	
Total liabilities	3,977	5,048	6,987	
Commitments and contingencies (Note 5)				
Redeemable convertible preferred stock, $0.001 par value:				
Authorized: 4,784,000 shares in 2001, 2002 and September 30, 2003 (unaudited)				
Issued and outstanding: 4,675,000 shares in 2001, 2002 and 4,725,000 shares at September 30, 2003 (unaudited), none pro forma (unaudited)				
(Liquidation and redemption value: $7,350 in 2001, 2002 and $7,450 at September 30, 2003 (unaudited))	7,272	7,272	7,372	$ —
Stockholders' equity:				
Common stock, $0.001 par value:				
Authorized: 20,000,000 shares;				
Issued and outstanding: 1,840,154, 1,963,384 and 2,155,267 shares in 2001, 2002 and September 30, 2003 (unaudited) and 6,880,267 shares pro forma (unaudited)	2	2	2	7
Additional paid-in capital	4,527	4,643	8,206	15,573
Deferred stock-based compensation	(3,719)	(2,615)	(5,094)	(5,094)
Retained earnings	416	1,076	2,797	2,797
Total stockholders' equity	1,226	3,106	5,911	$ 13,283
Total liabilities, redeemable convertible preferred stock and stockholders' equity	$ 12,475	$ 15,426	$ 20,270	

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

CUTERA, INC.

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

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Net revenue[1]	$ 9,531	$ 19,328	$ 28,327	$ 20,318	$ 26,639
Cost of revenue[1]	3,365	6,941	9,991	7,364	8,606
Gross profit	6,166	12,387	18,336	12,954	18,033
Operating expenses:					
Sales and marketing[1]	2,794	5,693	8,602	5,941	9,343
Research and development[1]	1,539	2,221	2,988	2,087	2,432
General and administrative[1]	989	1,963	5,416	4,085	3,390
Total operating expenses	5,322	9,877	17,006	12,113	15,165
Income from operations	844	2,510	1,330	841	2,868
Interest and other income, net	193	171	85	68	28
Income before income taxes	1,037	2,681	1,415	909	2,896
Provision for income taxes	—	(342)	(755)	(485)	(1,175)
Net income	$ 1,037	$ 2,339	$ 660	$ 424	$ 1,721
Net income per share:					
Basic	$ 0.97	$ 1.58	$ 0.36	$ 0.24	$ 0.83
Diluted	$ 0.13	$ 0.27	$ 0.07	$ 0.05	$ 0.19
Weighted-average number of shares used in per share calculations:					
Basic	1,064	1,480	1,810	1,760	2,073
Diluted	8,008	8,731	8,811	8,902	8,924
Pro forma net income per share (unaudited):					
Basic			$ 0.10		$ 0.26
Diluted			$ 0.07		$ 0.19
Weighted-average number of shares used in pro forma per share calculations (unaudited):					
Basic			6,485		6,748
Diluted			8,811		8,924

[1] Includes the following stock-based compensation charges:

Net revenue	$ —	$ 164	$ —	$ —	$ —
Cost of revenue	—	93	234	175	189
Sales and marketing	—	262	366	116	233
Research and development	—	113	287	214	257
General and administrative	—	120	310	232	320
	$ —	$ 752	$ 1,197	$ 737	$ 999

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

CUTERA, INC.

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

	Common Stock		Additional Paid-In Capital	Deferred Stock-Based Compensation	Retained Earnings (Deficit)	Total Stockholders' Equity (Deficit)
	Shares	Amount				
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	224,427	—	53	—	—	53
Deferred stock-based compensation	—	—	4,206	(4,206)	—	—
Amortization of deferred stock-based compensation	—	—	—	487	—	487
Non-employee stock-based compensation	—	—	265	—	—	265
Net income	—	—	—	—	2,339	2,339
Balance at December 31, 2001	1,840,154	2	4,527	(3,719)	416	1,226
Exercise of stock options	123,230	—	23	—	—	23
Deferred stock-based compensation	—	—	(78)	78	—	—
Amortization of deferred stock-based compensation	—	—	—	1,026	—	1,026
Non-employee stock-based compensation	—	—	171	—	—	171
Net income	—	—	—	—	660	660
Balance at December 31, 2002	1,963,384	2	4,643	(2,615)	1,076	3,106
Exercise of stock options (unaudited)	191,883	—	85	—	—	85
Deferred stock-based compensation (unaudited)	—	—	3,429	(3,429)	—	—
Amortization of deferred stock-based compensation (unaudited)	—	—	—	950	—	950
Non-employee stock-based compensation	—	—	49	—	—	49
Net income (unaudited)	—	—	—	—	1,721	1,721
Balance at September 30, 2003 (unaudited)	2,155,267	$ 2	$ 8,206	$ (5,094)	$ 2,797	$ 5,911

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

CUTERA, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Cash flows from operating activities:					
Net income	$ 1,037	$ 2,339	$ 660	$ 424	$ 1,721
Adjustments to reconcile net income to net cash provided by (used in) operating activities:					
Depreciation and amortization	177	203	382	277	335
Loss on disposal of fixed assets	—	11	4	—	—
Allowance for doubtful accounts	10	77	141	85	303
Reserve for excess and obsolete inventory	—	542	993	983	126
Stock-based compensation	—	752	1,197	737	999
Deferred tax asset	—	(859)	(310)	—	—
Change in assets and liabilities:					
Accounts receivable	(2,084)	(303)	(952)	(1,362)	(3,668)
Inventory	(151)	(1,290)	(1,132)	(1,355)	(661)
Deferred cost of revenue	(86)	56	30	—	—
Other current assets	(34)	(778)	593	661	(29)
Other assets	—	9	—	—	—
Accounts payable	120	435	116	210	633
Accrued liabilities	571	2,154	955	734	589
Deferred revenue	439	(178)	—	9	717
Net cash provided by (used in) operating activities	(1)	3,170	2,677	1,403	1,065
Cash flows from investing activities:					
Acquisition of property and equipment	(579)	(213)	(280)	(184)	(384)
Acquisition of intangibles	—	—	(538)	(538)	—
Change in restricted cash	—	(100)	40	—	(190)
Net cash used in investing activities	(579)	(313)	(778)	(722)	(574)
Cash flows from financing activities:					
Repayments on line of credit	(45)	(118)	—	—	—
Proceeds from exercise of stock options	3	53	23	10	85
Net cash provided by (used in) financing activities	(42)	(65)	23	10	85
Net increase (decrease) in cash and cash equivalents	(622)	2,792	1,922	691	576
Cash and cash equivalents at beginning of period	4,184	3,562	6,354	6,354	8,276
Cash and cash equivalents at end of period	$ 3,562	$ 6,354	$ 8,276	$ 7,045	$ 8,852
Supplemental disclosure of cash flow information:					
Cash paid for interest	$ 18	$ 13	$ —	$ —	$ —
Cash paid for taxes	$ —	$ 63	$ 997	$ 473	$ 1,300
Supplemental disclosure of significant non-cash investing and financing activities:					
Deferred stock-based compensation	$ —	$ 4,206	$ (78)	$ —	$ 3,429
Issuance of preferred stock upon exercise of warrants in exchange for subscription receivable	$ —	$ —	$ —	$ —	$ 100

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

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 — ORGANIZATION:

Formation and business of the Company

Cutera, Inc. (the "Company") designs, develops, manufactures, and markets the CoolGlide family of products for use in laser and other light-based aesthetic applications. The Company's products enable dermatologists, plastic surgeons, gynecologists, primary care physicians, and other qualified practitioners to offer non-invasive aesthetic treatments to their patients. 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 and again to Cutera, Inc. in January 2004.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Unaudited interim financial data

The accompanying balance sheet as of September 30, 2003, the statements of operations and of cash flows for the nine months ended September 30, 2002 and 2003, and the statement of stockholders' equity (deficit) for the nine months ended September 30, 2003 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 results of operations and cash flows for the nine months ended September 30, 2002 and 2003. The financial data and other information disclosed in these notes to consolidated financial statements related to the nine month periods are unaudited. The results for the nine months ended September 30, 2003 are not necessarily indicative of the results to be expected for the year ending December 31, 2003 or for any other interim period or for any future year.

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

The pro forma common shares outstanding at September 30, 2003, the pro forma weighted-average common shares outstanding during the year ended December 31, 2002, and the pro forma weighted-average common shares outstanding during the nine months ended September 30, 2003, reflect the automatic conversion of all shares of redeemable convertible preferred stock outstanding into shares of common stock in connection with the Company's contemplated initial public offering.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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, 2002		Nine Months Ended September 30, 2003
		(unaudited)	
Numerator:			
Net income	$ 660		$ 1,721
Denominator:			
Weighted-average number of shares outstanding used in computing basic net income per share	1,810		2,073
Adjustments to reflect the effect of the assumed conversion of the preferred stock from the date of issuance	4,675		4,675
Weighted-average number of shares used in computing basic pro forma net income per share	6,485		6,748
Weighted-average number of shares used in computing diluted pro forma net income per share	8,811		8,924

Basis of presentation

In 2002, the Company formed wholly-owned subsidiaries in France, Germany, and the United Kingdom. In 2003, the Company formed wholly-owned subsidiaries in Japan, Canada, Australia and Spain. The purpose of these subsidiaries is to market and sell the Company's products outside of the United States. The consolidated financial statements include the accounts of the subsidiaries, and all inter-company transactions and balances have been eliminated.

Use of estimates

The preparation of the accompanying financial statements in conformity with accounting principles generally accepted in the United States 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 or short-term financial investments that are readily convertible to cash 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 December 31, 2001 and 2002, cash balances of $100,000 and $60,000, respectively, were restricted from withdrawal and held by a bank in the form of certificates of deposit. These certificates of deposit serve as collateral against primarily merchant accounts.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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 that 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 primarily invested in deposits and money market accounts with one major bank in the United States. 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. Accounts receivable are typically unsecured and are derived from revenues earned from customers primarily located in the United States. The Company performs ongoing credit evaluations of its customers and maintains reserves for potential credit losses. Historically, such losses have been within management's expectations.

Segment information

The Company operates in one business segment, which encompasses the designing, developing, manufacturing and marketing of aesthetic laser systems for dermatologists, plastic surgeons, and other qualified practitioners worldwide. Management uses one measurement of profitability and does not segregate its business for internal reporting. Most of the Company's long-lived assets are maintained in the United States. The Company's long-lived assets maintained outside the United States are insignificant.

The following table summarizes revenues for those customers comprising 10% or more of net revenues for each of the years presented (in thousands):

	Years Ended December 31,		
	2000	2001	2002
Customer A	$ 1,560	$ —	$ —

The following table summarizes revenue by geographic region (in thousands):

	Years Ended December 31,		
	2000	2001	2002
United States	$ 7,022	$ 13,891	$ 22,944
Canada	1,193	1,562	900
Asia	966	2,225	1,963
Other	350	1,650	2,520
Total	$ 9,531	$ 19,328	$ 28,327

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 design, develop, manufacture and market its products. There can be no assurance that current products will continue to be 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 and cash flows.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Future products developed by the Company may require approvals from the U.S. 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 was 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

The balance of deferred cost of revenue at December 31, 2001 consists of the direct costs associated with the manufacture of products 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.

Intangible assets

Intangible assets are amortized using the straight-line method over their expected useful lives. Intangible assets at December 31, 2002 and September 30, 2003 (unaudited) principally comprised a technology license obtained as a result of the settlement of a patent litigation case. The license was acquired during the year ended December 31, 2002 at a cost of $538,000 and with an expected useful life of ten years from the date of purchase. Amortization expense during the year ended December 31, 2002 and for the nine months ended September 30, 2003 (unaudited) was $31,000 and $41,000, respectively. The license had a net carrying amount of $507,000 and $466,000 at December 31, 2002 and September 30, 2003 (unaudited), respectively. Estimated future amortization expense for each of the years ended December 31, 2003 through December 31, 2007 is $54,000 per year.

Impairment of long-lived assets

In accordance with the provisions of Statement of Financial Accounting Standards Board ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets," the Company reviews long-lived assets, including property and equipment, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. Under SFAS No. 144, an impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. Impairment, if any, is measured as the amount by which the carrying amount of a long-lived asset exceeds its fair value. Through September 30, 2003, there have been no such impairments.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Revenue recognition

Product revenue, including upgrade revenue, is recognized when title and risk of ownership has been transferred, provided that persuasive evidence of an arrangement exists, the price is fixed and determinable, remaining obligations are insignificant and collectibility is reasonably assured. Transfer of title and risk of ownership generally occurs when the product is shipped to the customer or when the customer receives the product, depending on the nature of the arrangement.

The Company generally offers a warranty with its products. Products sold to distributors include a warranty that covers parts only. The Company provides for the estimated cost to repair or replace products under warranty at the time of sale. Service revenue is recognized as the services are provided and, for service contracts, on a straight-line basis over the period of the applicable service contract. Service revenues were $0, $55,000 and $758,000 during the years ended December 31, 2000, 2001, 2002, respectively, and $485,000 and $1,176,000 during the nine months ended September 30, 2002 (unaudited) and 2003 (unaudited), 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 $174,000, $405,000 and $496,000 for the years ended December 31, 2000, 2001 and 2002, respectively.

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. Employee stock-based compensation is amortized on a straight-line basis over the vesting period of the underlying options. 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 (“EITF”) No. 96-18, “Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.” Equity instruments issued to non-employees are recorded at their fair value on the measurement date and are subject to periodic adjustment as the underlying equity instruments vest. Non-employee stock-based compensation charges are amortized over the vesting period, on a straight-line basis.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table illustrates the effect on net income if the Company had applied the fair value recognition provisions of SFAS No. 123 to stock-based employee compensation arrangements (in thousands, except per share data):

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Net income, as reported	$ 1,037	$ 2,339	$ 660	$ 424	$ 1,721
Add: Stock-based employee compensation expense included in reported net earnings, net of related tax effects	—	487	1,026	737	836
Deduct: Total stock-based employee compensation determined under fair value based method for all awards, net of related tax effects	(29)	(883)	(1,998)	(1,484)	(1,581)
Pro forma net income (loss)	$ 1,008	$ 1,943	$ (312)	$ (323)	$ 976
Net income (loss) per share:					
Basic — as reported	$ 0.97	$ 1.58	$ 0.36	$ 0.24	$ 0.83
Basic — pro forma	$ 0.95	$ 1.31	$ (0.17)	$ (0.18)	$ 0.47
Diluted — as reported	$ 0.13	$ 0.27	$ 0.07	$ 0.05	$ 0.19
Diluted — pro forma	$ 0.13	$ 0.22	$ (0.17)	$ (0.18)	$ 0.11

The value of each option granted is estimated on the date of grant using the minimum value method with the following weighted average assumptions:

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Risk-free interest rate	6.01%	5.05%	2.97%	3.02%	2.24%
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 $0.13, $3.71 and $0.48 per share for the years ended December 31, 2000, 2001 and 2002, respectively, and $0.36 and $6.72 for the nine months ended September 30, 2002 (unaudited) and 2003 (unaudited), respectively.

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

Comprehensive income 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 years ended

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

December 31, 2000, 2001 and 2002, and for the nine months ended September 30, 2003 (unaudited), the Company did not have any significant components of comprehensive income other than net income. Therefore, no separate statement of comprehensive income has been presented.

Foreign currency

The U.S. dollar is the functional currency of the Company's subsidiaries. Monetary and non-monetary assets and liabilities are remeasured into U.S. dollars at period end and historical exchange rates, respectively. Sales and expenses are remeasured at average exchange rates in effect during each period, except for those expenses related to non-monetary assets which are remeasured at historical exchange rates. Gains or losses resulting from foreign currency transactions are included in net income and are insignificant. The effect of exchange rate changes on cash and cash equivalents was insignificant for each of the three years in the period ended December 31, 2002 and for the nine months ended September 30, 2002 and 2003.

Recent accounting pronouncements

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51." FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. During December 2003, the FASB issued FIN 46R, a revision to FIN 46. FIN 46R provides a broad deferral of the latest date by which all public entities must apply FIN 46 to certain variable interest entities, to the first reporting period ending after March 15, 2004. The Company does not expect the adoption of FIN 46 to have a material impact upon its financial position, cash flows or results of operations.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). Many of those instruments were previously classified as equity. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. It is to be implemented by reporting the cumulative effect of a change in an accounting principle for financial instruments created before the issuance date of SFAS No. 150 and still existing at the beginning of the interim period of adoption. While the effective date of certain elements of SFAS No. 150 have been deferred, the Company does not expect the adoption of SFAS No. 150 to have a material impact upon its financial position, cash flows or results of operations.

NOTE 3 — BALANCE SHEET DETAIL:

Inventory

Inventory consists of the following (in thousands):

	December 31,		September 30, 2003
	2001	2002	
			(unaudited)
Raw materials	$ 687	$ 482	$ 944
Work-in-process	28	—	13
Finished goods	512	884	944
	$ 1,227	$ 1,366	$ 1,901

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Other current assets

Other current assets consist of the following (in thousands):

	December 31,	
	2001	2002
Prepaid expenses	$ 248	$ 268
Deferred public offering costs	646	—
Other	—	33
	$ 894	$ 301

Property and equipment, net

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

	December 31,	
	2001	2002
Leasehold improvements	$ 104	$ 104
Office equipment and furniture	612	778
Machinery and equipment	341	385
Construction in progress	—	58
	1,057	1,325
Less: Accumulated depreciation and amortization	(413)	(756)
	$ 644	$ 569

Depreciation and amortization expense related to property and equipment was $177,000, $203,000 and $351,000 for the years ended December 31, 2000, 2001 and 2002, respectively.

Accrued liabilities

Accrued liabilities consist of the following (in thousands):

	December 31,		September 30, 2003
	2001	2002	
			(unaudited)
Warranty	$ 988	$ 1,500	$ 1,600
Income tax	382	442	317
Payroll and related expenses	784	1,113	1,387
Professional fees	494	279	314
Other	192	461	766
	$ 2,840	$ 3,795	$ 4,384

NOTE 4 — WARRANTY AND SERVICE CONTRACTS:

Warranty

The Company has a direct field service organization in the United States that provides service for its products. The Company generally provides a warranty with its products, depending on the type of product. After the

warranty period, maintenance and support is provided on a service contract basis or on an individual call basis. On distributor sales, the Company provides a warranty on parts only. The Company currently provides for the estimated cost to repair or replace products under warranty at the time of sale.

Warranty reserve (in thousands):	
Balance, December 31, 2001	$ 988
Add: Accruals for warranties issued in 2002	1,462
Less: Settlements made during the period	950
Balance, December 31, 2002	1,500
Add: Accruals for warranties issued in the nine months ended September 30, 2003 (unaudited)	1,217
Less: Settlements made during the period (unaudited)	1,117
Balance, September 30, 2003 (unaudited)	$1,600

Service contracts

Service contract revenue is recognized on a straight-line basis over the period of the applicable service contract.

Deferred service contract revenue (in thousands):	
Balance, December 31, 2001	$ 328
Add: Payments received	758
Less: Revenue recognized	758
Balance, December 31, 2002	328
Add: Payments received (unaudited)	1,464
Less: Revenue recognized (unaudited)	747
Balance, September 30, 2003 (unaudited)	$1,045

Costs incurred under service contracts during the year ended December 31, 2002 and the nine months ended September 30, 2003 (unaudited) amounted to $408,000 and $764,000, respectively, and are recognized as incurred.

NOTE 5 — COMMITMENTS AND CONTINGENCIES:

Facility lease

The Company leases its office and manufacturing facilities under a noncancelable operating lease which expires in September 2005. The future minimum rental payments required under the noncancelable operating lease as of December 31, 2002 are as follows (in thousands):

Years Ending December 31,	
2003	$193
2004	199
2005	152
Future minimum rental payments	$544

Rent expense was $130,000, $183,000 and $189,000 for the years ended December 31, 2000, 2001 and 2002, respectively.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

During August 2003 (unaudited), the Company entered into a noncancelable facilities operating lease, which commences January 2004 and expires January 2014. Future aggregate minimum rental payments required under all noncancelable operating leases as of September 30, 2003 are as follows (unaudited, in thousands):

Years Ending December 31,	
Remainder of 2003	$ 48
2004	679
2005	632
2006	600
2007	713
2008	792
2009 and thereafter	6,415
Future minimum rental payments	$9,879

Contingencies

In February 2002, a civil action was filed 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 or asserting its position. The Company may be required to pay a royalty or some other form of compensation if it continues marketing products that have been found to infringe, or it could be required to stop selling products that are found to infringe.

In April 2002, a civil action was filed against the Company for breach of contract and other claims relating to a distribution agreement entered into in December 2000. 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.

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.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

NOTE 6 — REDEEMABLE CONVERTIBLE PREFERRED STOCK:

Redeemable convertible preferred stock

As of December 31, 2001, 2002 and September 30, 2003 (unaudited), the Company had redeemable convertible preferred stock outstanding as follows (in thousands):

	December 31,		September 30, 2003
	2001	2002	(unaudited)
Total authorized shares:	4,784	4,784	4,784
Outstanding shares:			
Series A	2,000	2,000	2,000
Series B	2,675	2,675	2,725
Total outstanding shares	4,675	4,675	4,725
Liquidation and redemption amount:			
Series A	$2,000	$2,000	$ 2,000
Series B	5,350	5,350	5,450
Total liquidation and redemption amount	$7,350	$7,350	$ 7,450
Proceeds, net of issuance costs:			
Series A	$1,945	$1,945	$ 1,945
Series B	5,327	5,327	5,427
Total proceeds, net of issuance costs	$7,272	$7,272	$ 7,372

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 year. 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 as if declared by the Board of Directors, and are not cumulative. As of September 30, 2003 (unaudited), 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.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

The holder of each share 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 December 31, 2002, the Company is required, upon approval, to redeem the preferred stock as follows:

	Series A		Series B		Total	
Years Ending 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	941,666	1,883,332	1,608,332	2,549,998
	2,000,000	$ 2,000,000	2,725,000	$ 5,450,000	4,725,000	$ 7,450,000

Stock warrants

In February 1999, in connection with a 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 December 31, 2002 and September 30, 2003 (unaudited).

In September 1999, the Company issued a warrant to purchase 50,000 shares of Series B preferred stock at $2.00 per share. The warrant may be exercised within four 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 December 31, 2002 and was fully exercised as of September 30, 2003 (unaudited).

In May 2000, in connection with an 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 December 31, 2002 and September 30, 2003 (unaudited).

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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 the 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, 2003, there were no outstanding shares of common stock subject to repurchase.

Stock option plan

In 1998, the Company adopted the 1998 Stock Plan (the "1998 Plan") under which 4,650,000 shares of the Company's common stock have been reserved for issuance to employees, directors and consultants. Options granted under the 1998 Plan may be incentive stock options or non-statutory stock options. Stock purchase rights may also be granted under the 1998 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 1998 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. The term of the options is ten years.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Activity under the 1998 Plan is summarized as follows:

		Options Outstanding	
	Shares Available for Grant	Number of Shares	Weighted-Average Exercise Price
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	1,100,000	—	
Options granted	(1,050,150)	1,050,150	$ 3.26
Options exercised	—	(224,427)	$ 0.24
Options cancelled	301,202	(301,202)	$ 0.61
Balances, December 31, 2001	434,552	3,170,271	$ 1.33
Additional shares reserved	800,000	—	
Options granted	(809,732)	809,732	$ 4.25
Options exercised	—	(123,230)	$ 0.19
Options cancelled	200,107	(200,107)	$ 4.33
Balances, December 31, 2002	624,927	3,656,666	$ 1.85
Options granted (unaudited)	(729,500)	729,500	$ 4.63
Options exercised (unaudited)	—	(191,883)	$ 0.44
Options cancelled (unaudited)	332,170	(332,170)	$ 4.16
Balances, September 30, 2003 (unaudited)	227,597	3,862,113	$ 2.27

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes information concerning outstanding and exercisable options as of December 31, 2002:

	Options Outstanding		Options Exercisable	
Exercise Price	Number Outstanding	Weighted-Average Remaining Contractual Life (in Years)	Number Outstanding	Weighted-Average Exercise Price
$0.10	1,715,250	6.64	1,392,752	$ 0.10
$0.20	57,176	6.91	26,249	$ 0.20
$0.50	253,229	7.49	166,136	$ 0.50
$0.75	109,396	8.09	50,860	$ 0.75
$2.50	265,133	8.41	103,300	$ 2.50
$3.00	67,000	8.50	27,375	$ 3.00
$4.25	795,482	9.43	83,907	$ 4.25
$4.50	169,000	8.64	56,334	$ 4.50
$5.50	140,000	8.73	43,750	$ 5.50
$6.50	20,000	8.78	10,792	$ 6.50
$7.25	65,000	8.90	17,604	$ 7.25
	3,656,666	7.74	1,979,059	$ 0.84

The following table summarizes information concerning outstanding and exercisable options as of September 30, 2003 (unaudited):

	Options Outstanding		Options Exercisable	
Exercise Price	Number Outstanding	Weighted-Average Remaining Contractual Life (in Years)	Number Outstanding	Weighted-Average Exercise Price
$0.10	1,591,688	5.91	1,591,688	$ 0.10
$0.20	29,332	6.15	27,687	$ 0.20
$0.50	207,271	6.74	169,493	$ 0.50
$0.75	58,572	7.29	42,218	$ 0.75
$2.50	231,611	7.62	133,520	$ 2.50
$3.00	64,604	7.75	38,793	$ 3.00
$4.25	1,214,118	9.15	215,736	$ 4.25
$4.50	141,917	7.89	84,896	$ 4.50
$5.50	140,000	7.98	70,000	$ 5.50
$6.00	158,000	9.93	3,500	$ 6.00
$6.50	20,000	8.04	13,230	$ 6.50
$7.25	5,000	8.16	2,292	$ 7.25
	3,862,113	7.46	2,393,053	$ 1.06

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Stock-based compensation

During the year ended December 31, 2001 and the nine months ended September 30, 2003, the Company issued options to certain employees and directors under the 1998 Plan with exercise prices below the estimated fair value, determined with 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. During the years ended December 31, 2001 and 2002 and the nine months ended September 30, 2003 (unaudited), the Company recorded deferred stock-based compensation in the amount of $4,206,000, $0 and $4,101,000, respectively. During the year ended December 31, 2002 and the nine months ended September 30, 2003 (unaudited), the Company reversed deferred stock-based compensation of $78,000 and $672,000 for options cancelled in connection with employee terminations. During the years ended December 31, 2001 and 2002 and the nine months ended September 30, 2003 (unaudited) the Company recorded employee stock-based compensation expense of $487,000, $1,026,000 and $950,000, respectively.

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:

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Risk-free interest rate	6.07%	5.32%	4.59%	5.05%	3.84%
Contractual life (in years)	10	10	10	10	10
Dividend yield	—	—	—	—	—
Expected volatility	80%	80%	80%	80%	80%

The stock-based compensation expense related to non-employees will fluctuate as the deemed fair market value of the common stock fluctuates as the options are earned. In connection with the grants of stock options to non-employees during the years ended December 31, 2001, 2002 and the nine months ended September 30, 2003 (unaudited), the Company recorded stock-based compensation expense of $265,000, $171,000 and $49,000, respectively.

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

NOTE 8 — INCOME TAXES:

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

	December 31,		
	2000	2001	2002
Current:			
Federal	$—	$1,129	$ 990
State	—	72	69
Foreign	—	—	6
	—	1,201	1,065
Deferred:			
Federal	—	(130)	(210)
State	—	31	(100)
Change in valuation allowance	—	(760)	—
	—	(859)	(310)
Total provision for income taxes	$—	$ 342	$ 755

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

	December 31,	
	2001	2002
Capitalized start-up costs	$ 24	$ 11
Credits	—	106
Accruals and reserves	305	204
Accrued warranty	394	575
Stock-based compensation	106	167
Depreciation and amortization	30	106
Gross deferred tax asset	859	1,169
Less: Valuation allowance	—	—
Net deferred tax asset	$859	$1,169

The differences between the U.S. federal statutory income tax rate to the Company's effective tax are as follows:

	Years Ended December 31,		
	2000	2001	2002
Tax at federal statutory rate	34.00 %	34.00 %	34.00 %
State, net of federal benefit	5.83 %	5.83 %	4.34 %
Meals and entertainment	1.50 %	2.38 %	2.45 %
Benefit for research and development credit	(5.00)%	(3.76)%	(25.62)%
Other	(0.33)%	2.64 %	(2.85)%
Stock-based compensation	0.00 %	0.00 %	41.03 %
Change in valuation allowance	(36.00)%	(28.35)%	0.00 %
Provision for taxes	0.00 %	12.74 %	53.35 %

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

At December 31, 2002, the Company had approximately $160,000 of state tax credit carryforwards available to offset future taxable income.

Management evaluates on a periodic basis the recoverability of deferred tax assets and the need for a valuation allowance. At December 31, 2001, the Company released its valuation allowance against its deferred tax asset and recorded a benefit of $760,000 that, in the opinion of management, is more likely than not to be realized.

NOTE 9 — NET INCOME PER SHARE:

Basic net income per share is computed by dividing net income by the weighted-average number of common shares outstanding during the period. Diluted net income 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 per share follows (in thousands):

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Numerator:					
Net income	$ 1,037	$ 2,339	$ 660	$ 424	$ 1,721
Denominator:					
Weighted-average number of common shares outstanding	1,701	1,825	1,878	1,874	2,073
Less: Weighted-average shares subject to repurchase	(637)	(345)	(68)	(114)	—
Weighted-average number of common shares outstanding used in computing basic net income per share	1,064	1,480	1,810	1,760	2,073
Dilutive potential common shares used in computing diluted net income per share	6,944	7,251	7,001	7,142	6,851
Total weighted-average number of shares used in computing diluted net income per share	8,008	8,731	8,811	8,902	8,924

Anti-dilutive securities

The following outstanding options and warrants (prior to the application to the treasury stock method) were excluded from the computation of diluted net income per common share for the periods presented because including them would have had an antidilutive effect (in thousands):

	Years Ended December 31,			Nine Months Ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Options to purchase common stock	442	85	—	—	—
Warrants to purchase preferred stock	70	—	—	—	—
	512	85	—	—	—

CUTERA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

NOTE 10 — EMPLOYEE BENEFIT PLAN:

In April 1999, the Company adopted a defined contribution retirement plan (the "plan"), which qualifies under Section 401(k) of the Internal Revenue Code. The plan covers essentially all employees. Eligible employees may make voluntary contributions to the plan up to 15% of their annual compensation, subject to statutory annual limitations, and the Company is allowed to make discretionary contributions. During the years ended December 31, 2000, 2001, 2002, the Company made contributions of $0, $124,000 and $160,000 under the plan.

NOTE 11 — SUBSEQUENT EVENTS:

Authorized number of common shares

On January 12, 2004, the Board of Directors approved an amendment to the Company's amended and restated certificate of incorporation increasing the authorized number of shares of common stock from 20,000,000 shares to 50,000,000 shares. The amendment is subject to stockholder approval and the closing of the Company's initial public offering.

2004 Equity Incentive Plan

On January 12, 2004, the Board of Directors adopted the 2004 Equity Incentive Plan, subject to stockholder approval. A total of 1,750,000 shares of common stock were reserved for issuance pursuant to the 2004 Equity Incentive Plan.

2004 Employee Stock Purchase Plan

On January 12, 2004, the Board of Directors adopted the 2004 Employee Stock Purchase Plan, subject to stockholder approval. A total of 200,000 shares of common stock were reserved for issuance pursuant to the 2004 Employee Stock Purchase Plan.

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Cutera Artwork — Edgar Descriptions

Inside Back Cover

Many Procedures. Any Patient. One Platform.

[Image of young woman beside images of all four CoolGlide systems. Under each system appears the name of the system and its function, as follows: “CoolGlide CV, Hair Removal,” “CoolGlide Excel, Vein Treatments, Hair Removal,” “CoolGlide Vantage, Skin Rejuvenation, Vein Treatments, Hair Removal,” and “CoolGlide Xeo, Pigmented Lesion Treatments, Skin Rejuvenation, Vein Treatments, Hair Removal.”]

CUTERA™
www.cutera.com

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Shares

CUTERA, INC.

Common Stock

PROSPECTUS

Until , 2004, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Piper Jaffray

SG Cowen

RBC Capital Markets

, 2004

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 Cutera in connection with the sale of the common stock being registered hereby. All amounts are estimates except the SEC Registration Fee and the NASD filing fee.

	Amount to be Paid
Securities and Exchange Commission registration fee	$ 5,850
NASD filing fee	7,687
Nasdaq National Market listing fee	100,000
Blue Sky fees and expenses	10,000
Printing and Engraving expenses	250,000
Legal fees and expenses	500,000
Accounting fees and expenses	500,000
Transfer Agent and Registrar fees	5,000
Miscellaneous	121,463
Total	$ 1,500,000

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

The Purchase 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 have purchased and intend to 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.

ITEM 15. ***Recent Sales of Unregistered Securities***

We have issued and sold the following securities:

1. From August 1998 through December 31, 2003, we granted options to purchase 5,549,382 shares of our common stock at prices ranging from $0.10 to $13.80 per share, 581,103 of which were exercised at prices ranging from $0.10 to $0.50 per share.

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.

4. On September 10, 2003, we issued and sold to MedVenture Associates III, LP 47,960 shares of Series B preferred stock and MedVen Affiliates III, LP 2,040 shares of Series B preferred stock upon their exercise of outstanding warrants to purchase Series B preferred stock at an exercise price per share of Series B preferred stock of $2.00.

5. On February 11, 1999 and May 24, 2000, we issued and sold to Silicon Valley Bank a warrant to purchase 9,000 shares of our Series A preferred stock at an exercise price per share of Series A preferred stock of $1.00 per share and a warrant to purchase 11,000 shares of our Series B preferred stock at an exercise price per share of Series B preferred stock of $2.00 per share, respectively.

As of December 31, 2003, there were outstanding warrants to purchase 9,000 shares of our Series A convertible preferred stock and 11,000 shares of our Series B convertible preferred stock at an exercise price of $1.00 per share and $2.00 per share, respectively. 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 for 9,000 shares of common stock at an exercise price of $1.00 per share, and the warrant to purchase Series B preferred stock will be exercisable for 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 warrants to Silicon Valley Bank in connection with a line of credit.

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.

ITEM 16. ***Exhibits and Financial Statement Schedules***

(a) *Exhibits*

Exhibit No.	Description
1.1*	Form of Purchase Agreement.
3.1	Amended and Restated Certificate of Incorporation of the Registrant (Delaware) as currently in effect and the Certificate of Amendments 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	2004 Equity Incentive Plan
10.4	2004 Employee Stock Purchase Plan.
10.5	Amended and Restated Investor Rights Agreement dated November 12, 1999 by and among the Registrant and certain stockholders.
10.6	Brisbane Technology Park Lease dated August 5, 2003 by and between the Registrant and Gal-Brisbane, L.P. for office space located at 3240 Bayshore Boulevard, Brisbane, California.
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).

* To be filed by amendment.

(b) *Schedule II—Valuation and Qualifying Accounts*

Schedules not listed above have been omitted because they are inapplicable or the requested information is shown in the financial statements of the Registrant or notes thereto.

CUTERA, INC.

VALUATION AND QUALIFYING ACCOUNTS
(in thousands)

	Balance at Beginning of Period	Additions	Deductions	Balance at End of Period
Allowance for doubtful accounts receivable				
Year ended December 31, 2000	$ —	$ 10	$ 2	$ 8
Year ended December 31, 2001	$ 8	$ 77	$ 4	$ 81
Year ended December 31, 2002	$ 81	$ 141	$ 82	$ 140
Reserve for excess and obsolete inventory				
Year ended December 31, 2000	$ —	$ —	$ —	$ —
Year ended December 31, 2001	$ —	$ 542	$ 488	$ 54
Year ended December 31, 2002	$ 54	$ 993	$ 923	$ 124

ITEM 17. ***Undertakings.***

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the Purchase 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 the Registrant for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 14 or otherwise, the Registrant has 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 the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant 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, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes 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.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Brisbane, State of California, on the 14th day of January, 2004.

CUTERA, INC.

By: /S/ KEVIN P. CONNORS

Kevin P. Connors
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 registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ KEVIN P. CONNORS **Kevin P. Connors**	President, Chief Executive Officer and Director (Principal Executive Officer)	January 14, 2004
/s/ RONALD J. SANTILLI **Ronald J. Santilli**	Chief Financial Officer and Vice President of Finance and Administration (Principal Accounting Officer)	January 14, 2004
/s/ DAVID A. GOLLNICK **David A. Gollnick**	Vice President of Research and Development and Director	January 14, 2004
/s/ DAVID B. APFELBERG **David B. Apfelberg**	Director	January 14, 2004
/s/ ANNETTE J. CAMPBELL-WHITE **Annette J. Campbell-White**	Director	January 14, 2004
/s/ GUY P. NOHRA **Guy P. Nohra**	Director	January 14, 2004

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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.
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10.1	Form of Indemnification Agreement for directors and executive officers.
10.2	1998 Stock Plan.
10.3	2004 Equity Incentive Plan
10.4	2004 Employee Stock Purchase Plan.
10.5	Amended and Restated Investor Rights Agreement dated November 12, 1999 by and among the Registrant and certain stockholders.
10.6	Brisbane Technology Park Lease dated August 5, 2003 by and between the Registrant and Gal-Brisbane, L.P. for office space located at 3240 Bayshore Boulevard, Brisbane, California.
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).

* To be filed by amendment.

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 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 12th day of October, 2001.

/s/ Kevin Connors

Kevin Connors
President and Chief Executive Officer

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 4,650,000 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 30th day of July, 2002.

/s/ Kevin Connors

Kevin Connors
President and Chief Executive Officer

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 I of the Amended and Restated Certificate of Incorporation of the corporation shall be amended in its entirety to read as follows:

   "The name of this corporation is Cutera, Inc."

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 12th day of January, 2004.

/s/ Kevin Connors

Kevin Connors
President and Chief Executive Officer

Exhibit 3.2

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

CUTERA, INC.

Cutera, 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 Cutera, Inc. The original Certificate of Incorporation of the corporation was filed with the Delaware Secretary of State 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 amends the provisions of the Certificate of Incorporation of this corporation.

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

ARTICLE I

The name of the corporation is Cutera, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

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.

ARTICLE IV

The Corporation is authorized to issue two classes of shares of stock to be designated, respectively, Common Stock, $0.001 par value, and Preferred Stock, $0.001 par value. The total number of shares that the Corporation is authorized to issue is 55,000,000 shares. The number of shares of Common Stock authorized is 50,000,000. The number of shares of Preferred Stock authorized is 5,000,000.

The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the board). The Board of Directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

The authority of the Board of Directors with respect to each such class or series shall include, without limitation of the foregoing, the right to determine and fix:

(a) the distinctive designation of such class or series and the number of shares to constitute such class or series;

(b) the rate at which dividends on the shares of such class or series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative or accruing, and whether the shares of such class or series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so, on what terms;

(c) the right or obligation, if any, of the Corporation to redeem shares of the particular class or series of Preferred Stock and, if redeemable, the price, terms and manner of such redemption;

(d) the special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such class or series of Preferred Stock shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(e) the terms and conditions, if any, upon which shares of such class or series shall be convertible into, or exchangeable for, shares of capital stock of any other class or series, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) the obligation, if any, of the Corporation to retire, redeem or purchase shares of such class or series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;

(g) voting rights, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock;

(h) limitations, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock; and

(i) such other preferences, powers, qualifications, special or relative rights and privileges thereof as the Board of Directors of the Corporation, acting in accordance with this Amended and Restated Certificate of Incorporation, may deem advisable and are not inconsistent with law and the provisions of this Amended and Restated Certificate of Incorporation.

ARTICLE V

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this right.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

1 Limitation of Liability. To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or as may hereafter be amended, 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.

2 Indemnification. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person or his or her testator or intestate is or was a director, officer or employee of the Corporation, or any predecessor of the Corporation, or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

3 Amendments. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

ARTICLE VIII

Holders of stock of any class or series of this Corporation shall not be entitled to cumulate their votes for the election of directors or any other matter submitted to a vote of the stockholders, unless such cumulative voting is required pursuant to Sections 2115 and/or 301.5 of the California Corporations Code, in which event each such holder shall be entitled to as many votes as shall equal the number of votes which (except for this provision as to cumulative voting) such holder 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 the holder may cast all of such votes for a single director or may distribute them among the number of directors to be voted for, or for any two or more of them as such holder may see fit, so long as the name of the candidate for director shall have been placed in nomination prior to the voting and the stockholder, or any other holder of the same class or series of stock, has given notice at the meeting prior to the voting of the intention to cumulate votes.

ARTICLE IX

1 Number of Directors. The number of directors which constitutes the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation. The directors shall be divided into three classes with the term of office of the first class (Class I) to expire at the annual meeting of stockholders held in 2005; the term of office of the second class (Class II) to expire at the annual meeting of stockholders held in 2006; the term of office of the third class (Class III) to expire at the annual meeting of stockholders held in 2007; and thereafter for each such term to expire at each third succeeding annual meeting of stockholders after such election.

If the number of directors is hereafter changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Any director may be removed from office by the stockholders of the Corporation only for cause. Vacancies occurring on the Board of Directors for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at any meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy or newly created directorship shall hold office until the next election of the Class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

2 Election of Directors. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE X

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE XI

No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of the stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders by written consent. The affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the then outstanding voting securities of the Corporation, voting together as a single class, shall be required for the amendment, repeal or modification of the provisions of Article VIII, Article IX or Article XI of this Amended and Restated Certificate of Incorporation or Sections 2.3 (Special Meeting), 2.4 (Advance Notice Procedures; Notice of Stockholders' Meetings) or 2.9 (Voting) of the Corporation's Bylaws.

ARTICLE XII

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 provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

This Amended and Restated Certificate of Incorporation has been duly adopted by the Board of Directors of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended.

This Amended and Restated Certificate of Incorporation has been duly approved by the written consent of the stockholders of the corporation in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, as amended.

In witness whereof, the Corporation has caused this Certificate to be signed by Kevin P. Connors, its President and Chief Executive Officer, this ____ day of _____, 2004.

Kevin P. Connors, President and
Chief Executive Officer

Exhibit 3.3

BYLAWS

OF

ACME MEDICAL, INC.

Originally Adopted on August 10, 1998

(And Most Recently Amended on October 29, 1999)

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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 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.

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 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.

AMENDED AND RESTATED BYLAWS OF CUTERA, INC.

(a Delaware corporation)

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BYLAWS OF CUTERA, INC.

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The registered office of Cutera, Inc. shall be fixed in the corporation's certificate of incorporation, as the same may be amended from time to time.

1.2 OTHER OFFICES.

The corporation's Board of directors (the "Board") 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. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the corporation's principal executive office.

2.2 ANNUAL MEETING.

The annual meeting of stockholders shall be held each year. The Board shall designate the date and time of the annual meeting. In the absence of such designation the annual meeting of stockholders shall be held on the second Tuesday of May of 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 business day. At the annual 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, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer), but such special meetings may not be called by any other person or persons.

No business may be transacted at such special meeting other than the business specified in such notice to stockholders. 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 may be held.

2.4 ADVANCE NOTICE PROCEDURES; NOTICE OF STOCKHOLDERS' MEETINGS.

(i) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors, (B) otherwise properly brought before the meeting by or at the direction of the board of directors, or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) calendar days before the one year anniversary of the date on which the corporation first mailed its proxy statement to stockholders in connection with the previous year's annual meeting of stockholders; *provided*, *however*, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date of the prior year's meeting, notice by the stockholder to be timely must be so received not later than the close of business on the later of one hundred twenty (120) calendar days in advance of such annual meeting and ten (10) calendar days following the date on which public announcement of the date of the meeting is first made. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation that are beneficially owned by the stockholder, (d) any material interest of the stockholder in such business, and (e) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act"), in his capacity as a proponent to a stockholder proposal. Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph (i). The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this paragraph (i), and, if he should so determine, he shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(ii) Only persons who are nominated in accordance with the procedures set forth in this paragraph (ii) shall be eligible for election as directors. Nominations of persons for election to the board of directors of the corporation may be made at a meeting of stockholders by or at the direction of the board of directors or by any stockholder of the corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this paragraph (ii). Such nominations, other than those made by or at the direction of the board of directors, shall be made pursuant to timely notice in writing to the secretary of the corporation in accordance with the provisions of paragraph (i) of this Section 2.4. Such stockholder's notice shall set forth (a) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the corporation that are beneficially owned by such person, (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A

under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (b) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (i) of this Section 2.4. At the request of the board of directors, any person nominated by a stockholder for election as a director shall furnish to the secretary of the corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this paragraph (ii). The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these bylaws, and if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.

These provisions shall not prevent the consideration and approval or disapproval at an annual meeting of reports of officers, directors and committees of the board of directors, but in connection therewith no new business shall be acted upon at any such meeting unless stated, filed and received as herein provided. Notwithstanding anything in these bylaws to the contrary, no business brought before a meeting by a stockholder shall be conducted at an annual meeting except in accordance with procedures set forth in this Section 2.4.

All notices of meetings of stockholders shall be sent or otherwise given in accordance with either Section 2.5 or Section 8.1 of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such 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.

Notice of any meeting of stockholders shall be given:

(i) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the corporation's records; or

(ii) if electronically transmitted as provided in Section 8.1 of these bylaws.

An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or any other agent of the corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, 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, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, 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, place if any thereof, and the means of remote communications if any by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 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 CONDUCT OF BUSINESS.

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

2.9 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 Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

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

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class of stock or series thereof having a preference over the Common Stock as dividend or upon liquidation, any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

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 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 may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other such action.

If the Board 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 for any other purpose shall be at the close of business on the day on which the Board 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 may fix a new record date for the adjourned meeting.

2.12 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 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. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal executive office. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall 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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

2.14 INSPECTORS OF ELECTION

A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

Before any meeting of stockholders, the board of directors shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

Such inspectors shall:

(i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;

(ii) receive votes, ballots or consents;

(iii) hear and determine all challenges and questions in any way arising in connection with the right to vote;

(iv) count and tabulate all votes or consents;

(v) determine when the polls shall close;

(vi) determine the result; and

(vii) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE III - DIRECTORS

3.1 POWERS.

Subject to the provisions of the DGCL 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.

3.2 NUMBER OF DIRECTORS.

The authorized number of directors shall be determined from time to time by resolution of the Board, provided the Board shall consist of at least one member. 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, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

If so provided in the certificate of incorporation, the directors of the corporation shall be divided into three classes.

3.4 RESIGNATION AND VACANCIES.

Any director may resign at any time upon notice given in writing or by electronic transmission 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, 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. If the directors are divided into classes, a person so elected by the directors then in office to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

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 DGCL.

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 10% 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 DGCL as far as applicable.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE.

The Board 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, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other 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 REGULAR MEETINGS.

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

3.7 SPECIAL MEETINGS; NOTICE.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the authorized number of directors.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile; or

(iv) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation's principal executive office) nor the purpose of the meeting.

3.8 QUORUM.

At all meetings of the Board, a majority of the authorized number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum is not present at any meeting of the Board, 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.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 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, 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 or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 FEES AND COMPENSATION OF DIRECTORS.

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

3.11 REMOVAL OF DIRECTORS.

Any director may be removed from office by the stockholders of the corporation only for cause.

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 may, by resolution passed by a majority of the authorized number of directors, designate one or more committees, 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 such member or members constitute a quorum, may unanimously appoint another member of the Board 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 or in these bylaws, shall have and may exercise all the powers and authority of the Board 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) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation,

4.2 COMMITTEE MINUTES.

Each committee shall keep regular minutes of its meetings and report the same to the Board 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:

(i) Section 3.5 (place of meetings and meetings by telephone);

(ii) Section 3.6 (regular meetings);

(iii) Section 3.7 (special meetings and notice);

(iv) Section 3.8 (quorum);

(v) Section 7.12 (waiver of notice); and

(vi) Section 3.9 (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 and its members. However:

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board; and

(iii) 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 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 and a secretary. The corporation may also have, at the discretion of the Board, a chairperson of the Board, a vice chairperson of the Board, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS.

The Board shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 and 5.5 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS.

The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board 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 at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

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. Unless otherwise specified in the notice of resignation, 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 or as provided in Section 5.2.

5.6 REPRESENTATION OF SHARES OF OTHER CORPORATIONS.

The chairperson 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 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.

5.7 AUTHORITY AND DUTIES OF OFFICERS.

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 or the stockholders and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE VI - RECORDS AND REPORTS

6.1 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, 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 so to 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 executive office.

6.2 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 or her 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.

ARTICLE VII - GENERAL MATTERS

7.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

The Board, 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 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.

7.2 STOCK CERTIFICATES; PARTLY PAID SHARES.

The shares of the corporation shall be represented by certificates, provided that the Board 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, 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 chairperson or vice-chairperson of the Board, 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.

7.3 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 DGCL, 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.

7.4 LOST CERTIFICATES.

Except as provided in this Section 7.5, 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 such owner’s 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.

7.5 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL 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.

7.6 DIVIDENDS.

The Board, subject to any restrictions contained in either (i) the DGCL, or (ii) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The Board 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.

7.7 FISCAL YEAR.

The fiscal year of the corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.8 SEAL.

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.9 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.

7.10 STOCK TRANSFER AGREEMENTS.

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

7.11 REGISTERED STOCKHOLDERS.

The corporation:

(i) 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;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) 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.

7.12 WAIVER OF NOTICE.

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, 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 or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII - NOTICE BY ELECTRONIC TRANSMISSION

8.1 NOTICE BY ELECTRONIC TRANSMISSION.

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

(i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

8.2 DEFINITION OF ELECTRONIC TRANSMISSION.

An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

8.3 INAPPLICABILITY.

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

ARTICLE IX - INDEMNIFICATION

9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS

The corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, any director or officer of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”) by reason of the fact that he or she, or a person for whom he or she is the legal representative, 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 or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding. The corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board.

9.2 INDEMNIFICATION OF OTHERS

The corporation shall have the power to indemnify and hold harmless, to the extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an 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 or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

9.3 PREPAYMENT OF EXPENSES

The corporation shall pay the expenses incurred by any officer or director of the corporation, and may pay the expenses incurred by any employee or agent of the corporation, in defending any Proceeding in advance of its final disposition; *provided*, *however*, that the payment of expenses incurred by a person in advance of the final

disposition of the Proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article IX or otherwise.

9.4 DETERMINATION; CLAIM

If a claim for indemnification or payment of expenses under this Article IX is not paid in full within sixty days after a written claim therefor has been received by the corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

9.5 NON-EXCLUSIVITY OF RIGHTS

The rights conferred on any person by this Article IX shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

9.6 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 or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

9.7 OTHER INDEMNIFICATION

The corporation’s obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

9.8 AMENDMENT OR REPEAL

Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.”

ARTICLE X - AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote. However, 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.

CUTERA, INC.

CERTIFICATE OF AMENDMENT OF BYLAWS

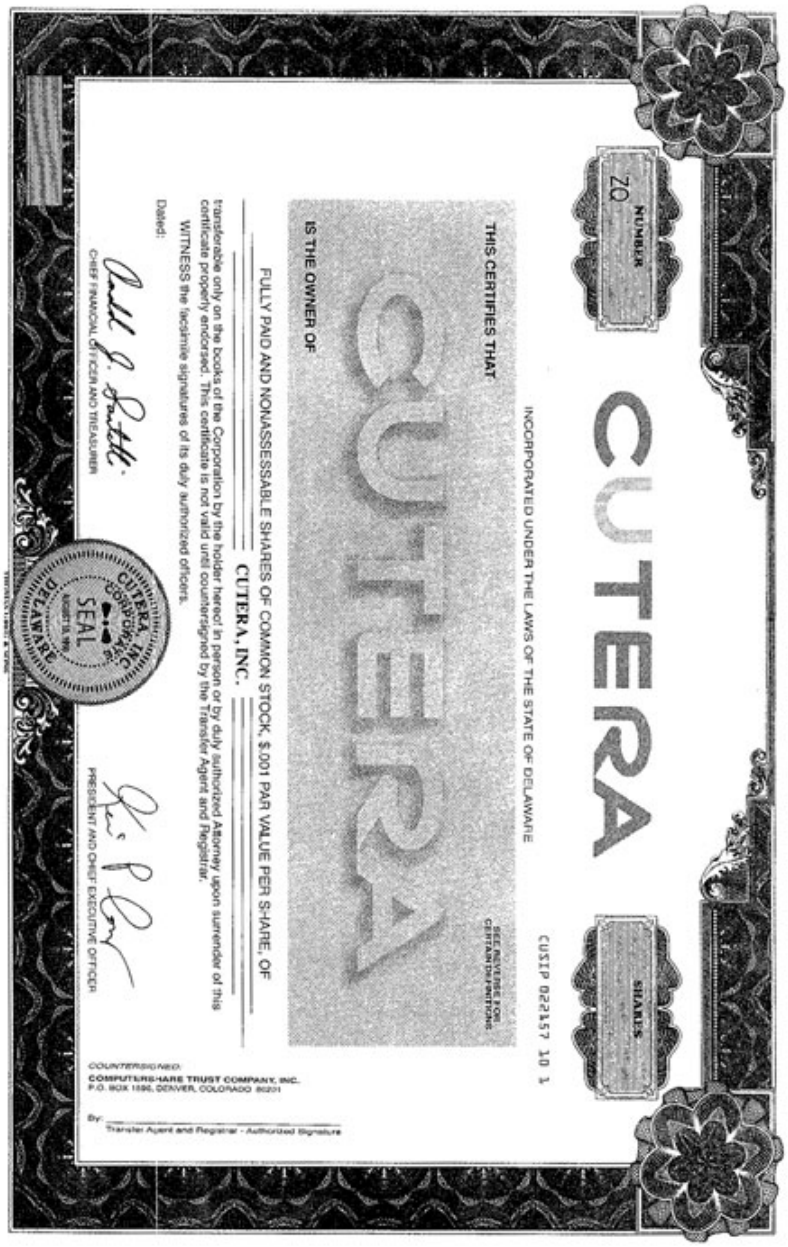
The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Secretary or Assistant Secretary of Cutera, Inc., a Delaware corporation and that the foregoing bylaws, comprising _____ pages, were amended and restated on _____, 20__ by the corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this __ day of _____, 20__.

Secretary

PROOF DATE
DECEMBER 12, 2003
PROOF #

MIDWEST BANK NOTE CO., 46001 FIVE MILE ROAD - P.O. BOX 701398, PLYMOUTH, MICH. 48170-0964
PLEASE NOTE THAT 25% ADDITIONAL WILL BE CHARGED WHEN SHIPMENT IS REQUESTED ON THE SAME DAY THAT PROOF APPROVAL IS GIVEN OR 15% WHEN SHIPMENT IS REQUIRED THE NEXT DAY OR 7% WHEN SHIPMENT IS REQUIRED WITHIN 72 HOURS OF APPROVAL.
WE CAN IMPRINT BONDS FOR CLOSING. CERTIFICATES MAY BE ORDERED IN SHEETS, MOUNTED ON CARRIERS OR IN TRUE CONTINUOUS FORM.
FAX# 734 451-2249 PHONE 734 451-2222



CUTERA, INC.

THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND 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. SUCH REQUEST MUST BE MADE TO THE CORPORATION'S SECRETARY AT THE PRINCIPAL EXECUTIVE OFFICE OF THE CORPORATION.

Keep this Certificate in a safe place. If it is lost, stolen or destroyed, the Corporation will require a bond of indemnity as a condition to the issuance of a replacement certificate.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	–	as tenants in common
TEN ENT	–	as tenants by the entireties
JT TEN	–	as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT- _____ Custodian _____
(Cust) (Minor)
under Uniform Gifts to Minors Act _____
(State)

UNIF TRF MIN ACT- _____ Custodian (until age _____)
(Cust)
_____ under Uniform Transfers
(Minor)
to Minors Act _____
(State)

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF ASSIGNEE(S)

_____

_____

_____

Shares represented by the within Certificate, and do hereby irrevocably constitute and

appoint _____ Attorney to
transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

_____

In presence of

_____

_____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

Signature(s) Guaranteed

By _____

THE SIGNATURES MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM) PURSUANT TO S.E.C. RULE 17Ad-15.

Exhibit 10.1

CUTERA, INC.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("**Agreement"**) is made as of this __ day of _____, _____, by and between Cutera, Inc., a Delaware corporation (the "**Company"**), and _____ ("**Indemnitee**").

WHEREAS, the Company and Indemnitee recognize the significant cost of directors' and officers' liability insurance and the general reductions in the coverage of such insurance;

WHEREAS, the Company and Indemnitee further recognize the substantial increase in corporate litigation in general, subjecting officers and directors to expensive litigation risks at the same time as the coverage of liability insurance has been severely limited; and

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve as officers and directors of the Company and to indemnify its officers and directors so as to provide them with the maximum protection permitted by law.

NOW, THEREFORE, in consideration for Indemnitee's services as an officer or director of the Company, the Company and Indemnitee hereby agree as follows:

1. ***Indemnification***.

(a) *Third Party Proceedings*. The Company shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or any alternative dispute resolution mechanism, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnitee in connection with such action, suit or proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that Indemnitee's conduct was unlawful.

(b) *Proceedings By or in the Right of the Company*. The Company shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and, to the fullest extent permitted by law, amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such action or suit if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(c) *Mandatory Payment of Expenses*. To the extent that Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Subsections (a) and (b) of this Section 1, or in defense of any claim, issue or matter therein, Indemnitee shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by Indemnitee in connection therewith.

2. ***Expenses; Indemnification Procedure***.

(a) *Advancement of Expenses*. The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action, suit or proceeding referenced in Section 1(a) or (b) hereof (but not amounts actually paid in settlement of any such action, suit or proceeding). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company as authorized hereby. The advances to be made hereunder shall be paid by the Company to Indemnitee within thirty (30) days following delivery of a written request therefor by Indemnitee to the Company.

(b) *Notice/Cooperation by Indemnitee*. Indemnitee shall, as a condition precedent to his right to be indemnified under this Agreement, give the Company notice in writing as soon as practicable of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Notice to the Company shall be directed to the President of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee). Notice shall be deemed received three business days after the date postmarked if sent by domestic certified or registered mail, properly addressed, five business days if sent by airmail to a country outside of North America; otherwise notice shall be deemed received when such notice shall actually be received by the Company. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) *Procedure*. Any indemnification and advances provided for in Section 1 and this Section 2 shall be made no later than thirty (30) days after receipt of the written request of Indemnitee. If a claim under this Agreement, under any statute, or under any provision of the Company's Certificate of Incorporation or Bylaws providing for indemnification, is not paid in full by the Company within thirty (30) days after a written request for payment thereof has first been received by the Company, Indemnitee may, but need not, at any time thereafter bring an action against the Company to recover the unpaid amount of the claim and, subject to Section 12 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. However, Indemnitee shall be entitled to receive interim payments of expenses pursuant to Subsection 2(a) unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Company contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its stockholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Company (including it Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

(d) *Notice to Insurers*. If, at the time of the receipt of a notice of a claim pursuant to Section 2(b) hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(e) *Selection of Counsel*. In the event the Company shall be obligated under Section 2(a) hereof to pay the expenses of any proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnitee, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that (i) Indemnitee shall have the right to employ his counsel in any such proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the

Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not, in fact, have employed counsel to assume the defense of such proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company.

3. ***Additional Indemnification Rights; Nonexclusivity***.

(a) *Scope*. Notwithstanding any other provision of this Agreement, the Company hereby agrees to indemnify the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Certificate of Incorporation, the Company's Bylaws or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute, or rule which expands the right of a Delaware corporation to indemnify a member of its board of directors or an officer, such changes shall be, *ipso facto*, within the purview of Indemnitee's rights and Company's obligations, under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify a member of its board of directors or an officer, such changes, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) *Nonexclusivity.* The indemnification provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation, its Bylaws, any agreement, any vote of stockholders or disinterested Directors, the General Corporation Law of the State of Delaware, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though he may have ceased to serve in such capacity at the time of any action, suit or other covered proceeding.

4. ***Partial Indemnification***. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by him in the investigation, defense, appeal or settlement of any civil or criminal action, suit or proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

5. ***Mutual Acknowledgement***. Both the Company and Indemnitee acknowledge that in certain instances, Federal law or applicable public policy may prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

6. ***Officer and Director Liability Insurance***. The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain

a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. In all policies of director and officer liability insurance, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a subsidiary or parent of the Company.

7. ***Severability***. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 7. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. ***Exceptions***. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) *Claims Initiated by Indemnitee*. To indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 145 of the Delaware General Corporation Law, but such indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors has approved the initiation or bringing of such suit; or

(b) *Lack of Good Faith*. To indemnify Indemnitee for any expenses incurred by the Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by the Indemnitee in such proceeding was not made in good faith or was frivolous; or

(c) *Insured Claims*. To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) which have been paid directly to Indemnitee by an insurance carrier under a policy of officers' and directors' liability insurance maintained by the Company.

(d) *Claims Under Section 16(b)*. To indemnify Indemnitee for expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

9. ***Construction of Certain Phrases***.

(a) For purposes of this Agreement, references to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

10. ***Counterparts***. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

11. ***Successors and Assigns***. This Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs, legal representatives and assigns.

12. ***Attorneys' Fees.*** In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

13. ***Notice***. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice.

14. ***Consent to Jurisdiction***. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Delaware.

15. ***Choice of Law***. This Agreement shall be governed by and its provisions construed in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware without regard to the conflict of law principles thereof.

16. ***Period of Limitations***. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; *provided*, *however*, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

17. ***Subrogation***. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

18. ***Amendment and Termination***. No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

19. ***Integration and Entire Agreement***. This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CUTERA, INC.

_____

Signature of Authorized Signatory

_____

Print Name and Title

Address: 3240 Bayshore Boulevard
Brisbane, CA 94005

AGREED TO AND ACCEPTED:

INDEMNITEE:

_____

Signature

_____

Print Name and Title

Address: _____

_____

_____

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 U.S. state corporate laws, U.S. 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 4,650,000 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 10.3

CUTERA, INC.

2004 EQUITY INCENTIVE PLAN

1. Purposes of the Plan. The purposes of this 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.

The Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Restricted Stock, Stock Appreciation Rights, Performance Units and Performance Shares.

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

(a) "Administrator" means the Board or any of its Committees as will be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Affiliated SAR" means an SAR that is granted in connection with a related Option, and which automatically will be deemed to be exercised at the same time that the related Option is exercised.

(c) "Applicable Laws" means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. 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 foreign country or jurisdiction where Awards are, or will be, granted under the Plan.

(d) "Award" means, individually or collectively, a grant under the Plan of Options, SARs, Restricted Stock, Performance Units or Performance Shares.

(e) "Award Agreement" means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.

(f) "Board" means the Board of Directors of the Company.

(g) "Change in Control" means the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets;

(iii) A change in the composition of the Board occurring within a two-year period, as a result of which fewer than a majority of the directors are Incumbent Directors. "Incumbent Directors" means directors who either (A) are Directors as of the effective date of the Plan, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but will not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or

(iv) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(h) "Code" means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein will be a reference to any successor or amended section of the Code.

(i) "Committee" means a committee of Directors appointed by the Board in accordance with Section 4 of the Plan.

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

(k) "Company" means Cutera, Inc., a Delaware corporation, or any successor thereto.

(l) "Consultant" means any person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

(m) "Director" means a member of the Board.

(n) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code, provided that in the case of Awards other than Incentive Stock Options, the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

(o) "Employee" means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company will be sufficient to constitute "employment" by the Company.

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

(q) "Exchange Program" means a program under which (i) outstanding Awards are surrendered or cancelled in exchange for Awards of the same type (which may have lower exercise prices and different terms), Awards of a different type, and/or cash, and/or (ii) the exercise price of an outstanding Award is reduced. The terms and conditions of any Exchange Program will be determined by the Administrator in its sole discretion.

(r) "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 will be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day 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, the Fair Market Value of a Share of Common Stock will be the mean between the high bid and low asked prices for the Common Stock on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(iii) For purposes of any Awards granted on the Registration Date, the Fair Market Value will be the initial price to the public as set forth in the final prospectus included within the registration statement in Form S-1 filed with the Securities and Exchange Commission for the initial public offering of the Company's Common Stock; or

(iv) In the absence of an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Administrator.

(s) "Fiscal Year" means the fiscal year of the Company.

(t) "Freestanding SAR" means a SAR that is granted independently of any Option.

(u) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(v) "Inside Director" means a Director who is an Employee.

(w) "Nonstatutory Stock Option" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(x) "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.

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

(z) "Optioned Stock" means the Common Stock subject to an Award.

(aa) "Outside Director" means a Director who is not an Employee.

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

(cc) "Participant" means the holder of an outstanding Award.

(dd) "Performance Share" means an Award granted to a Participant pursuant to Section 9.

(ee) "Performance Unit" means an Award granted to a Participant pursuant to Section 9.

(ff) "Period of Restriction" means the period during which the transfer of Shares of Restricted Stock are subject to restrictions and therefore, the Shares are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, the achievement of target levels of performance, or the occurrence of other events as determined by the Administrator.

(gg) "Plan" means this 2004 Equity Incentive Plan.

(hh) "Registration Date" means the effective date of the first registration statement that is filed by the Company and declared effective pursuant to Section 12(g) of the Exchange Act, with respect to any class of the Company's securities.

(ii) "Restricted Stock" means shares of Common Stock issued pursuant to a Restricted Stock award under Section 7 of the Plan, or issued pursuant to the early exercise of an Option.

(jj) "Rule 16b-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(kk) "Section 16(b) " means Section 16(b) of the Exchange Act.

(ll) "Service Provider" means an Employee, Director or Consultant.

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

(nn) "Stock Appreciation Right" or "SAR" means an Award, granted alone or in connection with an Option, that pursuant to Section 8 is designated as a SAR.

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

(pp) "Tandem SAR" means a SAR that is granted in connection with a related Option, the exercise of which will require forfeiture of the right to purchase an equal number of Shares under the related Option (and when a Share is purchased under the Option, the SAR will be canceled to the same extent).

(qq) "Unvested Awards" will mean Options or Restricted Stock that (i) were granted to an individual in connection with such individual's position as an Employee and (ii) are still subject to vesting or lapsing of Company repurchase rights or similar restrictions.

3. Stock Subject to the Plan.

(a) Stock Subject to the Plan. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares that may be optioned and sold under the Plan is 1,750,000 Shares plus (i) the number of Shares which have been reserved but not issued under the Company's 1998 Stock Plan (the "1998 Plan") as of the Registration Date, (ii) any Shares returned to the 1998 Plan as a result of termination of options or repurchase of Shares issued under such plan, and (iii) an annual increase to be added on the first day of the Company's fiscal year beginning in 2005, equal to the lesser of (A) 2,000,000 Shares, (B) 5% of the outstanding Shares on such date or (C) an amount determined by the Board. The Shares may be authorized, but unissued, or reacquired Common Stock. Shares will not be deemed to have been issued pursuant to the Plan with respect to any portion of an Award that is settled in cash. Upon payment in Shares pursuant to the exercise of an SAR, the number of Shares available for issuance under the Plan will be reduced only by the number of Shares actually issued in such payment. If the exercise price of an Option is paid by tender to the Company, or attestation to the ownership, of Shares owned by the Participant, the number of Shares available for issuance under the Plan will be reduced by the gross number of Shares for which the Option is exercised.

(b) Lapsed Awards. If an Award expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Exchange Program, the unpurchased Shares which were subject thereto will become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan, whether upon exercise of an Award, will not be returned to the Plan and will not become available for future distribution under the Plan, except that if unvested Shares are forfeited or repurchased by the Company, such Shares will become available for future grant under the Plan.

(c) Share Reserve. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) Multiple Administrative Bodies. Different Committees with respect to different groups of Service Providers may administer the Plan.

(ii) Section 162(m). To the extent that the Administrator determines it to be desirable to qualify Options granted hereunder as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Plan will be administered by a Committee of two or more "outside directors" within the meaning of Section 162(m) of the Code.

(iii) Rule 16b-3. To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder will be structured to satisfy the requirements for exemption under Rule 16b-3.

(iv) Other Administration. Other than as provided above, the Plan will be administered by (A) the Board or (B) a Committee, which committee will be constituted to satisfy Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator will have the authority, in its discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Awards may be granted hereunder;

(iii) to determine the number of Shares to be covered by each Award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Administrator will determine;

(vi) to institute an Exchange Program;

(vii) to construe and interpret the terms of the Plan and Awards granted pursuant to the Plan;

(viii) 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 satisfying applicable foreign laws;

(ix) to modify or amend each Award (subject to Section 17(c) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Awards longer than is otherwise provided for in the Plan;

(x) to allow Participants to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Award that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld (the Fair Market Value of the Shares to be withheld will be determined on the date that the amount of tax to be withheld is to be determined and all elections by a Participant to have Shares withheld for this purpose will be made in such form and under such conditions as the Administrator may deem necessary or advisable);

(xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

(xii) to allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant under an Award

(xiii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations will be final and binding on all Participants and any other holders of Awards.

5. Eligibility. Nonstatutory Stock Options, Restricted Stock, Stock Appreciation Rights, Performance Units and Performance Shares may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Stock Options.

(a) Limitations.

(i) Each Option will be designated in the Award 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 Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds $100,000, such Options will be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options will be taken into account in the order in which they were granted. The Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted.

(ii) The following limitations will apply to grants of Options and Stock Appreciation Rights:

(1) No Service Provider will be granted, in any Fiscal Year, Options to purchase more than 500,000 Shares.

(2) In connection with his or her initial service, a Service Provider may be granted Options to purchase up to an additional 500,000 Shares, which will not count against the limit set forth in Section 6(a)(2)(ii)(1) above.

(3) The foregoing limitations will be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 13.

(4) If an Option is cancelled in the same Fiscal Year in which it was granted (other than in connection with a transaction described in Section 13), the cancelled

Option will be counted against the limits set forth in subsections (1) and (2) above. For this purpose, if the exercise price of an Option is reduced, the transaction will be treated as a cancellation of the Option and the grant of a new Option.

(b) Term of Option. The term of each Option will be stated in the Award Agreement. In the case of an Incentive Stock Option, the term will be ten (10) years from the date of grant or such shorter term as may be provided in the Award Agreement. Moreover, in the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five (5) years from the date of grant or such shorter term as may be provided in the Award Agreement.

(c) Option Exercise Price and Consideration.

(i) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option will be determined by the Administrator, subject to the following:

(1) In the case of an Incentive Stock Option

a) granted to an Employee who, at the time the Incentive Stock 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 per Share exercise price will be no less than 110% of the Fair Market Value per Share on the date of grant.

b) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price will be no less than 100% of the Fair Market Value per Share on the date of grant.

c) Notwithstanding the foregoing, Incentive Stock Options may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code.

(2) In the case of a Nonstatutory Stock Option, the per Share exercise price will be determined by the Administrator. In the case of a Nonstatutory Stock Option intended to qualify as “performance-based compensation” within the meaning of Section 162(m) of the Code, the per Share exercise price will be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator will fix the period within which the Option may be exercised and will determine any conditions that must be satisfied before the Option may be exercised.

(iii) Form of Consideration. The Administrator will determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator will determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of: (1) cash; (2) check;

(3) promissory note; (4) other Shares, provided Shares acquired directly or indirectly from the Company, (A) have been owned by the Participant and not subject to substantial risk of forfeiture for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option will be exercised; (5) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan; (6) a reduction in the amount of any Company liability to the Participant, including any liability attributable to the Participant's participation in any Company-sponsored deferred compensation program or arrangement; (7) any combination of the foregoing methods of payment; or (8) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

(d) Exercise of Option.

(i) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder will be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share.

An Option will be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Award 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 Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant 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 stockholder will exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company will 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 13 of the Plan.

Exercising an Option in any manner will decrease 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.

(ii) Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, other than upon the Participant's death or Disability, the Participant may exercise his or her Option within such period of time as is specified in the Award Agreement 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 such Option as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option will remain exercisable for three (3) months following the Participant's termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iii) Disability of Participant. If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option within such period of time as is specified in the Award Agreement 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 Award Agreement). In the absence of a specified time in the Award Agreement, the Option will remain exercisable for twelve (12) months following the Participant's termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iv) Death of Participant. If a Participant dies while a Service Provider, the Option may be exercised following the Participant's death within such period of time as is specified in the Award Agreement to the extent that the Option is vested on the date of death (but in no event may the option be exercised later than the expiration of the term of such Option as set forth in the Award Agreement), by the Participant's designated beneficiary, provided such beneficiary has been designated prior to Participant's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the Award Agreement, the Option will remain exercisable for twelve (12) months following Participant's death. Unless otherwise provided by the Administrator, if at the time of death Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

7. Restricted Stock.

(a) Grant of Restricted Stock. Subject to the terms and provisions of the Plan, the Administrator, at any time and from time to time, may grant Shares of Restricted Stock to Service Providers in such amounts as the Administrator, in its sole discretion, will determine.

(b) Restricted Stock Agreement. Each Award of Restricted Stock will be evidenced by an Award Agreement that will specify the Period of Restriction, the number of Shares granted, and such other terms and conditions as the Administrator, in its sole discretion, will determine. Unless the Administrator determines otherwise, Shares of Restricted Stock will be held by the Company as escrow agent until the restrictions on such Shares have lapsed.

(c) Transferability. Except as provided in this Section 7, Shares of Restricted Stock may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction.

(d) Other Restrictions. The Administrator, in its sole discretion, may impose such other restrictions on Shares of Restricted Stock as it may deem advisable or appropriate.

(e) Removal of Restrictions. Except as otherwise provided in this Section 7, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan will be released from escrow as soon as practicable after the last day of the Period of Restriction. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed.

(f) Voting Rights. During the Period of Restriction, Service Providers holding Shares of Restricted Stock granted hereunder may exercise full voting rights with respect to those Shares, unless the Administrator determines otherwise.

(g) Dividends and Other Distributions. During the Period of Restriction, Service Providers holding Shares of Restricted Stock will be entitled to receive all dividends and other distributions paid with respect to such Shares unless otherwise provided in the Award Agreement. If any such dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid.

(h) Return of Restricted Stock to Company. On the date set forth in the Award Agreement, the Restricted Stock for which restrictions have not lapsed will revert to the Company and again will become available for grant under the Plan.

8. Stock Appreciation Rights.

(a) Grant of SARs. Subject to the terms and conditions of the Plan, a SAR may be granted to Service Providers at any time and from time to time as will be determined by the Administrator, in its sole discretion. The Administrator may grant Affiliated SARs, Freestanding SARs, Tandem SARs, or any combination thereof.

(b) Number of Shares. The Administrator will have complete discretion to determine the number of SARs granted to any Service Provider.

(c) Exercise Price and Other Terms. The Administrator, subject to the provisions of the Plan, will have complete discretion to determine the terms and conditions of SARs granted under the Plan. However, the exercise price of Tandem or Affiliated SARs will equal the exercise price of the related Option.

(d) Exercise of Tandem SARs. Tandem SARs may be exercised for all or part of the Shares subject to the related Option upon the surrender of the right to exercise the equivalent portion of the related Option. A Tandem SAR may be exercised only with respect to the Shares for which its related Option is then exercisable. With respect to a Tandem SAR granted in connection with an Incentive Stock Option: (a) the Tandem SAR will expire no later than the expiration of the underlying Incentive Stock Option; (b) the value of the payout with respect to the Tandem SAR will be for no more than one hundred percent (100%) of the difference between the exercise price of the underlying Incentive Stock Option and the Fair Market Value of the Shares subject to the underlying Incentive Stock Option at the time the Tandem SAR is exercised; and (c) the Tandem SAR will be exercisable only when the Fair Market Value of the Shares subject to the Incentive Stock Option exceeds the Exercise Price of the Incentive Stock Option.

(e) Exercise of Affiliated SARs. An Affiliated SAR will be deemed to be exercised upon the exercise of the related Option. The deemed exercise of an Affiliated SAR will not necessitate a reduction in the number of Shares subject to the related Option.

(f) Exercise of Freestanding SARs. Freestanding SARs will be exercisable on such terms and conditions as the Administrator, in its sole discretion, will determine.

(g) SAR Agreement. Each SAR grant will be evidenced by an Award Agreement that will specify the exercise price, the term of the SAR, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

(h) Expiration of SARs. An SAR granted under the Plan will expire upon the date determined by the Administrator, in its sole discretion, and set forth in the Award Agreement. Notwithstanding the foregoing, the rules of Section 6(d) also will apply to SARs.

(i) Payment of SAR Amount. Upon exercise of an SAR, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying:

(i) The difference between the Fair Market Value of a Share on the date of exercise over the exercise price; times

(ii) The number of Shares with respect to which the SAR is exercised.

At the discretion of the Administrator, the payment upon SAR exercise may be in cash, in Shares of equivalent value, or in some combination thereof.

9. Performance Units and Performance Shares.

(a) Grant of Performance Units/Shares. Performance Units and Performance Shares may be granted to Service Providers at any time and from time to time, as will be determined by the Administrator, in its sole discretion. The Administrator will have complete discretion in determining the number of Performance Units and Performance Shares granted to each Participant.

(b) Value of Performance Units/Shares. Each Performance Unit will have an initial value that is established by the Administrator on or before the date of grant. Each Performance Share will have an initial value equal to the Fair Market Value of a Share on the date of grant.

(c) Performance Objectives and Other Terms. The Administrator will set performance objectives or other vesting provisions in its discretion which, depending on the extent to which they are met, will determine the number or value of Performance Units/Shares that will be paid out to the Service Providers. The time period during which the performance objectives or other vesting provisions must be met will be called the “Performance Period.” Each Award of Performance Units/Shares will be evidenced by an Award Agreement that will specify the Performance Period, and such other terms and conditions as the Administrator, in its sole discretion, will determine. The Administrator may set performance objectives based upon the achievement of Company-wide, divisional, or individual goals, applicable federal or state securities laws, or any other basis determined by the Administrator in its discretion.

(d) Earning of Performance Units/Shares. After the applicable Performance Period has ended, the holder of Performance Units/Shares will be entitled to receive a payout of the number of Performance Units/Shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding performance objectives or other vesting provisions have been achieved. After the grant of a Performance Unit/Share, the Administrator, in its sole discretion, may reduce or waive any performance objectives or other vesting provisions for such Performance Unit/Share.

(e) Form and Timing of Payment of Performance Units/Shares. Payment of earned Performance Units/Shares will be made as soon as practicable after the expiration of the applicable Performance Period. The Administrator, in its sole discretion, may pay earned Performance Units/Shares in the form of cash, in Shares (which have an aggregate Fair Market Value equal to the value of the earned Performance Units/Shares at the close of the applicable Performance Period) or in a combination thereof.

(f) Cancellation of Performance Units/Shares. On the date set forth in the Award Agreement, all unearned or unvested Performance Units/Shares will be forfeited to the Company, and again will be available for grant under the Plan.

10. Formula Option Grants to Outside Directors.

All grants of Options to Outside Directors pursuant to this Section will be automatic and nondiscretionary and will be made in accordance with the following provisions:

(a) Type of Option. All Options granted pursuant to this Section will be Nonstatutory Stock Options and, except as otherwise provided herein, will be subject to the other terms and conditions of the Plan.

(b) No Discretion. No person will have any discretion to select which Outside Directors will be granted Options under this Section or to determine the number of Shares to be covered by such Options (except as provided in Sections 10(f) and 13).

(c) First Option. Each person who first becomes an Outside Director following the Registration Date will be automatically granted an Option to purchase 30,000 Shares (the “First Option”) on or about the date on which such person first becomes an Outside Director, whether through election by the stockholders of the Company or appointment by the Board to fill a vacancy; provided, however, that an Inside Director who ceases to be an Inside Director, but who remains a Director, will not receive a First Option.

(d) Subsequent Option. Each Outside Director will be automatically granted an Option to purchase 10,000 Shares (a “Subsequent Option”) on each date of the annual meeting of the stockholders of the Company beginning in 2005, if as of such date, he or she will have served on the Board for at least the preceding six (6) months.

(e) Terms. The terms of each Option granted pursuant to this Section will be as follows:

(i) The term of the Option will be ten (10) years.

(ii) The exercise price per Share will be 100% of the Fair Market Value per Share on the date of grant of the Option.

(iii) Subject to Section 14, the First Option will vest and become exercisable as to 1/3rd of the Shares subject to such First Option on each anniversary of its date of grant, provided that the Participant continues to serve as a Director through each such date.

(iv) Subject to Section 14, the Subsequent Option will vest and become exercisable as to 100% of the Shares subject to such Option on the third anniversary of its date of grant, provided that the Participant continues to serve as a Director through such date.

(f) Amendment. The Administrator in its discretion may change the number of Shares subject to the First Options and Subsequent Options.

11. Leaves of Absence. Unless the Administrator provides otherwise, vesting of Awards granted hereunder will be suspended during any unpaid leave of absence. A Service Provider will 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, or any Subsidiary. For purposes of Incentive Stock Options, no such leave may exceed ninety (90) 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, then three months following the 91st day of such leave any Incentive Stock Option held by the Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

12. Transferability of Awards. Unless determined otherwise by the Administrator, an Award 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 Participant, only by the Participant. If the Administrator makes an Award transferable, such Award will contain such additional terms and conditions as the Administrator deems appropriate.

13. Adjustments; Dissolution or Liquidation; Merger or Change in Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, may (in its sole discretion) adjust the number and class of Shares that may be delivered under the Plan and/or the number, class, and price of Shares covered by each outstanding Award, the numerical Share limits in Sections 3 and 6 of the Plan and the number of Shares issuable pursuant to Section 10.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Award will terminate immediately prior to the consummation of such proposed action.

(c) Change in Control. In the event of a Change in Control, each outstanding Award will 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 Award, the Participant will fully vest in and have the right to exercise all of his or her outstanding Options and Stock Appreciation Rights, including Shares as to which such Awards would not otherwise be vested or exercisable, all restrictions on Restricted Stock shall lapse, and, with respect to Performance Shares and Performance Units, all performance goals will be deemed achieved at target levels and all other terms and conditions met. In addition, if an Option or Stock Appreciation Right becomes fully vested and exercisable in lieu of assumption or substitution in the event of a Change in Control, the Administrator will notify the Participant in writing or electronically that the Option or Stock Appreciation Right will be fully vested and exercisable for a period of time determined by the Administrator in its sole discretion, and the Option or Stock Appreciation Right will terminate upon the expiration of such period.

With respect to Awards granted to an Outside Director that are assumed or substituted for, if on the date of or following such assumption or substitution the Participant's status as a Director or a director of the successor corporation, as applicable, is terminated other than upon a voluntary resignation by the Participant, then the Participant will fully vest in and have the right to exercise Options and/or Stock Appreciation Rights as to all of the Optioned Stock, including Shares as to which such Awards would not otherwise be vested or exercisable, all restrictions on Restricted Stock shall lapse, and, with respect to Performance Shares and Performance Units, all performance goals will be deemed achieved at target levels and all other terms and conditions met.

For the purposes of this subsection (c), an Award will be considered assumed if, following the Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) or, in the case of a Stock Appreciation Right upon the exercise of which the Administrator determines to pay cash or a Performance Share or Performance Unit which the Administrator can determine to pay in cash, the fair market value of the consideration received in the merger or Change in Control 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 Change in Control 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 an Option or Stock Appreciation Right or upon the payout of a Performance Share or Performance Unit, for each Share subject to such Award (or in the case of Performance Units, the number of implied shares determined by dividing the value of the Performance Units by the per share consideration received by holders of Common Stock in the Change in Control), 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 Change in Control.

Notwithstanding anything in this Section 13(c) to the contrary, an Award that vests, is earned or paid-out upon the satisfaction of one or more performance goals will not be considered

assumed if the Company or its successor modifies any of such performance goals without the Participant's consent; provided, however, a modification to such performance goals only to reflect the successor corporation's post-Change in Control corporate structure will not be deemed to invalidate an otherwise valid Award assumption.

14. No Effect on Employment or Service. Neither the Plan nor any Award will confer upon a Participant any right with respect to continuing the Participant's relationship as a Service Provider with the Company, nor will they interfere in any way with the Participant's right or the Company's right to terminate such relationship at any time, with or without cause, to the extent permitted by Applicable Laws.

15. Date of Grant. The date of grant of an Award will be, for all purposes, the date on which the Administrator makes the determination granting such Award, or such other later date as is determined by the Administrator. Notice of the determination will be provided to each Participant within a reasonable time after the date of such grant.

16. Term of Plan. Subject to Section 20 of the Plan, the Plan will become effective upon its adoption by the Board. It will continue in effect for a term of ten (10) years unless terminated earlier under Section 17 of the Plan.

17. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Company will obtain stockholder 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 will impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Company. Termination of the Plan will not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

18. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares will not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares will comply with Applicable Laws and will 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 Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

19. 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, will relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority will not have been obtained.

20. Stockholder Approval. The Plan will be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted. Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws.

Exhibit 10.4

CUTERA, INC.

2004 EMPLOYEE STOCK PURCHASE PLAN

The following constitutes the provisions of the 2004 Employee Stock Purchase Plan of Cutera, Inc.

1. Purpose. The purpose of the Plan is to provide Employees with an opportunity to purchase Common Stock through accumulated payroll deductions. It is the intention of the Company to have the Plan qualify as an "employee stock purchase plan" under Section 423 of the Code. The provisions of the Plan, accordingly, shall be construed so as to extend and limit Plan participation in a manner that is consistent with the requirements of that section of the Code.

2. Definitions.

(a) "Administrator" means the Board or any committee thereof designated by the Board in accordance with Section 14.

(b) "Board" means the Board of Directors of the Company.

(c) "Change of Control" means the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or

(iii) The consummation of a merger or consolidation of the Company, with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company, or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(iv) A change in the composition of the Board, as a result of which fewer than a majority of the Directors are Incumbent Directors. "Incumbent Directors" means Directors who either (A) are Directors as of the effective date of the Plan (pursuant to Section 23), or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of those Directors whose election or nomination was not in connection with any transaction described in subsections (i), (ii) or (iii) or in connection with an actual or threatened proxy contest relating to the election of Directors of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein shall be a reference to any successor or amended section of the Code.

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

(f) "Company" means Cutera, Inc., a Delaware corporation.

(g) "Compensation" means an Employee's base straight time gross earnings, commissions (to the extent such commissions are an integral, recurring part of compensation), overtime and shift premium, but exclusive of payments for incentive compensation, bonuses and other compensation.

(h) "Designated Subsidiary" means any Subsidiary that has been designated by the Administrator from time to time in its sole discretion as eligible to participate in the Plan.

(i) "Director" means a member of the Board.

(j) "Employee" means any individual who is a common law employee of an Employer and is customarily employed for at least twenty (20) hours per week and more than five (5) months in any calendar year by the Employer. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Employer. Where the period of leave exceeds ninety (90) days and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the 91st day of such leave.

(k) "Employer" means any one or all of the Company and its Designated Subsidiaries.

(l) "Enrollment Date" means the first Trading Day of each Offering Period.

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

(n) "Exercise Date" means the first Trading Day on or after May 1 and November 1 of each year. The first Exercise Date under the Plan shall be November 1, 2004.

(o) "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 the Common Stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the date of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable, or;

(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 of the closing bid and asked prices for the Common Stock on the date of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable, or;

(iii) In the absence of an established market for the Common Stock, its Fair Market Value shall be determined in good faith by the Administrator, or;

(iv) For purposes of the Enrollment Date of the first Offering Period under the Plan, the Fair Market Value shall be the initial price to the public as set forth in the final prospectus deemed to be included within the registration statement on Form S-1 filed with the Securities and Exchange Commission for the initial public offering of the Common Stock (the "Registration Statement").

(p) "Offering Periods" means the periods of approximately twelve (12) months during which an option granted pursuant to the Plan may be exercised, commencing on the first Trading Day on or after May 1 and November 1 of each year and terminating on the first Trading Day on or after the May 1 and November 1 Offering Period commencement date approximately twelve months later; provided, however, that the first Offering Period under the Plan shall commence with the first Trading Day on or after the date on which the Securities and Exchange Commission declares the Company's Registration Statement effective and ending on the first Trading Day on or after the earlier of (i) May 1, 2005 or (ii) twenty-seven (27) months from the beginning of the first Offering Period; and provided, further, that the second Offering Period under the Plan shall commence on May 1, 2004. The duration and timing of Offering Periods may be changed pursuant to Section 4 of this Plan.

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

(r) "Plan" means this 2004 Employee Stock Purchase Plan.

(s) "Purchase Period" means the approximately six (6) month period commencing on one Exercise Date and ending with the next Exercise Date, except that the first Purchase Period of any Offering Period shall commence on the Enrollment Date and end with the next Exercise Date.

(t) "Purchase Price" means an amount equal to eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower; provided however, that the Purchase Price may be adjusted by the Administrator pursuant to Section 20.

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

(v) "Trading Day" means a day on which the U.S. national stock exchanges and the Nasdaq System are open for trading.

3. Eligibility.

(a) First Offering Period. Any individual who is an Employee immediately prior to the first Offering Period under the Plan shall be automatically enrolled in the first Offering Period.

(b) Subsequent Offering Periods. Any individual who is an Employee as of the Enrollment Date of any future Offering Period shall be eligible to participate in such Offering Period, subject to the requirements of Section 5.

(c) Limitations. Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) to the extent that, immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or any Parent or Subsidiary of the Company and/or hold outstanding options to purchase such stock possessing five percent (5%) or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Parent or Subsidiary of the Company, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans (as defined in Section 423 of the Code) of the Company or any Parent or Subsidiary of the Company accrues at a rate which exceeds twenty-five thousand dollars ($25,000) worth of stock (determined at the Fair Market Value of the stock at the time such option is granted) for each calendar year in which such option is outstanding at any time.

4. Offering Periods. The Plan shall be implemented by consecutive, overlapping Offering Periods with a new Offering Period commencing on the first Trading Day on or after May 1 and November 1 of each year, or on such other date as the Administrator shall determine, and continuing thereafter until terminated in accordance with Section 20; provided, however, that the first Offering Period under the Plan shall commence with the first Trading Day on or after the date on which the Securities and Exchange Commission declares the Company's Registration Statement effective and ending on the first Trading Day on or after the earlier of (i) May 1, 2005 or (ii) twenty-seven (27) months from the beginning of the first Offering Period; and provided, further, that the second Offering Period under the Plan shall commence on May 1, 2004. The Administrator shall have the power to change the duration of Offering Periods (including the commencement dates thereof) with respect to future offerings without stockholder approval if such change is announced prior to the scheduled beginning of the first Offering Period to be affected thereafter.

5. Participation.

(a) First Offering Period. An Employee who has become a participant in the first Offering Period under the Plan pursuant to Section 3(a) shall be entitled to continue his or her participation in such Offering Period only if he or she submits to the Company's payroll office (or its designee) a properly completed subscription agreement authorizing payroll deductions in the form provided by the Administrator for such purpose (i) no earlier than the effective date of the filing of the Company's Registration Statement on Form S-8 with respect to the shares of Common Stock issuable under the Plan (the "Effective Date") and (ii) no later than five (5) business days from the Effective Date or such other period of time as the Administrator may determine (the "Enrollment Window"). A participant's failure to submit the subscription agreement during the Enrollment Window pursuant to this Section 5(a) shall result in the automatic termination of his or her participation in the first Offering Period under the Plan.

(b) Subsequent Offering Periods. An Employee who is eligible to participate in the Plan pursuant to Section 3(b) may become a participant by (i) submitting to the Company's payroll office (or its designee), on or before a date prescribed by the Administrator prior to an applicable Enrollment Date, a properly completed subscription agreement authorizing payroll deductions in the form provided by the Administrator for such purpose, or (ii) following an electronic or other enrollment procedure prescribed by the Administrator.

6. Payroll Deductions.

(a) At the time a participant enrolls in the Plan pursuant to Section 5, he or she shall elect to have payroll deductions made on each payday during the Offering Period in an amount not exceeding 15% of the Compensation which he or she receives on each such payday.

(b) Payroll deductions authorized by a participant shall commence on the first payday following the Enrollment Date and shall end on the last payday in the Offering Period to which such authorization is applicable, unless sooner terminated by the participant as provided in Section 10; provided, however, that for the first Offering Period under the Plan, payroll deductions shall commence on the first payday on or following the end of the Enrollment Window.

(c) All payroll deductions made for a participant shall be credited to his or her account under the Plan and shall be withheld in whole percentages only. A participant may not make any additional payments into such account.

(d) A participant may discontinue his or her participation in the Plan as provided in Section 10, or may change the rate of his or her payroll deductions during the Offering Period by (i) properly completing and submitting to the Company's payroll office (or its designee), on or before a date prescribed by the Administrator prior to an applicable Exercise Date, a new subscription agreement authorizing the change in payroll deduction rate in the form provided by the Administrator for such purpose, or (ii) following an electronic or other procedure prescribed by the Administrator; provided, however, that a participant may only make one payroll deduction change during each Purchase Period. If a participant has not followed such procedures to change the rate of payroll deductions, the rate of his or her payroll deductions shall continue at the originally elected rate throughout the Offering Period and future Offering Periods (unless terminated as provided in Section 10). The Administrator may, in its sole discretion, limit the nature and/or number of payroll deduction rate changes that may be made by participants during any Offering Period. Any change in payroll deduction rate made pursuant to this Section 6(d) shall be effective as of the first full payroll period following five (5) business days after the date on which the change is made by the participant (unless the Administrator, in its sole discretion, elects to process a given change in payroll deduction rate more quickly).

(e) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(c), a participant's payroll deductions may be decreased to zero percent (0%) at any time during a Purchase Period. Payroll deductions shall recommence at the rate originally elected by the participant effective as of the beginning of the first Purchase Period which is scheduled to end in the following calendar year, unless terminated by the participant as provided in Section 10.

(f) At the time the option is exercised, in whole or in part, or at the time some or all of the Company's Common Stock issued under the Plan is disposed of, the participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock. At any time, the Company may, but shall not be obligated to, withhold from the participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to the sale or early disposition of Common Stock by the Employee.

7. Grant of Option. On the Enrollment Date of each Offering Period, each Employee participating in such Offering Period shall be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of shares of Common Stock determined by dividing such participant's payroll deductions accumulated prior to such Exercise Date and retained in the participant's account as of the Exercise Date by the applicable Purchase Price; provided that in no event shall a participant be permitted to purchase during each Purchase Period more than 2,500 shares of Common Stock (subject to any adjustment pursuant to Section 19), and provided further that such purchase shall be subject to the limitations set forth in Sections 3(c) and 13. The Employee may accept the grant of such option (i) with respect to the first Offering Period under the Plan, by submitting a properly completed subscription agreement in accordance with the requirements of Section 5(a) on or before the last day of the Enrollment Window, and (ii) with respect to any future Offering Period under the Plan, by electing to participate in the Plan in accordance with the requirements of Section 5(b). The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of shares of Common Stock that a participant may purchase during each Purchase Period of such Offering Period. Exercise of the option shall occur as provided in Section 8, unless the participant has withdrawn pursuant to Section 10. The option shall expire on the last day of the Offering Period.

8. Exercise of Option.

(a) Unless a participant withdraws from the Plan as provided in Section 10, his or her option for the purchase of shares of Common Stock shall be exercised automatically on the Exercise Date, and the maximum number of full shares subject to option shall be purchased for such participant at the applicable Purchase Price with the accumulated payroll deductions in his or her account. No fractional shares of Common Stock shall be purchased; any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full share shall be retained in the participant's account for the subsequent Purchase Period or Offering Period, subject to earlier withdrawal by the participant as provided in Section 10. Any other monies left over in a participant's account after the Exercise Date shall be returned to the participant. During a participant's lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

(b) Notwithstanding any contrary Plan provision, if the Administrator determines that, on a given Exercise Date, the number of shares of Common Stock with respect to which options are to be exercised may exceed (i) the number of shares of Common Stock that were available for sale under the Plan on the Enrollment Date of the applicable Offering Period, or (ii) the number of shares of Common Stock available for sale under the Plan on such Exercise Date, the Administrator may in its sole discretion (x) provide that the Company shall make a pro rata allocation of the shares

of Common Stock available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and continue all Offering Periods then in effect, or (y) provide that the Company shall make a pro rata allocation of the shares of Common Stock available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and terminate any or all Offering Periods then in effect pursuant to Section 20. The Company may make pro rata allocation of the shares of Common Stock available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional shares of Common Stock for issuance under the Plan by the Company's shareholders subsequent to such Enrollment Date.

9. Delivery. As soon as administratively practicable after each Exercise Date on which a purchase of shares of Common Stock occurs, the Company shall arrange the delivery to each participant, as appropriate, the shares purchased upon exercise of his or her option in a form determined by the Administrator (in its sole discretion) and pursuant to rules established by the Administrator. No participant shall have any voting, dividend, or other shareholder rights with respect to shares of Common Stock subject to any option granted under the Plan until such shares have been purchased and delivered to the participant as provided in this Section 9.

10. Withdrawal.

(a) Under procedures established by the Administrator, a participant may withdraw all but not less than all the payroll deductions credited to his or her account and not yet used to exercise his or her option under the Plan at any time by (i) submitting to the Company's payroll office (or its designee) a written notice of withdrawal in the form prescribed by the Administrator for such purpose, or (ii) following an electronic or other withdrawal procedure prescribed by the Administrator. All of the participant's payroll deductions credited to his or her account shall be paid to such participant as promptly as practicable after the effective date of his or her withdrawal and such participant's option for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of shares shall be made for such Offering Period. If a participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the succeeding Offering Period unless the participant re-enrolls in the Plan in accordance with the provisions of Section 5.

(b) A participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan which may hereafter be adopted by the Company or in succeeding Offering Periods which commence after the termination of the Offering Period from which the participant withdraws.

11. Termination of Employment. Upon a participant's ceasing to be an Employee, for any reason, he or she shall be deemed to have elected to withdraw from the Plan and the payroll deductions credited to such participant's account during the Offering Period but not yet used to purchase shares of Common Stock under the Plan shall be returned to such participant or, in the case of his or her death, to the person or persons entitled thereto under Section 15, and such participant's option shall be automatically terminated. The preceding sentence notwithstanding, a participant who

receives payment in lieu of notice of termination of employment shall be treated as continuing to be an Employee for the participant's customary number of hours per week of employment during the period in which the participant is subject to such payment in lieu of notice.

12. Interest. No interest shall accrue on the payroll deductions of a participant in the Plan.

13. Stock.

(a) Subject to adjustment upon changes in capitalization of the Company as provided in Section 19, the maximum number of shares of Common Stock which shall be made available for sale under the Plan shall be 200,000 shares of Common Stock plus an annual increase to be added on the first day of the Company's fiscal year beginning in fiscal year 2004, equal to the lesser of (i) 600,000 shares of Common Stock, (ii) 2% of the outstanding shares of Common Stock on such date or (iii) an amount determined by the Board.

(b) Shares of Common Stock to be delivered to a participant under the Plan shall be registered in the name of the participant or in the name of the participant and his or her spouse.

14. Administration. The Board or a committee of members of the Board who shall be appointed from time to time by, and shall serve at the pleasure of, the Board, shall administer the Plan. The Administrator shall have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility, to adjudicate all disputed claims filed under the Plan and to establish such procedures that it deems necessary for administration of the Plan (including, without limitation, to adopt such procedures and sub-plans as are necessary or appropriate to permit the participation in the Plan by employees who are foreign nationals or employed outside the United States). The Administrator, in its sole discretion and on such terms and conditions as it may provide, may delegate to one or more individuals all or any part of its authority and powers under the Plan. Every finding, decision and determination made by the Administrator (or its designee) shall, to the full extent permitted by law, be final and binding upon all parties.

15. Designation of Beneficiary.

(a) A participant may designate a beneficiary who is to receive any shares of Common Stock and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such participant of such shares and cash. In addition, a participant may designate a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to exercise of the option. If a participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the participant at any time. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

(c) All beneficiary designations under this Section 15 shall be made in such form and manner as the Administrator may prescribe from time to time.

16. Transferability. Neither payroll deductions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares of Common Stock under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw from an Offering Period in accordance with Section 10.

17. Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions. Until shares of Common Stock are issued under the Plan (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), a participant shall only have the rights of an unsecured creditor with respect to such shares.

18. Reports. Individual accounts shall be maintained for each participant in the Plan. Statements of account shall be given to participating Employees at least annually, which statements shall set forth the amounts of payroll deductions, the Purchase Price, the number of shares of Common Stock purchased and the remaining cash balance, if any.

19. Adjustments, Dissolution, Liquidation or Change of Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Common Stock or other securities of the Company, or other change in the corporate structure of the Company affecting the Common Stock such that an adjustment is determined by the Administrator (in its sole discretion) to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Administrator shall, in such manner as it may deem equitable, adjust the number and class of Common Stock which may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised, and the numerical limits of Sections 7 and 13.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Offering Period then in progress shall be shortened by setting a new Exercise Date (the "New Exercise Date"), and shall terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Board. The New Exercise Date shall be before the date of the Company's proposed dissolution or liquidation. The Board shall notify each participant in writing, at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for the participant's option has been changed to the New Exercise Date and that the participant's option shall be exercised automatically on the New Exercise Date, unless prior to such date the participant has withdrawn from the Offering Period as provided in Section 10.

(c) Change of Control. In the event of a Change of Control, each outstanding option shall be assumed or an equivalent option 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, any Purchase Periods then in progress shall be shortened by setting a new Exercise Date (the "New Exercise Date") and any Offering Periods then in progress shall end on the New Exercise Date. The New Exercise Date shall be before the date of the Company's proposed Change of Control. The Board shall notify each participant in writing, at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for the participant's option has been changed to the New Exercise Date and that the participant's option shall be exercised automatically on the New Exercise Date, unless prior to such date the participant has withdrawn from the Offering Period as provided in Section 10.

20. Amendment or Termination.

(a) The Administrator may at any time and for any reason terminate or amend the Plan. Except as provided in Section 19, no such termination can affect options previously granted under the Plan, provided that an Offering Period may be terminated by the Administrator on any Exercise Date if the Administrator determines that the termination or suspension of the Plan is in the best interests of the Company and its stockholders. Except as provided in Section 19 and this Section 20, no amendment may make any change in any option theretofore granted which adversely affects the rights of any participant. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision or any other applicable law, regulation or stock exchange rule), the Company shall obtain stockholder approval in such a manner and to such a degree as required.

(b) Without stockholder consent and without regard to whether any participant rights may be considered to have been "adversely affected," the Administrator shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable which are consistent with the Plan.

(c) In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Board may, in its discretion and, to the extent necessary or desirable, modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(i) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price;

(ii) shortening any Offering Period so that Offering Period ends on a new Exercise Date, including an Offering Period underway at the time of the Board action; and

(iii) allocating shares.

Such modifications or amendments shall not require stockholder approval or the consent of any Plan participants.

21. Notices. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

22. Conditions Upon Issuance of Shares. Shares of Common Stock shall not be issued with respect to an option under the Plan unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder, the Exchange Act and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company 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 by any of the aforementioned applicable provisions of law.

23. Term of Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the stockholders of the Company. It shall continue in effect for a term of twenty(20) years, unless sooner terminated under Section 20.

24. Automatic Transfer to Low Price Offering Period. To the extent permitted by any applicable laws, regulations, or stock exchange rules if the Fair Market Value of the Common Stock on any Exercise Date in an Offering Period is lower than the Fair Market Value of the Common Stock on the Enrollment Date of such Offering Period, then all participants in such Offering Period shall be automatically withdrawn from such Offering Period immediately after the exercise of their option on such Exercise Date and automatically re-enrolled in the immediately following Offering Period.

SAMPLE SUBSCRIPTION AGREEMENT

CUTERA, INC.

2004 EMPLOYEE STOCK PURCHASE PLAN

SUBSCRIPTION AGREEMENT

_____ Original Application Offering Date:_____
_____ Change in Payroll Deduction Rate
_____ Change of Beneficiary(ies)

1. _____ hereby elects to participate in the Cutera, Inc. 2004 Employee Stock Purchase Plan (the "Plan") and subscribes to purchase shares of the Company's Common Stock in accordance with this Subscription Agreement and the Plan.
2. I hereby authorize payroll deductions from each paycheck in the amount of ____% of my Compensation on each payday (from 0 to 15%) during the Offering Period in accordance with the Plan. (Please note that no fractional percentages are permitted.)
3. I understand that said payroll deductions shall be accumulated for the purchase of shares of Common Stock at the applicable Purchase Price determined in accordance with the Plan. I understand that if I do not withdraw from an Offering Period, any accumulated payroll deductions will be used to automatically exercise my option.
4. I have received a copy of the complete Plan. I understand that my participation in the Plan is in all respects subject to the terms of the Plan. I understand that my ability to exercise the option under this Subscription Agreement is subject to shareholder approval of the Plan.
5. Shares of Common Stock purchased for me under the Plan should be issued in the name(s) of Employee or Employee and Spouse only.
6. I understand that if I dispose of any shares received by me pursuant to the Plan within 2 years after the Offering Date (the first day of the Offering Period during which I purchased such shares) or one year after the Exercise Date, I will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in an amount equal to the excess of the fair market value of the shares at the time such shares were purchased by me over the price which I paid for the shares. I hereby agree to notify the Company in writing within 30 days after the date of any disposition of my shares and I will make adequate provision for Federal, state or other tax withholding obligations, if any, which arise upon the disposition of the Common Stock. The Company may, but will not be obligated to, withhold from my compensation the amount necessary to meet any applicable withholding obligation including any withholding necessary to make available to the Company any tax deductions or

benefits attributable to sale or early disposition of Common Stock by me. If I dispose of such shares at any time after the expiration of the 2-year and 1-year holding periods, I understand that I will be treated for federal income tax purposes as having received income only at the time of such disposition, and that such income will be taxed as ordinary income only to the extent of an amount equal to the lesser of (1) the excess of the fair market value of the shares at the time of such disposition over the purchase price which I paid for the shares, or (2) 15% of the fair market value of the shares on the first day of the Offering Period. The remainder of the gain, if any, recognized on such disposition will be taxed as capital gain.

7. I hereby agree to be bound by the terms of the Plan. The effectiveness of this Subscription Agreement is dependent upon my eligibility to participate in the Plan.

8. In the event of my death, I hereby designate the following as my beneficiary(ies) to receive all payments and/or shares due me under the Plan:

NAME: (Please print) _____

(First) (Middle) (Last)

_____ _____

Relationship

_____ _____

Percentage Benefit (Address)

NAME: (please print) _____

(First) (Middle) (Last)

_____ _____

Relationship

_____ _____

Percentage of Benefit (Address)

Employee's Social Security Number: _____

Employee's Address: _____

_____

_____

I UNDERSTAND THAT THIS SUBSCRIPTION AGREEMENT SHALL REMAIN IN EFFECT THROUGHOUT SUCCESSIVE OFFERING PERIODS UNLESS TERMINATED BY ME.

Dated: _____

_____

Signature of Employee

_____

Spouse's Signature (If beneficiary other than spouse)

SAMPLE WITHDRAWAL NOTICE

CUTERA, INC.

2004 EMPLOYEE STOCK PURCHASE PLAN

NOTICE OF WITHDRAWAL

The undersigned participant in the Offering Period of the Cutera, Inc. 2004 Employee Stock Purchase Plan which began on _____, _____ (the "Offering Date") hereby notifies the Company that he or she hereby withdraws from the Offering Period. He or she hereby directs the Company to pay to the undersigned as promptly as practicable all the payroll deductions credited to his or her account with respect to such Offering Period. The undersigned understands and agrees that his or her option for such Offering Period will be automatically terminated. The undersigned understands further that no further payroll deductions will be made for the purchase of shares in the current Offering Period and the undersigned shall be eligible to participate in succeeding Offering Periods only by delivering to the Company a new Subscription Agreement.

Name and Address of Participant:

_____

_____

_____

Signature:

_____

Date: _____

EXHIBIT D

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

ALTUS MEDICAL, INC.

November 12, 1999

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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.

By: /s/ Kevin 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
Managing Member of MedVenture Associates Management III Co., L.L.C.
Title: 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: Annette J. Campbell-White
Title: Managing Member of MedVenture Associates 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
Furbershaw Revocable Trust **Gerard A. Furbershaw** **Michelle A.B. Furbershaw** 214 Pope Street Menlo Park, CA 94025	20,000	$ 20,000

Investors	Series A Preferred Stock	Purchase Price
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.	1,439,759	$ 1,439,759
MedVen Affiliates III, L.P. 4 Orinda Way, Building D, #150 Orinda, CA 94563 Attn: Annette J. Campbell-White	61,241	$ 61,241
Nur Owen Premo 544 South Eighth Street San Jose, CA 95112	100,000	$ 100,000
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

Investors	Series A Preferred Stock	Purchase Price
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

Investors	Series B Preferred Stock	Purchase Price
Alta Embarcadero Partners II, LLC 1 Embarcadero Center Suite 4050 San Francisco, CA 94111	17,154	$ 34,308
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 10.6

BRISBANE TECHNOLOGY PARK

LEASE

by and between

GAL-BRISBANE, L.P., a California limited partnership

as Landlord

and

ALTUS MEDICAL, INC.

as Tenant

TABLE OF CONTENTS

LEASE SUMMARY

Lease Date:	_____, 2003
Landlord:	**GAL-BRISBANE, L.P.,** a California limited partnership
Landlord's Address:	c/o Stuhlmuller Property Company 4055 Bohannon Drive Menlo Park, CA 94025 Attn: Mr. Roger Stuhlmuller Telephone: (650) 321-5900 Fax No.: (650) 321-5933
Tenant:	**ALTUS MEDICAL, INC.,** a Delaware corporation
Tenant's Address:	
Prior to the Commencement Date:	**Altus Medical, Inc.** 821 Cowan Road Burlingame, CA 94010 Attn: President Fax No: (650) 552-9787 With copy to: Altus Medical, Inc. 821 Cowan Road Burlingame, CA 94010 Attn: General Counsel Telephone: (650) 259-5520 Fax No: (309) 218-0641
After the Commencement Date:	3240 Bayshore Boulevard Brisbane, CA 94005 Attn: President With copy to: Altus Medical, Inc. 3240 Bayshore Boulevard Brisbane, CA 94005 Attn: General Counsel

Premises:	The Premises consists of approximately sixty-six thousand and two (66,002) rentable square feet of space in the building (the "Building") located at 3240 Bayshore Boulevard in Brisbane, California.
Premises Address:	3240 Bayshore Blvd., Brisbane, California 94005
Project:	That certain office and research and development business park commonly known as Brisbane Technology Park and more particularly described in Exhibit B attached hereto. The Project consists of the Building, two (2) other buildings located at 3260 and 3280 Bayshore Boulevard, adjacent parking areas, landscaping and related improvements and contains approximately one hundred eighty-three thousand three hundred forty-four (183,344) rentable square feet of space.
Tenant's Project Percentage:	A percentage equal to the rentable square footage of the Premises divided by the rentable square footage of the Project (i.e., 66,002/183,344 = 36%).
Commencement Date:	See Section 2
Estimated Delivery Date:	October 15, 2003
Alternate Delivery Date:	January 1, 2004
Term:	One hundred twenty (120) full calendar months and any partial calendar month at the commencement of the Term.
Initial Base Rent:	Forty Thousand Dollars ($40,000) per month, subject to adjustment pursuant to Section 3(a)(ii).
Security Deposit:	One Hundred Twenty Thousand Dollars ($120,000)
Landlord's Broker:	BT Commercial Real Estate (Mr. Mike Connor)
Tenant's Broker:	Commercial Property Services (Mr. Dan Hollingsworth and Mr. Todd Beatty)

BRISBANE TECHNOLOGY PARK

LEASE

THIS LEASE (this "Lease"), dated as of August 5, 2003, is entered into by and between **GAL-BRISBANE, L.P.**, a California limited partnership ("Landlord"), and **ALTUS MEDICAL, INC.**, a Delaware corporation ("Tenant").

1. PREMISES

(a) Leased Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises (the "Premises") located in the Project (defined below) consisting of approximately sixty-six thousand and two (66,002) rentable square feet of space, as shown on Exhibit A attached hereto, in that certain building (the "Building") located at 3240 Bayshore Boulevard in Brisbane, California. The Premises are located within that certain office and research and development business park commonly known as Brisbane Technology Park (the "Project"), and more particularly described in Exhibit B attached hereto. The Project consists of the Building, two (2) other office buildings located at 3260 and 3280 Bayshore Boulevard (collectively, the "Other Buildings"), adjacent parking areas, landscaping and related improvements. The total rentable square footage of the Project is approximately one hundred eighty-three thousand three hundred forty-four (183,344) rentable square feet.

(b) Project Common Areas. Tenant's right to use the Project Common Areas (as hereinafter defined) is a right in common with other tenants of the Project, if any. For purposes of this Lease, the term "Project Common Areas" shall mean all areas and facilities within the Project provided and designated by Landlord for the general use, convenience or benefit of Tenant and other tenants and occupants of the Project (excluding space in the Building and the Other Buildings), including, but not limited to, parking areas, access and perimeter roads, sidewalks, landscaped areas, service areas, trash disposal facilities and similar areas. Tenant's right to use the Project Common Areas is subject to the reasonable rules and regulations and reasonable changes therein from time to time made by Landlord governing the use of the Project Common Areas. Landlord shall at all times have exclusive control of the Project Common Areas and may at any time temporarily close any part thereof, exclude and restrain anyone from any part thereof, and/or temporarily or permanently change the size, configuration, composition and/or location of the Project Common Areas. Specifically, Landlord shall have the right from time to time during the Lease Term (as hereinafter defined) to (a) grant easements within the boundaries of the Project, (b) modify the parking areas and ingress and egress to and from the parking areas and the buildings located within the Project, (c) modify the directional flow of traffic in the Project, (d) make alterations or additions to the Building, the Other Buildings and any other buildings located within the Project, (e) install, maintain, use, repair and replace pipes, ducts, conduits and wires, leading through, under or over the Premises to locations serving other parts of the Project and (f) subdivide the Project into two or more legal parcels and enter into and record against the Project covenants, conditions and restrictions (the "CC&Rs") and/or easement agreements (the "Easement Agreements"). Tenant's right to occupy and use the Premises pursuant to this Lease and Tenant's interest in the Project shall be subject and subordinate to any CC&Rs and Easement Agreements entered into by Landlord; provided, however, Tenant shall have the right to review and approve (which approval shall not be unreasonably withheld) such

CC&Rs and/or Easements Agreements prior to this Lease and Tenant's interest in the Project becoming subject and subordinate to such CC&Rs and/or Easement Agreements. Landlord also reserves the right to expand or contract the area of the Project, to make alterations thereof or additions thereto and to construct and install additional buildings and other improvements within the Project; provided, however that in such case, Tenant's Project Percentage (as hereinafter defined) shall be proportionately adjusted. The preceding to the contrary notwithstanding, Landlord agrees that it shall not make any changes, alterations or improvements to the Project Common Areas or any other portion of the Project as provided above if the same would (i) materially impair or adversely affect Tenant's access to or use of the Premises, or any portion thereof, (ii) reduce the number of parking spaces allocated to Tenant for Tenant's use or reduce the number of parking spaces in the Project Common Areas below those required by local ordinance or code, or (iii) result in any increased costs on Tenant.

2. LEASE TERM

(a) Term. The term of this Lease shall be a period of approximately ten (10) years, commencing on the Commencement Date (defined in Section 2(b)) and ending, unless earlier terminated pursuant to the terms of this Lease, on the last day of the one hundred twentieth (120th) full calendar month after the Commencement Date (the "Expiration Date"). Such period, as the same may be extended pursuant to the terms hereof, shall be referred to hereinafter as the "Lease Term."

(b) Commencement Date; Delivery Dates.

(i) Commencement Date. For purposes of this Lease, the "Commencement Date" shall be October 15, 2003 (the "Estimated Delivery Date"); provided, however, if Landlord fails to substantially complete Landlord's Work (as defined in the Work Letter Agreement attached hereto as Exhibit C) and deliver possession of the Premises to Tenant by the Estimated Delivery Date, then the Commencement Date shall be the later to occur of (i) January 1, 2004 (the "Alternate Delivery Date") or (ii) the date on which Landlord substantially completes Landlord's Work and delivers possession of the Premises to Tenant.

(ii) Delay in Delivery. If Landlord has not substantially completed Landlord's Work and delivered possession of the Premises to Tenant by the Alternate Delivery Date for any reason other than a Tenant Delay (as defined in the Work Letter Agreement), then this Lease shall remain in effect and Tenant shall receive a credit against the Base Rent otherwise payable under the Lease from and after the Commencement Date in an amount equal to $1,333.33 per day for each day of the delay in delivering the Premises in the required condition beyond the Alternate Delivery Date. The parties agree that such amount represents a fair and reasonable estimate of the damages that Tenant will incur by reason of the late completion of the Landlord's Work. Except as otherwise provided in this Section 2, Landlord shall not be liable to Tenant for any loss or damage resulting from any failure of Landlord to substantially completed Landlord's Work and deliver possession of the Premises to Tenant by the Estimated Delivery Date or Alternate Delivery Date and this Lease shall remain in effect.

(iii) Tenant Delay. Notwithstanding anything to the contrary contained in this Lease, if Landlord is delayed in substantially completing Landlord's Work as a result of a Tenant Delay, then this Lease shall commence (and Tenant shall be obligated to commence paying Rent) on the day that Landlord would have substantially completed Landlord's Work absent the Tenant Delay as reasonably determined by Landlord. Landlord shall not be entitled to claim a Tenant Delay in substantially completing the Landlord's Work unless Landlord notifies Tenant in writing of such Tenant Delay (describing in detail the nature of such Tenant Delay) within three (3) business days following the date such Tenant Delay commences.

(iv) Force Majeure. If Landlord is delayed in substantially completing Landlord's Work as a result of an event of Force Majeure (as defined in the Work Letter Agreement) and, as a result, Landlord fails to substantially complete Landlord's Work and deliver possession of the Premises to Tenant by the Alternate Delivery Date, then the Alternate Delivery Date shall be extended one day for each day that Landlord is delayed in substantially completing Landlord's Work as a result of an event of Force Majeure. Landlord shall not be entitled to claim a Force Majeure Delay in substantially completing the Landlord's Work unless Landlord notifies Tenant in writing of such Force Majeure Delay (describing in detail the nature of such Force Majeure Delay) within three (3) business days following the date such Force Majeure Delay commences.

(v) Commencement Date Memorandum. Within ten (10) days after the determination of the Commencement Date, Landlord shall prepare and deliver to Tenant a commencement date memorandum (the "Commencement Date Memorandum") in the form of Exhibit D, attached hereto, subject to such changes in the form as may be required to insure the accuracy thereof. The Commencement Date Memorandum shall certify the date on which Landlord delivered possession of the Premises to Tenant and the dates upon which the Lease Term commences and expires. Tenant's failure to execute and deliver to Landlord the Commencement Date Memorandum within ten (10) business days after Tenant's receipt of the Commencement Date Memorandum shall be conclusive upon Tenant as to the matters set forth in the Commencement Date Memorandum.

(vi) Termination Date. If for any reason (including, without limitation, any Force Majeure event(s), but not including any Tenant Delays) the Commencement Date has not occurred by March 31, 2004, then Tenant may elect, in its sole discretion, to terminate this Lease by delivery of written notice of termination prior to the occurrence of the Commencement Date. In the event of such termination, all rights and obligations under this Lease shall cease and Landlord shall promptly return to Tenant all prepaid Base Rent and the Security Deposit.

(vii) Outside Termination Date. If for any reason the Commencement Date has not occurred within two (2) years after the date of this Lease, then this Lease shall automatically terminate and be of no further force or effect and Landlord shall promptly return to Tenant all prepaid Base Rent and the Security Deposit.

(c) Tenant's Early Access. Tenant shall be allowed to enter the Premises during the thirty (30) day period immediately prior to the Commencement Date (as reasonably determined by Landlord) for the purpose of installing Tenant's telephone lines, cabling, furniture, computers and other personal property (hereinafter referred to as the "Installation Work") provided that Tenant provides Landlord with twenty-four (24) hours' prior written notice of its intent to enter the Building. Landlord shall notify Tenant in writing on or about the thirty-fifth

(35th) day prior to the date Landlord reasonably believes the Commencement Date will occur and the Landlord's Work will be substantially completed. Tenant shall not interfere with Landlord's completion of Landlord's Work during Tenant's early occupancy of the Premises; provided, however, Landlord shall reasonably cooperate with Tenant in scheduling and performing Landlord's Work in a manner that enables Tenant to perform the Installation Work during the early entry period. Tenant assumes all risk of loss or damage to Tenant's machinery, equipment, fixtures and other personal property installed or placed in the Premises during the early occupancy period stated above and agrees to waive and release Landlord from any loss or damage to such machinery, equipment, fixtures and personal property except for liability, loss or damage caused by or resulting from the gross negligence or willful misconduct of Landlord or any of its agents, employees, contractors, subcontractors or other representatives. Tenant's early occupancy of the Premises shall be subject to all of the terms and conditions of this Lease except that Tenant shall not be obligated to pay any Base Rent, Operating Expenses, Real Property Taxes or Project Property Insurance during the early occupancy period.

3. RENT

(a) Base Rent.

(i) Initial Base Rent. Commencing on the Commencement Date, and continuing thereafter until the Expiration Date or earlier termination of this Lease, Tenant shall pay to Landlord, subject to Section 2(b)(ii) above and subject to adjustment as provided in Section 3(a)(ii) below, base rent (the "Base Rent") for the Premises in the amount of Forty Thousand Dollars ($40,000) per month. Base Rent shall be paid in advance on the first day of each calendar month, in lawful money of the United States, without abatement, deduction, claim, offset, prior notice or demand except as otherwise specifically provided in this Lease. Tenant shall pay to Landlord the first month's Base Rent upon execution of this Lease and such payment shall be applied by Landlord to the first months' Base Rent due hereunder.

(ii) Adjustments. On the first (1st) day of the third Lease Year and on the first day of each Lease Year thereafter (each, an "Adjustment Date") the Base Rent shall be increased to the amount set forth in Section 1 of the Addendum to this Lease, attached hereto and incorporated herein by reference. For purposes of this Lease, the first "Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month of this Lease; provided, however, if the Commencement Date occurs on or between the second (2nd) day and the fifteenth (15th) day of a calendar month, then the first Lease Year shall be the period commencing on the Commencement Date and ending on the last day of the eleventh (11th) full calendar month of this Lease. Thereafter, the term "Lease Year" shall mean a period of twelve (12) full calendar months commencing upon the expiration of the prior Lease Year.

(b) Additional Rent. All monies other than Base Rent that Tenant is required to pay under this Lease, including, without limitation, a portion of repair and maintenance charges pursuant to Section 8, Real Property Taxes pursuant to Section 10, insurance premiums pursuant to Section 11 and Operating Expenses pursuant to Section 12, shall be deemed "Additional Rent" and shall be paid to Landlord as provided in this Lease. The term "Rent" as used herein shall refer to Base Rent plus any Additional Rent. All Rent shall be paid to Landlord at Landlord's address set forth in the Lease Summary or at such other place designated by Landlord in a written notice to Tenant. No Additional Rent shall accrue under this Lease until on and after the Commencement Date.

(c) Prorations. If the Commencement Date is not the first (1st) day of a calendar month, or if the expiration date of this Lease is not the last day of a calendar month, Base Rent due for the fractional month during which this Lease commences or expires shall be prorated on the basis of the number of days in such calendar month.

4. CONDITION OF PREMISES

Landlord shall deliver possession of the Premises to Tenant in the condition required pursuant to the Work Letter Agreement. In addition, Landlord represents and warrants to Tenant that, as of the Commencement Date, the Premises (including, without limitation, all improvements and building systems therein), the Tenant Improvements (as defined in the Work Letter Agreement) and the Project Common Areas will be in compliance with all applicable Laws (including, without limitation, the Accessibility Requirements described in Section 5(b)(i)(A) below and Title 24 of the California Code of Regulations) and the Building systems and equipment shall be in good working order and repair. In the event of any breach by Landlord of the representation or warranty set forth in the immediately preceding sentence, in addition to all other rights and remedies available to Tenant at law or in equity or under this Lease, Landlord shall diligently undertake to cure such breach at Landlord's sole cost (and without any reimbursement by Tenant or pass-through of such cost to Tenant). Tenant acknowledges that, except as expressly provided in this Lease and the Work Letter Agreement attached hereto, neither Landlord nor Landlord's authorized agents, partners, members, subsidiaries, directors, officers and/or employees (collectively, "Landlord's Agents") have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord or Landlord's Agents agreed to undertake any Alterations (defined below in Section 7) or construct any improvements in the Premises.

5. USE

(a) Tenant's Use. Tenant may use the Premises solely for office, administration, and research and development purposes and for other legal related uses including, without limitation, assembling, manufacturing, final testing, shipping and receiving of medical device related products, and shall not use the Premises for any other use or purpose. Landlord shall provide Tenant with access to the Building twenty-four hours per day, seven days per week.

(b) Compliance with Laws and Project Rules and Regulations.

(i) Laws.

(A) Tenant's Compliance. Tenant shall not use the Premises or suffer or permit anything to be done in or about the Premises which shall in any way conflict with the requirements of any covenants, conditions and/or restrictions of record as of the date of execution of this Lease, or with any law, statute, zoning restriction, ordinance, order, rule, regulation or requirement of any duly constituted public authorities (including, without limitation, state, municipal, county and federal governments and their departments, bureaus, boards and officials), whether now in force or which may hereafter be in force, applicable to Tenant's use or occupancy of the Premises (collectively, "Laws"), including, without limitation, (i) the San Bruno Mountain Area Habitat Conservation Plan, as amended (the "HCP"), and (ii) that certain Declaration of Covenants and Restrictions on Real Property on San Bruno Mountain. Throughout the Lease Term, Tenant shall, at its own cost and expense, promptly and properly observe and comply with all Laws applicable to Tenant's use or occupancy of the Premises, including, without limitation, the making by Tenant of any Alteration (as defined in Section 7) to the Premises. The preceding to the contrary notwithstanding, Tenant shall not be required or obligated to construct or install (or contribute to the cost of constructing or installing) any capital improvements that may be required by Laws, including, without limitation, applicable building codes, Title III of the Americans with Disabilities Act and/or state and local accessibility requirements (collectively, the "Accessibility Requirements") and Title 24 of the California Code of Regulations, as such may be amended from time to time, except to the extent required by Tenant's specific manner of use of the Premises or because of Alterations performed by Tenant. In addition, Tenant shall not be required to make any modifications or additions to the structure of the Building or basic Building systems or equipment except to the extent required by Tenant's specific manner of use of the Premises or because of Alterations performed by Tenant.

(B) Landlord's Compliance. Landlord shall maintain the Project Common Areas in good, safe and clean order, condition and repair and perform Landlord's maintenance and repair obligations pursuant to Section 8(a) of this Lease in compliance with all Laws, including, without limitation, all applicable building codes, Accessibility Requirements and Title 24 of the California Code of Regulations, as such may be amended from time to time.

(ii) Rules and Regulations. Tenant shall comply with the Rules and Regulations of the Project which are attached hereto as Exhibit E, as the same may be reasonably modified and amended from time to time by Landlord in its reasonable discretion (the "Rules and Regulations"). Landlord shall provide Tenant with any and amendments to the Rules and Regulations not less than thirty (30) days prior to the date such amendments are to go into effect. In the event of any conflict between the Rules and Regulations and this Lease, this Lease shall control. Landlord agrees to enforce the Rules and Regulations against Tenant and the other tenants within the Project in a non-discriminatory manner.

(c) Hazardous Materials.

(i) Definition. As used herein, the term "Hazardous Material" shall mean any substance: (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; (ii) which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, ordinance, rule, directive or order or any amendments thereto (hereinafter referred to as "Environmental Laws") including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (41 U.S.C. Section 6901 et seq.); (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; (iv) which contains gasoline, diesel fuel or other petroleum hydrocarbons; (v) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (vi) radon gas.

(ii) Existing Environmental Condition. Except as otherwise noted in that certain report entitled "Updated Level One Environmental Site Assessment" dated August 16, 2000, prepared by Lumina Technologies, Landlord represents to Tenant that, to Landlord's actual knowledge, (i) there are no Hazardous Materials located on, under or in the Project, and (ii) there are no underground storage tanks located in the Project.

(iii) Tenant's Covenants. Tenant shall not store, use, generate, transport, dispose or release any Hazardous Materials on, in, under or about the Premises, or any portion of the Project without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, as a condition to Landlord approving Tenant's storage, use, generation, transport, disposal or release of Hazardous Materials in or on the Premises and/or the Project, Tenant must satisfy and/or comply with the following conditions: (i) Tenant's request to store and use Hazardous Materials must be approved by Landlord's lender, (ii) Tenant may only use and store quantities of Hazardous Materials on the Premises that are necessary for the conduct of Tenant's business, (iii) Tenant must store, use and dispose of all Hazardous Materials in compliance with all Environmental Laws and all other applicable laws and regulations, (iv) Tenant must arrange for only qualified and trained personnel to handle, use, store and dispose of the Hazardous Materials, (v) Tenant must designate an area(s) within the Premises for storage of the Hazardous Materials, (vi) Tenant must adopt a compliance monitoring program with respect to the Hazardous Materials, which program must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and (vii) Landlord shall have the right, upon reasonable prior notice and at reasonable times, to conduct tests or periodic investigations ("Haz Mat Investigations") of the Premises and the Project to determine Tenant's compliance with the provisions contained in this Section or to determine whether Tenant has released or disposed of Hazardous Materials on or under the Premises in violation of this Lease. Tenant shall pay for the reasonable cost incurred by Landlord in performing not more than two (2) Haz Mat Investigations per year unless it is determined that Tenant has caused any Hazardous Materials to be released, discharged or emitted on, in or under or about the Premises or on or under any portion of the Project in violation of applicable Environmental Laws or any other applicable laws or regulations in which event Tenant shall pay the cost of the additional Haz Mat Investigations. Notwithstanding the foregoing, Tenant shall not be allowed to place underground storage tanks in the Premises or on the Project. In addition, Tenant shall have the right to use and store on the Premises (i) limited quantities of commonly used standard office and janitorial supplies containing chemicals categorized as Hazardous Materials and (ii) reasonable quantities of the Hazardous Materials listed on Exhibit I used in connection with Tenant's business, so long as Tenant uses, stores and disposes of all such Hazardous Materials in strict compliance with all Environmental Laws and prudent business practices. In addition, Tenant shall comply with all guidelines contained in the HCP with respect to the use, storage and release of pesticides in or on the Project. If at any time during or after the Lease Term Tenant becomes aware of any inquiry, investigation, administrative proceeding or judicial proceeding by any governmental agency regarding the storage, use or disposition of any Hazardous Materials by Tenant or Tenant's Agents in, on, under or about the Premises or the Project, Tenant shall, within five (5) days after first learning of such inquiry, investigation or proceeding, give Landlord written notice advising Landlord of the same.

If Landlord withholds its consent to any request by Tenant to store, use, generate, transport, dispose or release any Hazardous Materials on, in, under or about the Premises, or any portion of the Project and Tenant objects to Landlord's decision on the basis that Landlord has unreasonably withheld its consent, then either party may submit the matter as to whether Landlord has reasonably withheld its consent to binding arbitration before a single neutral arbitrator having experience in environmental law or Hazardous Materials or, alternatively, the arbitrator may be a retired judge or justice of a California Superior Court or Court of Appeal. The matter shall be decided by arbitration in accordance with the applicable arbitration statutes and the then existing Commercial Arbitration Rules of the American Arbitration Association. Any party may initiate the arbitration procedure by delivering a written notice of demand for arbitration to the other party. Within thirty (30) days after the other party's receipt of the written notice of demand for arbitration, the parties shall attempt to select a qualified arbitrator who is acceptable to all parties. If the parties are unable to agree upon an arbitrator who is acceptable to all parties, either party may request the American Arbitration Association to appoint the arbitrator in accordance with its Commercial Arbitration Rules. The provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s) are incorporated in and made a part of this Lease with respect to any arbitration requested in accordance with the provisions contained in this Section. Depositions may be taken and discovery may be obtained in any arbitration proceeding requested pursuant to this Section in accordance with the provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s). Arbitration hearing(s) shall be conducted in San Mateo County California. Any relevant evidence, including hearsay, shall be admitted by the arbitrator if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law; however, the arbitrator shall apply California law relating to privileges and work product. In rendering his or her award, the arbitrator shall set forth the reasons for his or her decision. The fees and expenses of the arbitrator shall be paid in the manner allocated by the arbitrator. This agreement to arbitrate any dispute concerning Landlord's failure to approve Tenant's request shall be specifically enforceable under the prevailing arbitration law. Judgment on the award rendered by the award may be entered in any court having jurisdiction thereof.

(iv) Tenant's Indemnity. Tenant shall be solely responsible for and shall indemnify, defend and hold harmless Landlord and Landlord's Agents from and against all claims, demands, judgments, losses, expenses, costs and liabilities, including reasonable fees and costs of attorneys and consultants and engineers (collectively, "Liabilities"), arising out of or in any way relating to the storage, use, generation, transportation, disposal or release of any Hazardous Material by Tenant and/or Tenant's affiliates (defined as any entity which controls, is controlled by or under common control with Tenant), subsidiaries, divisions, officers, directors, partners, employees, agents, contractors, invitees, tenants or assignees (collectively, "Tenant's Agents") in, on or under the Premises or any portion of the Project, including, without limitation, any Liabilities arising out of or in any way relating to any reasonable investigation, testing, removal, clean-up and/or restoration services, work, materials and equipment necessary to return the Project (or any part thereof) to its condition existing prior to the use, storage, generation, transport, disposal or release by Tenant or Tenant's Agents of any Hazardous Material in, on, under or about the Premises or the Project, and to otherwise reasonably and satisfactorily investigate and remediate the contamination arising therefrom. Notwithstanding any provision in this Lease to the contrary, Tenant shall not be liable to Landlord for, and shall have no indemnification obligation with respect to, any Hazardous Materials which were on the Project or in the Building and/or Premises prior to the date the Premises were delivered to Tenant in the required condition or which were subsequently placed thereon by anyone other than Tenant or Tenant's Agents.

(v) Landlord's Indemnity. Landlord shall be solely responsible for and shall indemnify, defend and hold harmless Tenant and Tenant's Agents from and against all Liabilities arising out of or in any way relating to (A) any breach by Landlord of its representation or warranty set forth in Section 5(c)(ii) above and/or (B) the storage, use, generation, transportation, disposal or release of any Hazardous Material by Landlord and/or Landlord's Agents in, on or under the Project.

(vi) Survival. Landlord's and Tenant's obligations under this Section 5 shall survive the expiration and/or earlier termination of this Lease.

6. ASSIGNMENT AND SUBLETTING

(a) Landlord's Consent. Tenant shall not assign this Lease, sublease all or any portion of the Premises or mortgage or hypothecate this Lease or all or any portion of Tenant's interest in this Lease or the Premises (each, a "Transfer") without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Any attempted or purported Transfer without Landlord's prior written consent (where such written consent is required) shall be void and confer no rights upon any third party. If Tenant effects a Transfer without Landlord's prior written consent, Landlord may (i) terminate this Lease (provided Tenant does not rescind such Transfer within five (5) business days following receipt of written notice from Landlord of such Transfer made without Landlord's required consent) or (ii) accept rent from the purported Tenant or assignee (each, a "Transferee") and apply such rent against Tenant's Base Rent and Additional Rent obligations under this Lease. No such acceptance of rent shall be deemed an express or implied waiver of Tenant's breach of this Section 6(a) unless such waiver is in writing and signed by Landlord, and Landlord reserves all rights and remedies arising with respect to such breach by Tenant, including, without limitation, the right to terminate this Lease if such Transfer in violation of the terms hereof is not rescinded by Tenant within five (5) business days following receipt of written notice from Landlord as provided above. Such acceptance of rent from a purported Transferee shall not be construed to constitute a consent to the purported Transfer or to give the purported Transferee a right of possession with respect to the Premises.

(b) Transferee Form. Each Transfer shall be by an instrument in writing in a form reasonably satisfactory to Landlord, and shall be executed by Tenant and Transferee. Each Transferee that is an assignee of this Lease shall agree in writing, for the benefit of Landlord, to assume, to be bound by and to perform the terms, conditions and covenants of this Lease to be performed by Tenant. Each Transferee that is a subtenant of Tenant hereunder shall agree in writing, for the benefit of Landlord, to perform the terms, conditions and covenants of this Lease to be performed by Tenant to the extent incorporated into such sublease. Notwithstanding anything contained herein, Tenant shall not be released from personal liability for the performance of each term, condition and covenant of this Lease by reason of Landlord's consent to a Transfer unless Landlord specifically grants such release in writing.

(c) No Waiver. Consent by Landlord to one Transfer shall not be deemed to be a consent to any subsequent Transfer.

(d) Information to be Furnished. If Tenant desires at any time to Transfer the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord: (i) the name of the proposed Transferee; (ii) the nature of the proposed Transferee's business to be carried on in the Premises; (iii) the terms and provisions of the proposed Transfer and a copy of the proposed Transfer agreement and related agreements; and (iv) such financial information, including financial statements, as Landlord may reasonably request concerning the proposed Transferee (except that such Transferee shall not be obligated to produce or deliver to Landlord audited financial statements unless the same are available). Tenant shall reimburse Landlord, as Additional Rent, for all reasonable legal and other expenses incurred by Landlord in connection with any request by Tenant for consent to a Transfer.

(e) Landlord's Alternatives. At any time within fifteen (15) days after Landlord's receipt of all of the information specified in Section 6(d), Landlord may, by written notice to Tenant, elect: (i) to terminate this Lease and recapture the entire Premises, in the event of an assignment, or the portion of the Premises that Tenant proposes to sublease, in the event of a sublease, which, when taken together with all other existing subleases, covers more than fifty percent (50%) of the rentable area of the Premises, in which event this Lease shall terminate as to, and Tenant shall surrender to Landlord, the portion of the Premises that Landlord has elected to recapture as of the date specified in Landlord's election notice (which in no event shall be less than thirty (30) days nor more than one hundred twenty (120) days following the date of Landlord's election notice); (ii) to consent to the Transfer by Tenant; or (iii) to reasonably refuse its consent to the Transfer, in which case Landlord shall specify the reasons for its refusal in Landlord's election notice. Notwithstanding the foregoing, Landlord shall not have the alternative set forth in Section 6(e)(i) in connection with a permitted Transfer described in Section 6(g). Landlord may withhold its consent to any Transfer pursuant to clause (iii) above with respect to any proposed Transfer by Tenant during the first three (3) years of the Lease Term if the Subrent is less than ninety percent (90%) of fair market rent. If Landlord fails to elect any of the alternatives set forth in Section 6(e)(i) through Section 6(e)(iii) above within the fifteen (15) day period, Tenant may send a second written request (the "Second Request") to Landlord and any other party designated by Landlord pursuant to Section 14. The Second Request shall expressly state in bold type that "Landlord will be deemed to have consented to the proposed Transfer if Landlord fails to respond to Tenant's request for approval of the proposed Transfer within five (5) days." If Landlord fails to notify Tenant of its election of any of the alternatives set forth in Section 6(e)(i) through Section 6(e)(iii) above within five (5) days after Landlord's (and any other party designated by Landlord to receive notice pursuant to Section 14's) receipt of the Second Request, then it shall be deemed that Landlord has consented to the Transfer. If Landlord consents or is deemed to have consented to the Transfer, Tenant may thereafter enter into a valid Transfer of the Premises or portion thereof, upon the terms and conditions and with the proposed Transferee set forth in the information furnished by Tenant to Landlord pursuant to Section 6(d), subject, however, to the condition that Tenant shall pay to Landlord fifty percent (50%) of any excess of the Subrent (defined below) over the Rent required to be paid by Tenant hereunder, less Tenant's reasonable Transfer Costs (the "Bonus Rent"). For the purposes of the foregoing, (i) the term "Subrent" shall mean any consideration of any kind received, or to be received, by Tenant from a sublessee if such sums are related to Tenant's interest in this Lease or in the Premises, and (ii) the term "Transfer Costs" shall mean all actual costs and expenses paid by Tenant to effect the Transfer, including brokerage fees, attorneys' fees, architectural fees, the cost of any alterations or leasehold improvements made by Tenant at the request of the transferee that would not have been constructed for Tenant's occupancy of the subject portion of the Premises, and any leasing commissions paid by Tenant incidental to such Transfer, but not including vacancy costs or the cost of any alterations or leasehold improvements made to the Premises other than those performed to effect the Transfer. Any such Subrent to be paid to Landlord pursuant hereto shall be payable to Landlord as and with the Base Rent payable to Landlord hereunder pursuant to Section 3(a).

(f) Executed Counterpart. No Transfer shall be valid nor shall any Transferee take possession of the Premises until an executed counterpart of the Transfer agreement has been delivered to Landlord.

(g) Permitted Assignments. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to obtain Landlord's prior consent or obligated to pay 50% of any Bonus Rent to Landlord in connection with any Transfer by Tenant to (i) an entity resulting from a merger or consolidation with, or reorganization (other than in connection with any bankruptcy filing) by, Tenant, (ii) an entity which acquires all or part of Tenant, or which is acquired in whole or in part by Tenant, (iii) an entity which acquires all or substantially all of the assets of Tenant, or (iv) a Tenant Affiliate. For purposes of this Lease, a "Tenant Affiliate" is defined as (x) any entity that controls, is controlled by or under common control with Tenant, and (y) any entity at least twenty-five percent (25%) of whose economic interest is owned by Tenant; and "control" means the power to direct the management of such entity through voting rights, ownership or contractual obligations. In the event Tenant is a publicly traded company, the sale or transfer of Tenant's stock shall not be deemed a Transfer for purposes of this Lease. In addition, Landlord shall not have the alternative set forth in Section 6(e)(i) in connection with a permitted Transfer described in this Section 6(g).

7. ALTERATIONS

(a) Consent to Alterations. Tenant shall not make or permit any modifications, additions or improvements in, on or about the Premises, including, but not limited to, lighting, heating, ventilating, air conditioning, electrical, partitioning, fixtures, window and wall covering and carpentry installations (collectively, "Alterations"), without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant shall have the right to make nonstructural Alterations costing in the aggregate not more than Fifty Thousand Dollars ($50,000) in any twelve (12) month period without Landlord's prior consent, provided that such Alterations (i) are not visible from any point outside of the Building, and (ii) will not materially affect the systems or structure of the Building. Landlord shall not unreasonably withhold its consent to any nonstructural Alterations provided that the nonstructural Alterations (i) are not visible from any point outside of the Building and (ii) do not materially affect the building systems or structural components of the Building. In no event may Tenant modify any building systems or structural components of the Building without Landlord's consent, which consent may be withheld by Landlord in its sole and absolute discretion. Tenant shall request Landlord's consent in writing and shall deliver Tenant's written request to Landlord with reasonably detailed plans and specifications for the proposed Alterations prepared at Tenant's expense by a licensed architect

or engineer, together with a list of the contractors that Tenant would like to use to install the subject Alteration(s). Landlord shall consent to or disapprove the Alterations proposed by Tenant within ten (10) business days after Landlord's receipt of Tenant's written request and a copy of Tenant's proposed plans and specifications and list of proposed contractors. If Landlord fails to respond to Tenant's written request for Landlord's consent to Tenant's proposed Alterations within the above-referenced ten (10) business day period, Landlord shall be deemed to have approved Tenant's request. Without limiting the foregoing, Landlord agrees that Landlord shall tentatively consent to or disapprove (but not give final consent to or disapproval of) any Alterations proposed by Tenant that require Landlord's consent within five (5) business days after Landlord's receipt of Tenant's written request therefor (but subject to Landlord's further review and approval of Tenant's proposed plans and specifications for such Alterations and proposed general contractor). Additionally, for all Alterations for which Landlord's prior written consent is required, Landlord shall have the right to pre-approve (which shall not be unreasonably withheld, conditioned or delayed) the general contractor retained by Tenant to perform such Alterations. Tenant shall reimburse Landlord for Landlord's reasonable charges for reviewing and approving or disapproving any request for an Alteration, including the plans and specifications thereof proposed by Tenant.

(b) General Conditions for Alterations. All Alterations shall be installed at Tenant's sole expense, in compliance with all applicable Laws and in accordance with the plans and specifications delivered to and approved by Landlord; provided, however, that neither Landlord's acceptance nor approval of any such plans and specifications shall imply that Landlord in any way covenants or warrants that the same are safe or that they comply with applicable Laws. All Alterations shall be performed in a good and workmanlike manner conforming in quality and design with the Premises existing as of the Commencement Date, and shall not diminish the value of the Premises or the Project. The workmanship and materials used in all Alterations shall be of a quality equal to or exceeding that used generally throughout the Project. Tenant shall indemnify and hold harmless Landlord and Landlord's Agents from any and all Liabilities incurred by Landlord and/or Landlord's Agents as a result of any defects in the materials or workmanship of the Alterations, and/or failure of Tenant or Tenant's Agents to comply with applicable Laws, including, without limitation, all applicable Accessibility Requirements.

(c) Notice and Liens. Tenant shall notify Landlord in writing at least five (5) business days prior to the commencement of any work on Alterations approved by Landlord, and Landlord shall be entitled to post and record Notices of Nonresponsibility or other notices deemed proper before the commencement of such work. If Tenant fails to cause any lien filed against the Premises in connection with any work performed or claimed to have been performed by or at the direction of Tenant to be released of record by payment or posting of a proper bond acceptable to Landlord within ten (10) days from after (i) the date of such filing and (ii) written notice from Landlord, then Landlord may do so at Tenant's expense and Tenant shall reimburse Landlord as Additional Rent. Such reimbursement shall include all sums reasonably disbursed, incurred or deposited by Landlord, including Landlord's reasonable costs, expenses and reasonable attorneys' fees, with interest thereon at an interest rate of ten percent (10%) per annum from the date of payment by Landlord.

(d) Removal of Alterations. Landlord shall notify Tenant within ten (10) days after Landlord receives Landlord's request for consent to Alterations or, if Tenant is not required to obtain Landlord's consent to the Alteration, within ten (10) days after Tenant notifies Landlord in writing of its intent to make an Alteration, as to whether Tenant will be required to remove the proposed Alteration upon the termination of Tenant's lease of that portion of the Premises in which the Alteration is to be constructed. If Landlord so notifies Tenant within said ten (10)-day period, then Tenant shall remove the proposed Alteration and repair or restore any damage caused by the installation and removal of such Alteration at the expiration or earlier termination of Tenant's lease of that portion of the Premises in which the Alteration is constructed, all at Tenant's sole cost and expense; provided, however, Tenant shall only be required to remove those Alterations which are specified in Landlord's notice. Tenant shall fully and promptly repair all damage caused by the removal of Alterations from the Premises. If Landlord fails, within the time period prescribed above, to notify Tenant in writing of Tenant's obligation to remove any Alterations from the Premises at the expiration or earlier termination of the Lease term, then Tenant shall have no obligation to remove such Alterations.

(e) Maintenance of Alterations. Notwithstanding any other provision of this Lease, Tenant shall be solely responsible for the maintenance and repair of any and all Alterations to the Premises made by Tenant, or by Landlord at Tenant's expense.

8. REPAIR AND MAINTENANCE

(a) Landlord. Landlord, at its expense (and without reimbursement as an Operating Expense), shall keep in good order, condition and repair the foundations of the Building, the structural components of the Building, subfloors, the structural portions of the exterior walls and the roof structures and membranes on the Building; provided, however, that any damage thereto caused by the negligence or willful acts or omissions of Tenant or Tenant's Agents, or by reason of the failure of Tenant to perform or comply with any terms, conditions or covenants in this Lease, or caused by any Alterations made by or for Tenant, shall be at Tenant's sole expense (except to the extent covered by insurance maintained by Landlord). In addition, Landlord shall be responsible for maintaining the non-structural portions of the exterior walls (e.g., repainting) of the Building (excluding the interior finish surface thereof) and the outside landscaping of the Project in good condition and repair, the costs of which shall constitute an Operating Expense under this Lease. Landlord, at Tenant's sole cost and expense, shall enter into regularly scheduled maintenance/service contracts for servicing the elevators within the Building. Also at Tenant's cost and expense, Landlord shall enter into regularly scheduled preventive maintenance/service contracts with maintenance contractors acceptable to Landlord for servicing all hot water and heating and air conditioning (the "HVAC") systems and equipment in the Premises unless Landlord elects for Tenant to do so pursuant to Section 8(b) below. It is an express condition precedent to all obligations of Landlord to repair and maintain the Building that Tenant shall have notified Landlord in writing of the need for any such repairs or maintenance. There shall be no abatement of Rent during the performance of Landlord's obligations under this Section 8(a) (except as provided in Section 9(a) below). In addition, Landlord shall not be liable to Tenant for any damage that may result from interruption of Tenant's use of the Premises during the period that Landlord is performing the maintenance and repairs required hereunder (unless and to the extent such damage is caused by the gross negligence or willful misconduct of Landlord). Landlord shall use commercially reasonable efforts in the performance of its obligations pursuant to this Section 8(a) to minimize any interference with Tenant's normal business operations.

(b) Tenant. Except for the portions of the Premises expressly required to be maintained by Landlord under Section 8(a), Tenant, at Tenant's sole cost and expense, shall maintain the Premises and the Building in which the Premises is located in good order, condition and repair, including, without limitation, floor coverings, walls and wall coverings, exposed portions of the mechanical, electrical and plumbing systems within the Building, doors and windows. In addition, if Tenant leases all of the rentable space located within the Building, Landlord may require Tenant to enter into regularly scheduled preventive maintenance/service contracts with maintenance contractors acceptable to Landlord for servicing the HVAC systems and equipment in the Building and provide to Landlord a copy of the current maintenance/services contract and written service reports on the HVAC systems and equipment on a quarterly basis. Tenant shall not enter onto the roof area of the Building, except for the purpose of maintaining the heating, ventilating, and air conditioning equipment to the extent Tenant is required to do so under the terms of this Lease. Tenant shall repair any damage to the roof area caused by its entry. If, in the reasonable judgment of Landlord, Tenant fails, within the notice and cure period set forth in Section 15(a)(ii) below, to maintain the Premises and the Building in which the Premises is located in good order, condition and repair, Landlord shall have the right, upon not less than five (5) days' written notice to Tenant, to perform such maintenance, repairs or refurbishing at Tenant's expense. In addition, Tenant shall, at its own expense, provide, install and maintain in good condition all of its trade fixtures, furniture, equipment and other personal property ("Tenant's Personal Property") required in the conduct of its business in the Premises. If any condition arises in the Premises or the Project which may be unsafe or dangerous to persons or property in the Project, Tenant shall, promptly following Tenant becoming aware of such condition, notify Landlord of such condition.

(c) Tenant Cure Rights. If Tenant provides written notice to Landlord of an event or circumstance that requires the action of Landlord with respect to the repairs or maintenance to the Premises or basic Building systems servicing the Premises as set forth in Section 8(a) of this Lease, and Landlord fails to provide such action as required by the terms of this Lease within thirty (30) days following receipt of such written notice, then Tenant may take the required action if: (i) Tenant delivers to Landlord an additional written notice advising Landlord that Tenant intends to take the required action if Landlord does not commence the required repair or maintenance within five (5) days after the receipt of such additional written notice; and (ii) Landlord fails to commence the required work within the five (5) day period or thereafter fails to diligently prosecute such required work to completion. If Tenant takes action to perform the repair or maintenance work required to be performed by Landlord as provided above, then, in addition to any other rights or remedies available to Tenant at law or in equity or under this Lease, Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable costs and expenses in taking such action plus interest at the rate of ten percent (10%) per annum from the date Tenant's costs are incurred until the date of Landlord's repayment. Landlord's obligation to reimburse Tenant shall survive expiration or earlier termination of this Lease. If any action taken by Tenant will affect any portion of the basic Building systems, structural integrity of the Building, or exterior appearance of the Building, then Tenant will use the contractor used by Landlord in the Building for such work, unless that contractor is unwilling or unable to perform the work, in which event Tenant may use the services of another qualified and licensed contractor.

(d) Wavier. Tenant waives the provisions of Sections 1941 and 1942 of the California Civil Code and any similar or successor Laws regarding Tenant's right to make repairs and deduct the expenses of such repairs from the Rent due under this Lease.

9. UTILITIES AND SERVICES

(a) Tenant's Obligations. Landlord agrees to furnish to the Premises at all times during the term of the Lease, air conditioning and heat, elevator service, and water for lavatory purposes, all in such reasonable quantities as in the reasonable judgment of Landlord is necessary for the comfortable occupancy and use of the Premises; provided, however, Tenant shall contract directly with the applicable utility or service provider for gas, water, electricity and refuse pickup. Tenant shall provide, or cause to be provided, janitorial service with respect to the Premises. Tenant shall pay all charges for gas, electricity, water, telephone and telephone cabling, HVAC, refuse pickup, janitorial service and all other utilities, materials and services furnished directly to or used by Tenant in the Premises during the Lease Term, together with any and all taxes thereon. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service or other service furnished to the Premises, except to the extent resulting from the gross negligence or willful misconduct of Landlord. Except as provided below, no such failure or interruption shall entitle Tenant to terminate this Lease or withhold Rent due hereunder. Notwithstanding the foregoing, to the extent that Landlord receives insurance proceeds under its insurance policy as a result of the interruption in utilities to compensate Landlord for lost Rent under this Lease, then the Rent due hereunder will be abated by such amount.

The preceding notwithstanding, if an interruption in utilities or services occurs as the result of the negligence or willful misconduct of Landlord or its agents or employees and the interruption in utilities or services substantially interferes with Tenant's use of the Premises or Tenant's conduct of business for more than five (5) continuous business days, then Rent shall abate until such time as all of the utilities and services are restored. If an interruption in utilities or services occurs which is not the result of the negligence or willful misconduct of Landlord or its agents or employees and the interruption in utilities or services substantially interferes with Tenant's use of the Premises or Tenant's conduct of business for more than thirty (30) continuous business days, then Rent shall abate until such time as all of the utilities and services are restored.

(b) Tenant to Pay Share of Expenses. If any utilities or services described in Section 9(a) above are not separately metered to Tenant or are contracted for by Landlord, then Tenant shall pay, as Additional Rent, a portion of the costs of such utilities and services, excluding the cost of installing metering devices (which cost of such installation shall be borne solely by Landlord and without reimbursement from Tenant), as reasonably determined by Landlord. Tenant shall pay such amount of such costs on the first day of the calendar month following receipt of Landlord's itemized bill therefor.

10. REAL PROPERTY TAXES

(a) Payment by Tenant. Commencing with the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, Tenant's Project Percentage of all Real Property Taxes (as hereinafter defined). Tenant shall pay Tenant's Project Percentage of such Real Property Taxes in the manner provided in Section 12 below. Tenant shall only be obligated to pay its Project Percentage of Real Property Taxes accruing during or attributable to the Lease Term.

(b) Real Property Taxes. For purposes of this Lease, "Real Property Taxes" shall mean any form of assessment, license, fee, rent tax, levy, penalty (if a result of and directly attributable to Tenant's delinquency), or tax of any nature imposed upon or with respect to the Premises or the Project or any part thereof (other than net income, estate, succession, inheritance, transfer or franchise taxes of Landlord) (collectively, "tax"), imposed by any authority having the direct or indirect power to tax, or by any city, county, state or federal government or any improvement or other district or division thereof, whether such tax is: (i) determined by the area of the Premises or Project or any part thereof or the rent and other sums payable hereunder by Tenant or by other tenants, including, but not limited to, any gross income or excise tax levied by any of the foregoing authorities with respect to receipt of such rent or other sums due under this Lease; (ii) levied or assessed upon any legal or equitable interest of Landlord in the Project or the Premises or any part thereof; (iii) levied or assessed upon this transaction or any document to which Tenant is a party creating or transferring any interest in the Premises; (iv) levied or assessed in lieu of, in substitution for, or in addition to, existing or additional taxes imposed on or with respect to the Project or the Premises, whether or not now customary or within the contemplation of the parties; or (v) surcharged against the parking area. The cost and expenses of contesting the amount or validity of any of the foregoing taxes shall be included in Real Property Taxes. Real Property Taxes shall also include all new and increased assessments, taxes, fees, levies and charges which may be imposed by governmental agencies for such purposes as fire protection, street, sidewalk, road, utility construction and maintenance, refuse removal, libraries, street lighting, police services, and for other governmental services.

(c) Tax on Improvements. Without limiting the generality of Section 10(b), Tenant shall pay any increase in Real Property Taxes resulting from any and all Alterations placed in, on or about the Premises for the benefit of, at the request of, or by Tenant.

(d) Proration. Tenant's liability to pay Real Property Taxes shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included at the commencement or expiration of the Lease Term. With respect to any assessments which may be levied against or upon the Premises, or which under the Laws then in force may be evidenced by improvement bonds or other bonds or may be paid in annual installments, only the amount of the annual installment due each year (with appropriate proration for any partial year) and interest due thereon shall be included within the computation of the annual Real Property Taxes levied against the Premises for such year.

(e) Personal Property Taxes. Tenant shall pay prior to delinquency all taxes assessed or levied against Tenant's Personal Property. When possible, Tenant shall cause Tenant's Personal Property to be assessed and billed separately from the real and/or personal property of Landlord.

(f) Exclusions. Notwithstanding anything to the contrary contained in this Lease, the following shall not constitute Real Property Taxes for purposes of this Lease (i) any estate, inheritance taxes or gross receipts tax, (ii) any increase in taxes attributable to change of ownership of all or any part of the Project, and (iii) any increase in real estate taxes attributable to interior improvements made in the Other Buildings after July 15, 2003.

(g) Real Property Taxes Following Parcelization of Project. In the event Landlord separates the Project into three (3) separate legal parcels for each building currently located within the Project and a Common Area parcel, then during the balance of the term of this Lease, Tenant shall be responsible only for the Real Property Taxes attributable to the real property beneath the Building (and the Real Property Taxes attributable to the Building leased by Tenant) plus a proportionate share of the Real Property Taxes attributable to the Common Area parcel. If the Building and the land underlying the Building are separately assessed, then Tenant shall have the right to contest or review the amount or validity of any Real Property Taxes allocated thereto by appropriate legal proceedings; however, as a condition of Tenant's right to contest, if such contested Real Property Taxes are not paid before such contest and if the legal proceedings shall not operate to prevent or stay the collection of the Real Property Taxes so contested, Tenant shall, before instituting such proceedings, protect the Premises and the interest of Landlord therein against any lien upon the Premises by a surety bond, issued by an insurance company reasonably acceptable to Landlord, and in an amount equal to the 150% of the amount contested. Any contest by Tenant as to the validity or amount of the Real Property Tax allocable to the Building and/or land underlying the Building shall be made by Tenant in its own name, or, if required by law, in the name of Landlord or both Landlord and Tenant. Tenant shall be entitled to retain any refund of any such contested Real Property Taxes and penalties and interest thereon to the extent the refunded amount previously had been paid by Tenant. Nothing contained herein shall be construed as affecting or limiting Landlord's right to contest any Real Property Taxes at Landlord's expense.

11. INSURANCE

(a) Indemnification.

(i) Tenant's Indemnification of Landlord. Tenant hereby agrees to indemnify, defend (with attorneys reasonably acceptable to Landlord) and hold harmless the Premises, Landlord, Landlord's Agents and Landlord's lenders, from and against any and all Liabilities arising out of or in any way relating to all activities in the Premises during the Lease Term, the conduct of Tenant's business in the Premises and the Project, any default or breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, the use or occupancy of the Premises or any part of the Project by Tenant, or by the acts or omissions of Tenant or Tenant's Agents, except to the extent caused by the negligence or willful misconduct of Landlord and any of Landlord's Agents. Tenant's indemnification obligations with respect to Hazardous Materials shall be pursuant to Section 5(c) of this Lease. To the extent any damage or repair obligation is covered by insurance obtained by Landlord as part of Operating Expenses, but is not covered by insurance obtained by Tenant, then Tenant shall be relieved of its indemnity obligation up to the amount of the insurance proceeds which Landlord receives.

(ii) Landlord's Indemnification of Tenant. Landlord hereby agrees to indemnify, defend and hold harmless Tenant from any and all Liabilities arising out of or in any way relating to, involving, or in dealing with, any part of the Project, to the extent such Liabilities are caused by the gross negligence or willful misconduct of Landlord or any of Landlord's Agents or any default or breach by Landlord in the performance in a timely manner of any obligation on Landlord's part to be performed under this Lease.

(b) Tenant's Insurance. Tenant agrees to maintain in full force and effect at all times during the Lease Term, at its own expense, for the protection of Tenant and Landlord, as their interests may appear, policies of insurance issued by a responsible carrier or carriers reasonably acceptable to Landlord which afford the following coverages:

(i) Worker's Compensation. Worker's compensation in an amount equal to the statutory requirements then in effect.

(ii) Employer's Liability. Employer's liability in an amount not less than One Million Dollars ($1,000,000) per accident for bodily injury or disease.

(iii) Automobile Liability. Automobile liability insurance (ISO form CA 0001 (Ed. 1/87), code 1 or substantially equivalent form) for each vehicle owned, leased or rented by Tenant in connection with its business, in an amount not less than One Million Dollars ($1,000,000) per accident for bodily injury and property damage.

(iv) General Liability. Commercial General Liability insurance (ISO occurrence form CG 0001 or substantially equivalent form), including premises operations, in an amount not less than Three Million Dollars ($3,000,000) (which may include taking into consideration umbrella coverage), combined single limit for both bodily injury and property damage, naming Landlord as additional insured.

(v) Property. Property insurance on Tenant's Personal Property located on or in the Premises and on any Alterations made by Tenant in the Premises. Such insurance shall be in an amount of one hundred percent (100%) of the replacement cost of the insured items. Such property insurance shall exclude earthquake coverage unless such earthquake insurance coverage is maintained by Tenant in its sole discretion. Such policy shall be endorsed, as necessary, to provide coverage for boilers and machinery and sprinkler leakage. As long as this Lease is in effect, the proceeds of such policy shall be used for the repair or replacement of such items so insured. Landlord shall have no interest in the insurance upon Tenant's Personal Property.

(vi) Business Income. Business Income/Extra Expense Insurance at a minimum of six (6) months continued normal operating expenses, including payroll, including coverage for loss of Business Income due to damage to Tenant's Personal Property and Alterations arising from insured perils covered under such policy, excluding earthquake unless such earthquake insurance coverage is maintained by Tenant in its sole discretion.

(vii) Products and Completed Operations. Products and completed operations insurance in an amount not less than Two Million Dollars ($2,000,000) (which may include taking into consideration umbrella coverage).

(c) Landlord's Insurance. During the Lease Term Landlord shall maintain commercial general liability insurance, and "All Risk" or ISO Special Form property insurance (the "Project Property Insurance") including, at Landlord's option, earthquake and flood coverage, inflation endorsement, sprinkler leakage endorsement, and boiler and machinery coverage, covering the full replacement cost of the Premises, including the Tenant Improvements but excluding any Alterations made by Tenant and the foundations of the Building. The Project Property Insurance shall also include insurance against loss of rents in an amount equal to the Base Rent, Additional Rent, and any other sums payable to Landlord by the tenants of the Project under their respective leases for a period of at least twelve (12) months. The Project Property Insurance shall name Landlord as named insured and include a lender's loss payable endorsement in favor of Landlord's lender. Tenant shall reimburse Landlord, as Additional Rent, for Tenant's Project Percentage of the costs of such policy or policies. Tenant shall pay Tenant's Project Percentage of the Project Property Insurance in the manner provided in Section 12.

(d) Certificates. Tenant shall deliver to Landlord at least thirty (30) days prior to the time such insurance is first required to be carried by Tenant, and thereafter at least ten (10) days prior to expiration of each such policy, certificates of insurance and endorsements or copies of portions of the insurance policies evidencing the above coverage with limits not less than those specified above and naming Landlord as additional insured on Tenant's commercial general liability insurance policy.

(e) Increased Coverage. Landlord, by written notice to Tenant, may reasonably require Tenant to increase the amount of insurance maintained by Tenant in accordance with this Lease to such amounts as are generally and reasonably required by landlords of similar properties located in the Brisbane-San Francisco area; provided, however, Landlord shall not increase the amount of liability insurance (taking into consideration umbrella coverage) during the first three (3) years of the Lease Term unless required by Landlord's lender.

(f) Intentionally Omitted.

(g) Insurance Requirements. All of Tenant's insurance shall be in a form reasonably satisfactory to Landlord and shall be carried with companies that have a current A.M. Best's rating of no less than A-:IX or A:VII, except for the company providing products and completed operations insurance which must have a current A.M. Best's rating of no less than A-:VII; shall provide that such policies shall not be subject to material alteration or cancellation except after at least thirty (30) days' prior written notice to Tenant; and shall be primary as to Landlord and Landlord's Agents. The duly executed certificates and endorsements (or copies of portions of the insurance policies as provided above) for the Tenant's policies shall be deposited with Landlord prior to the Commencement Date, and upon renewal of such policies, not less than ten (10) days prior to the expiration of the term of such coverage. If Tenant fails to procure and maintain the insurance required hereunder, or fails to provide Landlord with the duly executed certificates and endorsements (or copies of portions of the insurance policies as provided above) of Tenant's policies required hereunder, Landlord may, but shall not be required to, following not less than five (5) days prior written notice to Tenant, order such insurance at Tenant's expense and Tenant shall reimburse Landlord for such reasonable amounts as Additional Rent. Such reimbursement shall include all sums reasonably disbursed, incurred or deposited by Landlord, including Landlord's reasonable costs, expenses and reasonable attorneys' fees, with interest thereon at an interest rate of ten percent (10%) per annum from the date of payment by Landlord.

(h) Landlord's Disclaimer. Subject to Landlord's insurance obligations under Section 11(c) above and Landlord's indemnification obligations under Section 11(a)(ii) above, neither Landlord nor Landlord's Agents shall be liable to Tenant for any loss or damage to persons or property resulting from fire, explosion, falling plaster, glass, tile or sheetrock, steam, gas, electricity, water or rain which may leak from any part of the Premises or the Project, or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or whatsoever, unless caused by the gross negligence or willful misconduct of Landlord or any of Landlord's agents, employees, contractors or other representatives or breach by Landlord of any of its obligations under this Lease.

(i) Waiver of Subrogation. Landlord and Tenant each hereby waive all rights of recovery against the other on account of loss and damage occasioned to such waiving party for its property or the property of others under its control (including, without limitation, the Building) to the extent that such loss or damage is insured against under any insurance policies which are required hereunder or which otherwise may be in force at the time of such loss or damage. Tenant and Landlord shall, upon obtaining policies of insurance required hereunder, give notice to the insurance carrier that the foregoing mutual waiver of subrogation is contained in this Lease and Tenant and Landlord shall cause each insurance policy obtained by such party to provide that the insurance company waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any damage covered by such policy.

12. ADDITIONAL RENT

(a) Payment. Tenant shall pay to Landlord, as Additional Rent during each year commencing on the Commencement Date and ending on the Expiration Date (prorated for any partial calendar year during the Lease Term), (i) all Operating Expenses (defined herein) attributable to the ownership, operation, repair and/or maintenance of the Building which accrue during the Lease Term, (ii) Tenant's Project Percentage of all Operating Expenses attributable to the ownership, operation, repair and/or maintenance of the Project Common Areas and the Project generally, and (iii) Tenant's Project Percentage of Real Property Taxes and Project Property Insurance, each as reasonably and equitably determined by Landlord.

(b) Tenant's Project Percentage. Tenant's Project Percentage is calculated by dividing the then applicable total rentable square footage of the Premises by the total rentable square footage in the Project (rounded to the nearest $1/100^{th}$ of a percent). Tenant's Project Percentage as of the Commencement Date is set forth in the Lease Summary. Any change in the total rentable square footage of the Project or the Premises shall increase or decrease Tenant's Project Percentage.

(c) Definition of Operating Expenses. The term "Operating Expenses" shall include, without limitation, the reasonable cost of labor, materials, supplies and services used or consumed in maintaining, operating and repairing the Building, the Project and all supporting facilities, including the following: (a) the reasonable cost of maintaining and repairing all sidewalks, landscaping, service areas, elevators, mechanical rooms, utility systems, signs, site lighting, walkways, driveways and parking areas of the Project (including re-striping the parking lot, applying a new slurry seal to the parking lot and repainting the Building); (b) all reasonable charges for heat, water, gas, electricity, sewer, air conditioning, trash removal and other utilities used or consumed in the Building or the Project (not separately metered and billed to any individual tenant of the Project); (c) Landlord's management fee each year, of which Tenant's proportionate share shall be an amount equal to three percent (3%) of the total annual Base Rent due under this Lease; (d) costs incurred for pest control, janitorial, exterior window washing, sweeping services and security for the Building and the Project; (e) all business license, permit and inspection fees, (f) fees, expenses, charges or other costs assessed Landlord under any covenants, conditions and restrictions binding on the Building or the Project (excepting therefrom penalties or charges assessed as a result of Landlord's fault, negligence or willful misconduct or other wrongful acts or omissions); (g) insurance deductibles; provided, however, with respect to earthquake deductibles, Operating Expenses shall only include the amortized amount of the earthquake deductible (amortized over a ten (10) year period); and (h) fees, impositions or other charges assessed or imposed on Landlord under the HCP. Notwithstanding the foregoing, the term "Operating Expenses" shall not include (i) depreciation, (ii) reserves, (iii) overhead and profit and any other compensation or fees paid to Landlord or subsidiaries or affiliates of Landlord for services rendered to the Project or the Building or for supplies or other materials to the extent that the costs of the services, supplies or materials exceed the competitive costs of the services, supplies or materials if they were not provided by a subsidiary or an affiliate and (iv) costs incurred in constructing any capital improvements and/or capital replacements on the Project (as distinguished from capital repairs or maintenance which shall be included as an Operating Expense), including, without limitation, replacement of the roof membrane or HVAC units. Anything herein to the contrary notwithstanding, the costs, expenses and other charges referred to in Exhibit H attached hereto also shall be excluded from the Operating Expenses which Tenant is obligated to pay in accordance with the terms of this Lease.

(d) Estimates. Landlord shall, as soon as practicable prior to the Commencement Date and after the end of each calendar year during the Lease Term, notify Tenant in writing of the amount which Landlord estimates will be Tenant's Project Percentage of any Real Property Taxes and Project Property Insurance and Tenant's share of any Operating Expenses for such calendar year, and one-twelfth (1/12th) thereof shall be added to the Base Rent as Additional Rent for each ensuing month. If, during any calendar year during the Lease Term (but not more often than once in any calendar year), it appears in the reasonable judgment of Landlord that Real Property Taxes, Project Property Insurance and Operating Expenses payable under this Section will exceed Landlord's estimate, Landlord may, by written notice to Tenant, revise its estimate for such year, and the Rent hereunder shall be adjusted accordingly.

(e) Annual Adjustment. Landlord shall use commercially reasonable efforts to provide to Tenant by the ninetieth (90th) day following the end of each calendar year during the Lease Term (and in no event later than May 15th of the year immediately following the end of each calendar year during the Lease Term), an annual reconciliation statement stating (i) the actual amount of Operating Expenses expended or incurred by Landlord during the prior calendar year in connection with the Building only and in connection with the Project Common Areas and Project generally, (ii) the amount of Real Property Taxes paid or incurred by Landlord during the prior calendar year, (iii) the amount of Project Property Insurance paid or incurred by Landlord during the prior calendar year, and also (iv) stating the amount of any shortfall or excess payment made by Tenant with respect to such Operating Expenses, Real Property Taxes and/or Project Property Insurance for such prior calendar year. If after any calendar year it is determined that the amount of Tenant's Project Percentage of Real Property Taxes and/or Project Property Insurance and/or Tenant's share of Operating Expenses for such calendar year is greater or less than the amount actually billed to and paid for by Tenant, an adjustment shall be made as soon as practicable following the commencement of the calendar year next following the calendar year in which such Real Property Taxes, Project Property Insurance and/or Operating Expenses were overstated or understated by Landlord, and, within thirty (30) days following the date such reconciliation statement is received by Tenant, Tenant shall pay Landlord such amount or be credited accordingly based upon Tenant's receipt of such year end reconciliation statement of such adjustment, whether or not this Lease is still then in effect. Tenant shall have sixty (60) days after Tenant receives the year-end statement of the adjustment to the Operating Expenses (and Real Property Taxes and Project Property Insurance) for the prior calendar year to notify Landlord in writing of Tenant's desire to conduct, at Tenant's sole cost and expense (subject to the terms below), an audit of Landlord's books and records relating to the prior calendar year. Any such audit must be conducted by Tenant or its agents or representatives during regular business hours at the offices of Landlord or the offices of Landlord's designated agent and must be completed within one hundred twenty (120) days after Tenant receives the applicable year-end statement and all back-up and support documentation reasonably requested by Tenant evidencing or related to the Operating Expenses, Real Property Taxes and Project Property Insurance expended or incurred by Landlord. Tenant shall have the right, after reasonable notice and at reasonable times, to inspect and photocopy all invoices, bills, statements, cancelled checks and other records evidencing or related to the Operating Expenses, Real Property Taxes and Project Property Insurance expended or incurred by Landlord. The person or entity performing the audit or review of Landlord's books and records on Tenant's behalf or at Tenant's request shall be an independent auditor and may not be compensated for the audit or review on a contingency fee basis. The preceding notwithstanding, if following the audit it is determined that Tenant's share of Operating Expenses, Real Property Taxes or Project Property Insurance as set forth in any reconciliation statement sent to Tenant was in error in Landlord's favor by more than four percent (4%), then Landlord shall pay the cost of such audit. Landlord shall be required to maintain records of all Operating Expenses for a period of three (3) years following Landlord's delivery of each annual or reconciliation statement setting forth Tenant's share of such Operating Expenses. The payment by Tenant of any amounts pursuant to this subsection shall not preclude Tenant from questioning the correctness of any reconciliation statement provided by Landlord. In addition, in the event that any other tenant of the Project audits or reviews Operating Expenses, Real Property Taxes or Project Property Insurance that are included in Tenant's share of Operating Expenses, Real Property Taxes and/or Project Property Insurance paid or to be paid by Tenant and an adjustment is made, the results of such audit or review shall be sent to Tenant to allow Tenant to determine whether Tenant is to be permitted a corresponding adjustment.

(f) Arbitration. If Landlord objects to the findings of Tenant's audit, Landlord and Tenant shall attempt to resolve their disagreement concerning the amount of Tenant's proportionate share of Operating Expenses within the next thirty (30) days. If Landlord and Tenant are unable to agree upon the amount of Tenant's proportionate share of Operating Expenses (after Tenant has completed its audit), the parties shall submit the matter to binding arbitration before a single neutral arbitrator having experience in real estate valuation, property management or accounting or, alternatively, the arbitrator may be a retired judge or justice of a California Superior Court or Court of Appeal. The matter shall be decided by arbitration in accordance with the applicable arbitration statutes and the then existing Commercial Arbitration Rules of the American Arbitration Association. Any party may initiate the arbitration procedure by delivering a written notice of demand for arbitration to the other party. Within thirty (30) days after the other party's receipt of the written notice of demand for arbitration, the parties shall attempt to select a qualified arbitrator who is acceptable to all parties. If the parties are unable to agree upon an arbitrator who is acceptable to all parties, either party may request the American Arbitration Association to appoint the arbitrator in accordance with its Commercial Arbitration Rules. The provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s) are incorporated in and made a part of this Lease with respect to any arbitration requested in accordance with the provisions contained in this Section. Depositions may be taken and discovery may be obtained in any arbitration proceeding requested pursuant to this Section in accordance with the provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s). Arbitration hearing(s) shall be conducted in San Mateo County California. Any relevant evidence, including hearsay, shall be admitted by the arbitrator if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law; however, the arbitrator shall apply California law relating to privileges and work product. In rendering his or her award, the arbitrator shall set forth the reasons for his or her decision. The fees and expenses of the arbitrator shall be paid in the manner allocated by the arbitrator. This agreement to arbitrate any dispute concerning the findings of Tenant's audit shall be specifically enforceable under the prevailing arbitration law. Judgment on the award rendered by the award may be entered in any court having jurisdiction thereof.

13. DAMAGE OR DESTRUCTION

(a) Landlord's Obligation to Rebuild. If the Premises are damaged or destroyed, Landlord shall promptly and diligently repair the Premises, unless Landlord or Tenant elects to exercise any right to terminate this Lease as hereinafter provided.

(b) Landlord's Right to Terminate. Landlord shall have the right to terminate this Lease with respect to the entire Premises or the damaged Building in the event any of the following events occurs:

(i) Net insurance proceeds (after deducting the cost of recovery of such proceeds) actually received by Landlord are insufficient to pay one hundred percent (100%) of the cost of such repair less the amount of Landlord's deductible; or

(ii) The entire Premises or the damaged Building cannot, with reasonable diligence, be substantially repaired or restored by Landlord within two hundred seventy (270) days after the date that the damage or destruction occurs (as reasonably determined in good faith by Landlord's general contractor); or

(iii) The entire Premises or the damaged Building cannot be safely repaired because of the presence of hazardous factors, including, but not limited to, earthquake faults, radiation, chemical waste and other similar dangers.

If Landlord elects to terminate all or any portion of this Lease, Landlord shall give Tenant written notice of its election within thirty (30) days after the date Landlord's general contractor notifies Landlord in writing of the time period necessary to repair or restore the Premises, and this Lease (or applicable portion thereof) shall terminate thirty (30) days after the date Tenant receives such notice (except that Landlord's election to terminate the Lease pursuant to this Section 13(b)(i) above shall be deemed rescinded if, within thirty (30) days following Tenant's receipt of such termination notice, Tenant agrees in writing to pay any shortfall in net insurance proceeds to cover the cost of such repair and delivers to Landlord cash or a letter of credit, in a form and from an institution reasonably acceptable to Landlord, in the amount of the estimated shortfall). Landlord shall arrange for Landlord's general contractor to determine the time period necessary to repair or restore the Premises within forty-five (45) days after the date that the damage or destruction occurs. If Landlord does not elect to terminate all of this Lease, Landlord shall notify Tenant in writing within thirty (30) days after the date Landlord's general contractor notifies Landlord in writing of the time period necessary to repair or restore the Premises of Landlord's general contractor's reasonable and good faith estimate of the time period required to substantially repair or restore the Premises or Building, and Landlord shall diligently commence the process of obtaining any necessary building permits and governmental approvals with respect to the portion of this Lease that has not been terminated, and shall commence repair of the Premises or the Building, as the case may be, as soon as practicable and thereafter prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect.

(c) Tenant's Right to Terminate. If Landlord's general contractor reasonably and in good faith determines that Premises cannot be substantially repaired or restored within two hundred seventy (270) days after the damage or destruction, Tenant shall have the right to terminate this Lease by written notice to Landlord. Tenant shall exercise such termination right, if at all, within thirty (30) days after Landlord notifies Tenant in writing of the time estimated by Landlord's general contractor to substantially complete the repairs or restoration work. If Tenant does not elect to terminate this Lease within the thirty (30) day period, Tenant shall be deemed to have waived its option to terminate this Lease pursuant to this Section 13(c) in connection with the casualty.

(d) Limited Obligation to Repair. Notwithstanding anything to the contrary contained in this Section 13, in no event shall Landlord be obligated to repair or replace Tenant's Personal Property or any Alterations made by Tenant. If Tenant desires to repair and/or replace Tenant's Personal Property and/or Alterations, the same shall be undertaken and completed by Tenant, at Tenant's sole cost and expense, promptly following the date of the damage or destruction.

(e) Abatement of Rent. In the event of damage to or destruction of the Premises, or any portion thereof, Rent shall be proportionately abated to the extent to which such damage or destruction interferes with Tenant's business conducted in the Premises as reasonably determined by Tenant; provided, however, so long as Landlord maintains the insurance required pursuant to Section 11(c), Rent shall be abated only to the extent of any net proceeds attributable to the Premises received by Landlord or Landlord's lender from rental abatement insurance described in Section 11(c). Such abatement shall commence upon such damage or destruction and end upon substantial completion by Landlord of the repair or reconstruction work which Landlord is obligated or elects to perform and Landlord's delivery to Tenant of the Premises, or at such earlier time when Tenant is able to use the Premises without substantial interference. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the Premises, damage to Tenant's Personal Property or any inconvenience occasioned by such damage, repair or restoration. Tenant hereby waives all rights to terminate this Lease pursuant to the provisions of California Civil Code Section 1932, Subdivision 2, and Section 1933, Subdivision 4, and the provisions of any similar Laws hereinafter enacted.

(f) Damage Near End of Lease Term. Anything herein to the contrary notwithstanding, if the Premises are wholly or partially destroyed or damaged during the last twelve (12) months of the Lease Term such that Tenant shall be prevented from using more than twenty-five percent (25%) of the Premises for thirty consecutive days or more due to such damage and destruction (and Tenant does not elect to exercise its applicable extension option within thirty (30) days following such damage or destruction), then either Landlord or Tenant may, at its option, by written notice to the other after such thirty (30) day period but not later than forty-five days after the occurrence of such damage or destruction, cancel and terminate this Lease. In the event of such cancellation and termination of this Lease, this Lease shall be deemed cancelled and terminated as of the date sixty days following the date of such damage or destruction. If neither party so elects to terminate this Lease, the repair of such damage shall be governed by Sections 13(a), 13(b) or 13(c), as the case may be. If this Lease is so terminated, Landlord may keep all the insurance proceeds resulting from such damage, except for those proceeds payable under policies obtained by Tenant which specifically insure Tenant's Personal Property and Alterations, if applicable.

(g) Landlord's Determinations. Landlord's determination of the estimated costs to repair and/or replace any damaged property and the time period required for such repair and/or replacement shall be made reasonably and in good faith by Landlord's general contractor and shall be conclusive for the purposes of this Section 13.

14. NOTICES

Any notice or demand required or desired to be given under this Lease shall be in writing and shall be personally delivered to the address herein provided for the addressee, or in lieu of personal delivery may be given by air courier or other commercial delivery service which guarantees overnight delivery, or by United States certified or registered mail service. Notice shall be effective on the day such notice is received or rejected at the address herein provided for the addressee. For purposes hereof, the addresses for Landlord and Tenant are as set forth in the Lease Summary; provided, however, that after the Commencement Date, the address of Tenant shall be the address of the Premises. In addition, with respect to any Second Request that Tenant delivers to Landlord pursuant to Section 6, Tenant shall also deliver a copy of the Second Request to the following party:

Michael F. Potter, Esq.
Real Estate Law Group, LLP
2330 Marinship Way, Suite 211
Sausalito, CA 94965

Either party may change its address or addresses by giving notice of same in accordance with this Section 14.

15. DEFAULT

(a) Tenant's Default. A default under this Lease by Tenant shall exist if any of the following events shall occur:

(i) If Tenant shall have failed to pay any amount of Rent within five (5) business days after receipt by Tenant of written notice that such payment is past due; or

(ii) If Tenant shall have failed to perform any term, covenant or condition of this Lease (including Tenant's obligations pursuant to Exhibit C attached hereto) other than the payment of Rent (and excluding the defaults described in clauses (iii) through (ix) below) and such failure continues for thirty (30) or more days after written notice from Landlord; provided, however, that where such failure could not reasonably be cured within the thirty (30) day period, Tenant shall not be in default if it has commenced such performance within said thirty (30) day period and thereafter diligently prosecutes the same to completion; or

(iii) If Tenant shall have assigned its assets for the benefit of its creditors; or

(iv) If the sequestration or attachment of or execution on any material part of Tenant's Personal Property essential to the conduct of Tenant's business shall have occurred, and Tenant shall have failed to obtain a return or release of such Personal Property or replaced such Personal Property within sixty (60) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier; or

(v) If Tenant shall have abandoned the Premises and failed to pay Rent during such period of abandonment; or

(vi) If a court shall have made or entered any decree or order other than under the bankruptcy Laws of the United States adjudging Tenant to be insolvent; or approving as properly filed a petition seeking reorganization of Tenant; or directing a winding up or liquidation of Tenant and such decree or order shall have continued for a period of sixty (60) days; or

(vii) If Tenant shall have failed to comply with the provisions of Sections 19 or 24 of this Lease within the time periods provided for therein; or

(viii) If Tenant shall have sublet the Premises or any portion thereof or assigned its interest in this Lease without Landlord's prior written consent (and Tenant has not caused such subletting or assignment to be rescinded within five (5) business days following receipt of written notice from Landlord of such wrongful subletting or assignment).

(b) Remedies. Upon a default, Landlord shall have the following remedies, in addition to all other rights and remedies provided by Law or otherwise provided in this Lease, to which Landlord may resort cumulatively or in the alternative, and without notice to Tenant where no cure period is provided for Tenant's breach:

(i) Continue Lease. Landlord may continue this Lease in full force and effect pursuant to California Civil Code Section 1951.4, and this Lease shall continue in full force and effect as long as Landlord does not terminate this Lease, and Landlord shall have the right to collect Rent when due and enforce other obligations of Tenant hereunder.

(ii) Terminate Right to Possession. Landlord may terminate Tenant's right to possession of the Premises at any time by giving written notice to that effect, and relet the Premises or any part thereof. In addition to any other remedies provided for herein, Tenant shall pay to Landlord the unamortized amount of any broker's commissions paid or payable by Landlord in connection with this Lease (amortized on a straight line basis over the initial term of this Lease). Reletting may be for a period shorter or longer than the remaining term of this Lease. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to remove all Tenant's Personal Property and store same at Tenant's cost and to recover from Tenant as damages:

(A) The worth at the time of award of unpaid Rent and other sums due and payable which had been earned at the time of termination; plus

(B) The worth at the time of award of the amount by which the unpaid Rent and other sums due and payable which would have been earned or payable after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus

(C) The worth at the time of award of the amount by which the unpaid Rent and other sums due and payable for the balance of the Lease Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; plus

(D) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which, in the ordinary course of things, would be likely to result therefrom, including, without limitation, any costs or expenses reasonably incurred by Landlord: (i) in retaking possession of the Premises; (ii) in maintaining, repairing, preserving, restoring or cleaning the Premises or any portion thereof; (iii) any unamortized leasing commissions paid or payable by Landlord in connection with this Lease (amortized on a straight line basis over the initial term of this Lease); or (iv) for any other reasonable costs necessary or appropriate to relet the Premises; plus

(E) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the Laws of the State of California.

The "worth at the time of award" of the amounts referred to in Sections 15(b)(ii)(A) and 15(b)(ii)(B) is computed by allowing interest at the rate of ten percent (10%) per annum on the unpaid Rent and other sums due and payable from the termination date through the date of award. The "worth at the time of award" of the amount referred to in Section 15(b)(ii)(C) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future Laws, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any default of Tenant hereunder.

(iii) Re-entry. Landlord may, with or without terminating this Lease, in accordance with applicable Laws and upon notice to Tenant if required by Law, re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. No re-entry or taking possession of the Premises by Landlord pursuant to this paragraph shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant.

(iv) Remedy. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant pursuant to the terms of Section 26.

(c) Late Charges. Tenant acknowledges that late payment by Tenant to Landlord of Rent and other charges provided for under this Lease shall cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult or impracticable to fix. Such costs include, but are not limited to, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and notes secured by any encumbrance covering the Premises, or late charges and penalties due to late payment of Real Property Taxes due on the Premises. Therefore, if any installment of Rent or any other charge due from Tenant is not received by Landlord within seven (7) days after Tenant's receipt of written notice of such delinquent payment, Tenant shall pay to Landlord an additional sum equal to three percent (3%) of the amount overdue as a one (1) time late charge, whether or not Landlord has exercised any remedy herein provided for default by Tenant. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord shall incur by reason of the late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord on account thereof.

(d) Landlord's Default. Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Tenant to Landlord specifying the nature of such default; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

16. SURRENDER OF THE PREMISES

(a) Condition upon Surrender. Upon the expiration or earlier termination of the Lease Term, Tenant shall surrender the Premises to Landlord broom clean and in its condition, subject to the provisions of Section 7(d) hereof, existing as of the Commencement Date, ordinary wear and tear, damage and destruction and condemnation excepted.

(b) Removal of Alterations. Tenant shall remove from the Premises prior to the termination or expiration of this Lease all of Tenant's Alterations required to be removed pursuant to Section 7(d) and all Tenant's Personal Property, and shall repair any damage and perform any restoration work caused by such removal. If Tenant fails to remove such Alterations and Tenant's Personal Property on or before the termination of this Lease (or on any such earlier date that Tenant abandons or surrenders the Premises), Landlord shall comply with applicable Laws with respect to such Alterations and Tenant's Personal Property. Tenant shall be liable to Landlord for costs of removal of any such Alterations and Tenant's Personal Property and storage and transportation costs of same, and the cost of repairing any damage to the Premises and restoring the Premises, together with interest at the rate of ten percent (10%) per annum from the date of expenditure by Landlord.

(c) Indemnification of Landlord. If the Premises are not surrendered to Landlord in accordance with the terms of this Section 16, Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents against all Liabilities resulting from Tenant's delay past such date in so surrendering the Premises, including, without limitation, any claims made by any succeeding tenant, losses to Landlord due to lost opportunities to lease to succeeding tenants, and attorneys' fees and costs.

17. ATTORNEYS' FEES

If either party brings any action or legal proceeding for damages for an alleged breach of any provisions of this Lease, to recover Rent, to terminate the tenancy of the Premises or to enforce, interpret, protect or establish any term, condition or covenant of this Lease or right of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, or in a separate action brought for that purpose, its reasonable attorneys' fees and costs.

18. LIENS

Tenant shall keep the Premises and the Project free from liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from all Liabilities arising out of or in any way relating to any such liens or claims of lien. Tenant shall cause any such liens to be released of record, by payment or posting of a proper bond acceptable to Landlord, within ten (10) days after the imposition of the lien and written request by Landlord.

19. SUBORDINATION

(a) Documentation. This Lease is subject and subordinate to all ground and underlying leases, mortgages and deeds of trust which now affect the Premises, as the same may hereafter be renewed, modified, consolidated, replaced and/or extended (collectively "Encumbrances"); provided, however, if the holder or holders of any such Encumbrance ("Holder") shall require that this Lease be prior and superior thereto, then within seven (7) days after written request of Landlord to Tenant, Tenant shall execute, have acknowledged and deliver any and all documents or instruments, in the form presented to Tenant, which Landlord or Holder deems necessary or desirable for such purposes. Landlord shall have the right to cause this Lease to be and become and remain subject and subordinate to any and all future Encumbrances which might hereafter affect the Premises; provided, however, that in such event, so long as Tenant is not in default under this Lease, Holder shall agree not to disturb Tenant's quiet enjoyment of the Premises or terminate or cancel any of Tenant's rights or interests under this Lease as long as Tenant shall pay the Rent timely and observe and perform all other provisions of this Lease to be observed and performed by Tenant. Within twenty (20) days after Landlord's written request, Tenant shall execute any and all documents reasonably required by Landlord or Holder (in Holder's commercially reasonable standard form) required to effectuate such subordination to make this Lease subordinate to any lien of the Encumbrance.

(b) Attornment. Notwithstanding anything to the contrary set forth in this Section 19, Tenant hereby attorns and agrees to attorn to any entity purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any other rights, powers or remedies under any Encumbrance, provided such purchaser or transferee expressly assumes in writing the obligations of Landlord under this Lease.

(c) Nondisturbance Rights from Existing Lender. Landlord shall use commercially reasonable and diligent efforts to obtain from any and all Holders of any Encumbrances secured by the Project, Building and/or Premises within thirty (30) days following the execution of this Lease by Landlord and Tenant, an executed non-disturbance agreement in favor of Tenant. The non-disturbance agreement shall be in Holder's commercially reasonable standard form and provide, among other things, that so long as Tenant is not in default under this Lease and Tenant pays the Rent timely and observes and performs all other provisions of this Lease to be observed and performed by Tenant, such Holder shall not to disturb Tenant's quiet enjoyment of the Premises or terminate or cancel any of Tenant's rights or interests under this Lease. If Landlord is unable to obtain from any Holder an executed non-disturbance agreement (as described above) within the time period prescribed herein, then Tenant shall have the right to terminate this Lease. Tenant shall exercise such right, if at all, within forty (40) days after the execution of this Lease. If Tenant terminates this Lease pursuant to this Section, Landlord shall promptly return all prepaid Rent to Tenant and Tenant's Security Deposit.

20. MORTGAGEE PROTECTION

In the event of any default on the part of Landlord, Tenant shall give written notice to any beneficiary of a deed of trust covering the Premises, and shall allow such beneficiary a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure.

21. CONDEMNATION

(a) Total Taking - Termination. If (i) title to all of the Premises or so much thereof is taken for any public or quasi-public use under any statute or by right of eminent domain so that reconstruction of the Premises will not result in the Premises being reasonably suitable for Tenant's continued occupancy for the uses and purposes permitted by this Lease (as reasonably determined by Tenant), or (ii) the parking spaces available to Tenant pursuant to this Lease are taken for any public or quasi-public use under any statute or by right of eminent domain such that the ratio of parking spaces to rentable square feet of the Premises falls below that mandated by law and Landlord is not able to provide alternative parking to Tenant, then this Lease shall terminate as of the date that possession of the Premises or part thereof is taken.

(b) Partial Taking. If any part of the Premises is taken and the remaining part is reasonably suitable for Tenant's continued occupancy for the purposes and uses permitted by this Lease (as reasonably determined by Tenant), this Lease shall, as to the part so taken, terminate as of the date that possession of such part of the Premises is taken and the Rent payable hereunder shall be reduced in the same proportion that the floor area of the portion of the Premises so taken (less any addition thereto by reason of any reconstruction) bears to the original floor area of the Premises. Landlord shall, at its own cost and expense, diligently make all necessary repairs or alterations to the Premises so as to make the portion of the Premises not taken a complete architectural unit. Such work shall not, however, require Landlord to expend sums in excess of the net proceeds awarded to Landlord on account of such condemnation or taking. During the period of any such repair or alteration, Rent shall be temporarily abated in proportion to the degree that Tenant's use of the Premises is impaired. Each party hereby waives the provisions of Section 1265.130 of the California Code of Civil Procedure and any similar Laws allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

(c) Allocation of Award. Tenant assigns to Landlord its interest in any award which may be made in such taking or condemnation, together with any and all rights of Tenant arising in or to the same or any part thereof; provided, however, nothing contained herein shall be deemed to give Landlord any interest in or require Tenant to assign to Landlord any portion of the award that is allocable to the taking of Tenant's Personal Property, Alterations, Tenant's moving costs or Tenant's goodwill.

(d) Temporary Taking. No temporary taking of the Premises shall terminate this Lease or give Tenant any right to any abatement of Rent. Any award made by reason of such temporary taking shall belong entirely to Tenant and Landlord shall not be entitled to share therein. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Section 21.

(e) Sale Under Threat of Condemnation. A sale by Landlord to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes of this Section 21.

22. HOLDING OVER

If Tenant holds possession of any portion of the Premises after expiration or termination of the term of this Lease with respect to that portion of the Premises without the written consent of Landlord (hereinafter referred to as a "holdover"), then, absent express agreement of Landlord, such holding over shall be a tenancy at sufferance and not for any periodic or fixed term. Tenant shall pay monthly rental hereunder during the first thirty (30) days of such holdover period at an amount equal to one hundred twenty-five percent (125%) of the monthly Base Rent payable immediately prior to expiration of such term with respect to such Premises. After the first thirty (30) days of such holdover period, Tenant shall pay monthly rental at an amount equal to one hundred fifty percent (150%) of the monthly Base Rent payable immediately prior to expiration of such term with respect to such Premises. In addition, Tenant shall pay to Landlord its proportionate share of Real Property Taxes, Project Property Insurance and Operating Expenses as provided in this Lease. Nothing herein shall be construed as a consent in advance by Landlord to any holding over by Tenant or to any specific terms or conditions of any holding over, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord when and as required hereunder. Any holding over with the written consent of Landlord shall, except as otherwise specified in such consent, thereafter constitute a lease from month to month but otherwise subject to all of the terms and conditions of this Lease, excluding any options or rights of Tenant to renew or extend this Lease or expand the Premises hereunder. In addition, Tenant shall not be liable for any consequential damages or claims of lost profits or lost income in connection with any holdover unless Tenant fails to vacate and surrender to Landlord possession of the Premises within twenty (20) days after Landlord's written notice to Tenant to do so.

23. ENTRY BY LANDLORD

Tenant shall permit Landlord and Landlord's Agents to enter the Premises at all reasonable times with reasonable notice, except for emergencies in which case no notice shall be required, to inspect the same and to conduct tests thereon, to post notices of nonresponsibility and "For Sale" signs, to show the Premises to interested parties such as prospective lenders and purchasers, to make necessary Alterations or repairs, and to discharge Tenant's obligations hereunder when Tenant has failed to do so within a reasonable time after written notice from Landlord. Notwithstanding the foregoing, Landlord and Landlord's Agents may enter the Premises at any reasonable time within nine (9) months prior to the expiration of the Lease Term, or at any time during the Lease Term hereof if Tenant is in default hereunder, to place upon the Premises ordinary "For Lease" signs and to show the Premises to prospective tenants. Tenant shall have the right to have a representative of Tenant to accompany Landlord or Landlord's Agents on the Premises. Any entry by Landlord or any of Landlord's Agents shall be accomplished as expeditiously as reasonably possible and in a manner so as to cause as little interference to Tenant as reasonably possible. Landlord shall not access Tenant's safes or enter into any areas maintained by Tenant for the safety and security of monies, securities, negotiable instruments, confidential documents, information or files, or similar items, without Tenant's prior consent, which consent shall not unreasonably be withheld, delayed or conditioned, except for emergencies in which case Tenant's consent shall not be required.

24. ESTOPPEL CERTIFICATES; INFORMATION

(a) Estoppel Certificates. Tenant shall have twenty (20) days following Tenant's receipt from Landlord of an estoppel certificate and Landlord's written request to execute and deliver to Landlord the estoppel certificate, (i) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging to Tenant's knowledge that there are no uncured defaults on the part of Landlord, or, if there are uncured defaults on the part of Landlord, stating the nature of such uncured defaults, (iii) certifying that, to Tenant's knowledge, Tenant has no defenses or offsets then outstanding against any of its obligations under this Lease, or stating those claimed by Tenant, and (iv) certifying any other matters pertaining to the status of this Lease or performance of obligations thereunder by Landlord or Tenant as to which Tenant has actual knowledge and as may be reasonably required either by a purchaser of the Premises or a lender making a loan to Landlord to be secured by the Premises or Project. Tenant's failure to deliver an estoppel certificate within twenty (20) days after delivery of Landlord's written request therefor shall be conclusive upon Tenant that (aa) this Lease is in full force and effect, without modification except as may be represented by Landlord, (bb) there are no uncured defaults in Landlord's performance, (cc) Tenant has no defenses or right of offset against its obligations hereunder, and (dd) no Rent has been paid in advance.

(b) Financial Statements. In connection with any proposed financing or sale of all or any portion of the Project, Landlord may require Tenant to deliver to Landlord the most current financial statements of Tenant, including balance sheets and profit and loss statements, all prepared in accordance with generally accepted accounting principles consistently applied and certified by an officer of Tenant (to the officer's actual knowledge) as true, correct and complete. If Tenant is a publicly traded company on a national exchange, Tenant shall only be required to provide copies of Tenant's annual statement and recent 10Q statements. Tenant shall provide the financial information to Landlord within seven (7) days following Landlord's written request. Tenant shall not be obligated to provide audited financial statements to Landlord unless the same are available. All financial statements furnished by Landlord pursuant to this Section 24(b) shall be treated as confidential; provided, however, Lender may disclose Tenant's financial statements and information to Landlord's lenders, partners, officers, directors, accountants, attorneys, potential lenders and potential purchasers of all or any portion of the Project and any other parties to the extent required by law. To the extent Landlord discloses Tenant's financial statements and information in accordance with the preceding sentence, Landlord shall request that the party to whom it is disclosing the information keep the information confidential and, with respect to potential purchasers of all or any portion of the Project, require the potential purchaser to agree in writing to keep the information confidential.

25. TRANSFER OF THE PREMISES BY LANDLORD

In the event of any conveyance of the Premises and assignment by Landlord of its interest in this Lease, upon the assignee's assumption in writing of this Lease, Landlord shall be and is hereby entirely released from all liability under any and all of its covenants and obligations contained in or derived from this Lease that accrue after the date of such conveyance and assignment.

26. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

If Tenant shall at any time default under this Lease with respect to any payment or performance of any other act on its part to be made or performed under this Lease, Landlord may, but shall not be obligated to and without waiving or releasing Tenant from any obligation of Tenant under this Lease, following not less than five (5) business days' written notice to Tenant, make such payment or perform such other act to the extent Landlord may deem desirable, and in connection therewith, pay expenses and employ counsel. Tenant shall reimburse Landlord for all reasonable sums so paid by Landlord and all penalties, interest, legal fees and collection costs reasonably incurred in connection therewith within thirty (30) days after Landlord's written request therefor. If Tenant fails to so reimburse Landlord within such thirty (30) day period, then (a) a late charge shall be assessed in accordance with Section 15(c) above, (b) interest shall accrue on such delinquent payment at the rate of ten percent (10%) per annum from the date due to the date of payment thereof by Tenant to Landlord, and (c) Landlord shall have all other rights and remedies granted or reserved to Landlord hereunder for the nonpayment of Rent.

27. TENANT'S REMEDY

The obligations of Landlord under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord and Tenant shall look solely to the Project and the proceeds thereof (and any insurance proceeds relating thereto) for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant under this Lease and Landlord shall look solely to the assets of the Tenant for satisfaction of the liability of Tenant and shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant.

28. SECURITY

(a) Cash Security Deposit. Within two (2) days after full execution of this Lease, Tenant shall deliver to Landlord cash (the "Security Deposit") in the amount specified as the Security Deposit in the Lease Summary. The Security Deposit shall secure the performance of all of Tenant's obligations under this Lease, including Tenant's obligation to pay Rent and other monetary amounts, to maintain the Premises and repair damages thereto, and to surrender the Premises to Landlord upon termination of this Lease in the condition required hereunder. Landlord may use and commingle the Security Deposit with other funds of Landlord. If Tenant defaults in the performance of any of its obligations hereunder (and such default continues beyond any applicable cure or grace period), Landlord may, but without any obligation to do so, apply all or any portion of the Security Deposit towards fulfillment of Tenant's unperformed obligations. If Landlord does so apply all or any portion of the Security Deposit, Tenant, upon written demand by Landlord, shall immediately pay to Landlord a sufficient amount in cash to restore the Security Deposit to the full original amount. Tenant's failure to pay to Landlord a sufficient amount in cash to restore the Security Deposit to its original amount within five (5) business days after receipt of such demand shall constitute a default under this Lease. Tenant shall not be entitled to interest on the Security Deposit. Within thirty (30) days after the expiration or earlier termination of this Lease, if Tenant has then performed all of Tenant's obligations hereunder, Landlord shall return the Security Deposit to Tenant. If Landlord sells or otherwise transfers Landlord's rights or interest under this Lease, Landlord shall deliver the Security Deposit to the transferee, whereupon Landlord shall be released from any further liability to Tenant with respect to the Security Deposit.

(b) Letter of Credit. In lieu of providing Landlord with a cash security deposit, or at any time in substitution of the cash security deposit referred to above, Tenant may deliver to Landlord an irrevocable standby letter of credit (the "Letter of Credit") in substantially the form attached hereto as Exhibit G naming Landlord as beneficiary, in the amount of the Security Deposit. The Letter of Credit shall be issued by Bank of America, Wells Fargo Bank, Comerica Bank or another major national bank reasonably satisfactory to Landlord ("Bank"). The Letter of Credit shall allow draws by Landlord upon sight draft accompanied by a statement from Landlord that Tenant is in default under the Lease beyond any applicable cure or grace period and that Landlord is entitled to draw upon the Letter of Credit and shall contain terms which allow Landlord to make partial and multiple draws up to the face amount of the Letter of Credit. If Tenant has not delivered to Landlord at least thirty (30) days prior to the expiration of the original Letter of Credit (or any renewal letter of credit) a renewal or extension thereof, Landlord shall have the right to draw down the entire amount of original Letter of credit (or renewal thereof) and retain the proceeds thereof as the security deposit. If and when Tenant would be entitled to request that Landlord return the Security Deposit (or unapplied portion thereof) to Tenant or apply the Security Deposit towards Tenant's obligation to pay Rent, Landlord shall, at Tenant's request, return to Tenant any Letter of Credit delivered to Landlord pursuant to this Section.

29. FINANCIAL COVENANTS

Tenant represents and warrants that all financial information provided by Tenant to Landlord prior to execution of this Lease is, to Tenant's actual knowledge, true and complete and fairly represents the actual financial condition of Tenant as of the date indicated on the financial statement, and that no material adverse change in such financial condition has occurred from such date to the date that Tenant executes this Lease. Tenant agrees that any material misrepresentation to Landlord as to Tenant's financial condition shall constitute a default under this Lease.

30. PARKING

Tenant and Tenant's Agents shall be entitled to the non-exclusive use of 3.3 non-exclusive parking spaces (within the parking areas of the Project Common Areas) per 1,000 rentable square feet of space contained in the Premises. Such parking rights shall be free of charge and available for Tenant's use on a non-exclusive basis with the other tenants of the Project and their respective officers, employees, customers and invitees; provided, however, that Tenant agrees not to overburden the parking facilities and to reasonably cooperate with Landlord and other tenants of the Project, at no additional cost to Tenant, in the use of the parking facilities. Landlord reserves the right in its absolute discretion to determine whether the parking facilities are becoming crowded and to allocate and assign parking spaces among Tenant and the other tenants of the Project or to impose reasonable, validated parking restrictions. If Landlord exercises its right to assign parking spaces to Tenant and the other tenants of the Project, Landlord shall exercise its best efforts to assign Tenant parking spaces nearest the entrance or entrances to the Building. Landlord shall not be liable to Tenant, nor shall this Lease be affected, if any parking privileges appurtenant to the Premises are impaired by reason of any Law or Landlord's further modifications or development of the Project (including, without limitation, the addition of new buildings or other improvements on existing parking areas) or as a result of any other tenants parking in any parking spaces designated for Tenant's exclusive use; provided, however, Landlord agrees not to modify or develop any portion of the Project in a manner that would result in Tenant being allocated less than 3.3 non-exclusive parking spaces (within the parking areas situated within the Project Common Areas) per 1,000 rentable square feet of space within the Premises . Notwithstanding the foregoing, if the ratio of parking spaces to rentable square feet of the Premises falls below the ratio required by law and Landlord is not able to provide alternative parking to Tenant within sixty (60) days, then, in addition to any other rights or remedies available to Tenant at law or in equity or under this Lease, Tenant may terminate this Lease by written notice to Landlord. Tenant shall exercise such termination right, if at all, within twenty (20) days after Landlord notifies Tenant in writing that Tenant's parking will be reduced below the ratio required by law.

31. QUIET ENJOYMENT

Landlord covenants that Tenant, upon performing the terms, conditions and covenants of this Lease, shall have quiet and peaceful possession of the Premises throughout the Lease Term.

32. SIGNS

Tenant shall not maintain a Tenant identification sign in any location in, on or about the Premises and shall not display or erect any other signage or advertising material that is visible from the exterior of the Building or anywhere upon the Project, except in compliance with the then-current multi-tenant signage program for the Project (a copy of the current version of which is attached hereto as Exhibit F) and any governmental restrictions or conditional approvals. Landlord shall be permitted to make reasonable amendments to its existing multi-tenant signage program and such amendments shall be binding on the tenants of the Project, including Tenant, following such tenants receipt of such amendments. If any such sign or advertising material is approved by Landlord (the "Approved Signage"), the cost thereof, including the cost of design, manufacture, installation, maintenance and removal, shall be Tenant's sole expense. If Tenant fails to maintain its Approved Signage, or if Tenant fails to remove its Approved Signage upon the termination of this Lease, and such failure continues for a period of more than ten (10) days following receipt of written notice from Landlord, Landlord may do so at Tenant's expense and Tenant shall reimburse Landlord, as Additional Rent, for such amounts reasonably expended by Landlord in removing the applicable signage. Such reimbursement shall include all sums disbursed, incurred or deposited by Landlord, including Landlord's costs, expenses and reasonable attorneys' fees, with interest thereon at an interest rate of ten percent (10%) per annum from the date of payment by Landlord.

33. ACCEPTANCE

Delivery of this Lease, duly executed by Tenant, together with payment of the Base Rent for the first month of the Lease Term and the Security Deposit required hereunder, constitutes an offer to lease the Premises, and under no circumstances shall such delivery and payment be deemed to create an option or reservation to lease the Premises for the benefit of Tenant. This Lease shall only become effective and binding upon full execution hereof by Landlord and delivery of a signed copy to Tenant. Upon acceptance of Tenant's offer to lease under the terms hereof, Landlord shall apply the Base Rent to the first months' Base Rent owing under the Lease Term and hold and apply the Security Deposit in accordance with the terms of Section 28 of the Lease. If Landlord declines said offer, any such payments shall be returned to Tenant.

34. RECORDING; QUITCLAIM

Neither party shall record this Lease nor a short form memorandum thereof. Upon any termination of this Lease, Tenant shall, at Landlord's reasonable request, execute, have acknowledged and deliver to Landlord a quitclaim deed or other documentation acceptable to Landlord evidencing the termination of Tenant's interest in the Premises.

35. BROKERS

Tenant represents and warrants to Landlord that it has no dealings with any real estate broker or agent in connection with the negotiation of this Lease and that it knows of no real estate broker or agent who is or might be entitled to a commission or fee in connection with this Lease, except for the brokers disclosed in the Lease Summary attached hereto (the "Brokers"). Tenant agrees to indemnify and hold harmless Landlord and Landlord's Agents from and against any and all Liabilities arising out of or in any way related to any claims for compensation made by any party claiming to have acted on behalf or for the benefit of Tenant in connection with this Lease, other than the Brokers. Landlord shall pay, pursuant to separate agreement, the commissions and fees due to the Brokers. Landlord represents and warrants to Tenant that it has no dealings with any real estate broker or agent in connection with the negotiation of this Lease and that it knows of no real estate broker or agent who is or might be entitled to a commission or fee in connection with this Lease, except for the Brokers referred to above. Landlord agrees to indemnify and hold harmless Tenant and Tenant's Agents from and against any and all Liabilities arising out of or in any way related to any claims for compensation made by any party claiming to have acted on behalf or for the benefit of Landlord in connection with this Lease, including the Brokers (to whom Landlord shall pay a commission pursuant to a separate written agreement between Landlord and the Brokers).

36. GENERAL

(a) Captions. The captions and headings used in this Lease are for the purpose of convenience only and shall not be construed to limit or extend the meaning of any part of this Lease.

(b) Executed Copy; Counterparts. Any fully executed copy of this Lease shall be deemed an original for all purposes. This Lease may be executed in several counterparts, each of which shall be an original, but all of such counterparts shall constitute one such Lease.

(c) Severability. In case any one or more of the provisions contained herein, except for the payment of Rent, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

(d) Construction; Choice of Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California, without giving effect to the conflict-of-law principles of said State. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

(e) Gender; Singular, Plural. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural.

(f) Binding Effect. The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns to the extent assignable.

(g) Waiver. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver is in writing and signed by such party. The waiver by either party hereto of any breach of any term, condition or covenant of this Lease shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other term, condition or covenant of this Lease. Landlord shall have the right to accept Base Rent and other payments due from Tenant hereunder with knowledge of a preceding breach of this Lease, and no such acceptance shall be deemed an express or implied waiver of such breach unless such waiver is in writing and signed by Landlord. No further reservation of rights shall be required of either party hereto under this Lease to reserve all rights and remedies of such party arising with respect to such preceding breach.

(h) Entire Agreement. This Lease (and the Addendum and Exhibits attached hereto) is the entire agreement between the parties, and this Lease expressly supersedes all prior negotiations, representations and agreements of the parties respecting the Premises or the Project. There are no agreements or representations between the parties except as expressed herein or in the Addendum or Exhibits attached hereto. Except as otherwise provided herein or in the Addendum or Exhibits attached hereto, no subsequent change or addition to this Lease shall be binding unless in writing and signed by each of the parties hereto.

(i) Authority. If either or both parties to this Lease is a corporation or a partnership, such party represents and warrants that the person(s) executing this Lease on behalf of such party is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with its corporate bylaws, statement of partnership or certificate of limited partnership, as the case may be. Either party, at its option, may require a copy of such written authorization to enter into this Lease. The failure of such party to deliver the same to the other party within twenty (20) days after such other party’s reasonable request therefor shall be deemed a default under this Lease.

(j) Exhibits. All exhibits, amendments, riders and addenda attached hereto are hereby incorporated herein and made a part hereof.

(k) Lease Summary. The Lease Summary attached to this Lease is intended to provide general information only. In the event of any inconsistency between the Lease Summary and the specific provisions of this Lease, the specific provisions of this Lease shall prevail.

(l) Survival. Landlord's and Tenant's indemnities shall survive the termination of this Lease where reasonably appropriate to accomplish the purpose thereof.

(m) Time. Time is of the essence for the performance of each term, condition and covenant of this Lease.

(n) No Jury Trial. Landlord and Tenant hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Landlord against Tenant or Tenant against Landlord on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any Laws now or hereafter in effect.

(o) Shuttle Program. Landlord and Tenant shall each participate in the Brisbane/Crocker Park Shuttle Program managed by the Multi-City TSM Agency for the City of Brisbane at its own expense.

(p) Addendum. The terms of an Addendum, consisting of paragraphs 1 through 7 is attached hereto and made a part hereof.

THIS LEASE is effective as of the date first hereinabove written.

"Tenant"

ALTUS MEDICAL, INC.
a Delaware corporation

By: /s/ Kevin Connors

Name: Kevin Connors
Its: CEO

By: /s/ Ronald J. Santili

Name: Ronald J. Santili
Its: VP & CFO

"Landlord"

GAL-BRISBANE, L.P., a California limited partnership

By: Brisbane Tech LLC, a Delaware limited liability company, its General Partner

By: Stuhlmuller Real Estate, LLC, a Delaware limited liability company

By: /s/ Roger C. Stuhlmuller

Roger C. Stuhlmuller,
Manager

EXHIBIT A

DIAGRAM OF BUILDING

[Architecturally rendered images of building]

EXHIBIT B

PLAT AND LEGAL DESCRIPTION OF PROJECT

[Plat and legal description of project and architecturally rendered image of site plan]

EXHIBIT C

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT supplements that certain lease (the "Lease") dated _____, 2003, entered into between GAL-BRISBANE, L.P., a California limited partnership, as Landlord, andALTUS MEDICAL, INC., a Delaware corporation, as Tenant. All capitalized terms not otherwise defined herein shall have the same meaning as those capitalized terms contained in the Lease.

1. Landlord, at Landlord's sole cost, shall construct or cause to be constructed (on a turnkey basis) within the Premises the improvements described in that certain letter dated July 11, 2003 from Aberthaw West to Roger Stuhlmuller, (the "Aberthaw Letter"), a copy of which is attached hereto as Exhibit C-1 and as shown on the Floor Plan referred to below, except that (w) Landlord shall install two glass doors, as approved by Tenant, in the Premises' lobby, (x) Landlord shall install modular furniture cubicles as described in subparagraph 1.a. below, (y) Landlord shall install rubber mat flooring in the fitness center, and (z) the 6th through 10th lines of section "Final Test Area-1st Floor" on page 2 of the Aberthaw Letter is deleted and replaced with the following: "Provide and install three suspended wire molds running east/west evenly spaced. Each wire mold to contain provisions for five work station receptacle clusters, evenly spaced (total of 15 work stations) and, each receptacle cluster to contain one 30A/220V receptacle, one 20A/110V duplex receptacle and one data outlet and, each electrical receptacle described above to have dedicated circuit breaker. In addition to the work to be performed by Landlord described above, Landlord, at its sole cost, also shall performing the following additional work and/or improvements within or at the Premises, as the case may be:

a. Cubicles. Landlord shall install, setup and fully wire up to 189 modular furniture cubicles in the Premises so that such cubicles are in a "plug & play" condition. The cubicle specifications are provided in Exhibit C-2, attached hereto. In addition, the floor layout of the cubicles shall be as determined by Tenant; however, the number of cubicles on the second floor shall not be greater than 141 (with the actual number to be determined by Tenant) and the number of cubicles on the first floor shall not be greater than 48 (with the actual number to be determined by Tenant); and

b. Truck Loading Facilities. Landlord shall install dock-high and grade level loading facilities for the Premises in the location(s) noted on the site plan attached hereto as Exhibit C-3. The truck loading facilities referred to in the immediately preceding sentence shall substantially conform to the descriptions thereof in the Aberthaw Letter, except the roll-up door provided at the dock area shall be a glass panel roll-up door with aluminum and glass that matches the existing glass system.

The improvements described above and in the Aberthaw Letter are hereinafter collectively referred to as the "Landlord's Work" or "Tenant Improvements". Landlord shall diligently construct the Tenant Improvements on a "turn-key" basis. The Tenant Improvements (excepting therefrom the cubicles referenced above) also shall substantially conform to the three-page floor plan prepared by hpc architecture (collectively, the "Floor Plan"), which Floor Plan is approved by Landlord and Tenant and attached hereto as Exhibit C-4. Landlord shall use commercially reasonable efforts to substantially complete the Tenant Improvements not later than October 15, 2003 and if such Tenant Improvements are not substantially completed by that date, then Landlord shall continue to use commercially reasonable efforts to substantially complete Landlord's Work as soon thereafter as reasonably practical.

2. Landlord shall construct or install the Tenant Improvements in accordance with current building standards, laws, regulations, ordinances and codes.

3 Tenant may request changes or modifications to the Tenant Improvements ("Change Order") by written notice to Landlord; provided, however, the net increased cost of any Change Order(s) shall be borne by Tenant. If Tenant requests a Change Order, Landlord shall promptly give Tenant a written estimate of (a) the cost of engineering and design services to prepare the Change Order, (b) the cost of the work to be performed pursuant to the Change Order, and (c) the time delay expected because of such requested Change Order. Within three (3) days after Tenant's receipt of the written estimate, Tenant shall notify Landlord in writing whether it approves the written estimate. If Tenant approves the written estimate, then Tenant shall accompany its approval with a check made payable to Landlord in the amount of the estimated net increase in cost to effect the Change Order. Upon Landlord's completion of the Change Order and submission of the final cost thereof to Tenant, Tenant shall promptly pay to Landlord any additional amounts reasonably incurred by Landlord in excess of the written estimate. If such written authorization and check are not received by Landlord, then Landlord shall not be obligated to commence work relating to effecting the Change Order on the Premises and Tenant shall be responsible for any delay in the completion of the Premises in accordance with Paragraph 4 below.

4. If Landlord is delayed in substantially completing the Tenant Improvements as a result of a delay by Tenant (each, a "Tenant Delay"), then the Lease Term shall commence on the date that Landlord would have substantially completed the Tenant Improvements but for the Tenant Delay. Tenant Delays shall include, without limitation, those delays caused by (i) Change Orders made or requested by Tenant, and (ii) Tenant's or Tenant's agents' interference with Landlord or Landlord's contractor in the performance of Landlord's Work or the Tenant Improvements. All costs and expenses occasioned by a Tenant Delay, including, without limitation, increases in labor or materials, shall be borne by Tenant. Landlord shall not be entitled to claim a Tenant Delay in substantially completing the Tenant Improvements unless Landlord notifies Tenant in writing of such Tenant Delay (describing in detail the nature of such Tenant Delay) within three (3) business days following the date such Tenant Delay commences. For purposes of the Lease, the term "Force Majeure" delays shall mean delays in completion of construction of the Tenant Improvements caused by general strikes, unseasonably inclement weather, acts of God, unforeseeable governmental regulations, inability to obtain materials, and other similar causes beyond the reasonable control of Landlord and its contractors. Landlord shall not be entitled to claim a Force Majeure delay in substantially completing the Tenant Improvements unless Landlord notifies Tenant in writing of such Force Majeure Delay (describing in detail the nature of such Force Majeure Delay) within three (3) business days following the date such Force Majeure Delay commences.

5. The Premises shall be deemed “substantially completed” as of the date that all of the following conditions are satisfied:

(a) The Tenant Improvements have been substantially completed in accordance with the Aberthaw Letter and the Floor Plan (except for those punch list items referenced in Paragraph 6 below), such that Tenant can reasonably conduct business within the Premises; and

(b) A certificate of occupancy and/or finalized building permit (signed off the applicable building inspector(s)) have been issued for the Premises and the Tenant Improvements.

6. Tenant and Landlord together shall conduct a walk-through of the Building and Premises at a mutually convenient date and time, but in no event later than ten (10) days following the date Landlord gives Tenant notice that the Tenant Improvements are substantially complete. Tenant and Landlord together shall inspect the Premises immediately prior to Tenant’s occupancy and promptly thereafter Tenant shall compile and furnish Landlord with a punch list of any missing or deficient or defective Tenant Improvements. Landlord shall diligently complete the corrective work noted in the punch list in a prompt, good and workman-like manner. Punch list corrections shall not delay the Commencement Date, nor shall a delay in making corrections be grounds for a delay or reduction in any rent payments due Landlord.

7. Landlord shall select the manufacturer and vendor of all building materials and equipment with respect to the Tenant Improvements (however, Tenant shall have a right to have input into materials selected by Landlord, such as paint, carpet, lighting and floor coverings); however, such building materials and equipment shall not be of a lesser quality than Building standard materials and equipment.

8. Tenant shall have the right to enter the Building at all reasonable times for the purpose of inspecting the progress of the Landlord’s Work. Landlord shall notify Tenant in writing when the Landlord’s Work is substantially completed. Tenant’s failure to specify any item on the punchlist shall not waive the Landlord’s obligation to construct the Landlord’s Work in accordance with the terms of this Work Letter Agreement. Landlord shall warrant the Tenant Improvements against defects in workmanship and materials for a period of twelve months following substantial completion of construction and installation of the Tenant Improvements.

9. Landlord agrees that Tenant shall have no obligation to remove any of the Tenant Improvements from the Premises or Building at the expiration or earlier termination of the Lease Term.

10. In the event of any conflict between the terms of this Work Letter Agreement and the Lease, the terms and conditions of the Work Letter Agreement shall control.

"Landlord"	"Tenant"
GAL-BRISBANE, L.P., a California limited partnership	ALTUS MEDICAL, INC., a Delaware corporation
By: Brisbane Tech LLC, a Delaware limited liability company, its General Partner	By: _____
	Name: _____
	Its: _____
By: Stuhlmuller Real Estate, LLC, a Delaware limited liability company	By: _____
	Name: _____
	Its: _____
By: /s/ Roger C. Stuhlmuller	
Roger C. Stuhlmuller Manager	

EXHIBIT C-1

[Aberthaw Letter]

EXHIBIT C-2

[Architecturally rendered images of cubical layouts]

EXHIBIT C-3

[Architecturally rendered image of property]

EXHIBIT C-4

[Architecturally rendered images of floor plans]

EXHIBIT D

COMMENCEMENT DATE MEMORANDUM

LANDLORD: _____

TENANT: _____

LEASE DATE: _____

PREMISES: _____

Pursuant to Section 2(b) of the above referenced Lease, Landlord and Tenant hereby agree as follows:

1. The Commencement Date is _____, 20____; and

2. The Expiration Date is _____, 20____, unless sooner terminated or extended pursuant to the terms of the above-referenced Lease.

LANDLORD:

GAL-BRISBANE, L.P., a California
limited partnership

By: Brisbane Tech LLC, a Delaware limited liability company, its General Partner

By: Stuhlmuller Real Estate, LLC, a Delaware limited liability company

By: _____

Roger C. Stuhlmuller,
Manager

TENANT:

ALTUS MEDICAL, INC.
a _____ corporation

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EXHIBIT E

PROJECT RULES AND REGULATIONS

1. The sidewalks, driveways, entrances, lobbies, stairways and public corridors within the Project shall be used only as a means of ingress and egress and shall remain unobstructed at all times. The entrance and exit doors of the buildings are to be kept closed at all times except as required for orderly passage. Obstruction of any means of ingress or egress, is not permitted.

2. Plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no rubbish, newspapers, trash or other inappropriate substances of any kind shall be deposited therein. Tenant shall not place any harmful liquids in the drainage systems servicing the Buildings or the Project. Personal articles, equipment and clothing shall not be left in common area bathrooms, showers or locker rooms except and unless stored properly within a locker, and in no circumstances shall articles remain overnight.

3. Walls, floors, windows, doors and ceilings shall not be defaced in any way and no one shall be permitted to mark, drive nails, screws or drill into, paint, or in any way mar the Buildings or the Project surface, except that pictures, certificates, licenses and similar items normally used in Tenant's business may be carefully attached to the walls by Tenant in a manner to be reasonably prescribed by Landlord. Upon removal of such items by Tenant any damage to the walls or other surfaces, shall be repaired by Tenant. Tenant is required to protect all carpeting within its Premises from damage (unless caused by ordinary wear and tear), which shall include the use of chair mats at desks and work stations, and the use of moisture barriers under all plants within the Premises.

4. No awning, shade, sign, advertisement or notice shall be inscribed, coated, painted, displayed or affixed on, in, or to any window, door or wall or any other part of the outside or inside of the Premises without the prior written consent of Landlord. No window display or other public display shall be permitted without the prior written consent of Landlord. No lettering or signs will be permitted on public corridor walls or doors excepting the name of tenants, with the size, type and color of letters and the manner of attachment, style of display and location thereon to be prescribed by Landlord. The directory of the Building, if any, will be provided exclusively for the identification and location of tenants only, and Landlord reserves the right to exclude all other information therefrom. All requests for listing on the Building directories shall be submitted to the office of Landlord in writing. Landlord reserves the right to approve all listing requests (which approval shall not be unreasonably withheld, conditioned or delayed). Any change requested by Tenant of Landlord of the name or names posted on directory, after initial posting, will be at the expense of Tenant.

5. The weight, size and position of all safes and other densely weighted or heavy objects used or placed in the Premises, the Buildings or other portion of the Project shall be subject to approval by Landlord prior to installation (which approval shall not be unreasonably withheld conditioned or delayed) and shall, in all cases, be supported and braced as prescribed by Landlord and as otherwise required by law. The repair of any damage caused by the installation, removal or maintenance of such safes or other heavy objects shall be paid for by Tenant. Tenant shall bear the cost of any consultant services employed by Landlord in the evaluation of placement, location or bracing of such heavy items.

6. No improper or unusually loud noises, vibrations or odors are permitted outside any building in the Project. No person shall be permitted to interfere in any way with the tenants of the Project or the people having business with them. No person will be permitted to bring or keep within any building in the Project any animal, bicycle, motorcycle or other vehicle except with the prior written consent of Landlord. Bicycles of Tenant and its employees, agents and invitees shall be stored only in designated bicycle racks outside of buildings and in no other location. No person shall dispose of trash, refuse, cigarettes or other substances of any kind at any place inside or outside of any building in the Project except in the appropriate refuse containers provided therefor. Landlord reserves the right to exclude or expel from the Buildings and the Project any person who, in the judgement of Landlord, is intoxicated or under the influences of alcohol or drugs or who shall do any act in violation of these rules and regulations. Tenant shall not commit, nor shall Tenant allow its employees, agents, invitees, or licensees to commit, any public or private nuisance or any other act or thing which might or would disturb the quiet enjoyment of any other tenant of the Project or the occupancy of nearby property.

7. All keying of office doors, and all reprogramming of Security Access Cards after the date that Tenant commences occupancy of the Premises will be at the expense of Tenant. Tenant shall not re-key any door without making prior arrangements with Landlord.

8. Neither Tenant nor Tenant’s employees, agents, invitees or licensees shall use more than Tenant’s allocated share of the Project parking areas. Automobile parking shall only be in designated areas and entirely within painted parking spaces. Overnight parking and parking by Tenant or its employees within areas marked “visitor” is prohibited. Landlord reserves the right to designate exclusive parking for tenants and visitors, and to require identification of the vehicles of tenants and their employees. Vehicles owned or operated by Tenant, its employees, invitees and agents which are parked improperly shall be subject to tow at such vehicle owner’s expense. The servicing or repairing of vehicles within Project parking areas is prohibited. Tenant, its employees, agents and invitees shall obey all traffic signs at the Project. Vehicle speed limit within the Project parking areas is fifteen miles per hour.

9. Neither Tenant nor Tenant’s employees, agents, invitees or licensees shall hang or display any items from the exterior of any building in the Project, in any common area of the Project, or in any area outside of Tenant’s Premises.

10. Neither Tenant nor any of Tenant’s employees, agents, invitees or licensees, shall at any time transport to or from, or keep upon the Premises any foul or obnoxious, flammable, combustible, explosive, toxic or hazardous fluid, chemical or substance, except as may be specifically approved in writing by Landlord and as further required by law.

11. All equipment of any electrical or mechanical nature shall be placed and maintained by Tenant in the Premises in settings reasonably approved by Landlord, to absorb or prevent any vibration, noise interference, or annoyance to Landlord or others, and shall not overload any circuit, nor draw more power than has been specifically allocated to Tenant.

12. No air conditioning, heating unit, antenna, or electrical panel shall be installed or used by Tenant without the prior written consent of Landlord. No modification of any Building electrical, mechanical, plumbing or security system is permitted without the prior written consent of Landlord (which shall not be unreasonably withheld, conditioned or delayed). Each tenant of the Project is responsible for the proper maintenance and servicing of fire extinguishers and fire protection equipment within its demised premises.

13. No storage, staging, display, or placing of any material, product or equipment by Tenant outside of Tenant's Premises is permitted except as may be expressly approved in writing by Landlord.

14. Trash containers and trash enclosures for each Building are Project common area facilities and Tenant, its employees, agents, invitees and licensees may not dispose of any refuse or other waste material except within trash containers for the Building of which Tenant's Premises are a part, and then only in compliance with applicable law and regulations. Tenant may not place any articles within a trash enclosure other than within a trash bin. Tenant may not place any cardboard boxes within trash containers unless such boxes have been flattened. Tenant shall be responsible for closing and securing trash enclosures after use by Tenant. Tenant shall not dump or store water material or refuse or allow such to remain outside the Premises or the Buildings, except in designated trash containers and trash enclosures.

15. There shall not be used in the Premises, or in the common areas of the Project, either by Tenant or others, any hand trucks except those equipped with rubber tires and rubber side guards. Tenants shall not employ any elevator within any building in the Project for the moving of product, equipment or other non-personal property without employing proper protective elevator pads.

16. Tenant shall notify Landlord promptly following Tenant obtaining knowledge of any leak or electrical or equipment malfunction, fire or other damage to Tenant's Premises or the Buildings.

17. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and address of the Buildings (except the name of the Building in which the Premises is a part) and/or the Project and to reasonably modify these rules and regulations.

18. Tenant shall protect dock areas and pavements from damage due to trucks and trailers. Tenant shall not store trucks or trailers on the Project parking areas, nor park trucks or trailers in the automobile parking areas, traffic aisles, walkways or any public street adjacent to the Project parking areas.

19. Tenant shall make carpool, vanpool and transit information available to employees as may be required by Applicable Laws. Tenant shall employ vanpool and carpool parking spaces for only the purposes indicated.

20. Tenant shall be deemed to have read these Rules and Regulations, and agrees to abide by them as a covenant of its lease of the Premises.

EXHIBIT F

SIGNAGE

[Architecturally rendered images of signage]

1.

EXHIBIT G

IRREVOCABLE STANDBY LETTER OF CREDIT

[ISSUER'S LETTERHEAD]

_____, 2000

Beneficiary:

_____
_____
_____
_____

Re: Irrevocable Standby Letter of Credit No. _____

Gentlemen:

By order of our client, _____ ("Tenant"), 3240 Bayshore Boulevard, Brisbane, California, we hereby issue our IRREVOCABLE, TRANSFERABLE STANDBY LETTER OF CREDIT No. _____ in your favor, for an amount not to exceed in aggregate the sum of and 00/100 U.S. Dollars ($_____.00), effective immediately and expiring at our office located at _____, _____, California, available by payment against your draft drawn on us at sight (herein, "our Office") on or before _____, 20__ (subject to the automatic extensions as hereinafter provided). If the expiration date of this Letter of Credit is a date when the Issuer is not open for business to the public for the entirety of that business day, then the expiration date shall be automatically extended to the first day thereafter that the issuer is open for business to the public for the entirety of that day.

Funds hereunder are available to you or your Transferee (as hereinafter defined) against presentation of your Sight Draft(s), drawn on us, mentioning thereon our Letter of Credit Number _____, accompanied by:

1. Beneficiary's written statement purportedly signed by an authorized general partner or other representative of GAL-Brisbane, L.P., or any Transferee (hereinafter called "Landlord"), containing either of the two (2) following statements:

(a) "I, the undersigned, an authorized general partner or other representative of Landlord, do hereby certify that Tenant is in default beyond any applicable cure or grace period under that certain Office Lease (the "Lease") dated _____, 2000, between GAL-Brisbane, L.P., as Landlord, and Altus Medical, Inc., as Tenant, covering approximately _____ (_____) square feet of space located at 3240 Bayshore Boulevard, Brisbane, California as such Lease may have been or may be amended, modified, extended or renewed from time to time";

OR

(b) “I, the undersigned, an authorized representative of Landlord, do hereby certify that Landlord has received notice from the issuer of this Letter of Credit No. [insert number of Letter of Credit] that the same will not be automatically extended as provided for in the Letter of Credit, and Tenant under the Lease has not delivered to Landlord at least thirty days prior to the expiration of such Letter of Credit (or any renewal letter of credit) a renewal or extension thereof.”

AND,

2. This original Letter of Credit.

Special Conditions:

It is a condition of this Letter of Credit that it shall be deemed automatically extended, without amendment, for an additional period of one year from the present or any future expiration date unless at least forty-five (45) days prior to such date, we notify you in writing by certified mail, return receipt requested at your address specified above (or such other address that you specify in writing to us) that we elect not to renew this Letter of Credit for such additional period. Following receipt by you of such notice, you may draw on us at any time on or before the expiration date up to an amount not exceeding the available amount of this Letter of Credit by means of your draft drawn on us at sight accompanied by your written statement as specified in 1(b) above.

Partial drawings are allowed.

This Letter of Credit may be transferred by you in its entirety provided that you deliver to us written notice thereof.

Any draft drawn under this credit must be marked “Drawn under Irrevocable Standby Letter of Credit No. _____ issued by _____, _____, California”.

Unless otherwise expressly stated herein, this Letter of Credit is subject to the “Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.”

We hereby agree to honor each draft drawn under and in compliance with the terms and conditions of this Letter of Credit, if presented, as specified, at our Office on or before the expiration date as specified above.

Should you have occasion to communicate with us regarding this Letter of Credit, please direct your correspondence to us at _____, making specific mention of the Letter of Credit Number mentioned above.

_____

By: _____

Name: _____

Title: _____

EXHIBIT H

There shall be excluded from the Operating Costs which Tenant is obligated to pay or contribute to in accordance with the Lease:

Depreciation interest or amortization on mortgages or ground lease payments;

Legal fees incurred in negotiating and enforcing tenant leases;

Real estate brokers leasing commissions;

Initial improvements and alterations to tenant spaces (including but not limited to expenses incurred in connection with the Tenant Improvements to the Premises);

The costs of providing any service directly to and paid directly by any tenant;

Any costs expressly excluded from Operating Expenses elsewhere in the Lease;

Costs of any item for which Landlord receives reimbursement from insurance proceeds or any third party. Insurance proceeds shall be excluded from Operating Expenses in the year in which they are received;

Interest, principal depreciation, attorneys fees, costs of environmental investigations or reports, points fees and other lender costs and closing costs on or relating to any mortgage, ground lease payment or other debt instrument encumbering the Project or the Building, or applicable portion thereof;

Any bad debt loss, rent loss or reserve;

Landlord's cost of electricity and other utilities, items, benefits and services to the extent that they are sold or provided to other tenants or occupants but that are not offered or provided to Tenant;

Interest or penalties resulting from any late payment of any Operating Expenses or Real Property Taxes by Landlord in any amount payable by Landlord to any tenant resulting from Landlord's default in its obligations to such tenant;

Any annual management fee in excess of three percent (3%) of the annual Base Rent due under the Lease for such annual period;

Defending or prosecuting any lawsuit with any lender, ground lessor, broker, tenant, occupant or prospective tenant or occupant;

Selling or syndicating any of Landlord's interest in the Project or Building, or portion thereof, and disputes between Landlord and Landlord's property manager;

Landlord's general corporate or partnership overhead and general administrative expenses, including (i) the salaries of management personnel who are not directly related to the Project or Building and primarily engaged in the operation, maintenance and repair of the Project or Building except to the extent that those costs and expenses are included in the management fee, and (ii) the cost of preparing Landlord's annual partnership tax returns and any legal costs associated with the formation or continued existence of the partnership entity;

Wages, salaries or other compensation paid to any executive employee of Landlord or Landlord's property manager above the grade of Building manager for the Building or paid to any offsite personnel;

Any rental, imputed rental or associated costs for any management office that exceeds 500 rentable square feet and for which the rental rate exceeds the prevailing market rate for comparable office space, and any costs associated with the purchase or rental of furniture and office equipment for Landlord, Landlord's property manager or their agents, contractors and lenders;

Advertising and promotional expenditures primarily directed toward leasing tenant space in the Project or Building, or applicable portion thereof;

Leasing commissions, space planning costs, attorneys fees and costs and other expenses incurred (1) in connection with leasing, other negotiations or disputes with tenants and occupants, prospective tenants or other prospective occupants of the Project or Building, or applicable portion thereof, or (2) associated with the enforcement of any leases;

Any costs arising from Hazardous Material that was installed by Landlord or its agents, employees or contractors, notwithstanding any other provision of this Lease, any costs associated with the presence of any Hazardous Materials in or about the Project, or applicable portion thereof, the Building, the real property on which the Building or Other Buildings are situated (including Hazardous Materials in the groundwater or soil) that was not brought or transported on or used, stored, placed or manufactured in the Project or Building by Tenant or Tenant's Agents;

Any costs incurred because the Building, Other Buildings or Project Common Areas violate any building code, regulation or law, unless due to the acts or omissions of Tenant or Tenant's Agents.

Any costs relating to faulty construction or latent defects in the Building or Other Buildings or other improvements within the Project and any costs for repairs, alterations, additions, improvements or replacements made to rectify or correct any defect in the design, materials or workmanship of the Building, Other Buildings or Project Common Areas;

Any costs incurred in installing, operating and maintaining any specialty service that is not necessary for the management or maintenance of the Building or Other Buildings including, but not limited to broadcasting services, cafeteria, news stand, flower service, car wash and athletic club;

Any expenses arising out of the operation, management, maintenance or repair of any retail premises in the Building or Other Buildings or improvements within the Project operated by Landlord, its agents, contractors, vendors or affiliates;

Any charitable or political contributions made by Landlord;

Costs, including costs of plans, construction, permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for other tenants in the Other Buildings or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Other Buildings;

Costs of purchasing fine art for the Building, Other Buildings and/or Project Common Areas; and

Damage and repairs necessitated by the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

EXHIBIT I

[Chemical Audit of Altus Medical, Inc. Tables]

ADDENDUM

This Addendum is entered into by and between GAL-BRISBANE, L.P., a California limited partnership ("Landlord"), and ALTUS MEDICAL, INC., a Delaware corporation ("Tenant") and made a part of that certain Lease dated concurrently herewith and attached hereto, pursuant to which Landlord leases to Tenant approximately sixty-six thousand and two (66,002) rentable square feet of space in that certain building located at 3240 Bayshore Boulevard in Brisbane, California. Capitalized terms used herein and not defined herein shall have the meanings set forth in the Lease.

1. Base Rent. The Base Rent shall be adjusted on the first day of each Lease Year during the Lease Term as set forth below:

Period	Monthly Base Rent
1st Lease Year	Forty Thousand Dollars ($40,000.00)
2nd Lease Year	Forty Thousand Dollars ($40,000.00)
3rd Lease Year	Fifty Thousand Dollars ($50,000.00)
4th Lease Year	Fifty-Nine Thousand Four Hundred One and 80/100 Dollars ($59,401.80)
5th Lease Year	Sixty-Six Thousand Two Dollars ($66,002.00)
6th Lease Year	Eighty-Two Thousand Five Hundred Two and 50/100 Dollars ($82,502.50)
7th Lease Year	Ninety-Five Thousand Seven Hundred Two and 90/100 Dollars ($95,702.90)
8th Lease Year	One Hundred Eight Thousand Nine Hundred Three and 30/100 Dollars ($108,903.30)
9th Lease Year	One Hundred Eighteen Thousand Eight Hundred Three and 60/100 Dollars ($118,803.60)
10th Lease Year through the Expiration Date	One Hundred Twenty Eight Thousand Seven Hundred Three and 90/100 Dollars ($128,703.90)

2. Tenant Inducement.

a. Cash Inducement. Tenant presently leases space at 821 Cowan Road in Burlingame, California, pursuant to that certain lease (the "Existing Lease") entered into between Tenant's existing landlord ("Current Landlord"), as landlord, as Tenant, as tenant. Tenant is currently negotiating with Current Landlord to terminate the Existing Lease prior to the end of its stated term. If Tenant desires to pay Current Landlord any consideration for terminating the Existing Lease (hereinafter referred to as the "Termination Payment"), as distinguished from any amounts that Tenant pays or that are due to Current Landlord for past or future rent under the Existing Lease, then Landlord shall pay to Tenant an amount equal to the amount of the Termination Payment not to exceed Two Hundred Thousand Dollars ($200,000) (hereinafter referred to as the "Cash Inducement") to be applied by Tenant to the Termination Payment. Landlord shall pay the Cash Inducement to Tenant within ten (10) days after Tenant delivers to Landlord Tenant's written request for payment of the Cash Inducement.

b. Rent Credit. If the amount paid by Landlord to Tenant pursuant to Section 2.a of this Addendum is less than Two Hundred Thousand Dollars ($200,000), then Landlord shall credit against Tenant's obligation to pay Base Rent an amount (the "Rent Credit") equal to the difference between (i) Two Hundred Thousand Dollars ($200,000) and (ii) the amount paid by Landlord to Tenant pursuant to Section 2.a. The Rent Credit shall be applied evenly against Tenant's obligation to pay Base Rent over the Lease Term.

c. Default. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be obligated to pay Tenant the Cash Inducement and/or provide Tenant with the Rent Credit if and during such time that Tenant is in default of the Lease beyond any applicable cure period.

3. Extension Options.

a. Options to Extend. Tenant shall have two (2) options to extend the Lease Term for a period of five (5) years each (hereinafter referred to as the "First Extension Term" and "Second Extension Term," respectively, and each, an "Extension Term"), provided that at the time Tenant's Extension Notice (defined below) is given and at the time the Extension Term is to commence (i) no default by Tenant exists under this Lease beyond any applicable cure or grace period, and (ii) Altus Medical, Inc. or a permitted transferee under Section 6(g) of the Lease (i.e. a Transferee to whom Landlord's consent is not required) is in occupancy of at least fifty percent (50%) of the Building. Tenant shall exercise such option, if at all, by written notice ("Tenant's Extension Notice") to Landlord not later than nine (9) months, nor earlier than fifteen (15) months, prior to the expiration of the original Lease Term or the First Extension Term, as the case may be. Tenant's failure to deliver Tenant's Extension Notice to Landlord in a timely manner shall be deemed a waiver of Tenant's option to extend the Term and Tenant's extension option, and any future option to extend the Lease Term shall lapse and be of no force or effect.

b. Exercise of Option.

(1) First Extension Term. If Tenant exercises its extension option for the First Extension Term, the Lease Term shall be extended for an additional period of five (5) years on all of the terms and conditions of this Lease, except (i) Tenant's options to further extend the Lease Term shall be reduced in number by one, (ii) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement and (iii) the monthly Base Rent for the first year of the First Extension Term shall be the greater of (A) the "Fair Market Rent" prevailing at the commencement of the First Extension Term or (B) the monthly Base Rent in effect at the end of the original Lease Term.

(2) Second Extension Term. If Tenant exercises its extension option for the Second Extension Term, the Lease Term shall be extended for an additional period of five (5) years on all of the terms and conditions of this Lease, except (i) Tenant shall have no further options to extend the Lease Term, (ii) Landlord shall not be required to pay to Tenant any tenant improvement allowance or inducement and (iii) the monthly Base Rent for the first year of the Second Extension Term shall be the greater of (A) the "Fair Market Rent" prevailing at the commencement of the Second Extension Term or (B) the monthly Base Rent in effect at the end of the First Extension Term.

(3) Real Estate Commission. Tenant shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of its option to extend the Lease Term made by parties claiming through Tenant. Landlord shall be responsible for all brokerage costs and/or finder's fees associated with Tenant's exercise of its option to extend the Lease Term made by parties claiming through Landlord.

c. Determination of Fair Market Rent.

(1) Agreement on Rent. For the purposes of this Lease, the "Fair Market Rent" means the monthly base rent (i.e., rent other than operating expenses, taxes and insurance premiums) expected to prevail as of the commencement of an Extension Term for the entire Extension Term with respect to leases of comparable space within buildings located in the "Designated Area" (defined as Brisbane and South San Francisco) of a quality and with interior improvements, parking, site amenities, building systems, location, identity and access all comparable to that of the Premises, for a term equal to the Extension Term. Within fifteen (15) days after Landlord's receipt of Tenant's Extension Notice, by written notice to Tenant ("Landlord's Rent Notice"), Landlord shall advise Tenant as to Landlord's determination of the Fair Market Rent. If Tenant disagrees with Landlord's determination, Tenant shall advise Landlord as to Tenant's determination of Fair Market Rent by written notice ("Tenant's Rent Notice") within fifteen (15) days after Tenant's receipt of Landlord's Rent Notice. If Tenant fails to deliver Tenant's Rent Notice to Tenant within the time period provided above, Tenant shall be bound by Landlord's determination of the Fair Market Rent as set forth in Landlord's Rent Notice. If Tenant shall timely deliver to Landlord Tenant's Rent Notice, Landlord and Tenant shall attempt in good faith to reach agreement as to the Fair Market Rent within fifteen (15) days after Landlord's receipt of Tenant's Rent Notice.

(2) Selection of Brokers. If Landlord and Tenant are unable to agree as to the amount of the Fair Market Rent within the aforementioned fifteen (15) day period as evidenced by a written amendment to this Lease executed by them, then, within ten (10) days after the expiration of the fifteen (15) day period, Landlord and Tenant shall each, at its sole cost and by giving notice to the other party, appoint a competent real estate broker licensed in California with at least five (5) years' full-time commercial real estate leasing experience in the Designated Area to determine the Fair Market Rent. If either Landlord or Tenant does not appoint a broker within ten (10) days after the other party has given notice of the name of its broker, the single broker appointed shall be the sole broker and shall determine the Fair Market Rent. If Landlord and Tenant as stated in this Section appoint two (2) brokers, they shall attempt to select a third broker meeting the qualifications stated in this Section within ten (10) days. If they are unable to agree on the third broker, either Landlord or Tenant, by giving ten (10) days' notice to the other party, can apply to the then president of the real estate board of the county in which the Building is located, or to the Presiding Judge of the Superior Court of the county in which the Building is located, for the selection of a third broker who meets the qualifications stated in this paragraph. Landlord and Tenant each shall bear one-half (1/2) of the cost of appointing the third broker and of paying the third broker's fee. The third broker, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant.

(3) Value Determined By Three (3) Brokers. The brokers shall determine the Fair Market Rent by using the "Market Comparison Approach" with the relevant market being office buildings located in the Designated Area. Within thirty (30) days after the selection of the third broker, Landlord's broker shall arrange for the simultaneous delivery to Landlord and Tenant of written appraisals from each of the brokers and the three (3) appraisals shall be added together and their total divided by three (3); the resulting quotients shall be the Fair Market Rent. If, however, the low appraisal and/or the high appraisal of the Fair Market Rent are/is more than ten percent (10%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2); the resulting quotient shall be the Fair Market Rent. If both the low appraisal and the high appraisal of the Fair Market Rent is/are disregarded as stated in this Section, the middle appraisal shall be the Fair Market Rent.

d. Notice to Landlord and Tenant. After the monthly Base Rent for an Extension Term has been set, Landlord and Tenant immediately shall execute an amendment to the Lease stating the monthly Base Rent.

4. Operating Expenses. Landlord shall use commercially reasonable efforts to keep the Operating Expenses as low as possible during the Lease Term while also maintaining the Project in a first class condition and performing its repair and maintenance obligations under Section 8 of the Lease. With respect to any maintenance and/or services estimated by Landlord to cost in excess of $50,000 each year, Landlord shall obtain at least three (3) bids from potential vendors. Landlord shall not be required to select the contractor or vendor that provides the lowest bid, but shall select the contractor or vendor that Landlord reasonably determines can provide the best service or work for the lowest amount, taking into account the bids and the contractor's or vendor's experience, size, financial net worth or rating, and reputation. Notwithstanding the foregoing, Landlord shall be deemed to have complied with the above-requirement regarding obtaining bids from at least three (3) vendors with respect to obtaining bids for insurance coverage provided that Landlord obtains insurance through a licensed insurance broker who obtains and/or reviews quotes from at least three (3) insurance companies. Upon Tenant's written request, Landlord shall provide Tenant with copies of the various bids.

5. Parking. Landlord shall designate ten (10) parking spaces near the entrance to the Building as visitor parking spaces and, at Tenant's sole cost, Landlord shall mark the spaces "Altus Visitor". There shall be no charge or cost to Tenant for use of such ten (10) exclusive parking spaces.

6. Exterior Signage. Notwithstanding anything to the contrary contained in this Section or under the Lease, (i) Tenant shall have the right to install one (1) exterior sign on the Building and (ii) Tenant shall have the right to install Tenant's signage on the existing monument sign in the Project. Tenant's right to install exterior signage on the Building and on the monument sign is subject to Landlord's prior review and approval of Tenant's proposed signage, including the size, color, design and exact proposed location of Tenant's signage, which approval shall not be unreasonably withheld provided that the signage is in accordance with Landlord's written sign criteria and in compliance with all Laws and local ordinances. Tenant shall obtain all of the necessary governmental permits and approvals required to install Tenant's signs in the Project and all of Tenant's signs shall comply with all laws, ordinances and regulations.

7. Right of First Offer. During the Lease Term, if Landlord ever elects to sell the Premises to an unrelated third party, Landlord shall notify Tenant in writing (the "Notice of Intent to Sell") of Landlord's intent to sell the Premises and such Notice to Seller shall contain all material terms and conditions upon which Landlord intends to sell the Premises, including, without limitation, the purchase price, deposit, length of the escrow and due diligence periods and closing date. Tenant shall have ten (10) days from after Tenant's receipt of the Notice of Intent to deliver to Landlord a written offer to purchase the Premises ("Tenant's Offer to Purchase") on the terms and conditions set forth in Landlord's Notice of Intent to Sell or on such other terms and conditions as may be acceptable to Tenant. Tenant's Offer to Purchase shall state either (i) that Tenant offers to purchase the Premises on all the terms and conditions set forth in Landlord's Notice of Intent to Sell or (ii) all of the material terms and conditions upon which Tenant would agree to purchase the Premises. Landlord shall have ten (10) days from after Landlord's receipt of Tenant's Offer to Purchase to either accept or reject Tenant's offer to purchase the Premises by written notice to Tenant; provided, however, Landlord shall be deemed to have accepted Tenant's Offer to Purchase if it is on the same terms and conditions as set forth in Landlord's Notice of Intent to Sell. If Landlord accepts or is deemed to have accepted Tenant's offer to purchase the Premises, then, within ten (10) days thereafter, Landlord and Tenant shall enter into a purchase and sale agreement for the Premises. If (i) Tenant fails to deliver to Landlord Tenant's Offer to Purchase within the ten (10) day period referenced above, (ii) Landlord rejects Tenant's offer to purchase the Premises or (iii) Landlord and Tenant fail to enter into a purchase and sale agreement for the Premises for any reason within the ten (10) period referenced above, Tenant shall be deemed to have waived its right to purchase the Premises pursuant to this provision and Landlord may sell the Premises to any other party on any terms and conditions deemed acceptable to Landlord regardless of whether such terms or conditions or more or less favorable than the terms and conditions offered by Tenant. If Landlord fails to enter into a written agreement with a prospective buyer for the purchase and sale of the Premises within one year after the date of the Notice of Intent to Sell, then Landlord shall be required to deliver to Tenant a new Notice of Intent to Sell prior to Landlord selling the Premises to a third party. The right of first offer granted to Tenant pursuant to this paragraph is personal to Altus Medical, Inc. and may not be assigned to any other party (other than a Tenant Affiliate of Altus Medical, Inc. or a transferee described in Section 6(g) of the Lease and shall expire concurrently with the expiration or earlier termination of the Lease.

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 April 4, 2003, except for note 11, as to which the date is January 12, 2004, relating to the financial statements and financial statement schedule of Cutera, Inc., which appear in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
January 14, 2004