SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10

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

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

Delaware	330-827-593
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

6740 Top Gun Street San Diego, California	92121
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code:

858-458-0900

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

NONE

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

COMMON STOCK, par value $0.001

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This registration statement contains forward-looking statements that involve risks and uncertainties. These forward-looking statements are often accompanied by words such as "believes," "anticipates," "estimates," "intends," "plans," "expects" and similar expressions. These statements include, without limitation, statements about market opportunity, MacroPore, Inc.'s growth strategy and its expectations, plans and objectives. Actual results will likely differ, perhaps materially, from those anticipated in these forward-looking statements as a result of various factors, including changes in MacroPore, Inc.'s ability to obtain necessary state, federal and foreign approval or clearance for use of its products, acceptance of its products in the medical community or ability to attract and retain key management and research personnel. Because of these uncertainties, you should not place undue reliance on these forward-looking statements. Except to the extent required by applicable laws or rules, MacroPore, Inc. does not intend to update any of the forward-looking statements contained herein, whether as a result of new information, future events or otherwise.

ITEM 1. BUSINESS.

GENERAL

MacroPore, Inc. (the "Company") was initially formed as a California general partnership on July 1, 1996. On May 16, 1997, the Company was incorporated in the State of Delaware.

The Company develops, commercializes and manufactures biodegradable surgical implants to aid in the reconstruction, repair and regeneration of bone. The Company's resorbable products are made from a lactic acid copolymer which is composed of a lactic acid similar to that which occurs naturally in the human body. The lactic acid copolymer used by the Company, while maintaining its strength during the bone healing process, is slowly broken down in the body through hydrolysis into lactic acid molecules and ultimately metabolized into carbon dioxide and water, which are then released from the body through the lungs and the kidneys. The Company believes that its products are easier to use and more cost-effective than products made from alternative materials, such as titanium, by eliminating the need for a second, later surgery to remove the implant. The Company has received regulatory clearance or approval to market and sell certain of its products in the United States and Europe, and has entered into an exclusive worldwide marketing and distribution agreement with Medtronic, Inc. ("Medtronic") for the global marketing and distribution of some of its products for use in the craniofacial skeleton.

The Company is also developing additional products for use in spinal fusion procedures, neurosurgery plating, long-bone repair, healing of non-union fractures and cyst or tumor site removal repair, among other things. These future products may require further development and regulatory clearance or approval, potentially including clinical trials, prior to marketing and commercial use.

PRODUCTS AND SERVICES

The Company currently manufactures its products solely in the United States at its San Diego facility. The Company markets three product lines in the United States and in Europe for use in the craniofacial skeleton and for certain applications in the entire skeleton. Some of the Company's products are being marketed in Europe for use in spinal applications.

The Company's MacroPore FX system is comprised of more than 120 lactic acid copolymer components, including plates, screws, tacks and mesh which can be used to fixate a bone in place to facilitate healing. This system is currently approved or cleared for use in the craniofacial skeleton in the United States. The Company believes its MacroPore FX products are well-suited for use in other non-load or low-load bearing sites, particularly in orthopedic fracture repair in the hands and feet. MacroPore FX products have been cleared in Europe for use throughout the body in no-load and low-load bearing sites.

The Company also currently manufactures and markets MacroPore PS and MacroPore OS which are malleable, continuous macroporous sheets used to protect bone defects from surrounding soft tissues, such as muscle tissue, which encroach on the site of the bone defect and interfere with the natural healing process by irritating the bone defect site and causing pain. The MacroPore PS and MacroPore OS systems consist of various shapes and sizes of the macroporous sheets and resorbable screws and tacks which are used to fix the macroporous sheets to the skeleton. MacroPore PS is currently approved or cleared for use in the craniofacial skeleton in the United States and in Europe. MacroPore OS is designed for use in bone healing applications in the skeleton other than the craniofacial skeleton. The Company has received regulatory approval to market MacroPore OS in the Unites States for use, other than in spinal applications, in non-load bearing situations and for use in load bearing situations when used in conjunction with traditional rigid fixation. MacroPore OS is currently authorized for marketing in Europe, including for

use in spinal applications. MacroPore OS has been cleared for use in the United States as a containment system for bone grafts or bone graft substitutes to maintain the bone graft or bone graft substitute in place while allowing access to the site for blood vessels and bone-forming cells necessary for healing.

The Company provides a range of support services to its customers, including product demonstrations and training at the Company's San Diego headquarters for surgeons interested in using the Company's products. The Company also provides regional and on-site training seminars and symposia and provides support personnel to advise surgeons during surgery on the use of the Company's products.

To date, revenue realized from the sale of cranofacial products has accounted for more than 87.0% of the Company's revenue.

PLAN OF OPERATION

During 2001, the Company intends to focus on:

- continuing to grow its craniofacial and neurosurgical markets by introducing new products into these markets
- expanding its overseas markets
- developing new uses for its existing products
- developing new products for use in new applications

In order to accomplish its goals, the Company intends to support the sales and marketing efforts of its distributors, develop products for orthopedic-spinal and craniomaxillofacial-neurologic applications, and continue its research and development of new products. The Company provides marketing support by attending trade shows and providing product promotional materials, through training of the sales force and medical community and by facilitating communications between the Company and its customers.

RESEARCH AND DEVELOPMENT

The Company is continuing its research efforts to develop new applications for its resorbable products and to develop new resorbable products. The Company is currently developing multiple new products which target craniofacial and neurosurgery, spinal and orthopedic indications, and expects to continue to develop new technologically advanced products.

In 1998, the Company continued research and development of its resorbable protective sheets, plates and screws and began development of its resorbable tacks for use in craniofacial indications. Research and development expense for the year ended December 31, 1998 was $1,175,000.

In 1999, the Company's research and development efforts focused on developing its resorbable sheets, plates, screws and tacks for use in other indications, including neurosurgical indications. Research and development expense for the year ended December 31, 1999 was $1,172,000.

In 2000, the Company's research and development efforts focused on developing its MacroPore DX system and on developing uses of its resorbable sheets, plates, screws and tacks in other indications. Research and development expense for the year ended December 31, 2000 was $2,584,000.

CUSTOMERS

Medtronic is the primary distributor for the Company's products and is the Company's principal customer, directly accounting for approximately 97.0% of the Company's revenues for the year ended December 31, 2000.

The Company entered into a distribution agreement with Medtronic in January 2000. The distribution agreement provides Medtronic with exclusive rights in the United States and with exclusive worldwide rights except for rights granted under the Company's existing distribution agreements with other distributors, to market, distribute and sell MacroPore FX and MacroPore PS products solely for use in the reconstruction or fixation of the cranial or facial skeleton. The agreement requires the Company to use its reasonable best efforts to terminate its other existing distribution agreements, or to convert the existing distributors into sub-distributors of Medtronic. The agreement also provides Medtronic with a right of first refusal with respect to any proposed grant to a third party of the distribution or sales representation rights for any of the Company's other products. Under the terms of the agreement, Medtronic paid an up-front payment to the Company and must pay the Company agreed prices for product that Medtronic orders. In addition, Medtronic must submit a minimum amount of purchase orders during the first 12 months of the agreement, or must pay the Company the difference between the amount of purchase orders it actually submits and the stated minimum amount, if any. The Company has agreed to extend by 3 months the period of time in which Medtronic must submit its minimum purchase order amount.

The distribution agreement is terminable upon specified events, including a material breach of the agreement by either party or the insolvency of either party. In addition, the Company may terminate the agreement if Medtronic does not either place a minimum number of purchase orders or pay for the difference between the amount of purchase orders it actually submits and the stated minimum amount. If the agreement is terminated, subject to certain limitations, Medtronic may require the Company to repurchase from Medtronic its inventory of the Company's products at the Company's invoiced price to Medtronic. Upon certain events of default, including a failure by the Company to provide Medtronic with an adequate supply of product, Medtronic may terminate its arrangement to purchase MacroPore FX and MacroPore PS from the Company and Medtronic may itself then manufacture those products and only pay the Company royalties based on sales.

The Company and Medtronic also concurrently entered into a development and supply agreement which provides Medtronic with exclusive worldwide rights to develop, market and sell the Company's products for use in certain spinal applications. Pursuant to this agreement the Company has the right to use Medtronic's intellectual property in spinal applications in its joint research and development in this area. The development and supply agreement provides that Medtronic shall obtain and maintain regulatory approval for the commercial sale of the products developed pursuant to the agreement. The Company will be responsible for the manufacture of such products. The agreement provides that Medtronic will pay the Company a percentage of Medtronic's net selling price for all of the products sold pursuant to the development and supply agreement.

The development and supply agreement is terminable upon specified events, including a material breach of the agreement by either party or the insolvency of either party. Upon certain events of default, including a failure by the Company to provide Medtronic with an adequate supply of product, Medtronic may terminate its arrangement to purchase the products from the Company and Medtronic may itself then manufacture those products and only pay the Company royalties based on sales.

Both of these agreements between the Company and Medtronic have five year terms and automatically renew for successive five year periods, unless either party gives the other party written

notice that the agreement will not be renewed at least 180 days prior to the expiration date of that term.

In the event the Company develops new products and Medtronic does not exercise its right of first refusal under its distribution agreement with the Company, the Company may enter into distribution agreements with other distributors for the sale of these new products. The Company is currently considering entering into distribution agreements with other distributors, primarily to market its products for use in applications other than craniomaxillofacial-neuro and spinal, in Europe, Asia and the Pacific Region.

MARKET AND COMPETITION

The Company competes with many competitors in developing and marketing its technology and products. In the craniofacial fixation market, the Company competes primarily with titanium products, although the Company believes that an increasing number of other companies are developing, or are offering, resorbable bone fixation systems. In particular, Walter Lorenz Surgical, Inc. offers a resorbable fixation system in conjunction with its metallic products, which has primarily been used in pediatric patients, since it loses its strength within eight to twelve weeks and resorbs within one year. Bionx Implants, Inc. also markets a resorbable fixation system for use in the craniofacial skeleton which has some strength advantages over the Company's products and may be preferred to the Company's products for use in the lower jaw. In addition, Synthes Maxillofacial and Stryker Leibinger GmbH & Co. KG, which are primarily metallic fixation companies, market resorbable craniofacial systems. There can be no assurance that the Company's products will be able to compete effectively against such products or against future products that may be developed by these or other competitors.

The Company believes the benefits of using a resorbable material in bone healing and regenerating applications include:

- elimination of the necessity for additional surgery to remove non-resorbable implants
- elimination of the risk of migration of plates and screws during the bone healing process
- lowering the risk of infection
- elimination of thermal sensitivity from temperature changes
- elimination of long-term growth restrictions related to the use of metallic plates and screws in pediatric patients
- no long-term patient palpation
- do not appear on x-rays
- will not distort diagnostic and therapeutic imaging modalities and create imaging artifacts which are commonly encountered with metal systems

In addition, because of their thermoplastic properties, the Company's resorbable products are easy to shape, size and apply to varying anatomical structures, which the Company believes allows for a better anatomical fit and saves valuable minutes in the operating room.

Many of the Company's competitors and potential competitors have substantially greater financial,

technological, research and development, marketing and personnel resources than the Company. These competitors may also have greater experience in developing products, conducting clinical trials, obtaining regulatory approvals, and manufacturing and marketing such products. Certain of these competitors may obtain patent protection, approval or clearance by the FDA or from foreign countries, or may achieve product commercialization earlier than the Company, any of which could materially adversely effect the Company. There can be no assurance that the Company's competitors will not succeed in developing alternative technologies and products that are more effective, easier to use or more economical than those which have been or are being developed by the Company or that would render the Company's technology and products obsolete and noncompetitive in these fields. Furthermore, under the terms of the Company's marketing agreement with Medtronic, Medtronic may pursue parallel development of other technologies or products, which may result in Medtronic developing additional products that will compete with the Company's products.

SALES BY GEOGRAPHIC REGION

The Company sells products in the United States and internationally through a network of independent distributors. International sales may be limited or disrupted by political instability, price controls, trade restrictions and changes in tariffs. The Company's existing distribution agreements provide for payment in U.S. dollars and the Company intends to include similar payment provisions in future distribution agreements. Additionally, fluctuations in currency exchange rates may adversely affect demand for the Company's products by increasing the price of the Company's products in the currency of the countries in which the products are sold.

The Company recorded its first sales in 1999. For the year ended December 31, 1999, the Company recorded $1,513,000 in sales. The Company sold approximately $1,472,000 of product in the United States and $41,000 of product outside the United States.

For the year ended December 31, 2000, the Company recorded $6,251,000 in sales. The Company sold approximately $6,200,000 of product in the United States and $51,000 of product outside the United States.

WORKING CAPITAL

The Company generally maintains an inventory of approximately six to twelve months of products. Although capital expenditures may vary depending on a variety of factors, including sales, the Company presently intends to spend approximately $1,400,000 on capital equipment purchases in 2001. The Company believes its inventory practices and capital expenditures are consistent with other similar companies at similar levels of development.

RAW MATERIALS

The Company presently purchases all of its supply of lactic acid copolymer, the primary raw material used in manufacturing the Company's medical devices, from one source. In August 1999, the Company entered into an agreement with B.I. Chemicals, Inc. to provide the Company with its required supply of lactic acid copolymer. The agreement has a three year term and automatically renews for successive one year terms, unless either party gives written notice that the agreement will not be renewed six months prior to the end of that term. In the event that B.I. Chemicals is unable to supply the raw lactic acid copolymer, B.I. Chemicals has agreed to provide the Company with the manufacturing protocol to enable the Company to produce the raw lactic acid copolymer in-house. The lactic acid copolymer is also available from at least one other supplier.

INTELLECTUAL PROPERTY

The Company's success depends in large part on its ability to protect its proprietary technology and information, and operate without infringing on the proprietary rights of third parties. The Company relies on a combination of patent, trade secret, copyright and trademark laws, as well as confidentiality agreements, licensing agreements and other agreements, to establish and protect its proprietary rights. The Company's success also depends on its ability to obtain patents on its technology. The Company has one U.S. patent for the design of its resorbable sheets that was issued in July 1999 and expires in 2016. The Company has filed applications for ten additional U.S. patents, as well as certain corresponding patent applications outside the United States, relating to the Company's technology. There can be no assurance that any of the pending patent applications will be approved, that the Company will develop additional proprietary products that are patentable, that any patents issued to the Company will provide the Company with competitive advantages or will not be challenged by any third parties or that the patents of others will not prevent the commercialization of products incorporating the Company's technology. Furthermore, there can be no assurance that others will not independently develop similar products, duplicate any of the Company's products or design around the Company's patents.

Litigation, which would result in substantial costs to and diversion of effort by the Company, may also be necessary to enforce any patents issued or licensed to the Company or to determine the scope and validity of third party proprietary rights. If competitors of the Company that claim technology also claimed by the Company prepare and file patent applications in the United States, the Company may have to participate in interference proceedings declared by the U.S. Patent and Trademark Office to determine priority of invention, which could result in substantial costs to and diversion of effort by the Company, even if the eventual outcome is favorable to the Company. Any such litigation or interference proceedings, regardless of outcome, could be expensive and time consuming. Litigation could subject the Company to significant liabilities to third parties and require disputed rights to be licensed from third parties or require the Company to cease using certain technology.

The Company currently has five pending patent applications in the European Patent Office, Australia, Japan and Canada and has published four other international patent applications with all countries designated. In addition, the Company has one patent issued in Australia for the design of its resorbable sheets that expires on August 5, 2017, and has four pending patent applications in Australia. Patent law outside the United States is uncertain and in many countries is currently undergoing review and revisions. The laws of some countries may not protect the Company's proprietary rights to the same extent as United States laws. Third parties may attempt to oppose the issuance of the Company's patents in foreign countries by way of opposition proceedings. Additionally, if an opposition proceeding is initiated against any of the Company's patent filings in a foreign country, that proceeding could have an adverse effect on the corresponding patents that are issued or pending in the United States. It may be necessary or useful for the Company to participate in proceedings to determine the validity of its, or its competitors, patents that have been issued in countries other than the United States, which could result in substantial cost, divert the Company's efforts and attention from other aspects of its business, and could have a material adverse effect on the Company's results of operations and financial condition.

In addition to patent protection, the Company relies on unpatented trade secrets and proprietary technological expertise. There can be no assurance that others will not independently develop or otherwise acquire substantially equivalent techniques, or otherwise gain access to the Company's trade secrets and proprietary technological expertise or disclose such trade secrets, or that the Company can ultimately protect its rights to such unpatented trade secrets and proprietary technological expertise. The Company relies, in part, on confidentiality agreements with its marketing partners, employees, advisors,

vendors and consultants to protect its trade secrets and proprietary technological expertise. There can be no assurance that these agreements will not be breached, that the Company will have adequate remedies for any breach or that the Company's unpatented trade secrets and proprietary technological expertise will not otherwise become known or be independently discovered by competitors. Failure to obtain or maintain patent and trade secret protection, for any reason, could have a material adverse effect on the Company's results of operations and financial condition.

GOVERNMENT REGULATION

Most medical devices for use in humans, including the Company's resorbable protective sheets, plates, screws and tacks, are subject to stringent government regulation in the United States by the Food and Drug Administration, or FDA, under the Federal Food, Drug and Cosmetic Act, or FDC Act. The FDA regulates the clinical testing, manufacture, safety, labeling, sale, distribution and promotion of medical devices. Included among these regulations are premarket clearance, premarket approval, and Quality System Regulation, or QSR, requirements. Other statutory and regulatory requirements govern, among other things, registration and inspection, medical device listing, prohibitions against misbranding and adulteration, labeling and postmarket reporting. The regulatory process may be lengthy, expensive and uncertain. Securing FDA approvals and clearances may require the submission of extensive clinical data and supporting information to the FDA. Failure to comply with applicable requirements can result in application integrity proceedings, fines, recalls or seizures of products, injunctions, civil penalties, total or partial suspensions of production, withdrawals of existing product approvals or clearances, refusal to approve or clear new applications or notifications, and criminal prosecution.

Under the FDC Act, medical devices are classified into Class I, Class II or Class III devices, based on their risks and the control necessary to reasonably ensure their safety and effectiveness. Class I devices are subject to general controls such as labeling, premarket notification and adherence to QSR requirements. Class II devices are subject to general controls, and to specific controls such as performance standards, postmarket surveillance and patient registries. Generally, Class III devices, which include certain life-sustaining, life-supporting and implantable devices or new devices which have been found not to be substantially equivalent to certain legally marketed devices, must receive premarket approval from the FDA. MacroPore FX, MacroPore PS and MacroPore OS are Class II medical devices.

Before any new medical device may be introduced to the market, the manufacturer generally must obtain either premarket clearance through the 510(k) premarket notification process or premarket approval through the lengthier Premarket Approval Application, or PMA, process. A 510(k) premarket notification will be granted if the submitted data establish that the proposed device is "substantially equivalent" to a legally marketed Class I or Class II medical device, or to a Class III medical device for which the FDA has not called for PMAs. The FDA may request data, including clinical studies, before a substantial equivalence determination can be made. It generally takes from three to 12 months from submission to obtain 510(k) premarket clearance, although it may take longer. There is no assurance that clearance will be granted. A PMA must be filed if a product is found not to be substantially equivalent to a legally marketed Class I or II device or if it is a Class III device for which the FDA requires PMAs. A PMA must be supported by extensive data to demonstrate the safety and effectiveness of the device, including laboratory, preclinical and clinical trial data, as well as extensive manufacturing information. Before initiating human clinical trials on devices that present a significant risk, the manufacturer must first obtain an Investigational Device Exemption, or IDE, for the proposed medical device. Toward the end of the PMA review process, the FDA will generally conduct an inspection of the manufacturer's facilities to ensure compliance with QSRs. Approval of a PMA could take up to one or more years from the date of submission of the application or petition. The PMA process can be expensive, uncertain and

lengthy, and there is no guarantee of ultimate approval.

Modifications or enhancements of products that could affect the safety or effectiveness or effect a major change in the intended use of a device that was either cleared through the 510(k) process or approved through the PMA process may require further FDA review through new 510(k) or PMA submissions.

Medical device manufactures are subject to periodic inspections by the FDA to ensure that devices continue to be manufactured in accordance with QSR requirements. Device manufacturers also are subject to postmarket reporting requirements for deaths or serious injuries when the device may have caused or contributed to death or serious injury, and for certain device malfunctions that would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Postmarket reporting also may be required for certain corrective actions undertaken for distributed devices. If safety or effectiveness problems occur after the product reaches the market, the FDA may take steps to prevent or limit further marketing of the product. Additionally, the FDA actively enforces regulations prohibiting marketing of devices for indications or uses that have not been cleared or approved by the FDA.

The Company's current human medical devices are at different stages of FDA review. MacroPore FX has received 510(k) clearance for use in the craniofacial skeleton. MacroPore PS and MacroPore MX, a mandibular fixation system, have received 510(k) clearance for use in lower jaw reconstruction. The Company also has received 510(k) clearance for the use of MacroPore DX, a craniofacial distractor system, and for the use of MacroPore OS in protecting iliac crest, or hip bone, graft donor sites, tumor resections where bone strength is not compromised and throughout the skeleton, other than in spinal applications, when used in conjunction with traditional rigid fixation devices. The Company has submitted 510(k) notifications in connection with its products for use in various additional indications. All of the Company's products that have received 510(k) clearance are subject to QSR and other FDA postmarket requirements.

Under the terms of the Company's development and supply agreement with Medtronic, Medtronic will be responsible for preparing and filing applications for, and obtaining regulatory approval of the products developed by the Company pursuant to the terms of that agreement for use in certain spinal applications. The Company or its marketing partners may not be able to obtain necessary 510(k) clearances or PMA approvals to market the products it is developing in the United States for their intended use on a timely basis, if at all.

In addition, the Company must obtain marketing authroization for its products marketed in Europe, Canada and certain other non-U.S. jurisdictions. Some of the Company's products, primarily the MacroPore FX and MacroPore PS systems, have received such marketing authorization and the Company must comply with extensive regulations from foreign jurisdictions regarding safety, manufacturing processes and quality. These regulations, including the requirements for marketing authorization, may differ from the FDA regulatory scheme. Under the terms of the Company's distribution agreements, its distributors are responsible for obtaining such approvals.

The Company may not be able to obtain marketing authorization in all of the countries where it intends to market its products, may incur significant costs in obtaining or maintaining its foreign marketing authorizations, or may not be able to successfully commercialize its current or future products in any foreign markets. Delays in receipt of marketing authorizations for the Company's products in foreign countries, failure to receive such marketing authorizations or the future loss of previously received marketing authorizations could have a material adverse effect on the Company's results of operations and financial condition.

ENVIRONMENTAL REGULATION

Companies in the United States are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of hazardous materials and chemicals and certain wastes. The Company does not currently use any hazardous materials or chemicals in its manufacturing processes.

STAFF

As of March 9, 2001, the Company had 70 full-time employees, comprised of 23 employees in research and development, 22 employees in manufacturing, 14 employees in management and finance and administration, and 11 employees in marketing. From time to time, the Company also employs independent contractors to support its administrative organizations. The Company's employees are not represented by any collective bargaining unit, and the Company has never experienced a work stoppage. The Company believes its relations with its employees are good.

ITEM 2. FINANCIAL INFORMATION.

SELECTED HISTORICAL FINANCIAL DATA

The following selected financial data are derived from the Company's audited financial statements and the related notes thereto. The following data should be read in conjunction with the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and related notes thereto.

	YEAR ENDED DECEMBER 31,			
	2000	1999	1998	1997
	(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)			
STATEMENT OF OPERATIONS DATA:				
Revenues:				
Sales to related party	$ 6,092	$ -	$ -	$ -
Sales to distributors and end-users	159	1,513	-	-
	6,251	1,513	-	-
Costs directly related to revenue	2,376	481	-	-
Gross profit	3,875	1,032	-	-
Operating expenses:				
Research and development	2,584	1,172	1,175	299
Sales and marketing	2,629	2,356	202	104
General and administrative	2,555	1,313	604	197
Stock based compensation	5,716	666	76	9
Total operating expenses	13,484	5,507	2,057	609
Other income and (expenses):				
Interest income	1,315	68	10	9
Interest and other expenses	(351)	(164)	(43)	-
Net loss	(8,645)	(4,571)	(2,090)	(600)
Basic and diluted net loss per share	$ (1.05)	$ (1.32)	$ (0.64)	$ (0.18)
Shares used in calculating basic and diluted net loss per share	8,201,739	3,458,292	3,250,000	3,250,000
STATEMENT OF CASH FLOWS:				
Net cash used in operating activities	$ (2,982)	$ (5,107)	$ (1,523)	$ (545)
Net cash used in investing activities	(39,450)	(381)	(598)	(205)
Net cash provided by financing activities	47,437	7,924	1,837	1,065
Net increase (decrease) in cash	5,005	2,436	(284)	315
Cash and cash equivalents at beginning of period	2,471	35	319	4
Cash and cash equivalents at end of period	$ 7,476	$ 2,471	$ 35	$ 319
BALANCE SHEET DATA:				
Cash, cash equivalents and short-term investments	$ 44,484	$ 2,581	$ 140	$ 419
Working capital	46,858	3,510	(493)	387
Total assets	52,269	5,575	1,020	515
Capital lease obligations, less current portion	255	304	209	-
Convertible redeemable preferred stock	-	10,689,000	2,696,000	1,055,000
Total stockholders' equity (deficit)	$ 49,335	$ (6,147)	$ 108	$ 481

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

The Company has a limited operating history and its prospects are subject to the risk and uncertainties frequently encountered by companies in the early stages of development, and particularly by companies in rapidly evolving and technologically advanced fields such as the medical device field. On August 8, 2000, the Company completed its initial public offering in Germany and listed its common stock for trading on the NEUER MARKT segment of the Frankfurt Stock Exchange in Frankfurt, Germany.

The Company incurred net losses for the years ended December 31, 2000, 1999 and 1998 of $8,645,000, $4,571,000 and $2,090,000, respectively. As of December 31, 2000, the Company had an accumulated deficit of $15,892,000. The Company expects to expend substantial financial resources to expand marketing, training and customer support needed to generate and support higher sales. In addition, the Company anticipates its research and development expenses will increase as the Company continues to develop new products and conduct clinical trials. The Company will also need to expend further capital resources to expand its manufacturing capabilities. This investment is likely to result in lower gross margins until production efficiencies are reached.

In May 1999, the Company recognized revenue for the first time from the sale of its products. For the years ended December 31, 2000 and 1999, the majority of the Company's revenues came from the sales of its resorbable protective sheets, plates, screws and tacks, which are high revenue dollar and volume items. A smaller percentage of the Company's revenues for the years ended December 31, 2000 and 1999 came from accessories used by surgeons to form, mold and manipulate the Company's resorbable products during surgical procedures, which are lower revenue dollar and lower volume items. The Company expects to continue to realize the majority of its revenues from the sale of its resorbable protective sheets, plates, screws and tacks.

RESULTS OF OPERATIONS

YEAR ENDED DECEMBER 31, 2000 COMPARED TO YEAR ENDED DECEMBER 31, 1999

REVENUES. For the year ended December 31, 2000, revenues were $6,251,000 compared to $1,513,000 for the year ended December 31, 1999. The increase in revenues was primarily the result of sales to Medtronic, the Company's principal distributor, which totaled $6,092,000 and included an initial inventory purchase of $1,162,000. Revenues from this distributor, which is a major stockholder in the Company, represented approximately 97.0% of the Company's revenues for the year ended December 31, 2000.

COST DIRECTLY RELATED TO REVENUES. For the year ended December 31, 2000, cost directly related to revenues was $2,376,000 or 38.0% of revenues, compared to $481,000 or 31.8% of revenues for the year ended December 31, 1999. Cost directly related to revenues includes material, manufacturing labor and overhead costs. The increase in cost directly related to revenue for the year ended December 31, 2000 is primarily attributable to increased costs to support the increased revenue base, while the percent increase relates to the Company's use of distributors rather than an internal sales force in distributing its products, which caused a decrease in revenues per unit sold.

GROSS PROFIT. For the year ended December 31, 2000, gross profit was $3,875,000 or 62.0% of revenues, compared to $1,032,000 or 68.2% of revenues for the year ended December 31, 1999.

RESEARCH AND DEVELOPMENT EXPENSES. For the year ended December 31, 2000, research and development expenses were $2,584,000, compared to $1,172,000 for the year ended December 31, 1999. Research and development expenses include costs associated with the design, development, testing, enhancement of the Company's products, regulatory fees, the purchases of laboratory supplies and clinical trials. The Company expenses research and development costs as incurred. The increase in research and development expenses in the year ended December 31, 2000 is primarily attributable to research into the development of new product lines. The Company expects research and development spending to continue to increase in the future as the Company expands its product development efforts and seeks further regulatory approvals.

SALES AND MARKETING EXPENSES. For the year ended December 31, 2000, sales and marketing expenses were $2,629,000, compared to $2,356,000 for the year ended December 31, 1999. Sales and marketing expenses include costs for marketing personnel, tradeshow expenses, and promotional activities and materials. The increase in sales and marketing expenses in the year ended December 31, 2000 is primarily attributable to an increase in personnel costs and in marketing expenses related to the promotion of product lines. The Company expects sales and marketing expenses to increase in the future to support expanding business activities.

GENERAL AND ADMINISTRATIVE EXPENSES. For the year ended December 31, 2000, general and administrative expenses were $2,555,000, compared to $1,313,000 for the year ended December 31, 1999. General and administrative expenses include costs for administrative personnel, legal and other professional expenses and general corporate expenses. The increase in general and administrative expenses in the year ended December 31, 2000 is primarily attributable to increased personnel costs, and growth of administrative costs such as professional services, insurance and other general corporate expenses related to the expansion of all areas of the Company's operations, as well as costs to support the Company's status as a company whose stock is traded on the NEUER MARKT. The Company expects general and administrative expenses to increase in the future to support expanding business activities.

STOCK BASED COMPENSATION EXPENSES. For the year ended December 31, 2000, non-cash stock based compensation expenses were $5,716,000, compared to $666,000 for the year ended December 31, 1999. Stock based compensation results from options issued to employees and non-employees. Stock based compensation expenses are amortized over the remaining vesting periods of the options, generally four years from the date of grant. Approximately $1,257,000 of the increase in stock based compensation was attributable to the recognition of compensation expense relating to options granted to certain consultants for which services under the option grant agreement were completed during the current period and the related options became fully vested. Due to a modification of certain stock options, an adjustment of approximately $1,775,000 to stock based compensation was recorded in the three months ended March 31, 2000. In addition, the increase related to compensatory options granted to new and existing employees as well as consultants and the increase in the fair market value of the common stock.

INTEREST INCOME. For the year ended December 31, 2000, interest income was $1,315,000, compared to $68,000 for the year ended December 31, 1999. The increase in interest income resulted from an increase in cash, cash equivalents and short-term investments to approximately $44,500,000 as of December 31, 2000 from approximately $2,600,000 as of December 31, 1999.

INTEREST EXPENSE AND OTHER EXPENSES. For the year ended December 31, 2000, interest expense and other expenses were $351,000, compared to $164,000 for the year ended December 31, 1999. The increase in interest expense and other expenses is primarily related to a loss on the conversion of Euros to

U.S. dollars in connection with the net proceeds realized by the Company from the sale of its common stock in August 2000.

YEAR ENDED DECEMBER 31, 1999 COMPARED TO YEAR ENDED DECEMBER 31, 1998

REVENUES. For the year ended December 31, 1999, the Company recorded $1,513,000 in revenues of its resorbable implants and related accessory products. The Company did not report any revenues for the year ended December 31, 1998.

COST DIRECTLY RELATED TO REVENUES. For the year ended December 31, 1999, the Company reported cost directly related to revenues of $481,000 or 31.8% of revenues. Since the Company had no revenues in 1998, the Company did not incur any cost directly related to revenues for the year ended December 31, 1998.

GROSS PROFIT. For the year ended December 31, 1999, gross profit was $1,032,000 or 68.2% of revenues. The Company did not record gross profit for the year ended December 31, 1998.

RESEARCH AND DEVELOPMENT EXPENSES. For the year ended December 31, 1999, research and development expenses were $1,172,000, compared to $1,175,000 for the year ended December 31, 1998. The relatively flat level of expense in research and development expenses in 1999 as compared to 1998 is primarily attributable to a shift from development of the product line to manufacturing of products for sale.

SALES AND MARKETING EXPENSES. For the year ended December 31, 1999, sales and marketing expenses were $2,356,000, compared to $202,000 for the year ended December 31, 1998. The increase is primarily attributable to an increase in personnel costs related to hiring a sales force of thirteen people and the associated sales and marketing expenses such as travel, trade shows and product promotion materials. The sales force was subsequently terminated in 2000 after the Company entered into its distribution agreement with Medtronic.

GENERAL AND ADMINISTRATIVE EXPENSES. For the year ended December 31, 1999, general and administrative expenses were $1,313,000, compared to $604,000 for the year ended December 31, 1998. The increase is primarily attributable to increased personnel costs and growth of administrative costs such as professional services, insurance and other general corporate expenses related to the expansion of all areas of the Company's operations.

STOCK BASED COMPENSATION EXPENSES. For the year ended December 31, 1999, non-cash stock based compensation expenses were $666,000, compared to $76,000 for the year ended December 31, 1998. The increase was primarily due to the grants of additional options to new and existing employees and consultants as well as an increase in the fair market value of the common stock.

INTEREST INCOME. For the year ended December 31, 1999, interest income was $68,000, compared to $10,000 for the year ended December 31, 1998. The increase in interest income resulted from an increase in the average cash balances.

INTEREST EXPENSE AND OTHER EXPENSES. For the year ended December 31, 1999, interest expense and other expenses were $164,000, compared to $43,000 for the year ended December 31, 1998. The increase in interest expense and other expenses related to increased interest expense on capital lease financing and the use of short-term financing until the debt was converted to preferred stock in September 1999.

PRO FORMA STOCK BASED COMPENSATION

The following pro forma information is determined as if the Company had not accounted for its non-cash stock based compensation as an operating expense. The pro forma information may not be representative of such expense or lack of such expense in future years.

	DECEMBER 31, 2000
Net loss:	
As reported	$ (8,645,000)
Pro forma	(2,929,000)
Earnings per common share:	
As reported	$ (1.05)
Pro forma	(0.36)

UNEARNED COMPENSATION

The Company records unearned compensation for options granted to employees as the difference between the exercise price of options granted and the fair value of its common stock at the time of grant. Unearned compensation is amortized to stock based compensation expense and reflected as such in the statement of operations and comprehensive income. Unearned compensation recorded through December 31, 2000 was $6,600,000 with an accumulated amortization, net of any charges reversed during the period for the forfeiture of unvested awards, of $3,506,000. The remaining $3,094,000 as of December 31, 2000 will be amortized using the straight-line method over the remaining vesting periods of the options, generally four years from the date of grant. The Company expects to record amortization expense for unearned compensation of $1,020,000 in 2001, $989,000 in 2002, $860,000 in 2003 and $225,000 in 2004. The amount of unearned compensation expense recorded in future periods may decrease if unvested options for which unearned compensation has been recorded are subsequently forfeited.

NET OPERATING LOSS AND TAX CREDIT CARRY FORWARDS

As of December 31, 2000, the Company had federal net operating loss carryforwards of approximately $7,789,000 and state net operating loss carryforwards of approximately $6,710,000, which may be available to offset future taxable income for tax purposes. The federal net operating loss carryforwards begin to expire in 2012. The state net operating loss carryforwards begin to expire in 2005. A portion of the net operating losses are limited in their annual utilization. As of December 31, 2000, the Company also had research tax credit carryforwards of approximately $170,000 and $141,000 for federal and state tax purposes, respectively. The federal carryforward will begin to expire in 2012, if unused. As of December 31, 2000, the Company also had California manufacturer's credit carryforwards of approximately $160,000, which begin to expire in 2007, if unused.

RECENT ACCOUNTING PRONOUNCEMENTS

The Company has adopted Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"). SFAS 133, which is effective for fiscal years beginning after June 15, 2000, requires that all derivative instruments be recorded on the balance sheet at their fair value. Changes in the fair value of derivatives are recorded each period in current earnings or other comprehensive income, unless specific hedge accounting criteria are met. The Company does not expect that the adoption of SFAS 133 will have a material impact on its financial statements

because it does not currently hold any derivative instruments and does not engage in any hedging activities.

In December 1999, the Securities and Exchange Commission (the "SEC") issued Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements" ("SAB 101"). SAB 101 summarizes the SEC's views regarding the application of generally accepted accounting principles to revenue recognition in financial statements. The Company believes that its current revenue recognition principles comply with SAB 101.

In March 2000, the Financial Accounting Standards Board issued Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation" ("FIN 44"). This interpretation clarifies the application of APB Opinion No. 25 for certain issues related to stock based compensation, including the definition of employee for the purposes of applying APB 25, the criteria for determining whether a plan qualifies as a noncompensatory plan, the accounting consequences of modifications to the terms of a previously fixed stock option award, and the accounting for an exchange of stock compensation awards in a business combination. FIN 44 was effective July 1, 2000, but covers certain events that occur either after December 15, 1998 or January 12, 2000. The Company has applied the interpretations set forth in FIN 44 for the recognition of certain stock based compensation during the year ended December 31, 2000.

LIQUIDITY AND CAPITAL RESOURCES

As of December 31, 2000, the Company had cash, cash equivalents and short-term investments of $44,484,000 and working capital of $46,858,000. Since inception, the Company has financed its operations primarily through sales of stock. The sale of preferred stock in 1997, 1998 and 1999 yielded net proceeds of approximately $14,679,000. On August 8, 2000, the Company completed its initial public offering in Germany and listed its common stock for trading on the NEUER MARKT segment of the Frankfurt Stock Exchange in Frankfurt, Germany. The net proceeds to the Company from the sale of 3,500,000 shares of common stock in the offering were approximately $43,244,000. A portion of those net proceeds have been used for research and development, to expand the Company's manufacturing operations, to promote the Company's brand and to pursue regulatory approvals for the Company's products. In addition, some of the proceeds have been used for working capital and general corporate purposes. The Company has invested some of the proceeds from the offering in short-term investments, pending other uses of the proceeds in its business.

Net cash used in operating activities was approximately $2,982,000, $5,107,000 and $1,523,000 for the years ended December 31, 2000, 1999 and 1998, respectively. For each such period, net cash used in operating activities resulted primarily from net losses and working capital requirements.

Net cash used in investing activities was approximately $39,450,000, $381,000 and $598,000 for the years ended December 31, 2000, 1999 and 1998, respectively. The Company's investing activities primarily consist of the purchase of short-term investments and capital expenditures. The Company's investing activities in the year ended December 31, 2000 included increased short-term investments related to the short-term investment of the proceeds of the Company's initial public offering in August 2000.

Net cash provided by financing activities was approximately $47,437,000, $7,924,000 and $1,837,000 for the years ended December 31, 2000, 1999 and 1998, respectively. The net cash provided by financing activities was primarily attributable to the sale of common stock in the initial public offering and to the sale of preferred stock.

The Company has equipment lease obligations that mature at various dates through 2004 with interest rates ranging from 12.4% to 30.5%. The monthly payments under the equipment lease obligations are $14,000.

As of December 31, 2000, the Company had capital equipment of $4,445,000 less accumulated depreciation of $754,000 to support its clinical, research, development, manufacturing and administrative activities. For the year ended December 31, 2000, the Company's capital expenditures were $2,732,000. For the next twelve months, the Company expects capital expenditures to increase as the Company acquires additional equipment and expands its facilities. Among these planned expenditures are tooling costs for production and the potential purchase of the Company's manufacturing facility in San Diego, California.

From time to time, the Company may enter into collaborative arrangements with other companies for the purpose of engaging in joint research and development activities. In connection with these collaborations, the Company may acquire an ownership interest in other companies. The Company is presently negotiating the terms of one such collaborative arrangement.

The Company's capital requirements depend on numerous factors, including market acceptance of its products, the resources the Company devotes to developing and supporting its products and other factors. The Company expects to devote substantial capital resources to continue its research and development efforts, to expand its support and product development activities and for other general corporate activities. The Company believes that its current cash and investment balances and revenue to be derived from the sale of its products will be sufficient to fund its operations at least through December 31, 2002.

QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISKS

The Company is exposed to market risk related to fluctuations in interest rates and in foreign currency exchange rates.

INTEREST RATE EXPOSURE. The Company's exposure to market risk due to fluctuations in interest rates relates primarily to short term investments, which consist primarily of investments in debt instruments of financial institutions, corporations with strong credit ratings and United States government obligations, reported at an aggregate fair market value of $37,008,000 as of December 31, 2000. These securities are subject to interest rate risk inasmuch as their fair value will fall if market interest rates increase. If market interest rates were to increase immediately and uniformly by 100 basis points from the levels prevailing at December 31, 2000, for example, and assuming an average investment duration of nine months, the fair value of the portfolio would not decline by a material amount. The Company does not use derivative financial instruments to mitigate the risk inherent in these securities. However, the Company does attempt to reduce such risks by generally limiting the maturity date of such securities, diversifying its investments and limiting the amount of credit exposure with any one issuer. The Company believes that it currently has the ability to hold these investments until maturity and, therefore, believes that reductions in the value of such securities attributable to short-term fluctuations in interest rates would not materially affect its financial position, results of operations or cash flows.

FOREIGN CURRENCY EXCHANGE RATE EXPOSURE. The Company's exposure to market risk due to fluctuations in foreign currency exchange rates relates primarily to sales of the Company's products in Europe and other foreign markets. Although the Company transacts business in various foreign countries, settlement amounts are usually based on U.S. dollars or the Euro. Transaction gains or losses resulting from sales revenues have not been significant in the past and there is no hedging activity on the Euro or other currencies. Based on the Company's revenues derived from markets other than the United States for

the year ended December 31, 2000, a hypothetical 10% adverse change in Euros against U.S. dollars would not result in a material foreign exchange loss. Consequently, the Company does not expect that reductions in the value of such sales denominated in foreign currencies resulting from even a sudden or significant fluctuation in foreign exchange rates would have a direct material impact on its financial position, results in operations or cash flows.

Notwithstanding the foregoing interest rate and foreign currency exchange rate fluctuations on the value of the Company's investments and accounts and the indirect effects of such fluctuations could have a material adverse effect on its business, financial condition and results of operations. For example, international demand for the Company's products is affected by foreign currency exchange rates. In addition, interest rate fluctuations may affect the buying patters of the Company's customers. Furthermore, interest rate and currency exchange rate fluctuations have broad influence on the general condition of the United States, foreign and global economies that could have a material adverse effect on the Company.

ITEM 3. PROPERTIES.

The Company's main facility is located at 6740 Top Gun Street, San Diego, California. The Company currently leases approximately 27,000 square feet of space at this location which it uses for its corporate headquarters and for manufacturing. Of the 27,000 square feet, approximately 8,500 square feet is laboratory space, 6,000 square feet is office space and 12,500 square feet is manufacturing space. The Company's lease has a five year term and will expire in 2003. The Company is currently negotiating to purchase this property.

In addition, the Company collectively leases approximately 1,400 square feet of office space in Malvern, Pennsylvania, Atlanta, Georgia and Frankfurt, Germany. These offices have been leased for six month terms that renew automatically, unless terminated.

The Company pays an aggregate of approximately $29,700 in rent per month for its properties located in the United States and approximately DM3,000 for its property in Germany.

ITEM 4. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

The following table provides certain information regarding beneficial ownership of the Company's common stock as of March 9, 2001 by:

- each shareholder known by the Company to own beneficially more than 5% of the outstanding shares
- all directors, both individually and as a group
- all executive officers of the Company, individually and as a group

The amounts and percentages of common stock beneficially owned are reported on the basis of regulations of the SEC governing the determination of beneficial ownership of securities. Under the rules of the SEC, a person is deemed to be a "beneficial owner" of a security if that person has or shares "voting power," which includes the power to vote or to direct the voting of such security, or "investment power," which includes the power to dispose of or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities for which that person has a right to acquire beneficial

ownership within 60 days. Under these rules, more than one person may be deemed a beneficial owner of the same securities and a person may be deemed to be the beneficial owner of securities as to which that person has no economic interest.

All of the individuals listed below who hold stock options granted by the Company prior to January 1, 2001 may exercise stock option grants which have not yet vested. Shares of common stock issued by the Company upon the exercise of unvested options are held in escrow with the Secretary of the Company. None of the option shares are held in escrow at this time. Unless otherwise indicated, the address for each person or entity named below is c/o MacroPore, Inc., 6740 Top Gun Street, San Diego, California 92121.

NAME	NUMBER OF SHARES OF COMMON STOCK BENEFICIALLY OWNED	PERCENTAGE OF OUTSTANDING SHARES
Marshall Cox (1)	860,536	5.7%
Christopher J. Calhoun (2)	875,000	5.8
Michael Simpson (3)	268,750	1.8
Ari Bisimis (4)	298,368	2.0
Charles E. Galetto (5)	100,000	*
Gary Sohngen (6)	100,000	*
Stefan M. Lemperle (7)	766,194	5.1
David Rickey (8)	50,000	*
Ralph E. Holmes (9)	800,000	5.4
Medtronic Asset Management, Inc. (10)	1,000,000	6.7
Edmund Krix (11)	296,386	2.0
All directors and executive officers as a group (8 persons)	2,849,040	17.7

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* Less than one percent.

(1) Includes 115,625 shares issuable upon the exercise of stock options and 22,223 shares issuable upon exercise of warrants. Also includes 140,087 shares held of record by Saratoga Boys Club and 5,334 shares held of record by his spouse. Mr. Cox is the managing director of Saratoga Boys Club and has sole voting and investment power with respect to the shares of the Company's common stock held by Saratoga Boys Club. Mr. Cox disclaims beneficial ownership of shares held by his spouse.

(2) Includes 218,750 shares issuable upon the exercise of stock options. Also includes a total of 600,000 shares held of record by TTMC Investments, Inc., a total of 37,500 shares held of record by the Calhoun Family Trust and 18,750 shares held of record by Mr. Calhoun and his wife. Mr. Calhoun has sole voting and investment power with respect to the shares of the Company's common stock held by TTMC Investments. Mr. Calhoun and his wife are co-trustees of the Calhoun Family Trust and share voting and investment power with respect to the shares of the Company's common stock held by the Calhoun Family Trust.

(3) Includes 213,125 shares issuable upon the exercise of stock options.

(4) Includes 260,000 shares issuable upon the exercise of stock options. Also includes 25,000 shares of the Company's common stock pledged to the Company to secure the repayment of two loans made by the Company to Mr. Bisimis.

(5) Includes 100,000 shares issuable upon the exercise of stock options.

(6) Includes 100,000 shares issuable upon the exercise of stock options.

(7) Includes 600,000 shares held of record by Creative Microspheres, Inc. Dr. Lemperle has sole voting and investment power with respect to the shares of the Company's common stock held by Creative Microspheres. The address for Dr. Lemperle is c/o Artes Medical, 4660 La Jolla Village Drive Suite 825, San Diego, California 92122.

(8) Includes 50,000 shares issuable upon the exercise of stock options.

(9) The address for Dr. Holmes is 8010 Frost Street Suite 412, San Diego, California 92123.

(10) The address for Medtronic Asset Management, Inc. is Medtronic, Inc. Corporate Center, 7000 Central Avenue, N.E., Minneapolis, Minnesota 55432.

(11) Includes 50,000 shares issuable upon the exercise of stock options.

ITEM 5. DIRECTORS, EXECUTIVE OFFICERS AND FOUNDERS.

The following table sets forth certain information regarding the directors and executive officers of the Company as of March 9, 2001.

NAME	AGE	POSITION(S)
Marshall G. Cox	65	Chairman of the Board and Director
Christopher J. Calhoun	35	Chief Executive Officer, Vice-Chairman, Secretary and Director
Michael Simpson	55	President and Director
Ari Bisimis	31	Chief Financial Officer and Director
Charles Galetto	50	Senior Vice President - Finance and Administration, and Treasurer
Gary Sohngen	41	Vice President - Research & Development
Sharon Schulzki	42	Vice President and General Manager - Spine & Orthopedics
Bruce Reuter	51	Vice President - Market Development
R. Mark Lane	52	Vice President - U.S. Sales
David Rickey	45	Director
Edmund Krix	41	Director

MARSHALL G. COX, a current employee of the Company, has served as Chairman of the Board of Directors of the Company since May 1997. He founded Western Micro Technology, Inc. and from 1994 to 1997 served as its chairman and chief executive officer. Mr. Cox retired from Western Micro as Chairman Emeritus in 1997. He is the Managing Director of the Saratoga Boy's Club, formerly a major stockholder in the Company and he serves on the board of directors of Internix, Inc. Mr. Cox holds a B.S. from the University of California, Los Angeles.

CHRISTOPHER J. CALHOUN is a co-founder of the Company and has served as the Company's Vice-Chairman, Chief Executive Officer and Secretary since May 1997. Since 1989, Mr. Calhoun has been involved in research and management for the Plastic Surgery Bone Histology and Histometry Laboratory at the University of California at San Diego. Mr. Calhoun received a B.A. from the University of California at San Diego, and an M.B.A. from the University of Phoenix.

MICHAEL SIMPSON has served as the Company's President since September 1998. From 1986 to 1996,

Mr. Simpson served as President of Synthes (USA) Maxillofacial Division, a medical devices company. From 1997 to 1998, he served as President of the Craniofacial Division at Bionx Implants, Inc. Mr. Simpson holds a B.A. from St. Bonaventure University.

ARI BISIMIS has served as the Company's Chief Financial Officer since April 2000. Mr. Bisimis worked in various investment banking firms before joining the Company. From 1998 to 2000, Mr. Bisimis served as head of Eurobond trading for Dresdner Kleinwort Benson. From 1997 to 1998, he served as Senior Fixed Income Trader for Commerzbank and from 1994 to 1997 as Eurobond trader for JP Morgan. Mr. Bisimis holds a Diplom Kaufmann degree from Johann Wolfgang Goethe University in Frankfurt, Germany.

CHARLES E. GALETTO has served as the Company's Senior Vice President - Finance and Administration and Treasurer since April 2000. From August 1997 to January 2000, Mr. Galetto served in various positions with PMR Corporation, a company specializing in mental health care programs, including service as Senior Vice President-Finance and Treasurer of PMR Corporation. From June 1996 to July 1997, he served as Vice President-Corporate Controller of Medtrans, a medical transportation service, a division of Laidlaw, Inc. and from 1989 to 1996, as Chief Finance Officer, Treasurer and Secretary of Data/Ware Development, Inc. Mr. Galetto is a Certified Public Accountant and holds a B.S. from Wayne State University.

GARY SOHNGEN has served as the Company's Vice President - Research & Development since January 2000. From 1985 to 1999, Mr. Sohngen served as Vice President of Research and Development for DePuy ACE, a Johnson & Johnson company specializing in the manufacture of orthopedic implants. He holds a B.S. from Twickenham Technical College in the United Kingdom and an M.B.A. from the University of Phoenix.

SHARON SCHULZKI has served as the Company's Vice President and General Manager - Spine & Orthopedics business unit since July 2000. From 1983 to 1998, Ms. Schulzki served in various positions with Howmedica, Inc. Division of Pfizer, a manufacturer of medical devices, including Vice President. During that time she also served as Senior Vice President, Worldwide Marketing and Product Development, Howmedica Leibinger, Inc. Ms. Schulzki holds a B.S. from Loyola College, Baltimore, MD.

BRUCE REUTER has served as the Company's Vice President - Market Development since February 2001. From 1990 to 2000, Mr. Reuter served as the Vice President and Managing Director of Mentor International, a multi-national marketer of medical devices. He holds a B.A. from the University of Rhode Island and an M.B.A. from Memphis State University.

R. MARK LANE has served as the Company's Vice President - U.S. Sales since March 2001. From 1998 to 2001, Mr. Lane served as the Executive Vice President of Business Development for dotMD.Inc, a company licensing URL domain names, and President and Chief Operating Officer of MedAscend, Inc., a company providing education and training to physicians worldwide. From 1994 to 1996, he served as Vice President of Marketing Services and Promotions for Genzyme Surgical Products (formerly DSP Worldwide, Inc.). Mr. Lane holds a B.A. from the University of Kentucky.

DAVID RICKEY has served as a director of the Company since November 1999. Since 1996, Mr. Rickey has served as President and Chief Executive Officer of Applied Micro Circuits Corporation, which provides high-performance, high-bandwidth silicon solutions for optical networks. Mr. Rickey also serves as a director of Applied Micro Circuits Corporation and Silicon Wave. He holds a B.S. from Marietta College, a B.S. from Columbia University and an M.S. from Stanford University.

EDMUND KRIX has served as a director of the Company since August 2000. Since 1984, Mr. Krix has served as Chief Executive Officer and Chairman of the Board of Teleplan International N.V., an office products service and maintenance company.

The Board of Directors is responsible for managing the Company in accordance with the provisions of the Company's bylaws (the "Bylaws") and certificate of incorporation (the "Certificate of Incorporation") and applicable law. The number of directors which constitutes the Board of Directors is established by the Board, subject to a minimum of three directors. Currently, all directors hold office for a term ending on the date of the annual meeting following the annual meeting at which such director was elected.

Except as otherwise provided by the Bylaws for filling vacancies on the Company's Board of Directors, the Company's directors are elected at the Company's annual meeting of stockholders and hold office until their respective successors are elected, or until their earlier resignation or removal.

Mr. Cox, a director of the Company and Chairman of the Board of Directors, is Mr. Calhoun's father-in-law.

BOARD COMMITTEES

The Board of Directors has established a committee (the "Committee") to handle compensation matters and administer the Company's Stock Option and Stock Purchase Plan, as amended (the "Stock Option Plan"). The Committee consists of Mr. Calhoun and Mr. Cox. The Committee determines the compensation received by the Company's directors and executive officers and administers the Company's Stock Option Plan. The committee reviews and approves the compensation and benefits for the Company's executive officers, and makes recommendations to the Board of Directors regarding these matters.

The Board of Directors has also established an Audit Committee consisting of Mr. Rickey and Mr. Krix. Paul Araquistain, an employee and former member of the Board of Directors of the Company also serves on the Audit Committee. The Audit Committee provides recommendations to the Board of Directors regarding the selection of the Company's independent public accountants, reviews the scope of the annual audit of the Company's books and records, approves the audit fees to be paid, and reviews the Company's financial accounting controls with the Company's staff and its independent public accountants.

ITEM 6. EXECUTIVE COMPENSATION.

DIRECTOR COMPENSATION

Presently, other than expenses in connection with attendance at meetings and certain other expenses, the Company does not compensate any non-employee members of its Board of Directors. Non-employee directors are eligible to receive options under the Company's Stock Option Plan.

EXECUTIVE COMPENSATION

Executive officers of the Company are appointed by the Board of Directors annually at the first meeting of the Board of Directors following the annual meeting of stockholders and generally serve until their successors have been duly appointed and qualified.

The following table sets forth summary information concerning compensation awarded to, earned by,

or accrued for services by the Company's Chief Executive Officer and four additional officers for services rendered to the Company in all capacities during the years ended December 31, 1998, 1999 and 2000. Except as set forth below, no profit-sharing, allowances, insurance payments, commissions or other remuneration paid or benefits in kind were made to the Company's officers during such years.

NAME AND PRINCIPAL POSITION	YEAR	ANNUAL COMPENSATION SALARY	ANNUAL COMPENSATION BONUS	LONG TERM COMPENSATION AWARDS SECURITIES UNDERLYING OPTIONS/SARS (#)	ALL OTHER COMPENSATION (1)
Christopher L. Calhoun.....	2000	$ 177,303	$ 50,760	62,500	$ 12,845
CHIEF EXECUTIVE OFFICER AND SECRETARY	1999	145,750	41,086	250,000	7,385
	1998	10,008	0	0	0
Michael Simpson.....	2000	168,299	46,530	68,750	9,600
PRESIDENT	1999	165,000	41,086	55,000	9,600
	1998	55,000	30,000	220,000	2,400
Ari Bisimis (2).....	2000	120,000	36,000	275,000	7,200
CHIEF FINANCIAL OFFICER					
Charles Galetto (3).....	2000	102,885	38,125	100,000	6,600
SENIOR VICE PRESIDENT, FINANCE AND ADMINISTRATION AND TREASURER					
Gary Sohngen (4).....	2000	120,000	1,500	100,000	9,600
VICE PRESIDENT, RESEARCH AND DEVELOPMENT					

(1) The amounts in this column represent the car allowance given to each named executive officer.
(2) Mr. Bisimis began his employment with the Company in April 2000. He was granted 10,000 options in May 1999 for consulting services he provided prior to joining the Company.
(3) Mr. Galetto began his employment with the Company in April 2000.
(4) Mr. Sohngen began his employment with the Company in January 2000.

OPTION GRANTS IN 2000

The following table sets forth, as to the named executive officers, information concerning stock options granted during the year ended December 31, 2000.

	INDIVIDUAL GRANTS				
NAME	NUMBER OF SECURITIES UNDERLYING OPTION/SARS GRANTED	PERCENT OF TOTAL OPTIONS GRANTED	EXERCISE PRICE PER SHARE	EXPIRATION DATE	GRANT DATE PRESENT VALUE (1)
Christopher Calhoun.....	62,500	4.0%	$ 3.00	January 1, 2010	$ 150,312
Michael Simpson.....	68,700	4.4	3.00	January 1, 2010	165,224
Ari Bisimis.....	250,000	15.8	3.00	April 1, 2010	2,659,500
	25,000	1.6	3.00	January 1, 2010	60,125
Charles Galetto.....	100,000	6.3	3.00	April 24, 2010	1,063,600
Gary Sohngen.....	100,000	6.3	3.00	January 1, 2010	240,500

(1) The Company used the Black-Scholes option-pricing model to determine the grant date present value of the options set forth in this table. The Company's use of this model should not be construed as an endorsement of its accuracy at valuing options. The real value of the options depends upon the actual changes in the market price of the Company's common stock during the applicable period.

All stock option valuation models, including the Black-Scholes model, require a prediction about the future movement of the stock price. The following facts and assumptions were used in calculating grant date present value: exercise prices as indicated in the table above, fair market value of each option on the date of grant based on the best information available, a dividend yield of 0.0%, an expected stock option term of ten years and a stock price volatility of 60.0% based on the market

performance of the stock of similar medical device companies. The Company used an assumed risk-free interest rate in its calculations equivalent to the yield of a zero-coupon, ten-year Treasury bond on the date of the grants. The risk-free interest rate was 6.48% for options granted on January 1, 2000, 6.03% for options granted on April 1, 2000 and 6.00% for options granted on April 24, 2000. No other discounts or restrictions related to vesting or the likelihood of vesting of the stock options were applied.

AGGREGATED OPTIONS EXERCISES IN 2000 AND OPTION VALUES IN 2000

The following table sets forth information concerning options to purchase common stock held as of December 31, 2000 by each of the officers named in the summary compensation table that have stock options.

Amounts set forth as "value realized" in the following table represent hypothetical calculations based on the difference between the fair market value of the common stock underlying the options and the exercise price of the options. Prior to the Company's initial public offering in August 2000, there was no public market for the Company's stock. The value realized is therefore based on the best information available as to the fair market value of the Company's stock at the date of grant. The value realized does not necessarily represent any actual monetary gain to the option holder.

			NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AS OF DECEMBER 31, 2000		VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS AS OF DECEMBER 31, 2000	
NAME	SHARES ACQUIRED ON EXERCISE (#)	VALUE REALIZED	EXERCISABLE	UNEXERCISABLE	EXERCISABLE	UNEXERCISABLE
Christopher Calhoun	93,750	$1,093,125	218,750	-	$1,425,313	-
Michael Simpson	130,625	1,394,406	213,125	-	1,366,269	-
Ari Bisimis	25,000	248,750	260,000	-	1,164,800	-
Charles Galetto	-	-	100,000	-	448,000	-
Gary Sohngen	-	-	100,000	-	448,000	-

EMPLOYMENT AGREEMENTS

The Company has not entered into any written employment agreements with any of its executive officers or directors. The Company intends to enter into an employment agreement with Mr. Bisimis and into standard employment agreements with its other overseas employees.

STOCK OPTION PLAN

In October 1997, the Board of Directors of the Company adopted, and the stockholders approved, the Stock Option Plan. The Stock Option Plan is administered by the Committee. The purpose of the Stock Option Plan is to provide the Company's designated employees, certain consultants and advisors who perform services for the Company, and non-employee members of the Company's Board of Directors, with the opportunity to receive grants of incentive stock options, nonqualified stock options and restricted stock. Awards under the Stock Option Plan may be made in the form of:

- incentive stock options
- nonqualified stock options (incentive and nonqualified stock options are collectively referred to as "options")

- direct awards or sales of stock

Awards may be made to such directors and employees of the Company, and to such consultants to the Company as the Committee shall, in its own discretion, select.

The Company is currently authorized to issue 5,000,000 shares under its Stock Option Plan. As of March 9, 2001, the Company had outstanding options to acquire 3,441,083 shares of the Company's common stock pursuant to the Stock Option Plan. As of March 9, 2001, options to acquire 1,106,226 shares of common stock had been exercised and 452,691 shares of common stock were available for grant under the Stock Option Plan. The Company's Board of Directors has authorized, and the Company expects the stockholders of the Company to approve, an increase in the number of shares authorized for issuance under the Stock Option Plan to 7,000,000.

Awards granted under the Stock Option Plan and shares acquired pursuant thereto are subject to a number of rights and restrictions, including provisions relating to the termination of employment of service of the grantee. The Committee may, without stockholder approval, adopt, amend or rescind rules, procedures, and terms of the Stock Option Plan at any time, or from time to time; provided, however, that stockholder approval shall be obtained for any amendment for which such approval is required by Section 422 of the United States Internal Revenue Code of 1986, as amended, or by other provisions of applicable law. Unless sooner terminated by the Committee or unless the employee's service terminates, the provisions of the Stock Option Plan relating to the grant of incentive stock options shall terminate on October 22, 2007. All awards made under the Stock Option Plan prior to its termination shall remain in effect until they are satisfied or terminated. Stock options awarded under the Plan are not transferable.

In general, the individual stock option agreements granted under the Stock Option Plan prior to January 1, 2001 provide the Company's option holders with the ability to exercise stock option grants which have not yet vested. Shares of common stock issued by the Company upon the exercise of unvested options are held in escrow with the Secretary of the Company. Such escrowed shares typically vest 25% at the end of the first year anniversary of the stock option agreement and then vest at the rate of 1/48th per month thereafter until fully vested. In the event of termination of employment, the Company typically has a right to purchase any shares of common stock issued to an employee pursuant to the exercise of an unvested stock option. Individual stock option agreements issued under the Stock Option Plan since January 1, 2001 generally do not allow the exercise of unvested stock options.

The Committee is authorized to construe, interpret and implement the provisions of the Stock Option Plan, to select the persons to whom awards will be granted, to determine the terms and provisions of such awards, including the vesting schedule and purchase price per share payable upon the exercise of an option, and to amend outstanding awards. The determinations of the Committee are made in its sole discretion and are binding and conclusive.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

Mr. Calhoun, who is a member of the Committee, is currently Vice-Chairman, Chief Executive Officer and Secretary and serves as a director of the Company. He also serves as a director of Artes Medical, Inc. Mr. Cox, who is also a member of the Committee, serves as an employee of the Company and as Chairman of the Board of Directors. Mr. Cox is also the Managing Director of Saratoga Boys Club and serves as a director for Internix, Artes Medical, Inc., Triscend Inc. and G2 Inc.

ITEM 7. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

The following is a description of transactions since January 1998 to which the Company has been a party and in which any director, executive officer or holder of more than 5% of the Company's capital stock had or will have a direct or indirect material interest. All of the transactions disclosed below were duly authorized by the then-serving Board of Directors.

In November 1999, Mr. Simpson purchased 45,951 shares, Mr. Bisimis purchased 92,558 shares, Mr. Lane purchased 22,505 shares and Mr. Krix purchased 246,386 shares of the Company's Series C preferred stock at a purchase price of $2.25 per share for a total cash consideration of approximately $917,000.

In November 1999 and June and July 2000, the Company issued 59,707 shares of common stock to Mr. Bisimis in consideration of services rendered by Mr. Bisimis as a consultant to the Company.

Mr. Cox, the Chairman of the Company's Board of Directors, is the Managing Director of Saratoga Boys Club. During the period from September 1997 through November 1999, Saratoga Boys Club purchased an aggregate of 2,099,880 shares of the Company's preferred stock for a total cash consideration of approximately $1,978,000. The Company has issued three warrants to Mr. Cox in connection with certain loans made by Mr. Cox to the Company in 1998 and 1999. See "Description of Capital Stock - Warrants" for a further description of these warrants.

In 2000, the Company issued two loans to Ari Bisimis, one of the Company's directors and executive officers, in the aggregate amount of $46,500, at an annual interest rate of 10.0%, for the purchase of a total of 25,000 shares of the Company's common stock. The loans were issued pursuant to the exercise of stock options granted to Mr. Bisimis. The loans are full recourse and are secured by the shares of the Company's common stock that were purchased using the proceeds of the loans.

In January 2000, the Company entered into a distribution agreement and a development and supply agreement with Medtronic. In January 2000, Medtronic purchased 1,000,000 shares of the Company's Series D preferred stock for total cash consideration of $3,500,000.

The Company believes that all of the transactions described above were made and are on terms no less favorable to the Company than those that could be obtained from independent third parties in arms-length negotiations.

ITEM 8. LEGAL PROCEEDINGS.

The Company is not currently a party to any material legal proceedings.

ITEM 9. MARKET PRICE AND DIVIDENDS.

MARKET PRICES

The Company's common stock has been quoted on the NEUER MARKT of the Frankfurt Stock Exchange under the symbol "XMP" since its initial public offering on August 8, 2000. Prior to this time, there was no public market for the Company's stock. The Company's common stock is not currently traded on any United States exchange. The following table shows the high and low sales prices for the Company's common stock for the periods indicated, as reported on the NEUER MARKT. These prices do not include retail markups, markdowns or commissions.

2000	HIGH	LOW
Quarter ended September 30, 2000.....	E27.2	E17.8
Quarter ended December 31, 2000.....	E20.0	E 6.8

DIVIDENDS

The Company has never declared or paid any dividends and currently intends to retain all available earnings generated by its operations for the development and growth of its business. It does not currently anticipate paying any cash dividends on its outstanding shares of common stock in the foreseeable future. The majority of the Company's shares are represented by global certificates, which are deposited with Clearstream Banking AG ("Clearstream"), Frankfurt, Germany, the German securities depository. As of December 31, 2000, there was one stockholder of record of the Company's common stock, Clearstream, the recordholder of the Company's global certificates.

THE GERMAN EQUITY MARKET

GERMAN SECURITIES LAWS

As a United States company offering securities on a German stock exchange, the Company is subject to various laws and regulations in both jurisdictions. Some of these laws and regulations, in turn, can affect the ability of holders of the Company's securities to transfer or sell those securities.

At present, Germany does not restrict the export or import of capital, except for investments in Iraq and Libya in accordance with applicable resolutions adopted by the United Nations and the European Union. However, for statistical purposes only, every individual or corporation residing in Germany must report to the German Central Bank, subject only to immaterial exceptions, any payment received from or made to an individual or a corporation not a resident of Germany if such payment exceeds DM5,000 (E2,550 or the equivalent in a foreign currency). In addition, residents of Germany must report any claims against or any liabilities payable to non-residents if such claims or liabilities, in the aggregate, exceed DM3.0 million, or E1.53 million or the equivalent in a foreign currency, during any one month. Residents must also report any direct investment outside Germany if such investment exceeds DM100,000, or E51,000 or the equivalent in a foreign currency.

There are no limitations imposed by German law or the Company's Certificate of Incorporation or Bylaws on the right of non-resident owners to hold or vote the shares.

THE FRANKFURT STOCK EXCHANGE AND THE NEUER MARKT

The Frankfurt Stock Exchange is one of nine German stock exchanges (including the Eurex Deutschland). The NEUER MARKT segment of the Frankfurt Stock Exchange is a new trading segment that was launched in March 1997. It is designed for innovative, small to mid-size companies in high growth industries or in traditional industries that have an international orientation and that are willing to provide active investor relations. Issuers are requested to provide investors on an ongoing basis with information such as annual and quarterly reports, including cash flow statements, and a corporate action timetable. This information is required to be submitted in English and German as well as in electronic form, thus enabling the stock exchange to disseminate corporate information via the Internet. The NEUER MARKT permits the Company to file its reports in English only.

TRADING ON THE NEUER MARKT

Trading of shares on the NEUER MARKT takes place on the floor of the stock exchange, but is computer aided. Shares can also be traded on the Exchange Electronic Trading System (hereinafter referred to as "Xetra"). Trading takes place on every business day between 9:00 a.m. and 8:00 p.m., Central Europe Time. Trading within the Xetra system is done by financial services institutes and securities trading firms which have been admitted to trading on at least one of Germany's stock exchanges. Xetra is integrated into the Frankfurt Stock Exchange and is subject to its rules and regulations.

Markets in listed securities are generally of the auction type, but listed securities also change hands in inter-bank dealer markets off the Frankfurt Stock Exchange. Price formation is determined by open bid by state-appointed specialists who are themselves exchange members, but who do not, as a rule, deal with the public. Prices of shares traded on the NEUER MARKT are displayed continuously during trading hours. At the half-way point of each trading day, a single standard quotation is determined for all shares. The members' association of the Frankfurt Stock Exchange publishes a daily list of prices which contains the standard prices of all traded securities, as well as their highest and lowest quotation during the past year.

Transactions on the Frankfurt Stock Exchange, including transactions within the Xetra system, are settled on the second business day following trading. Transactions off the Frankfurt Stock Exchange, for large volumes or if one of the parties is foreign, are generally also settled on the second business day following trading, unless the parties have agreed upon a different date. Following a recent amendment to the conditions of German banks for securities trading, customers' orders to buy or sell listed securities must be executed on a stock exchange, unless the customer instructs otherwise. Trading can be suspended by the Frankfurt Stock Exchange if orderly stock exchange trading is temporarily endangered or if a suspension is in the public interest. A specific feature of the NEUER MARKT is the introduction of the obligatory "Designated Sponsor," an entity admitted for trading at the Frankfurt Stock Exchange which provides additional liquidity by quoting prices for the buying and selling of shares on request. Each issuer on the NEUER MARKT is required to nominate at least two Designated Sponsors which will not only ensure that there is sufficient liquidity for its shares, but also serve as consultants on all stock market related matters for the issuer for at least twelve months.

The Company's common stock has been admitted at the Frankfurt Stock Exchange with trading on the NEUER MARKT of the Frankfurt Stock Exchange. The NEUER MARKT is still a relatively new market. Accordingly, there can be no assurance that an active trading market for the shares will develop on the NEUER MARKT or that the NEUER MARKT will not experience problems in settlement or clearance as trading develops. Any such delays or problems could adversely affect the market price of the shares. Persons proposing to trade the shares on the NEUER MARKT should inform themselves about the potential costs of such trading.

ITEM 10. RECENT SALES OF UNREGISTERED SECURITIES.

During the last three years, the Company has sold and issued unregistered securities as follows.

In October 1998, the Company issued 1,032,583 shares of Series B preferred stock to various investors, including a member of its management, for a total cash consideration of approximately $1,549,000. These shares were issued in reliance on the exemption from the registration requirements under the Securities Act provided by Section 4(2) under the Securities Act and Regulation D promulgated thereunder.

In September 1999, the Company issued 2,574,989 shares of Series C preferred stock to various investors, including members of its management, for a total cash consideration of approximately $5,794,000. In May 2000, the Company issued an additional 2,777 shares of Series C preferred stock for a total cash consideration of $6,000 upon the exercise of warrants. These shares were issued in reliance on the exemption from the registration requirements under the Securities Act provided by Section 4(2) under the Securities Act and Regulation D promulgated thereunder. In February 2000, Mr. Simpson converted 45,951 shares of Series C preferred stock into 45,951 shares of common stock.

In November 1999 and June and July 2000, the Company issued 132,666 shares of common stock to various investors for a total cash consideration of approximately $304,000. In November 1999 and June and July 2000, the Company also issued 79,707 shares of common stock to certain employees and consultants in consideration of services rendered.

In December 1999 and March 2000, the Company issued an aggregate of 2,000,000 shares of Series D preferred stock to various investors for a total cash consideration of $7,000,000. These shares were issued in reliance on the exemption from the registration requirements under the Securities Act provided by Section 4(2) under the Securities Act and Regulation D promulgated thereunder.

In August 2000, the Company issued 3,500,000 shares of common stock in an underwritten offering for a total cash consideration of approximately $47,201,000. The Company paid approximately $2,478,000 in underwriting commissions in connection with this offering. These shares were listed on the NEUER MARKT. The shares were issued in reliance on the exemption from the registration requirements under the Securities Act provided by Section 4(2) under the Securities Act and Regulation S promulgated thereunder.

Pursuant to the Stock Option Plan and an exemption from the registration requirements under the Securities Act provided by Rule 701, since October 1997 and as of March 9, 2001, the Company has granted options to some of its employees, directors, officers and advisors to purchase a total of 4,828,976 shares of the Company's common stock, at a weighted average exercise price of $3.47.

In 1998 and 1999, pursuant to a private placement exemption, the Company issued warrants to Mr. Cox and Richard Christopher to purchase an aggregate of 25,000 shares of the Company's Series C preferred stock at an exercise price of $2.25 per share. The warrants were issued in connection with loans made to the Company by Mr. Cox and Mr. Christopher. The Company also issued one warrant to purchase 25,000 shares of the Company's common stock in 2000 at an exercise price of $12.00, in connection with the cancellation of a distribution agreement.

ITEM 11. DESCRIPTION OF CAPITAL STOCK.

AUTHORIZED AND OUTSTANDING CAPITAL STOCK

The Company's authorized capital stock consists of 95,000,000 shares of common stock and 5,000,000 shares of preferred stock. As of March 9, 2001, 14,945,948 shares of common stock and no shares of preferred stock were outstanding.

COMMON STOCK

VOTING

Holders of common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the Company's stockholders. Other than the election of directors by a plurality of votes cast, all other matters shall be decided by a majority of the votes cast.

DIVIDENDS

Holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the Board of Directors out of funds legally available therefor, subject to any preferential dividend rights of any outstanding Preferred Stock.

ADDITIONAL RIGHTS

Upon the liquidation, dissolution or winding up of the Company, the holders of common stock are entitled to receive ratably the net assets of the Company available after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock. Holders of the common stock have no preemptive, subscription, redemption or conversion rights. Some of the rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any preferred stock which the Company may designate and issue in the future without further stockholder approval.

PREFERRED STOCK

The Company's Certificate of Incorporation provides that the Company's Board of Directors, without any further vote or action by the Company's stockholders, may authorize and issue, subject to limitations prescribed by law, up to an aggregate of 5,000,000 shares of preferred stock. The preferred stock may be issued in one or more series. The Company's Board of Directors may determine the designation and the number of shares, preferences, limitations and special rights of any series of preferred stock, including dividend rights, conversion rights, voting rights, redemption rights and liquidation preferences. Because of the rights that may be granted, the issuance of preferred stock may delay, defer or prevent a change of control of the Company.

SHARE CERTIFICATES

Shares in the Company are represented by one or more global certificates deposited with Clearstream. However, pursuant to the Delaware General Corporation Code, or DGCL, stockholders are entitled to individual certificates, in such form as may be prescribed by law and the Board of Directors, certifying the number and class of shares owned by the stockholder in the Company. Each such certificate shall be signed by, or in the name of the Company by the chairperson or vice-chairperson 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 the Company.

WARRANTS

In September 1998, November 1998 and January 1999, the Company issued warrants to Marshall Cox providing Mr. Cox with options to purchase 11,000, 5,556 and 5,667 shares of the Company's Series C preferred stock, respectively. The warrants were issued in connection with certain loans made to the Company by Mr. Cox, which have been paid in full and canceled. The warrants are each exercisable at an exercise price of $2.25 per share. The warrants are exercisable in full. The warrants expire on the earliest to occur of:

- ten years from their respective issue dates in September 2008, November 2008 and January 2009
- under certain circumstances, upon a public offering of the Company's common stock under the securities laws of the United States
- upon the sale of all or substantially all of the Company's assets or a change in control of the Company

In July 2000, the Company issued a warrant to Surgical Science Systems providing Surgical Science Systems with an option to purchase 25,000 shares of the Company's common stock. The warrant is exercisable in full at an exercise price of $12.00 per share. The warrant expires on the earliest to occur of:

- July 31, 2004
- under certain circumstances, upon a public offering of the Company's common stock under the securities laws of the United States
- upon the sale of all or substantially all of the Company's assets or a change in control of the Company

ITEM 12. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

LIMITATION OF LIABILITY

The Certificate of Incorporation provides that the Company's directors will not be personally liable to the Company or its stockholders for monetary damages resulting from a breach of fiduciary duty except for:

- any breach of the duty of loyalty to the Company or its stockholders
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law
- liability under Section 174 of the DGCL
- any transaction from which the director derived an improper personal benefit

This limitation of liability does not apply to the responsibility or liability of the Company's directors pursuant to any criminal statute nor does it relieve the directors from payment of taxes pursuant to federal, state or local law.

INDEMNIFICATION

The Certificate of Incorporation provides that the liability of the directors will be limited to the fullest extent permitted by Delaware law. The Bylaws provide that the Company will indemnify its directors and executive officers and may indemnify other corporate agents, to the fullest extent permitted by Delaware law. Section 145 of DGCL provides a corporation with the power to indemnify any officer or director acting in his capacity as the corporation's representative who was, is or is threatened to be made, a party to any action or proceeding for expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action or proceeding. The indemnity provisions apply whether the action was instituted by a third party or arose by or in the Company's right. Generally, the only limitation on the Company's ability to indemnify its officers and directors is if their actions violate a criminal statute or if their actions or failures to act are finally determined by a court to have constituted willful misconduct or recklessness.

The Company currently has directors' and officers' liability insurance to provide its directors and officers with insurance coverage for losses arising from claims based on breaches of duty, negligence, errors and other wrongful acts. At present, there is no pending litigation or proceeding involving any director, officer, employee or agent as to which indemnification will be required or permitted. The Company is not aware of any threatened litigation or proceeding that may result in a claim for such indemnification.

ITEM 13. FINANCIAL STATEMENTS.

INDEX TO FINANCIAL STATEMENTS

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

We have audited the accompanying balance sheet of MacroPore, Inc. as of December 31, 2000 and the related statements of operations and comprehensive income, stockholders' equity and convertible redeemable preferred stock and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of MacroPore, Inc. as of December 31, 2000, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States.

/s/ Arthur Andersen LLP

San Diego, California
February 23, 2001

Report of Independent Accountants

To the Board of Directors of
MacroPore, Inc.

In our opinion, the accompanying balance sheet and the related statements of operations and comprehensive income, of stockholders' equity and convertible redeemable preferred stock and of cash flows present fairly, in all material respects, the financial position of MacroPore, Inc. at December 31, 1999, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the 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 Diego, California
June 30, 2000

MACROPORE, INC.
BALANCE SHEETS

	DECEMBER 31,	
	2000	1999
ASSETS		
Current assets:		
Cash and cash equivalents	$ 7,476,000	$ 2,471,000
Short-term investments, available for sale	37,008,000	110,000
Accounts receivable, related party, net of allowance for bad debts of $75,000 (Note 10)	693,000	-
Accounts receivable, net of allowance for bad debts of $53,000	-	492,000
Inventories	2,278,000	1,135,000
Prepaids and other current assets	882,000	31,000
Total current assets	48,337,000	4,239,000
Property and equipment, net	3,691,000	1,318,000
Deposits	241,000	18,000
Total assets	$ 52,269,000	$ 5,575,000
LIABILITIES, CONVERTIBLE REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable and accrued expenses	$ 1,364,000	$ 640,000
Current portion of capital lease obligations	115,000	89,000
Total current liabilities	1,479,000	729,000
Deferred revenue	1,200,000	-
Capital lease obligations, less current portion	255,000	304,000
Total liabilities	2,934,000	1,033,000
Commitments (Note 5)		
Convertible redeemable preferred stock:		
Series A non-cumulative, convertible preferred stock; $0.001 par value; -0- and 1,267,000 shares authorized, issued and outstanding in 2000 and 1999, respectively; liquidation preference of $0 and $634,000 in 2000 and 1999, respectively	-	630,000
Series B non-cumulative, convertible preferred stock; $0.001 par value; -0- and 1,032,583 shares authorized, issued and outstanding in 2000 and 1999, respectively; liquidation preference of $0 and $1,549,000 in 2000 and 1999, respectively	-	1,547,000
Series C non-cumulative, convertible preferred stock; $0.001 par value; -0- and 2,600,000 shares authorized in 2000 and 1999, respectively; -0- and 2,574,989 shares issued and outstanding in 2000 and 1999, respectively; liquidation preference of $0 and $5,696,000 in 2000 and 1999, respectively	-	5,657,000
Series D non-cumulative, convertible preferred stock; $0.001 par value; -0- and 2,000,000 shares authorized in 2000 and 1999, respectively; -0- and 832,226 issued and outstanding in 2000 and 1999, respectively; liquidation preference of $0 and $7,000,000 in 2000 and 1999, respectively	-	2,855,000
	-	10,689,000
Stockholders' equity (deficit):		
Preferred stock; $0.001 par value; 5,000,000 authorized; -0- shares issued and outstanding in 2000	-	-
Common stock; $0.001 par value; 95,000,000 and 17,000,000 shares authorized in 2000 and 1999, respectively; 14,814,346 and 3,639,505 issued and outstanding in 2000 and 1999, respectively	15,000	4,000
Additional paid-in capital	68,126,000	2,381,000
Unearned compensation	(3,094,000)	(1,285,000)
Accumulated deficit	(15,892,000)	(7,247,000)
Other accumulated comprehensive income	180,000	-
Total stockholders' equity (deficit)	49,335,000	(6,147,000)
Total liabilities, convertible redeemable preferred stock and stockholders' equity (deficit)	$ 52,269,000	$ 5,575,000

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE FINANCIAL STATEMENTS.

MACROPORE, INC.
STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME

	YEAR ENDED DECEMBER 31,		
	2000	1999	1998
Revenues:			
Sales to related party (Note 10)	$ 6,092,000	$ -	$ -
Sales to distributors and end-users	159,000	1,513,000	
	6,251,000	1,513,000	-
Costs directly related to revenues, net of stock based compensation expense of $18,000, $5,000 and $0 for the years ended December 31, 2000, 1999 and 1998, respectively	2,376,000	481,000	-
Gross profit	3,875,000	1,032,000	-
Operating expenses:			
Research and development, net of stock based compensation expense of $2,239,000, $70,000 and $40,000 for the years ended December 31, 2000, 1999 and 1998, respectively	2,584,000	1,172,000	1,175,000
Sales and marketing, net of stock based compensation expense of $1,852,000, $231,000 and $0 for the years ended December 31, 2000, 1999 and 1998, respectively	2,629,000	2,356,000	202,000
General and administrative, net of stock based compensation expense of $1,607,000, $360,000 and $32,000 for the years ended December 31, 2000, 1999 and 1998, respectively	2,555,000	1,313,000	604,000
Stock based compensation	5,716,000	666,000	76,000
Total operating expenses	13,484,000	5,507,000	2,057,000
Other income (expenses):			
Interest income	1,315,000	68,000	10,000
Interest and other expenses	(351,000)	(164,000)	(43,000)
Net loss	(8,645,000)	(4,571,000)	(2,090,000)
Other comprehensive income:			
Unrealized holding gains arising during period	180,000	-	-
Comprehensive loss	$ (8,465,000)	$ (4,571,000)	$ (2,090,000)
Basic and diluted net loss per share	$ (1.05)	$ (1.32)	$ (0.64)
Shares used in calculating basic and diluted net loss per share	8,201,739	3,458,292	3,250,000

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE FINANCIAL STATEMENTS.

MACROPORE, INC.
STATEMENTS OF STOCKHOLDERS' EQUITY AND CONVERTIBLE REDEEMABLE PREFERRED STOCK

	PREFERRED STOCK SUBSCRIBED	PREFERRED A SHARES	PREFERRED A AMOUNT	PREFERRED B SHARES	PREFERRED B AMOUNT	PREFERRED C SHARES	PREFERRED C AMOUNT	PREFERRED D SHARES	PREFERRED D AMOUNT
Balance at December 31, 1997	$ 425,000	1,267,000	$630,000	-	$ -	-	$ -	-	$ -
Compensatory stock options									
Issuance of Series B Preferred shares for cash, at $1.50 per share, net of issuance costs of $2,000	(253,000)			1,032,583	1,547,000				
Preferred stock subscribed	347,000								
Net loss for the year ended December 31, 1998									
Balance at December 31, 1998	519,000	1,267,000	630,000	1,032,583	1,547,000	-	-	-	-
Issuance of common stock for services rendered									
Issuance of common stock under stock option plan									
Issuance of common stock for cash	(172,000)								
Compensatory stock options									
Issuance of Series C Preferred shares for cash, at $2.25 per share, net of issuance costs of $137,000	(347,000)					2,574,989	5,657,000		
Issuance of Series D Preferred shares for cash, at $3.50 per share, net of issuance costs of $58,000								832,226	2,855,000
Net loss for the year ended December 31, 1999									
Balance at December 31, 1999	-	1,267,000	630,000	1,032,583	1,547,000	2,574,989	5,657,000	832,226	2,855,000
Issuance of common stock under stock option plan									
Conversion of Series C Preferred shares to common stock						(45,951)	(103,000)		
Issuance of Series C Preferred shares for cash, at $2.25 per share						2,777	6,000		
Issuance of Series D Preferred shares for cash, at $3.50								1,167,774	4,087,000
Issuance of common stock for service rendered									
Issuance of common stock in initial public offering, net of issuance costs of $3,957,000									
Conversion of preferred stock in connection with initial public offering		(1,267,000)	(630,000)	(1,032,583)	(1,547,000)	(2,531,815)	(5,560,000)	(2,000,000)	(6,942,000)
Compensatory stock options									
Unrealized income on investments									
Net loss for the year ended December 31, 2000									
Balance at December 31, 2000	$ -	-	$ -	-	$ -	-	$ -	-	$ -

	TOTAL	COMMON STOCK SHARES	COMMON STOCK AMOUNT	ADDITIONAL PAID-IN CAPITAL	UNEARNED COMPENSATION	ACCUMULATED DEFICIT	OTHER ACCUMULATED COMPREHENSIVE INCOME	TOTAL
Balance at December 31, 1997	$ 1,055,000	3,250,000	$ 3,000	$ 9,000	$ -	$ (586,000)	$ -	$(574,000)
Compensatory stock options	-			292,000	(216,000)			76,000
Issuance of Series B Preferred shares for cash, at $1.50 per								

share, net of issuance costs of $2,000	1,294,000			-				-
Preferred stock subscribed	347,000							-
Net loss for the year ended December 31, 1998	-					(2,090,000)		(2,090,000)
Balance at December 31, 1998	2,696,000	3,250,000	3,000	301,000	(216,000)	(2,676,000)	-	(2,588,000)
Issuance of common stock for services rendered	-	66,339		13,000				13,000
Issuance of common stock under stock option plan	-	190,500		14,000				14,000
Issuance of common stock for cash	(172,000)	132,666	1,000	303,000				304,000
Compensatory stock options	-			1,750,000	(1,069,000)			681,000
Issuance of Series C Preferred shares for cash, at $2.25 per share, net of issuance costs of $137,000	5,310,000			-				-
Issuance of Series D Preferred shares for cash, at $3.50 per share, net of issuance costs of $58,000	2,855,000			-				-
Net loss for the year ended December 31, 1999	-	-	-	-		(4,571,000)		(4,571,000)
Balance at December 31, 1999	10,689,000	3,639,505	4,000	2,381,000	(1,285,000)	(7,247,000)	-	(6,147,000)
Issuance of common stock under stock option plan	-	784,124	-	156,000				156,000
Conversion of Series C Preferred shares to common stock	(103,000)	45,951	-	103,000				103,000
Issuance of Series C Preferred shares for cash, at $2.25 per share	6,000			-				-
Issuance of Series D Preferred shares for cash, at $3.50	4,087,000			-				-
Issuance of common stock for service rendered	-	13,368	-	161,000				161,000
Issuance of common stock in initial public offering, net of issuance costs of $3,957,000	-	3,500,000	4,000	43,240,000				43,244,000
Conversion of preferred stock in connection with initial public offering	(14,679,000)	6,831,398	7,000	14,672,000				14,679,000
Compensatory stock options	-			7,413,000	(1,809,000)			5,604,000
Unrealized income on investments	-						180,000	180,000
Net loss for the year ended December 31, 2000	-	-				(8,645,000)		(8,645,000)
Balance at December 31, 2000	$ -	14,814,346	$ 15,000	$68,126,000	$(3,094,000)	$(15,892,000)	$180,000	$49,335,000

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE FINANCIAL STATEMENTS.

MACROPORE, INC.
STATEMENTS OF CASH FLOWS

	YEAR ENDED DECEMBER 31,		
	2000	1999	1998
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	$ (8,645,000)	$ (4,571,000)	$(2,090,000)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	441,000	235,000	113,000
Stock based compensation	5,716,000	666,000	76,000
Loss from sale of equipment	-	-	9,000
Increases (decreases) in cash caused by changes in operating assets and liabilities:			
Accounts receivable	(201,000)	(492,000)	-
Inventories	(1,143,000)	(1,097,000)	(38,000)
Prepaids and other current assets	(851,000)	1,000	(30,000)
Deposits	(223,000)	(6,000)	(12,000)
Accounts payable and accrued expenses	724,000	157,000	449,000
Deferred revenue	1,200,000	-	-
Net cash used in operating activities	(2,982,000)	(5,107,000)	(1,523,000)
CASH FLOWS FROM INVESTING ACTIVITIES:			
Proceeds from the sale and maturity of short-term investments	85,610,000	-	-
Purchase of short-term investments	(122,328,000)	(5,000)	(5,000)
Purchases of property and equipment	(2,732,000)	(376,000)	(593,000)
Net cash used in investing activities	(39,450,000)	(381,000)	(598,000)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Principal payments on capital leases	(105,000)	(73,000)	(15,000)
Proceeds from sale of equipment to leasing company	-	-	37,000
Proceeds from short-term debt	-	51,000	174,000
Proceeds from stock subscriptions of Series C Preferred Stock	-	-	347,000
Proceeds from sale of Common Stock	205,000	146,000	-
Proceeds from sale of Series B, Series C and Series D Preferred Stock, net of issuance costs	4,093,000	7,800,000	1,294,000
Proceeds from initial public offering, net of offering cost	43,244,000	-	-
Net cash provided by financing activities	47,437,000	7,924,000	1,837,000
Net increase (decrease) in cash	5,005,000	2,436,000	(284,000)
Cash and cash equivalents at beginning of period	2,471,000	35,000	319,000
Cash and cash equivalents at end of period	$ 7,476,000	$ 2,471,000	$ 35,000
SUPPLEMENTAL DISCLOSURE OF CASH FLOWS INFORMATION:			
Cash paid during period for:			
Interest	$ 82,000	$ 111,000	$ 8,000
Taxes	800	800	800
SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES:			
Equipment acquired under capital leases	$ 82,000	$ 211,000	$270,000
Conversion of bridge loan to Series B preferred stock (Note 6)	-	-	425,000
Conversion of bridge loan to Series C preferred stock (Note 6)	-	225,000	-
Issuance of Series C preferred stock for purchase of equipment	-	140,000	-
Issuance of Common Stock for services rendered	112,000	-	-

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE FINANCIAL STATEMENTS.

MACROPORE, INC.
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

1. ORGANIZATION AND OPERATIONS

THE COMPANY

MacroPore, Inc. (the "Company") was founded as MacroPore (the "Partnership"), a California general partnership with three equal partners, on July 1, 1996. On May 16, 1997, the Company was incorporated in the State of Delaware. The Company received assets from and liabilities of the Partnership and a cash contribution from a shareholder solely in exchange for common stock on May 20, 1997 (the "Transfer").

The Transfer was undertaken to reconstitute the Company as a corporation for tax purposes, at which time the Company transferred the amount of the Partnership's accumulated deficit to the additional paid-in-capital balance until it was zero, with the remainder transferred to the deficit accumulated during the development stage.

The Company develops, commercializes and manufactures biodegradable surgical implants to aid in the reconstruction, repair and regeneration of bone. The Company's resorbable products are made from a lactic acid copolymer which is composed of a lactic acid similar to that which occurs naturally in the human body.

CERTAIN RISKS AND UNCERTAINTIES

The Company has a limited operating history and its prospects are subject to the risks and uncertainties frequently encountered by companies in the early stages of development, and particularly by such companies in rapidly evolving and technologically advanced fields such as the medical device field. The future viability of the Company is largely dependent on the Company completing development of new products and receiving regulatory approvals for those products. No assurance can be given that the Company's new products will be successfully developed, regulatory approvals will be granted, or acceptance of these products will be achieved.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

USE OF ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions affecting 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 revenue and expenses during the reporting period. Actual results could differ from estimates.

CONCENTRATION OF CREDIT RISK

The Company's financial instruments that are subject to concentration of credit risk consist primarily of cash and cash equivalents, certificates of deposit and money market accounts. The balances in excess of FDIC insured amounts are $3,274,000 and $2,611,000 as of December 31, 2000 and 1999, respectively.

CASH AND CASH EQUIVALENTS

The Company considers all highly liquid investments with maturities of three months or less at the time of purchase to be cash equivalents. Investments with original maturities of three months or less that were classified as cash equivalents totaled $4,522,000 as of December 31, 2000. There were no investments classified as cash equivalents as of December 31, 1999.

SHORT-TERM INVESTMENTS

The Company invests its excess cash in debt instruments of financial institutions, corporations with strong credit ratings, and in U.S. government obligations. The Company has established guidelines relative to diversification and maturities that maintain safety and liquidity. These guidelines are periodically reviewed and modified to take advantage of trends in yields and interest rates.

Investments are accounted for in accordance with FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities, which requires that the Company determine the appropriate classification of investments at the time of purchase based on management's intent. Held to maturity investments are recorded at amortized cost as management has the positive intention and ability to hold such investments to maturity. Any premium or discounts are amortized to income over the term of the investment using a method, which approximates the interest method. Available-for-sale investments are stated at fair value, with net unrealized gains or losses, if any, net of tax, reported as a separate component of stockholders' equity. Realized gains or losses from the sale of investments, interest income and dividends are included in interest income in the accompanying statements of operations and comprehensive income.

Management reviews the carrying values of its investments and writes such investments down to estimated fair value by a charge to operations when such review results in management's determination that an investment's impairment is considered to be other than temporary. The cost of securities sold is based on the specific identification method.

FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying amounts of the Company's cash and cash equivalents, accounts receivable and accounts payable and accrued expenses approximate their fair value due to the short-term nature of these balances. The carrying amounts of the Company's short-term debt and capital lease obligations approximate fair value as the rates of interest for these instruments approximate market rates of interest currently available to the Company for similar instruments.

INVENTORIES

Inventories are valued at the lower of average cost (determined on a FIFO basis) or market. Provisions, when necessary, are made to reduce excess and obsolete inventories to their estimated net realizable values.

LONG-LIVED ASSETS

The Company assesses potential impairments to its long-lived assets when there is a change in circumstances that indicate carrying values of assets may not be recovered. An impairment loss is recognized when the undiscounted cash flows expected to be generated by an asset is less than its carrying amount. Any required impairment loss would be measured as the amount by which the asset's carrying value exceeds its fair value, and would be recorded as a reduction in the carrying value of the related asset and a charge to operating expense. The Company has not incurred any such losses.

PROPERTY AND EQUIPMENT

Property and equipment is stated at cost. Depreciation expense, which includes the amortization of assets recorded under capital leases, is provided on a straight-line basis over the useful lives of the assets, which range from three to seven years. When assets are sold or otherwise disposed, the

cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss is included in operations. Leasehold improvements are amortized over the shorter of the estimated useful life of the asset or the lease term. Maintenance and repairs are charged to operations as incurred.

REVENUE RECOGNITION
The Company generally sells its products to hospitals and distributors. Revenue from sales to hospitals is recognized upon delivery of the product. The Company has agreements with its distributors which provide that title and risk of loss pass to the distributor upon shipment of the products. The Company warrants that its products are free from manufacturing defects at the time of shipment to the distributor. Revenue is recognized upon shipment of products to distributors following receipt and acceptance of a distributor's purchase order.

Revenue from license agreements is recognized ratably over the term of the agreement, provided no significant obligations remain.

RESEARCH AND DEVELOPMENT
Research and development expenditures are charged to expense in the period incurred.

INCOME TAXES
Deferred income taxes are recognized for the expected tax consequences in future years of temporary differences between the tax bases of assets and liabilities and their financial reporting amounts at each year end as well as the expected future tax benefit from tax loss and tax credit carryforwards, based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount more likely than not to be realized in future tax returns. Income tax expense is the tax payable for the period and the change during the period in deferred tax assets and liabilities.

EMPLOYEE STOCK-BASED COMPENSATION
The Company measures compensation expense for its employee stock-based compensation plans using the intrinsic value method and provides pro forma disclosures of net loss and net loss per share as if fair value methods had been applied in measuring compensation expense. Accordingly, compensation cost for stock awards is measured as the excess, if any, of the deemed market value for financial reporting purposes of the Company's Common Stock at the date of grant over the amount an employee must pay to acquire the stock. Compensation cost is amortized using the straight-line method over the related vesting periods. Accrued compensation costs for awards that are forfeited are reversed against compensation expense in the period of forfeiture.

NON-EMPLOYEE STOCK-BASED COMPENSATION
Stock-based awards issued to non-employees are accounted for using a fair value method and are remeasured to estimated fair value at each period end until the earlier of the date that performance by the counterparty is complete or the awards are fully vested.

OTHER COMPREHENSIVE INCOME (LOSS)
In accordance with FASB Statement No. 130, Reporting Comprehensive Income, the Company displays comprehensive income (loss) and its components in a financial statement that is displayed with the same prominence as other financial statements.

SEGMENT INFORMATION
The Company follows the provisions of Statement of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information". The Company believes that all of its material operations are managed under the medical device industry, with similar purpose, production processes, markets, and regulatory requirements, and it currently reports as a single industry segment.

EARNINGS (LOSS) PER SHARE
Basic earnings (loss) per share is computed by dividing earnings (loss) available to common stockholders by the weighted average number of common shares outstanding during the period. Weighted average shares exclude shares of unvested Common Stock subject to repurchase by the Company. Diluted earnings (loss) per share is computed by dividing net earnings (loss) available to common stockholders by the weighted average number of common shares outstanding during the period increased to include, if dilutive, the number of additional common shares that would have been outstanding if potential common shares had been issued. The dilutive effect of outstanding stock options and unvested Common Stock subject to repurchase is reflected in diluted earnings (loss) per share by application of the treasury stock method.

The Company has excluded all convertible Preferred Stock and outstanding stock options from the calculation of diluted loss per share attributable to Common Stockholders for the periods ended December 31, 2000, 1999 and 1998 because all such securities are antidilutive. The number of potential common shares excluded from the calculations of diluted loss per share for the years ended December 31, 2000, 1999 and 1998 was 2,750,000, 5,907,420 and 2,431,977, respectively.

RECENT ACCOUNTING PRONOUNCEMENTS
In June 1998, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities." SFAS No. 133 is effective for fiscal years beginning after June 15, 2000. SFAS No. 133 requires that all derivative instruments be recorded on the balance sheet at their fair value. Changes in the fair value of derivatives are recorded each period in current earnings or other comprehensive income, unless specific hedge accounting criteria are met. The Company does not expect that the adoption of SFAS No. 133 will have a material impact on its financial statements because it does not currently hold any derivative instruments and does not engage in any hedging activities.

In December 1999, the Securities and Exchange Commission ("SEC") issued Staff Accounting Bulletin No. 101 ("SAB 101") "Revenue Recognition in Financial Statements." SAB 101 summarizes the SEC's views regarding the application of generally accepted principles to revenue recognition in financial statements. The Company believes that its revenue recognition principles comply with SAB 101.

In March 2000, the FASB issued Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation" (FIN 44). This interpretation clarifies the application of APB Opinion No. 25 for certain issues related to stock based compensation, including the definition of employee for the purposes of applying APB 25, the criteria for determining whether a plan qualifies as a noncompensatory plan, the accounting consequences of modifications to the terms of a previously fixed stock option award, and the accounting for an exchange of stock compensation awards in a business combination. FIN 44 is effective July 1, 2000, but covers certain events that occur either after December 15, 1998 or January 12, 2000. The Company has

applied the interpretations set forth in FIN 44 for the recognition of certain stock based compensation during the year ended December 31, 2000.

3. SHORT-TERM INVESTMENTS

As of December 31, 2000, all investments were classified as available-for-sale, which consisted of the following:

	AMORTIZED COST	GROSS UNREALIZED GAINS	ESTIMATED FAIR VALUE
Corporate notes and bonds	$17,594,000	$45,000	$17,639,000
Agency securities	17,740,000	133,000	17,873,000
Treasury note	1,494,000	2,000	1,496,000
	$36,828,000	$ 180,000	$37,008,000

As of December 31, 2000, investments available for sale have the following matures:

	AMORTIZED COST	ESTIMATED FAIR VALUE
Corporate notes and bonds:		
with maturity of less than 1 year	$17,594,000	$17,639,000
Agency securities:		
with maturity of less than 1 year	5,639,000	5,677,000
with maturity of 1 to 2 years	12,101,000	12,196,000
Treasury note:		
with maturity of less than 1 year	1,494,000	1,496,000
	$36,828,000	$37,008,000

As of December 31, 1999, investments consisted of a corporate note which was classified as held to maturity with the amortized cost and estimated fair value approximately equal with a value of $110,000. The investment was due within one year.

Proceeds from sales of investments for the year ended December 31, 2000 were $85,610,000. Gross realized gains on such sales for the year ended December 31, 2000 were approximately $6,000. There were no sales of investments for the year ended December 31, 1999.

4. COMPOSITION OF CERTAIN FINANCIAL STATEMENT CAPTIONS

INVENTORIES

	DECEMBER 31,	
	2000	1999
Raw Materials	$ 706,000	$ 97,000
Finished goods	1,572,000	1,038,000
	$ 2,278,000	$ 1,135,000

PROPERTY AND EQUIPMENT, NET

	DECEMBER 31,	
	2000	1999
Office and computer equipment	$ 845,000	$ 356,000
Manufacturing and development equipment	2,684,000	874,000
Leasehold improvements	916,000	423,000
	4,445,000	1,653,000
Less accumulated depreciation and amortization	(754,000)	(335,000)
	$ 3,691,000	$ 1,318,000

ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

	DECEMBER 31,	
	2000	1999
Accounts payable	$ 784,000	$ 334,000
Accrued expenses	459,000	251,000
Accrued vacation	121,000	55,000
	$ 1,364,000	$ 640,000

5. COMMITMENTS

The Company leases office space as well as equipment under noncancelable leases as follows:

YEAR ENDING DECEMBER 31,	CAPITAL LEASES	OPERATING LEASES
2001	$ 164,000	$ 322,000
2002	152,000	341,000
2003	116,000	57,000
2004	37,000	-
2005	-	-
Thereafter	-	-
Total minimum lease payments	469,000	$ 720,000
Less amounts representing interest	(99,000)	
Present value of minimum capital lease obligations	370,000	
Less current portion	(115,000)	
Long term portion of capital lease obligations	$ 255,000	

Equipment acquired under capital leases included in property and equipment amount to $588,000 ($446,000 net of accumulated depreciation and amortization) as of December 31, 2000. The Company's capital lease obligations mature at various dates through 2004 with interest rates ranging from 12.42% to 30.46%.

Rent expense for the years ended December 31, 2000, 1999 and 1998 was $369,000, $210,000 and $102,000, respectively.

6. SHORT-TERM DEBT

In 1998, the Company executed two bridge notes with a 10% annual interest rate with certain stockholders in the amount of $174,000. The principal and accrued interest was paid during 1999. In conjunction with the bridge notes, warrants to purchase 19,333 shares of Series C preferred stock were issued. The fair value of the warrants was calculated using the minimum value method and was determined to be di minimis.

In 1999, the Company executed a bridge note with a 10% annual interest rate with a stockholder in the amount of $51,000. The principal and accrued interest was paid during 1999. In conjunction with the bridge note, warrants to purchase 5,667 shares of Series C preferred stock were issued. The fair value of the warrants was calculated using the minimum value method and was determined to be di minimis.

In 1999, the Company had available up to $100,000 under an irrevocable letter of credit agreement with a bank. Interest was payable monthly at the bank's prime rate plus 0.5% with a maturity date of December 15, 1999. The agreement was collateralized by a certificate of deposit held at the bank in the amount of $100,000. At December 31, 1999, the Company had $100,000

available under the letter of credit. The letter of credit expired in April 2000 and was not renewed by the Company.

7. INCOME TAXES

Due to the Company's net loss position for the years ended December 31, 2000, 1999 and 1998 and as the Company has recorded a full valuation allowance against deferred tax assets, there was no provision or benefit for income taxes recorded.

The following is a reconciliation of the statutory federal income tax rate to the Company's effective tax rate:

	YEAR ENDED DECEMBER 31,		
	2000	1999	1998
Tax provision (benefit) at statutory rate	-34.00%	-34.00%	-34.00%
State tax, net of federal tax benefit	-3.00%	-5.95%	-6.89%
Stock based compensation	--	3.43%	0.50%
Research credits and other credits	-5.44%	-0.68%	-2.42%
Other permanent differences	0.14%	0.66%	-0.85%
Change in valuation allowance	42.30%	36.54%	43.66%
	0.00%	0.00%	0.00%

The components of the deferred tax assets and liabilities are as follows:

	DECEMBER 31,		
	2000	1999	1998
DEFERRED TAX ASSET			
Accrued expenses	$ 42,000	$ 22,000	$ 15,000
Accounts receivable	30,000	72,000	-
Deferred expenses	136,000	188,000	241,000
Deferred revenue	480,000	-	-
Property and equipment	(173,000)	(41,000)	(6,000)
Stock based compensation	2,376,000	89,000	21,000
Net operating loss carryforwards	3,051,000	2,247,000	725,000
Research credits	310,000	143,000	94,000
California manufacturer's credits	160,000	36,000	18,000
	6,412,000	2,756,000	1,108,000
Less valuation allowance	(6,412,000)	(2,756,000)	(1,108,000)
Net deferred tax asset	$ -	$ -	$ -

The Company has established a valuation allowance against its deferred tax assets due to the uncertainty surrounding the realization of such assets. Management periodically evaluates the recoverability of the deferred tax asset. At such time as it is determined that it is more likely than not that deferred tax assets are realizable, the valuation allowance will be reduced.

At December 31, 2000, the Company had federal net operating loss carryforwards of approximately $7,789,000, and state net operating loss carryforwards of approximately $6,710,000, which may be available to offset future taxable income for tax purposes. The federal net operating loss carryforwards begin to expire, if unused, in 2012. The state net operating loss carryforwards begin to expire in 2005.

At December 31, 2000, the Company also had a research tax credit carryforward of approximately $170,000 for federal tax purposes and $141,000 for state tax purposes. The federal carryforward will begin expiring, if unused, in 2012. The Company also has a California manufacturer's credit carryforward of approximately $160,000 at December 31, 2000, which will begin to expire, if unused, in 2007.

The Internal Revenue Code (the "Code") limits the availability of net operating losses and certain tax credits that arose prior to certain cumulative changes in a corporation's ownership resulting in a change of control of the Company. Due to an ownership change during 1997 and 2000, as defined in IRC Section 382, a portion of the net operating losses is limited in their annual utilization.

8. EMPLOYEE BENEFIT PLAN

The Company implemented a 401(k) retirement savings and profit sharing plan (the "Plan") effective January 1, 1999. The Company may make discretionary annual contributions to the Plan, which is allocated to the profit sharing accounts based on the number of years of employee service and compensation. At the sole discretion of the Board of Directors, the Company may also match the participants' contributions to the Plan. There were no contributions made by the Company to the Plan in 2000 and 1999.

9. EQUITY

CONVERTIBLE PREFERRED STOCK

In August 1997, the Company issued 1,267,000 shares of Series A non-cumulative convertible preferred stock ("Series A") at $0.50 per share. Proceeds, net of issuance costs, were $630,000. In July 1998, the Company issued 1,032,583 shares of Series B non-cumulative convertible preferred stock ("Series B") at $1.50 per share. Proceeds, net of issuance costs, were $1,547,000. In September 1999, the Company issued 2,574,989 shares of Series C non-cumulative convertible preferred stock ("Series C") at $2.25 per share. Proceeds, net of issuance costs, were $5,657,000. In December 1999, the Company issued 832,226 shares of Series D non-cumulative convertible preferred stock ("Series D") at $3.50 per share. Proceeds, net of issuance costs, were $2,855,000. In May 2000, the Company issued an additional 2,777 shares of Series C at $2.25 per share for $6,000 upon the exercise of warrants. In March 2000, the Company issued an additional 1,167,774 shares of Series D at $3.50 per share for $4,087,000.

In February 2000, certain stockholders converted 45,951 shares of Series C preferred stock into 45,951 shares of Common Stock. In August 2000, all outstanding shares of Series A, Series B, Series C and Series D preferred stock were converted into shares of common stock upon the consent of the majority of holders, in connection with the Company's initial public offering.

PREFERRED STOCK

The Company currently has authorized 5,000,000 shares of preferred stock, with no shares outstanding. The Board of Directors of the Company is authorized to designate the terms and conditions of any preferred stock issued by the Company without further action by the common stockholders.

STOCK OPTIONS

During 1997, the Company adopted a stock option and stock purchase plan (the "1997 Plan") which provides for the direct award or sale of shares and for the grant of incentive stock options ("ISO") and non-statutory options ("NSO") to employees, directors or consultants. The Plan, as amended, provides for the issuance of up to 5,000,000 shares of the Company's Common Stock.

Under the provisions of the 1997 Plan, the exercise price of ISO's is not less than the fair market value of the underlying shares on the date of grant. Option vesting is determined by the Board of Directors and is generally over a four-year period. Options expire no later than ten years from date of grant.

The following summarizes activity with respect to the options granted under the 1997 Plan:

	YEAR ENDED DECEMBER 31,					
	2000		1999		1998	
	OPTIONS	WEIGHTED AVERAGE EXERCISE PRICE	OPTIONS	WEIGHTED AVERAGE EXERCISE PRICE	OPTIONS	WEIGHTED AVERAGE EXERCISED PRICE
Options outstanding at beginning of period	2,151,000	$0.19	1,035,000	$0.11	485,000	$ 0.05
Granted	1,577,000	$5.92	1,306,000	$0.25	550,000	$ 0.15
Exercised	(784,000)	$0.20	(190,000)	$0.07	-	-
Forfeited	(194,000)	$0.65	-	-	-	-
Options outstanding at end of period	2,750,000	$3.44	2,151,000	$0.19	1,035,000	$ 0.11
Options vested at end of period	840,000	$1.41	499,000	$0.13	349,000	$ 0.09

The following table summarizes information about options outstanding under the 1997 Plan as of December 31, 2000:

EXERCISE PRICES	OPTIONS OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE (IN YEARS)	OPTIONS VESTED
$ 0.05 - $ 0.45	1,182,000	7.9	480,000
$ 1.90 - $ 3.00	1,075,000	9.1	355,000
$ 10.56 - $12.00	425,000	9.6	5,000
$ 13.88 - $15.14	57,000	9.8	-
$ 16.30 - $17.26	11,000	9.7	-
	2,750,000		840,000

The weighted-average grant date fair value (minimum value for the periods prior to the initial public offering) per share of options granted under the 1997 Plan for the years ended 2000, 1999 and 1998 was $6.40, $1.42 and $0.55, respectively.

EMPLOYEE STOCK-BASED COMPENSATION

Employee stock-based compensation is recognized using the intrinsic value method. In connection with the grant of stock options to employees and directors, the Company recorded unearned stock-based compensation within stockholders' equity of $4,980,000, $1,480,000 and $247,000 during the years ended December 31, 2000, 1999 and 1998, respectively. This represents the difference between the exercise price of these stock-based awards and the deemed market value of the underlying Common Stock on the date of grant. Amortization of unearned stock-based compensation, net of any charges reversed during the period for the forfeiture of unvested awards, was $3,171,000, $411,000 and $31,000 for the years ended December 31, 2000, 1999 and 1998, respectively.

The remaining unearned stock-based compensation of $3,094,000 at December 31, 2000 will be amortized as follows: $1,020,000 in 2001, $989,000 in 2002, $860,000 in 2003 and $225,000 in 2004. The amount of stock-based compensation expense to be recorded in future periods could decrease if awards are forfeited for which accrued but unamortized compensation expense has been recorded.

PRO FORMA COMPENSATION

The Company has computed the value of all options granted to employees using a fair value method. Under this method, the Company used the risk-free interest rate at the date of grant, expected volatility, expected dividend yield and the expected life of the options to determine the fair value of options granted. The risk-free interest rates ranged from 4.65% to 6.71%, expected volatility was assumed to be 60%, expected dividend yield of 0%, and the expected life of the options was assumed to be 4 years.

The following pro forma information is determined as if the Company had accounted for its employee stock options using the fair value methodology.

	DECEMBER 31,		
	2000	1999	1998
Net loss:			
As reported	$(8,645,000)	$ (4,571,000)	$(2,090,000)
Pro forma	(9,456,000)	(4,962,000)	(2,125,000)
Loss per common share:			
As reported	$ (1.05)	$ (1.32)	$ (0.64)
Pro forma	(1.15)	(1.43)	(0.65)

For purposes of pro forma disclosures, the estimated fair value of options is amortized to expense over the options' vesting period. The pro forma compensation expense may not be representative of such expense in future years.

NON-EMPLOYEE STOCK-BASED COMPENSATION

The Company issued 298,000, 226,000 and 35,000 stock options to non-employees for consulting services for the years ended December 31, 2000, 1999 and 1998, respectively. As a result, the Company recorded stock-based compensation expense of $2,545,000, $255,000 and $45,000 for the years ended December 31, 2000, 1999 and 1998, respectively.

The weighted-average grant-date fair value per share of stock options issued to non-employees for the years ended December 31, 2000, 1999 and 1998 was $9.42, $1.49 and $0.55, respectively.

The fair value of the grants was estimated using the Black-Scholes option-pricing model with the following weighted average assumptions for the years ended December 31, 2000, 1999 and 1998: expected dividend yield of 0.0%, risk-free interest rate ranging from 5.33% to 6.52%, expected volatility ranging from 60% to 100% and expected life of 2 years.

WARRANTS

The Company, in connection with the convertible bridge loan financing in 1998 and 1999, issued warrants to purchase 25,000 shares of Series C convertible preferred stock with an exercise price of $2.25 per share. All of the warrants are exercisable, and begin to expire in September 2008. As of December 31, 2000, 2,777 of these warrants had been exercised. Upon conversion of the Company's outstanding preferred stock into common stock, which occurred in August 2000, the warrants became immediately exercisable into shares of the Company's common stock.

The Company, in connection with a termination of a sales distribution agreement in 2000, issued warrants to purchase 25,000 shares of common stock with an exercise price of $12.00 per share. All the warrants are exercisable and expire in July 2004.

10. RELATED PARTY TRANSACTIONS

Included in research and development expenses are consulting fees, manufacturing and out-of-pocket expenses paid to various stockholders and employees. These expenses amounted to $19,000, $151,000 and $146,000 for the years ended December 31, 2000, 1999 and 1998, respectively.

In January 2000, the Company entered into a five-year distribution agreement with a distributor. Under the terms of the agreement, the distributor is granted exclusive worldwide rights, except for certain international rights previously granted, to market, distribute and sell all of the Company's products for use in the cranial and facial areas. In consideration for this exclusive right, the distributor paid a $1,500,000 up-front license fee to the Company, which will be recognized ratably over the same five-year period. Additionally, the distributor is required to purchase a minimum amount of product at agreed-upon prices for the first fifteen months of the agreement, as amended. The Company and the distributor concurrently entered into a five-year development and supply agreement, which provides the distributor exclusive worldwide rights for products developed as a result of the agreement. Additionally, in January 2000, the distributor purchased 1,000,000 shares Series D convertible preferred stock for $3,500,000. For the year ended December 31, 2000, the Company had sales to the distributor of $6,092,000 which represented 97% of total revenue. At December 31, 2000, the Company had amounts due from the distributor of $693,000.

In April 2000, the Company entered into a one year full-recourse note receivable with one of its directors and officers. At December 31, 2000, the note totaled approximately $47,000, with an annual interest rate of 10%.

11. QUARTERLY INFORMATION (UNAUDITED)

The following unaudited quarterly financial information includes, in management's opinion, all the normal and recurring adjustments necessary to fairly state the results of operations and related information for the periods presented. The quarterly information is restated due to an adjustment of approximately $1.8 million to stock based compensation for certain employee stock options

accelerated in January 2000. The effects of this adjustment are reflected in all appropriate quarters.

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
YEAR 2000				
Revenues	$1,259,000	$ 2,206,000	$ 1,114,000	$ 1,672,000
Gross profit	664,000	1,673,000	766,000	772,000
Operating expenses, excluding stock based compensation	1,339,000	1,702,000	2,076,000	2,651,000
Stock based compensation	2,428,000	1,431,000	1,745,000	112,000
Other income	62,000	84,000	81,000	737,000
Net loss	(3,041,000)	(1,376,000)	(2,974,000)	(1,254,000)
Basis and diluted net loss per share	$ (0.82)	$ (0.36)	$ (0.50)	$ (0.15)
YEAR 1999				
Revenues	$ 54,000	$ 243,000	$ 601,000	$ 615,000
Gross profit	38,000	165,000	410,000	419,000
Operating expenses, excluding stock based compensation	594,000	1,502,000	1,338,000	1,407,000
Stock based compensation	61,000	169,000	237,000	199,000
Other expenses	(58,000)	(25,000)	(9,000)	(4,000)
Net loss	(675,000)	(1,531,000)	(1,174,000)	(1,191,000)
Basis and diluted net loss per share	$ (0.21)	$ (0.46)	$ (0.35)	$ (0.34)

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

On December 12, 2000, PricewaterhouseCoopers LLP ("PWC") resigned as independent accountants for the Company.

PWC's report on the Company's financial statements for the fiscal years ended December 31, 1998 and 1999 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles.

In connection with PWC's audit of the Company's fiscal years ended December 31, 1998 and 1999 and through December 12, 2000, there were no disagreements with PWC on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreement(s), if not resolved to PWC's satisfaction, would have caused PWC to make reference to the subject matter of the disagreement(s) in connection with PWC's report.

During the Company's fiscal years ended December 31, 1998 and 1999 and through December 12, 2000, there were no reportable events (as defined in Item 304(a)(1)(v) of Regulation S-K).

The Company engaged Arthur Andersen, LLP as its independent accountants on December 15, 2000. The Company's Audit Committee participated in and approved the decision to engage Arthur Andersen.

The Company has provided PWC with a copy of the disclosures contained in Item 14 of this registration statement and has requested that PWC furnish to the Company a letter addressed to the SEC stating whether or not it agrees with the statements made therein.

ITEM 15. FINANCIAL STATEMENTS AND EXHIBITS.

INDEX TO FINANCIAL STATEMENTS

See the Index to the Company's financial statements included in Item 13 of this registration statement.

EXHIBITS

EXHIBIT NO.	DESCRIPTION OF EXHIBITS
3.1	Amended and Restated Certificate of Incorporation of MacroPore, Inc. (the "Company")
3.2	Bylaws of the Company
10.1	Amended and Restated Stock Option and Stock Repurchase Plan
10.2*	Distribution Agreement, made and entered into as of January 5, 2000, between the Company and Medtronic, Inc. ("Medtronic")
10.3*	Amendment No. 1 to Distribution Agreement, effective as of December 22, 2000, by and between the Company and Medtronic
10.4*	Development and Supply Agreement, made and entered into as of January 5, 2000, by and between the Company and Medtronic
10.5*	Amendment No. 1 to Development and Supply Agreement, effective as of December 22, 2000, by and between the Company and Medtronic
16.1	Letter from PricewaterhouseCoopers LLP re: change in certifying accountant

* Confidential treatment requested for portions of this document

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the Company has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in San Diego, California, on March 30, 2001.

MACROPORE, INC.

By: /S/ CHRISTOPHER J. CALHOUN

Christopher J. Calhoun
VICE-CHAIRMAN, CHIEF EXECUTIVE OFFICER
AND SECRETARY

EXHIBIT 3.1

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION OF

MACROPORE, INC.

MACROPORE, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the original name of this corporation is MacroPore, Inc., the original Certificate of Incorporation (the "Original Certificate") was filed under the Corporation's current name, and that the date of filing the Original Certificate with the Secretary of State of the State of Delaware is May 16, 1997.

SECOND: That in accordance with Section 228, 242 and Section 245 of the General Corporation Law, the Board of Directors and the holders of the outstanding capital stock of the Corporation adopted, approved and filed with the Secretary of State for the State of Delaware an Amended and Restated Certificate of Incorporation (the "First Amended Certificate") on September 13, 1997, that amended and restated the Original Certificate.

THIRD: That in accordance with Section 228, 242 and Section 245 of the General Corporation Law, the Board of Directors and the holders of the outstanding capital stock of the Corporation adopted, approved and filed with the Secretary of State for the State of Delaware an Amended and Restated Certificate of Incorporation (the "Second Amended Certificate") on October 26, 1998, that amended and restated the First Amended Certificate.

FOURTH: That in accordance with Section 228, 242 and Section 245 of the General Corporation Law, the Board of Directors and the holders of the outstanding capital stock of the Corporation adopted, approved and filed with the Secretary of State for the State of Delaware an Amended and Restated Certificate of Incorporation (the "Third First Amended Certificate") on June 14, 1999, that amended and restated the Second Amended Certificate.

FIFTH: That in accordance with Section 228, 242 and Section 245 of the General Corporation Law, the Board of Directors and the holders of the outstanding capital stock of the Corporation adopted, approved and filed with the Secretary of State for the State of Delaware an Amended and Restated Certificate of Incorporation (the "Fourth Amended Certificate") on November 15, 1999, that amended and restated the Third Amended Certificate.

SIXTH: That in accordance with Section 242 and Section 228 of the General Corporation Law, the Board of Directors and the holders of the outstanding capital stock of the Corporation adopted, approved and filed with the Secretary of State for the State of

Delaware a Certificate of Amendment to the Fourth Amended Certificate on January 11, 2000.

SEVENTH: That this Amended and Restated Certificate of Incorporation (the "Amended and Restated Certificate) restates and amends the Fourth Amended Certificate, as amended to date. This Amended and Restated Certificate was duly adopted by the directors and stockholders of the Company in accordance with the applicable provisions of Sections 228, 242 and 245 of the Delaware General Corporation Law.

EIGHTH: That the Amended and Restated Certificate shall not become effective until 4:00 p.m., eastern standard time, on August 7, 2000 (the "Effective Time");

NINTH: At the Effective Time, the Fourth Amended Certificate, as amended to date, is hereby amended and restated in its entirety to read as follows:

ARTICLE I.

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

ARTICLE II.

The address of the registered office of the Corporation in the State of Delaware is:

CorpAmerica, Inc.
30 Old Rudnick Lane
Dover, DE
County of Kent

The name of the Corporation's registered agent at said address is CorpAmerica, Inc.

ARTICLE III.

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

ARTICLE IV.

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is One Hundred Million (100,000,000) shares, Ninety Five Million (95,000,000) shares of which shall be Common Stock (the "Common Stock") and Five Million (5,000,000) shares of which shall be Preferred Stock (the "Preferred Stock"). The Common Stock and the Preferred Stock shall each have a par value of $0.001 per share.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation.

C. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, within the limitations and restrictions stated in this Amended and Restated Certificate of Incorporation, to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V.

The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation; and, provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

ARTICLE VI.

The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

ARTICLE VII.

To the fullest extent permitted by the Delaware General Corporation Law, 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 any breach of fiduciary duty as a director.

The Corporation shall 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 he, his 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.

Neither any amendment or repeal of this Article VII, nor the adoption of any provision of this 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 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.

The Corporation is to have perpetual existence.

ARTICLE IX.

The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

ARTICLE X.

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

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by the President of the Corporation on August 4, 2000.

MACROPORE, INC.

By: /s/ Michael J. Simpson

Name: Michael J. Simpson,
Title: President

EXHIBIT 3.2

BYLAWS

OF

MACROPORE, INC.

(a Delaware Corporation)

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BYLAWS

OF

MACROPORE, INC.

(a Delaware Corporation)

ARTICLE 1

OFFICES

1.1 PRINCIPAL OFFICE. The Board of Directors shall fix the location of the principal executive office of the Corporation at any place within or outside the State of Delaware.

1.2 ADDITIONAL OFFICES. The Board of Directors (the "Board") may at any time establish branch or subordinate offices at any place or places.

ARTICLE 2

MEETING OF STOCKHOLDERS

2.1 PLACE OF MEETING. All meetings of the stockholders for the election of directors shall be held at the principal office of the Corporation, at such place as may be fixed from time to time by the Board or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board and stated in the notice of the meeting. Meetings of stockholders for any purpose may be held at such time and place within or without the State of Delaware as the Board may fix from time to time and as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

2.2 ANNUAL MEETING. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board and stated in the notice of the meeting. At such annual meetings, the stockholders shall elect a Board and transact such other business as may properly be brought before the meetings.

2.3 SPECIAL MEETINGS. Special meetings of the stockholders may be called for any purpose or purposes, unless otherwise prescribed by the statute or by the Certificate of Incorporation, at the request of the Board, the Chairman of the Board, the President or the holders of shares entitled to cast not less than ten percent (10%) of the votes at the meeting or such additional persons as may be provided in the Certificate of Incorporation or Bylaws. Such request shall state the purpose or purposes of the proposed meeting. Upon request in writing that a special meeting of stockholders be called for any proper purpose, directed to the Chairman of the Board of Directors, the President, the Vice President or the Secretary by any person (other than the Board of Directors) entitled to call a special meeting of stockholders, the person forthwith shall cause notice to be given to the stockholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, such time not to be less than thirty-five (35) nor more than sixty (60) days after receipt of the request. Such request shall state the purpose or purposes of the proposed meeting.

2.4 NOTICE OF MEETINGS. Written notice of stockholders' meetings, stating the place, date and time of the meeting and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days prior to the meeting.

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, date and time thereof are announced at which the meeting at the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, date and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

2.5 BUSINESS MATTER OF A SPECIAL MEETING. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

2.6 LIST OF STOCKHOLDERS. The officer in charge of the stock ledger of the Corporation or the transfer agent 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, at a place within the city where the meeting is to be held, which place, if other than the place of the meeting, shall be specified in the notice of the meeting. The list shall also be produced and kept at the place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present in person thereat.

2.7 ORGANIZATION AND CONDUCT OF BUSINESS. The Chairman of the Board or, in his or her absence, the President of the Corporation or, in their absence, such person as the Board may have designated or, in the absence of such a person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as Chairman of the meeting. In the absence of the Secretary of the Corporation, the Secretary of the meeting shall be such person as the Chairman appoints.

The Chairman 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 discussion as seems to him or her in order.

2.8 QUORUM AND ADJOURNMENTS. Except where otherwise provided by law or the Certificate of Incorporation or these Bylaws, the holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented in proxy, shall constitute a quorum at all meetings of the stockholders. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to have less than a quorum if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum. At such adjourned meeting at which a quorum is present or represented,

any business may be transacted which might have been transacted at the meeting as originally notified. If, however, a quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat who are present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented.

2.9 VOTING RIGHTS. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder.

2.10 MAJORITY VOTE. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation or of these Bylaws, a different vote is required in which case such express provision shall govern and control the decision of such question.

2.11 RECORD DATE FOR STOCKHOLDER NOTICE AND VOTING. For purposes of determining the stockholders entitled to notice of any meeting or to vote, or entitled to receive payment of any dividend or other distribution, or entitled to exercise any right 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 shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting nor more than sixty (60) days before any other action.

If the Board does not so fix a record date, 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 business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

2.12 PROXIES. Every person entitled to vote for directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Secretary of the Corporation. 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. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Corporation stating that the proxy is revoked or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the person executing the proxy; or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Corporation before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven months from the date of the proxy, unless otherwise provided in the proxy.

2.13 INSPECTORS OF ELECTION. Before any meeting of stockholders the Board may appoint any person other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the Chairman of the meeting may, and on the request of any stockholder or a stockholder's proxy shall, appoint inspectors of

election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more stockholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the Chairman of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

2.14 ACTION WITHOUT MEETING BY WRITTEN CONSENT. All actions required to be taken at any annual or special meeting may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be 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 and shall be delivered to the Corporation by delivery to its registered office, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings or stockholders are recorded.

ARTICLE 3

DIRECTORS

3.1 NUMBER; QUALIFICATIONS. The Board shall consist of not less than three (3) nor more than five (5). The exact number of directors shall be four (4), until changed, within the limits specified above, by a bylaw amending this Section 3.1, duly adopted by the Board of Directors or by the Shareholders. At each annual meeting of the stockholders, directors shall be elected for that class of directors whose terms are then expiring, except as provided in Section 3.2 and each director so elected shall hold office until his successor is elected and qualified or until his earlier resignation or removal. Directors need not be stockholders.

3.2 RESIGNATION AND VACANCIES. A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation or removal of any director, or if the authorized number of directors be increased. Vacancies may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, unless otherwise provided in the Certificate of Incorporation. The stockholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board shall have power to elect a successor to take office when the resignation is to become effective. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

3.3 REMOVAL OF DIRECTORS. Unless otherwise restricted by statute, the Certificate of Incorporation or these Bylaws, any director or the entire Board may be removed, with or without cause, by the holders of at least a majority of the shares entitled to vote at an election of directors.

3.4 POWERS. The business of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such

lawful acts and things which are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Without prejudice to these general powers, and subject to the same limitations, the directors shall have the power to:

(a) Select and remove all officers, agents, and employees of the Corporation; prescribe any powers and duties for them that are consistent with law, with the Certificate of Incorporation, and with these Bylaws; fix their compensation; and require from them security for faithful service;

(b) Confer upon any office the power to appoint, remove and suspend subordinate officers, employees and agents;

(c) Change the principal executive office or the principal business office in the State of California or any other state from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency or country and conduct business within or without the State of California; and designate any place within or without the State of California for the holding of any stockholders meeting, or meetings, including annual meetings;

(d) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates;

(e) Authorize the issuance of shares of stock of the Corporation on any lawful terms, in consideration of money paid, labor done, services actually rendered, debts or securities canceled, tangible or intangible property actually received;

(f) Borrow money and incur indebtedness on behalf of the Corporation, and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities;

(g) Declare dividends from time to time in accordance with law;

(h) Adopt from time to time such stock option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(i) Adopt from time to time regulations not inconsistent with these Bylaws for the management of the Corporation's business and affairs.

3.5 PLACE OF MEETINGS. The Board may hold meetings, both regular and special, either within or without the State of Delaware.

3.6 ANNUAL MEETINGS. The annual meetings of the Board shall be held immediately following the annual meeting of stockholders, and no notice of such meeting shall be necessary

to the Board, provided a quorum shall be present. The annual meetings shall be for the purposes of organization, and an election of officers and the transaction of other business.

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

3.8 SPECIAL MEETINGS. Special meetings of the Board may be called by the Chairman of the Board, the President, a Vice President or a majority of the Board upon one (1) day's notice to each director.

3.9 QUORUM AND ADJOURNMENTS. At all meetings of the Board, a majority of the directors then in office 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, except as may otherwise be specifically provided by law or the Certificate of Incorporation. If a quorum is not present at any meeting of the Board, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting at which the adjournment is taken, until a quorum shall be 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 of by at least a majority of the required quorum for that meeting.

3.10 ACTION WITHOUT 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, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

3.11 TELEPHONE MEETINGS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any member of the Board or any committee may participate in a meeting 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.

3.12 WAIVER OF NOTICE. Notice of a meeting need not be given to any director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

3.13 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. The directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

3.14 RIGHTS OF INSPECTION. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and includes the right to copy and obtain extracts.

ARTICLE 4

COMMITTEES OF DIRECTORS

4.1 SELECTION. The Board may, by resolution passed by a majority of the entire Board, 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 he or she or they 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.

4.2 POWER. Any such committee, to the extent provided in the resolution of the Board, 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 which may require it; but no such committee shall have the power or authority in reference to amending 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 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), adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, removing or indemnifying directors or amending the Bylaws of the Corporation; and, unless the resolution or the Certificate of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board.

4.3 COMMITTEE MINUTES. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

ARTICLE 5

OFFICERS

5.1 OFFICERS DESIGNATED. The officers of the Corporation shall be chosen by the Board and shall be a President, a Secretary and a Treasurer or Chief Financial Officer. The Board may also choose a Chairman of the Board, one or more Vice Presidents, one or more assistant Secretaries and assistant Treasurers, and any other officers the Board may appoint by resolution so long as such officers' titles and duties are not inconsistent with these Bylaws. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

5.2 APPOINTMENT OF OFFICERS. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or 5.5 of this Article 5, shall be appointed by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS. The Board may appoint, and may 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 the 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 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; 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. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointment to that office.

5.6 COMPENSATION. The salaries of all officers of the Corporation shall be fixed from time to time by the Board and no officer shall be prevented from receiving a salary because he is also a director of the Corporation.

5.7 THE CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, perform such other powers and duties as may be assigned to him from time to time by the Board. If there is no President, 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 5.8 of this Article 5.

5.8 THE PRESIDENT. Subject to such supervisory powers, if any, as may be given by the Board to the Chairman of the Board, if there be such an officer, the President shall be the Chief Executive Officer of the Corporation, shall preside at all meetings of the stockholders and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board, shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. He or she shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation.

5.9 THE VICE PRESIDENT. The Vice President (or in the event there be more than one, the Vice Presidents in the order designated by the directors, or in the absence of any designation, in the order of their election), shall, in the absence of the President or in the event of his disability or refusal to act, perform the duties of the President, and when so acting, shall have the powers of and subject to all the restrictions upon the President. The Vice President(s) shall perform such other duties and have such other powers as may from time to time be prescribed for them by the Board, the President, the Chairman of the Board or these Bylaws.

5.10 THE SECRETARY. The Secretary shall attend all meetings of the Board and the stockholders and record all votes and the proceedings of the meetings in a book to be kept for that purpose and shall perform like duties for the standing committees, when required. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and special meetings of the Board, and shall perform such other duties as may from time to time be prescribed by the Board, the Chairman of the Board or the President, under whose supervision he or she shall act. The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof, by his or her signature. The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board, 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 issued for the same and the number and date of cancellation of every certificate surrendered for cancellation.

5.11 THE ASSISTANT SECRETARY. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order designated by the Board (or in the absence of any designation, 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 may from time to time be prescribed by the Board.

5.12 THE TREASURER OR CHIEF FINANCIAL OFFICER. The Treasurer or Chief Financial Officer shall have the custody of the Corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in

such depositories as may be designated by the Board. The Treasurer or Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and the Board, at its regular meetings, or when the Board so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

5.13 THE ASSISTANT TREASURER. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order designated by the Board (or in the absence of any designation, 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 may from time to time be prescribed by the Board.

ARTICLE 6

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

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 maximum 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 PAYMENT OF EXPENSES IN ADVANCE. Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by the Corporation in advance of the final disposition of such action or

proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article 6.

6.4 INDEMNITY NOT EXCLUSIVE. The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Certificate of Incorporation.

6.5 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 General Corporation Law of Delaware.

6.6 CONFLICTS. No indemnification or advance shall be made under this Article 6, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Certificate of Incorporation, these Bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

ARTICLE 7

STOCK CERTIFICATES

7.1 CERTIFICATES FOR SHARES. The shares of the Corporation shall be represented by certificates or shall be uncertificated. Certificates shall be signed by, or in the name of the Corporation by, the Chairman of the Board, or the President or a Vice President and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation.

Within a reasonable time after the issuance or transfer of uncertified stock, the Corporation shall send to the registered owner thereof a written notice containing the information required by the General Corporation Law of the State of Delaware or a statement that 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.

7.2 SIGNATURES ON CERTIFICATES. Any or all of the signatures on a 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 shall have 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.

7.3 TRANSFER OF STOCK. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate of 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 upon its books. Upon receipt of proper transfer instructions from the registered owner of uncertificated share, such uncertificated shares shall be canceled and issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Corporation.

7.4 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, and to hold liable for calls and assessments a percent 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 any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.5 RECORD DATE. In order that the Corporation may determine the stockholders of record who are entitled to receive notice of, or to vote at, any meeting of stockholders or any adjournment thereof or 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 to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any lawful action, the Board may fix, in advance, a record date which shall not be more than sixty (60) nor less than ten (10) days prior to the date of such meeting, nor more than sixty (60) days prior to the date of any other action. A determination of stockholders of record entitled to notice 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.

7.6 LOST, STOLEN OR DESTROYED CERTIFICATES. The Board may direct that a new certificate or certificates be issued to replace any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing the issuance of a new certificate or certificates, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require, and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

ARTICLE 8

NOTICES

8.1 NOTICE. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any director or stockholder it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his or her address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram or telephone.

8.2 WAIVER. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE 9

GENERAL PROVISIONS

9.1 DIVIDENDS. Dividends upon the capital stock of the Corporation, subject to any restrictions contained in the General Corporation Laws of Delaware or the provisions of the Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

9.2 DIVIDEND RESERVE. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

9.3 ANNUAL STATEMENT. The Board 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.

9.4 CHECKS. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

9.5 CORPORATE SEAL. The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

9.6 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.

ARTICLE 10

AMENDMENTS

In addition to the right of the stockholders of the Corporation to make, alter, amend, change, add to or repeal the Bylaws of the Corporation, the Board of Directors shall have the power (without the assent or vote of the stockholders) to make, alter, amend, change, add to or repeal the Bylaws of the Corporation.

EXHIBIT 10.1

MACROPORE, INC.

AMENDED AND RESTATED

1997 STOCK OPTION AND STOCK PURCHASE PLAN

(INITIALLY ADOPTED AS OF OCTOBER 22, 1997)

(EFFECTIVE AS OF NOVEMBER 5, 1999)

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MACROPORE, INC.
AMENDED AND RESTATED
1997 STOCK OPTION AND STOCK PURCHASE PLAN
(EFFECTIVE AS OF AUGUST 27, 1999)

SECTION 1. PURPOSE.

The purpose of the Plan is to offer selected employees, directors and consultants an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, to encourage such selected persons to remain in the employ of the Company and to attract new employees with outstanding qualifications. The Plan provides for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as incentive stock options intended to qualify under section 422 of the Internal Revenue Code.

SECTION 2. DEFINITIONS.

(a) "BOARD OF DIRECTORS" shall mean the Board of Directors of the Company, as constituted from time to time.

(b) "CHANGE IN CONTROL" means the occurrence of any of the following events:

(i) the consummation of the acquisition of fifty-one percent (51%) or more of the outstanding Stock of the Company by one person or by two or more persons acting as a partnership, limited partnership, syndicate or other group pursuant to a tender offer validly made under any federal or state law (other than a tender offer by the Company);

(ii) the consummation of a merger, consolidation or other reorganization of the Company (other than a reincorporation of the Company), if after giving effect to such merger, consolidation or other reorganization of the Company, the stockholders of the Company immediately prior to such merger, consolidation or other reorganization do not represent a majority in interest of the holders of voting securities (on a fully diluted basis) with the ordinary voting power to elect directors of the surviving or resulting entity after such merger, consolidation or other reorganization;

(iii) the sale of all or substantially all of the assets of the Company to a third party who is not an affiliate (including a Parent or Subsidiary) of the Company;

(iv) the dissolution of the Company pursuant to action validly taken by the stockholders of the Company in accordance with applicable state law; or

(v) the occurrence of any other tender offer, merger, consolidation, sale, reorganization, dissolution or other such event or series of events, which in the opinion of a majority of the Board (as reflected in a written resolution of the Board) has resulted in a change of control of the Company.

(c) "CODE" shall mean the Internal Revenue Code of 1986, as amended.

(d) "COMMITTEE" shall mean a committee consisting of members of the Board of Directors that is appointed by the Board of Directors. If no Committee has been appointed, the entire Board of Directors shall constitute the Committee. At such time as the officers and directors of the Company become reporting persons with respect to the Securities Exchange Act of 1934, the Committee shall have membership composition which enables the Plan to qualify under Rule 16b-3 with regard to the grant of Options or other rights to acquire Shares to persons who are subject to Section 16 of the Securities Exchange Act of 1934.

(e) "COMPANY" shall mean Macropore, Inc., a Delaware corporation.

(f) "DISABILITY" shall means that an Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

(g) "EMPLOYEE" shall mean (i) any individual who is a common-law employee of the Company or of a Subsidiary, (ii) a member of the Board of Directors, or (iii) a consultant who performs services for the Company or a Subsidiary. Service as a member of the Board of Directors or as a consultant shall be considered employment for all purposes under the Plan except the second sentence of Section 4(a).

(h) "EXERCISE PRICE"' shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Committee in the applicable Stock Option Agreement.

(i) "FAIR MARKET VALUE" shall mean the fair market value of a Share, as determined by the Committee in good faith. Such determination shall be conclusive and binding on all persons.

(j) "ISO" shall mean an employee incentive stock option described in Code section 422(b).

(k) "NONSTATUTORY OPTION" shall mean an employee stock option that is not an ISO.

(l) "OFFEREE" shall mean an individual to whom the Committee has offered the right to acquire Shares (other than upon exercise of an Option).

(m) "OPTION" shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(n) "OPTIONEE" shall mean an individual who holds an Option.

(o) "PLAN" shall mean this Macropore, Inc. 1997 Stock Option and Stock Purchase Plan.

(p) "PURCHASE PRICE" shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Committee.

(q) "SERVICE" shall mean service as an Employee.

(r) "SHARE" shall mean one share of Stock, as adjusted in accordance with Section 9 (if applicable).

(s) "STOCK" shall mean the common stock of the Company.

(t) "STOCK OPTION AGREEMENT" shall mean the agreement between the Company and an Optionee which contains the terms, conditions and restrictions pertaining to his or her Option.

(u) "STOCK PURCHASE AGREEMENT" shall mean the agreement between the Company and an Offeree who acquires Shares under the Plan which contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(v) "SUBSIDIARY" shall mean any corporation, of which the Company and/or one or more other Subsidiaries own not less than 50 percent of the total combined voting power of all classes of outstanding stock of such corporation. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

SECTION 3. ADMINISTRATION.

(a) COMMITTEE MEMBERSHIP. The Plan shall be administered by the Committee, which shall consist of members of the Board of Directors. The members of the Committee shall be appointed by the Board of Directors.

(b) COMMITTEE PROCEDURES. The Board of Directors shall designate one of the members of the Committee as chairperson. The Committee may hold meetings at such times and places as it shall determine. The acts of a majority of the Committee members present at meetings at which a quorum exists, or acts reduced to or approved in writing by all Committee members, shall be valid acts of the Committee.

(c) COMMITTEE RESPONSIBILITIES. Subject to the provisions of the Plan, the Committee shall have fall authority and discretion to take the following actions:

(i) To interpret the Plan and to apply its provisions;

(ii) To adopt, amend or rescind rules, procedures and forms relating to the Plan;

(iii) To authorize any person to execute, on behalf of the Company, any instrument required to carry out the purposes of the Plan;

(iv) To determine when Shares are to be awarded or offered for sale and when Options are to be granted under the Plan;

(v) To select Offerees and Optionees;

(vi) To determine the number of Shares to be awarded or offered for sale or to be made subject to each Option;

(vii) To prescribe the terms and conditions of each award or sale of Shares, including (without limitation) the Purchase Price and vesting of the award, and to specify the provisions of the Stock Purchase Agreement relating to such award or sale;

(viii) To prescribe the terms and conditions of each Option, including (without limitation) the Exercise Price and vesting of the Option, to determine whether such Option is to be classified as an ISO or as a Nonstatutory Option, and to specify the provisions of the Stock Option Agreement relating to such Option;

(ix) To amend any outstanding Stock Purchase or Stock Option Agreement; provided, however, that the rights and obligations under any Stock Purchase or Stock Option Agreement shall not be materially altered or impaired adversely by any such amendment, except with the consent of the Optionee or Offeree;

(x) To determine the disposition of an Option or other right to acquire Shares in the event of an Optionee's or Offeree's divorce or dissolution of marriage;

(xi) To correct any defect, supply any omission, or reconcile any inconsistency in the Plan and any Stock Purchase or Stock Option Agreement; and

(xii) To take any other actions deemed necessary or advisable for the administration of the Plan.

All decisions, interpretations and other actions of the Committee shall be final and binding on all Offerees, Optionees, and all persons deriving their rights from an Offeree or Optionee. No member of the Committee shall be liable for any action that he or she has taken or has failed to take in good faith with respect to the Plan, any Option or any other right to acquire Shares under the Plan.

(d) FINANCIAL REPORTS. To the extent required by applicable law, and not less often than annually, the Company shall furnish to Optionees and Offerees Company summary financial information including a balance sheet regarding the Company's financial condition and results of operations, unless such Optionees or Offerees have duties with the Company that assure them access to equivalent information. Such financial statements need not be audited.

SECTION 4. ELIGIBILITY.

(a) GENERAL RULE. Only Employees shall be eligible for designation as Optionees or Offerees by the Committee. In addition, only individuals who are employed as common-law employees by the Company or a Subsidiary shall be eligible for the grant of ISOs.

(b) TEN-PERCENT SHAREHOLDERS. An Employee who owns more than 10 percent of the total combined voting power of all classes of outstanding stock of the Company or any of its Subsidiaries shall not be eligible for designation as an Optionee or Offeree unless (i) the Exercise Price for an ISO (and, to the extent required by applicable law, the Exercise Price for a

Nonstatutory Option and Purchase Price for a sale of Shares) is at least 110 percent of the Fair Market Value of a Share on the date of grant, and (ii) in the case of an ISO, such ISO by its terms s is not exercisable after the expiration of five years from the date of grant.

(c) ATTRIBUTION RULES. For purposes of Subsection (b) above, in determining stock ownership, an Employee shall be deemed to own the stock owned, directly or indirectly, by or for his brothers, sisters, spouse, ancestors and lineal descendants. Stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be deemed to be owned proportionately by or for its shareholders, partners or beneficiaries.

(d) OUTSTANDING STOCK. For purposes of Subsection (b) above, "outstanding stock" shall include all stock actually issued and outstanding immediately after the grant. "Outstanding stock" shall not include shares authorized for issuance under outstanding options held by the Employee or by any other person.

SECTION 5. STOCK SUBJECT TO PLAN.

(a) BASIC LIMITATION. Shares offered under the Plan shall be authorized but unissued Shares, or issued Shares that have been reacquired by the Company. The aggregate number of Shares which may be issued under the Plan (upon exercise of Options or other rights to acquire Shares) shall not exceed three million (3,000,000) Shares, subject to adjustment pursuant to Section 9. The number of Shares which are subject to Options or other rights to acquire Shares outstanding at any time under the Plan shall not exceed the number of Shares which then remain available for issuance under the Plan. During the term of the Plan, the Company shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

(b) ADDITIONAL SHARES. In the event that any outstanding Option or other right to acquire Shares for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such Option or other right shall again be available for the purposes of the Plan.

SECTION 6. TERMS AND CONDITIONS OF AWARDS OR SALES.

(a) STOCK PURCHASE AGREEMENT. Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Offeree and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Committee deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

(b) DURATION OF OFFERS AND NONTRANSFERABILITY OF RIGHTS. Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Offeree within the number of days specified by the Committee and communicated to the Offeree by the Committee. Such right shall not be transferable and shall be exercisable only by the Offeree to whom such right was granted.

(c) PURCHASE PRICE. To the extent required by applicable law, the Purchase Price of Shares to be offered under the Plan shall not be less an eighty-five percent (85%) of the Fair Market Value of such Shares, except as otherwise provided in Section 4(b). Subject to the preceding sentence, the Purchase Price shall be determined by the Committee at its sole discretion. The Purchase Price shall be payable in a form described in Section 8.

(d) WITHHOLDING TAXES. As a condition to the purchase of Shares, the Offeree shall make such arrangements as the Committee may require for the satisfaction of any federal, state or local withholding tax obligations that may arise in connection with such purchase.

(e) RESTRICTIONS ON TRANSFER OF SHARES. No Shares awarded or sold under the Plan may be sold or otherwise transferred or disposed of by the Offeree during the one hundred eighty (180) day period following the effective date of a registration statement covering securities of the Company filed under the Securities Act of 1933. Subject to the preceding sentence, any Shares awarded or sold under the Plan shall be subject to such special conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Committee may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any general restrictions that may apply to all holders of Shares. To the extent required by applicable law, any service-based vesting conditions shall not be less rapid than the schedule set forth in Section 7(e).

SECTION 7. TERMS AND CONDITIONS OF OPTIONS.

(a) STOCK OPTION AGREEMENT. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Committee deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) NUMBER OF SHARES. Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 9. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) EXERCISE PRICE. Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than one hundred percent (100%) of the Fair Market Value of a Share on the date of grant, except as otherwise provided in Section 4(b). The Exercise Price of a Nonstatutory Option shall not be less than eighty-five percent (85%) of the Fair Market Value of a Share on the date of grant, except as otherwise provided in Section 4(b). Subject to the preceding two sentences, the Exercise Price under any Option shall be determined by the Committee in its sole discretion. The Exercise Price shall be payable in a form described in Section 8.

(d) WITHHOLDING TAXES. As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Committee may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such

exercise. The Optionee shall also make such arrangements as the Committee may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

(e) EXERCISABILITY. Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. To the extent required by applicable law, an Option shall become exercisable no less rapidly than the rate of twenty percent (20%) per year for each of the first five years from the date of grant. Subject to the preceding sentence, the vesting of any Option shall be determined by the Committee in its sole discretion.

(f) TERM. Stock Option Agreement shall specify the term of the Option. The term shall not exceed ten (10) years from the date of grant, except as otherwise provided in Section 4(b). Subject to the preceding sentence, the Committee at its sole discretion shall determine when an Option is to expire.

(g) NONTRANSFERABILITY. No Option shall be transferable by the Optionee other than by will or by the laws of descent and distribution. An Option may be exercised during the lifetime of the Optionee only by him or by his guardian or legal representative. No Option or interest therein may be transferred, assigned, pledged or hypothecated by the Optionee during his lifetime, whether by operation of law or otherwise, or be made subject to execution, attachment or similar process.

(h) EXERCISE OF OPTIONS ON TERMINATION OF SERVICE. Each Stock Option Agreement shall set forth the extent to which the Optionee shall have the right to exercise the Option following termination of the Optionee's service with the Company and its Subsidiaries. Such provisions shall be determined in the sole discretion of the Committee, need not be uniform among all Options issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination of employment. Notwithstanding the foregoing, to the extent required by applicable law, each Option shall provide that the Optionee shall have the right to exercise the vested portion of any Option held at termination for at least 30 days following termination of service with the Company for any reason, and that the Optionee shall have the right to exercise the Option for at least six months if the Optionee's service terminates due to death or Disability.

(i) NO RIGHTS AS A SHAREHOLDER. An Optionee, or a transferee of an Optionee, shall have no rights as a shareholder with respect to any Shares covered by an Option until the date of the issuance of a stock certificate for such Shares.

(j) MODIFICATION, EXTENSION AND ASSUMPTION OF OPTIONS. Within the limitations of the Plan, the Committee may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price.

(k) RESTRICTIONS ON TRANSFER OF SHARES. No Shares issued upon exercise of an Option may be sold or otherwise transferred or disposed of by the Optionee during the one hundred eighty (180) day period following the effective date of a registration statement covering securities of the Company filed under the Securities Act of 1933. Subject to the preceding

sentence, any Shares issued upon exercise of an Option shall be subject to such rights of repurchase, rights of first refusal and other transfer restrictions as the Committee may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally.

SECTION 8. PAYMENT FOR SHARES.

(a) GENERAL RULE. The entire Exercise Price of Shares issued under the Plan shall be payable in lawful money of the United States of America at the time when such Shares are purchased, except as provided in Subsections (b), (c) and (d) below.

(b) SURRENDER OF STOCK. To the extent that a Stock Option Agreement so provides, payment may be made all or in part with Shares which have already been owned by the Optionee or the Optionee's representative for any time period specified by the Committee and which are surrendered to the Company in good form for transfer. Such Shares shall be valued at their Fair Market Value on the date when the new Shares are purchased under the Plan.

(c) PROMISSORY NOTES. To the extent that a Stock Option Agreement so provides, payment may be made all or in part with a full recourse promissory note executed by the Optionee. The interest rate and other terms and conditions of such note shall be determined by the Committee. The Committee may require that the Optionee pledge his or her Shares to the Company for the purpose of securing the payment of such note. In no event shall the stock certificate(s) representing such Shares be released to the Optionee until such note is paid in full.

(d) CASHLESS EXERCISE. To the extent that a Stock Option Agreement so provides and a public market for the Shares exists, payment may be made all or in part by delivery (on a form prescribed by the Committee) of an irrevocable direction to a securities broker to sell Shares and to deliver all or part of the sale proceeds to the Company in payment of the aggregate Exercise Price.

SECTION 9. ADJUSTMENT OF SHARES.

(a) GENERAL. In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of a dividend payable in a form other than Shares in an amount that has a material effect on the value of Shares, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a recapitalization, a reclassification or a similar occurrence, the Committee shall make appropriate adjustments in one or more of (i) the number of Shares available for future grants of Options or other rights to acquire Shares under Section 5, (ii) the number of Shares covered by each outstanding Option or other right to acquire Shares or (iii) the Exercise Price of each outstanding Option or the Purchase Price of each other right to acquire Shares,

(b) REORGANIZATIONS. In the event that the Company is a party to a merger or reorganization, outstanding Options or other rights to acquire Shares shall be subject to the agreement of merger or reorganization.

(c) RESERVATION OF RIGHTS. Except as provided in this Section 9, an Optionee or Offeree shall have no rights by reason of (i) any subdivision or consolidation of shares of stock

of any class, (ii) the payment of any dividend, or (iii) any other increase or decrease in the number of shares of stock of any class. Any issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option, or the number or Purchase Price of shares subject to any other right to acquire Shares. The grant of an Option or other right to acquire Shares pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 10. LEGAL REQUIREMENTS.

Shares shall not be issued under the Plan unless the issuance and delivery of such Shares complies with (or is exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange on which the Company's securities may then be listed, and the Company has obtained the approval or favorable ruling from any governmental agency which the Company determines is necessary or advisable.

SECTION 11. NO EMPLOYMENT RIGHTS.

No provision of the Plan, nor any Option granted or other right to acquire Shares awarded under the Plan, shall be construed to give any person any right to become, to be treated as, or remain an Employee. The Company and its Subsidiaries reserve the right to terminate any person's Service at any time and for any reason.

SECTION 12. DURATION AND AMENDMENTS.

(a) TERM OF THE PLAN. The Plan, as set forth herein, shall become effective on the date, of its adoption by the Board of Directors, subject to the approval of the Company's shareholders. In the event that the shareholders fail to approve the Plan within twelve (12) months after its adoption by the Board of Directors, any Option grants or other right to acquire Shares already made shall be null and void, and no additional Option grants or other right to acquire Shares shall be made after such date. The Plan shall terminate automatically ten (10) years after its adoption by the Board of Directors and may be terminated on any earlier date pursuant to Subsection (b) below.

(b) RIGHT TO AMEND OR TERMINATE THE PLAN. The Board of Directors may amend the Plan at any time and from time to time. Rights and obligations under any Option granted or other right to acquire Shares awarded before amendment of the Plan shall not be materially altered, or impaired adversely, by such amendment, except with consent of the Optionee or Offeree. An amendment of the Plan shall be subject to the approval of the Company's shareholders only to the extent required by applicable laws, regulations or rules.

(c) EFFECT OF AMENDMENT OR TERMINATION. No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of art Option granted prior to such

termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or Option previously granted under the Plan.

SECTION 13. EXECUTION.

To record the amended and restatement of the Plan by the Board of Directors as of August 27, 1999 the Company has caused its authorized officer to execute the same.

MACROPORE, INC.

By: /s/ Christopher J. Calhoun

Name: Christopher J. Calhoun
Title: Vice Chairman, Chief Executive Officer, Secretary

DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (the "AGREEMENT") is made and entered into as of January 5, 2000 (the "EFFECTIVE DATE"), between MACROPORE, INC. ("MACROPORE"), a Delaware corporation, and MEDTRONIC, INC. (as defined below, "MEDTRONIC"), a Minnesota corporation.

WITNESSETH:

WHEREAS, MacroPore has developed bioabsorbable surgical implants for use in, among other areas, bone fixation and reconstruction in the craniofacial skeleton; and

WHEREAS, MacroPore and Medtronic's Affiliate, Medtronic Asset Management, Inc. ("MAMI"), intend to enter into a Series D Preferred Stock Purchase Agreement (the "INVESTMENT AGREEMENT") pursuant to which MAMI will purchase Series D Preferred Stock of MacroPore and receive various rights; and

WHEREAS, it is a condition to MAMI's willingness to purchase such MacroPore Series D Preferred Stock that the parties enter into this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
DEFINITIONS

1.1 SPECIFIC DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"AFFILIATE" of a specified person (natural or juridical) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "CONTROL" shall mean ownership of more than 50% of the shares of stock entitled to vote for the election of directors in the case of a corporation, and more than 50% of the voting power in the case of a business entity other than a corporation.

"AGREEMENT" means this Agreement and all Exhibits and Schedules hereto.

"CONFIDENTIAL INFORMATION" means know-how, trade secrets, and unpublished information disclosed (whether before or during the term of this Agreement) by one of the parties (the "disclosing party") to the other party or such other party's designee pursuant to Section 13.5 (the "receiving party"), and which is marked as proprietary or confidential as provided below, excluding information that:

(a) was already in the possession of receiving party prior to its receipt from the disclosing party (provided that the receiving party is able to provide the disclosing party with reasonable documentary proof thereof);

(b) is or becomes part of the public domain by reason of acts not attributable to the receiving party;

(c) is or becomes available to receiving party from a source other than the disclosing party which source, to the best of receiving party's knowledge, has rightfully obtained such information and has no obligation of nondisclosure or confidentiality to the disclosing party with respect thereto;

(d) is made available by the disclosing party to a third party unaffiliated with the disclosing party on an unrestricted basis;

(e) is independently developed by the receiving party completely without reference to any Confidential Information of the disclosing party, as evidenced by the receiving party's written records; or

(f) has been or must be publicly disclosed by reason of legal, accounting or regulatory requirements beyond the reasonable control, and despite the reasonable efforts, of the receiving party.

All Confidential Information disclosed by one party to the other under this Agreement shall be in writing and bear a legend "Proprietary," "Confidential" or words of similar import or, if disclosed in any manner other than writing, shall be followed by confirmation that such information is confidential by the disclosing party within 30 days.

Specific aspects or details of Confidential Information shall not be deemed to be within the public domain merely because the aspects or details of the Confidential Information is embraced by general disclosures in the public domain. In addition, any combination of Confidential Information shall not be considered in the public domain or in the prior possession of the receiving party merely because individual elements thereof are in the public domain or in the prior possession of the receiving party unless the combination and its principles are in the public domain or in the prior possession of the receiving party.

"CRANIAL FIELD" means the reconstruction or fixation of the cranial or facial skeleton, including but not limited to cranial, cranial-facial, mid-facial and mandibular applications.

"EXISTING DISTRIBUTION AGREEMENT" means: the Exclusive Sales Distribution Agreement dated as of July 15, 1999, by and between MacroPore, Inc. and Normed GmbH; the Exclusive Sales Agency Agreement dated as of July 15, 1999, by and between MacroPore, Inc. and Medsource; and the Exclusive Sales Distribution Agreement dated as of October 15, 1999, by and between MacroPore, Inc. and Surgical Science Systems.

"FDA" means the United States Food and Drug Administration.

"FAILURE OF SUPPLY" means (i) MacroPore's failure, for any reason other than Force Majeure, to deliver any Product ordered in accordance with the provisions of Article 5 by the date scheduled for delivery thereof, including but not limited to a failure to deliver Product which conforms to the Specifications therefor, which failure is not cured within one month after MacroPore is notified of such failure, or (ii) MacroPore's failure due to Force Majeure to deliver any Product

ordered in accordance with the provisions of Article 5 by the date scheduled for delivery thereof, including but not limited to a failure to deliver Product which conforms to the Specifications therefor, which failure is not cured within three months after MacroPore is notified of such failure.

"FORCE MAJEURE" means any event or condition, not existing as of the date of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part the performance by one of the parties of its obligations hereunder, such as an act of government, war or related actions, civil insurrection, riot, sabotage, strike, epidemic, fire, flood, windstorm, and similar events.

"FOREIGN DEVICE REGULATORY AUTHORITIES" means foreign regulatory authorities, the function and purpose of which include regulating the design, manufacture, quality and/or sale of medical devices.

"INTELLECTUAL PROPERTY" means letters patent and patent applications; trademarks, service marks and registrations thereof and applications therefor; copyrights and copyright registrations and applications; mask works and registrations thereof; all inventions, discoveries, ideas, technology, know-how, trade secrets, data, information, processes, formulas, drawings and designs, licenses, computer programs and software; and all amendments, modifications, and improvements to any of the foregoing.

"KNOWLEDGE" means actual knowledge of a fact or the knowledge that such person could reasonably be expected to have based on reasonable inquiry. The "knowledge" of an entity shall include the knowledge of such entity's employees.

"LICENSED INTELLECTUAL PROPERTY" means, with respect to a Failure of Supply of a particular Product, all Intellectual Property used by MacroPore in connection with the manufacture or sale of such Product at the time of such Failure of Supply.

"MACROPORE" means MacroPore, Inc. and its Affiliates.

"MEDTRONIC" means Medtronic, Inc. and its Affiliates.

"NET SALES" of Products for purposes of Article 13 with respect to a particular period means the amounts that Medtronic or any Affiliate of Medtronic receives from third parties (eliminating transactions among Affiliates of Medtronic and/or Medtronic) for net sales of Products during such period, excluding sales, use or excise tax, freight, duty or insurance included therein, returns, discounts and allowances, credits or repayments due to rejections, defects or returns, provided that if Medtronic or any Affiliate of Medtronic sells at a single price or rate a packaged combination of products, not all of which if sold individually would be Products, then "Net Sales" with respect to such sales of packaged products shall equal the number of units of Products sold as part of such packaged products (less rejections, defects and returns) multiplied by either (i) the respective average net selling price during such period of the same type of Product sold individually, or (ii) the average net selling price during such period for a comparable product (if the same type of Product is not sold individually), in either case excluding sales, use or excise tax, freight, duty or insurance included therein.

"NON-CRANIAL FIELD" means uses outside of the Cranial Field.

"PRODUCTS" means all products, devices, systems and instruments now or hereafter during the Term (as defined in Section 12.1) of this Agreement developed, manufactured, produced or sold by MacroPore that may be used in the Cranial Field, including but not limited to MacroPore's MacroSorb(TM) product line, including all components thereof and accessories thereto, and any modifications, improvements, substitutions and future generations of such products made by or under the authority of MacroPore during the Term.

"PRODUCT LIABILITY DAMAGES" means any liability, claim or expense, including but not limited to reasonable attorneys' fees and medical expenses, arising in whole or in part out of claims of third parties for personal injury or loss of or damage to property relating to or arising out of the Products, whether based on strict liability in tort, negligent manufacture of product, or any other allegation of liability arising directly from the design, testing, manufacture, packaging, labeling (including instructions for use), or sale of the Products.

"SPECIFICATIONS" means MacroPore's current specifications for the Products, as the same may be amended from time to time by MacroPore in compliance with this Agreement.

1.2 OTHER TERMS. Other terms may be defined elsewhere in the text of this Agreement and shall have the meaning indicated throughout this Agreement.

1.3 DEFINITIONAL PROVISIONS.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provisions of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References to an "Exhibit" or to a "Schedule" are, unless otherwise specified, to one of the Exhibits or Schedules attached to or referenced in this Agreement, and references to an "Article" or a "Section" are, unless otherwise specified, to one of the Articles or Sections of this Agreement.

(d) The term "person" includes any individual, partnership, joint venture, corporation, trust, unincorporated organization or government or any department or agency thereof.

(e) The term "dollars" or "$" shall refer to the currency of the United States of America.

(f) All references to time shall refer to Minneapolis, Minnesota time.

ARTICLE 2
APPOINTMENT; ADDITIONAL RIGHTS OF FIRST OFFER

2.1 SCOPE. Subject to the terms and conditions of this Agreement, MacroPore hereby appoints Medtronic, and Medtronic hereby accepts appointment, as MacroPore's exclusive worldwide distributor during the Term with the right to sell and distribute Products solely for use in the Cranial Field. Except as provided in Section 2.5, Medtronic shall not have any right to distribute Products for use outside the Cranial Field.

2.2 PAYMENT FOR DISTRIBUTION RIGHTS. In consideration of Medtronic's rights hereunder, Medtronic shall, within two business days after the date hereof, pay MacroPore the sum of One Million Five Hundred Thousand Dollars ($1,500,000).

2.3 EXCLUSIVITY.

(a) Medtronic's distribution rights under this Agreement shall be exclusive throughout the United States and, except for the Existing Distribution Agreements throughout the world. MacroPore represents and warrants to Medtronic that, except for the Existing Distribution Agreements, MacroPore has not entered into any other distributorship agreements or sales representative agreements, written or oral, with any third party permitting the sale of Products for use in the Cranial Field, and, to the extent it has entered into such agreements in the past, that all such agreements have been terminated without liability to MacroPore or Medtronic. MacroPore covenants and agrees that during the Term, MacroPore will not enter into any such agreement or itself sell or distribute any Products for use in the Cranial Field. MacroPore will use its reasonable best efforts to negotiate the termination of the Existing Distribution Agreements or, if such termination is not commercially feasible, to convert such existing distributors to sub-distributors of Medtronic.

(b) Except as set forth in Article 13, during the term of this Agreement, Medtronic shall not purchase or resell any poly-lactic acid implantable reconstruction or fixation products for use in the Cranial Field (excluding however, applications in the nose, sinus or ears) except those purchased from MacroPore hereunder.

2.4 SUBDISTRIBUTORS. Medtronic may appoint subdistributors for the sale or distribution of Products for use in the Cranial Field; provided that Medtronic gives MacroPore written notice of the identity of such subdistributors, and uses commercially reasonable efforts to ensure that such subdistributors comply with the applicable provisions of this Agreement. Notwithstanding such appointment of subdistributors, Medtronic shall remain fully responsible for the performance of all of its covenants and obligations hereunder, and any shipments by MacroPore to such Medtronic subdistributors shall be billed by MacroPore to Medtronic directly. Medtronic shall indemnify and hold MacroPore harmless from and against any claim, loss, damage or expense (including reasonable attorneys' fees) suffered or incurred by MacroPore relating to any claim in connection with this Agreement that is threatened or initiated by any subdistributor or sub-agent appointed by Medtronic, except for claims for which Medtronic is entitled to indemnification from MacroPore under Section 11.1.

2.5 RIGHT OF FIRST OFFER FOR DISTRIBUTION RIGHTS IN NON-CRANIAL FIELD.

(a) MacroPore shall not enter into any definitive agreement with respect to the grant by MacroPore of distribution or sales representative rights with respect to any MacroPore products, devices, systems and instruments now or hereafter during the Term developed, manufactured, produced or sold by MacroPore (such proposed grant of such rights referred to as a "PROPOSED TRANSACTION") unless Medtronic is given MacroPore's Notice (as defined below) with respect thereto and MacroPore complies with the terms of this Section 2.5.

(b) If (i) MacroPore receives a bona fide offer or written indication of interest from a third party to enter into a Proposed Transaction which MacroPore is willing to accept, or (ii) MacroPore determines to seek a third party to enter into a Proposed Transaction, then, in either such event MacroPore shall, within ten (10) days after such event, notify Medtronic in writing of MacroPore's receipt of such offer or indication of interest described in (i) above or of MacroPore's determination described in (ii) above ("MACROPORE'S NOTICE"). MacroPore's Notice shall include a copy of such offer or indication of interest and any other terms of such Proposed Transaction proposed by such third party, in the case of (i) above, or all material terms and provisions upon which MacroPore proposes to seek a third party to enter into a Proposed Transaction, in the case of (ii) above. For a period of 45 days following Medtronic's receipt of MacroPore's Notice with respect to such Proposed Transaction (referred to in this Section 2.5 as the "EXCLUSIVE PERIOD"), Medtronic shall have the exclusive right to negotiate with MacroPore regarding the material terms of such Proposed Transaction and, with respect to a Proposed Transaction initiated by MacroPore pursuant to (ii) above, the irrevocable right and option to enter into the Proposed Transaction on the terms and provisions specified in MacroPore's Notice. In the event Medtronic proposes, in the course of negotiation with MacroPore during the Exclusive Period, terms and provisions more favorable to MacroPore than those contained in Medtronic's initial proposal to MacroPore, then Medtronic shall memorialize such revised proposed terms and provisions in writing prior to the end of the Exclusive Period.

(c) During the Exclusive Period, MacroPore shall negotiate in good faith exclusively with Medtronic regarding the material terms of such Proposed Transaction or any comparable transaction. During the Exclusive Period, MacroPore shall not solicit offers from, negotiate with, or provide information to any third party regarding the Proposed Transaction or any comparable transaction. Nothing in this section shall prohibit MacroPore from consulting with or providing information to its attorneys, accountants, investment bankers or other consultants or advisors.

(d) If during the Exclusive Period MacroPore and Medtronic fail to reach agreement in principal upon the material terms for such Proposed Transaction and, in the event of a Proposed Transaction initiated by MacroPore pursuant to (b)(ii) above, Medtronic fails to exercise its option to enter into such Proposed Transaction, then MacroPore shall have 120 days after the expiration of the Exclusive Period in which to complete such Proposed Transaction with the third party whose bona fide offer or indication of interest was described in MacroPore's Notice (with respect to a Proposed

Transaction described in (b)(i) above) or with any third party (with respect to a Proposed Transaction described in (b)(ii) above); provided that MacroPore may not complete such Proposed Transaction unless the terms and provisions thereof are, in the aggregate, (with respect to a Proposed Transaction described in (b)(i) above) more favorable to MacroPore (as reasonably and in good faith determined by MacroPore's Board of Directors) than the terms and provisions most favorable to MacroPore that were proposed by Medtronic in its negotiations with MacroPore, or (with respect to a Proposed Transaction described in (b)(ii) above) at least as favorable to MacroPore as the terms and provisions specified in MacroPore's Notice. If MacroPore fails to complete such particular Proposed Transaction within such 120-day period, then Medtronic's rights under this Section 2.5 shall be reinstated and MacroPore may not enter into such Proposed Transaction without first giving Medtronic a new MacroPore's Notice and complying with the terms of this Section 2.5.

2.6 RESERVATION OF RIGHTS. Except as expressly provided herein, no right, title, or interest is granted, whether express or implied by MacroPore to Medtronic, and nothing in this Agreement shall be deemed to grant to Medtronic rights in any products or technology other than the Products.

ARTICLE 3
GENERAL OBLIGATIONS OF MEDTRONIC

3.1 MARKETING AND DISTRIBUTION. Medtronic shall use reasonable best efforts to further the promotion, marketing, sale and/or other distribution of Products for use in the Cranial Field. Without limiting the generality of the foregoing, Medtronic shall maintain adequate sales channels to market and distribute the Products for use in the Cranial Field.

3.2 QUALITY CONTROL. Medtronic agrees to follow reasonable quality control standards with respect to the storage, preservation, sale and use of the Products purchased under this Agreement. Medtronic shall make no representations or warranties concerning such Products other than as made to Medtronic by MacroPore or as otherwise may be agreed by the parties.

3.3 SALES AND SERVICE; TRAINING. Medtronic shall be solely responsible for marketing and selling all Products for use in the Cranial Field.

3.4 INVENTORY. Medtronic shall use commercially reasonable efforts to maintain sufficient quantities of each Product as reasonably necessary to meet the demand of customers for the Products in the Cranial Field.

3.5 MARKETING MATERIALS. Subject to Section 4.4, Medtronic shall be responsible for the preparation of sales and marketing materials for the marketing and sale of Products for use within the Cranial Field, including the translation, adaptation and/or modification of MacroPore's sales and marketing materials, as deemed appropriate by Medtronic, to reflect the culture or business practices and languages of the particular regions and to reflect Medtronic as the exclusive distributor of the Products for use in the Cranial Field. Medtronic shall provide to MacroPore for purposes of review and approval (such approval not to be unreasonably withheld

or delayed) all such sales and marketing materials relating to Products at least ten (10) days prior to the commercial release of such materials.

3.6 RECORDS AND RECALL. Medtronic shall maintain complete and accurate records of all Products sold by Medtronic and its subdistributors in sufficient detail to enable MacroPore to conduct an effective recall of Products if MacroPore determines that such a recall is required or otherwise necessary or appropriate. Medtronic shall not initiate a recall of Products without MacroPore's prior written consent, which consent shall not be unreasonably withheld. In the event of a recall of any of the Products, Medtronic will cooperate with and assist MacroPore in effecting such recall, including promptly contacting any purchasers that MacroPore reasonably desires to be contacted and promptly communicating to such purchasers the information or instructions MacroPore reasonably desires to be transmitted relating to such recall, all of which customer contact and communication shall be conducted by Medtronic at its own expense. Notwithstanding the foregoing, MacroPore shall pay, or reimburse Medtronic, for all other costs of effecting such recall, including any shipping costs related to returning recalled Products to MacroPore and replacing such recalled Products with new Products at MacroPore's expense.

In addition, upon MacroPore's request, Medtronic shall provide MacroPore with access to Medtronic's records of sales of Products in the event of Product recall or other quality related issue. During the Term of this Agreement, Medtronic also shall promptly forward all Product complaints which it receives to MacroPore. Medtronic shall make available to MacroPore for inspection Medtronic's process and records for adverse events and other regulatory reporting purposes at mutually agreed upon time and further shall ensure that Medtronic's processes comply with all applicable laws and regulations.

3.7 IMPORT APPROVALS. Except for (i) the CE Mark, which MacroPore shall be responsible for obtaining, and (ii) existing import licenses, which MacroPore shall assign or transfer to Medtronic, Medtronic shall be responsible for obtaining all import licenses and permits as may be required to import the Products into countries as selected by Medtronic in accordance with then prevailing laws and regulations of such countries. All such filings and registrations of the Products shall be owned by Medtronic and shall be obtained and maintained in the name of Medtronic, whenever feasible in accordance with prevailing laws and regulations. MacroPore shall cooperate fully with Medtronic in its efforts to obtain any such approvals.

3.8 EUROPEAN AUTHORIZED REPRESENTATIVE. Medtronic agrees to act as MacroPore's European Authorized Representative as required by the Medical Device Directive and as MacroPore's representative for Products for use within the Cranial Field in the countries outside the European Common Market. Medtronic shall, as soon as reasonably practicable, notify, document and forward to MacroPore or MacroPore's authorized representative all customer complaints received by Medtronic such that MacroPore can comply with Medical Device Reporting (MDR) regulations and vigilance. Medtronic shall notify Competent Authorities of clinical investigations as required, and shall represent MacroPore if a Competent Authority decides to: (i) refuse to allow the marketing of a Product in the Cranial Field, (ii) restrict the marketing of Product in the Cranial Field, or (iii) withdraw a Product from the market in the Cranial Field. Medtronic agrees to provide the competent authorities and notified bodies with access to the table of contents for the Technical File. In addition, Medtronic shall authorize

MacroPore to list Medtronic as the Authorized European Representative on product labeling, outer packaging, and instructions for use.

ARTICLE 4
GENERAL OBLIGATIONS OF MACROPORE

4.1 MANUFACTURE AND SUPPLY OF PRODUCTS. MacroPore shall use commercially reasonable efforts to manufacture, or have manufactured, Products in accordance with the Specifications and to ship such Products to Medtronic in the quantities ordered by Medtronic pursuant to Article 5 of this Agreement. MacroPore shall be responsible for packaging in accordance with packaging specifications to be mutually agreed upon by Medtronic and MacroPore, and for any necessary sterilization of Products purchased under this Agreement in accordance with the Specifications.

4.2 REGULATORY APPROVALS.

(a) CLINICALS. MacroPore shall be responsible for all clinical study design, investigator selection, data analysis in connection with clinical trials of the Products. Medtronic shall assist MacroPore in such clinical study activities such as investigator selection, and such other clinical matters as the parties may agree.

(b) DEVICE APPROVALS. MacroPore shall be responsible, on a timely basis and at its expense, for filing, obtaining and maintaining regulatory approvals in the Territory. To the extent permitted by law, all foreign regulatory approvals, including those processed by Medtronic, shall be owned by MacroPore and shall be in the name of MacroPore. Except as otherwise required by law or agreed by the parties, MacroPore will be responsible for the content of its own labeling. In connection with obtaining Device Approvals, MacroPore shall bear the expenses of meeting any applicable Product design and manufacturing facility requirements applicable to its then current manufacturing facility, and shall take all steps as are necessary to meet the EMD Directive.

(c) EXPORT. MacroPore shall be responsible for obtaining all export licenses and permits as may be required to export the Products from the country of manufacture into the particular countries where such Products are delivered. Medtronic shall cooperate fully with MacroPore in its efforts to obtain any such approvals.

(d) GOOD MANUFACTURING PRACTICES/QUALITY SYSTEMS REGULATIONS. MacroPore shall be responsible for compliance with present and future applicable statutes, laws, ordinances and regulations of national, federal, state and local governments now or hereafter in effect relating to the design, manufacture and/or quality of Products. Without limitation of the foregoing, MacroPore represents and warrants to Medtronic that all Products sold and delivered to Medtronic under this Agreement will have been designed, manufactured and labeled in accordance with all applicable requirements. MacroPore shall cause Medtronic's regulatory personnel to be provided with reasonable access from time to time to the facilities and records of MacroPore for the purpose of confirming MacroPore's compliance with this Section 4.2(d).

4.3 TRAINING. MacroPore at its expense will provide Medtronic with surgical procedure manuals and a reasonable level of sales and technical training for Medtronic's dedicated sales personnel for Products and other appropriate Medtronic personnel. If requested by Medtronic, MacroPore at its expense will also provide training for up to fifty (50) physicians per annum.

4.4 PRODUCT LITERATURE AND PACKAGING. MacroPore will work jointly with Medtronic in the preparation of mutually acceptable Product packaging, labeling and operations and technical manuals for use with the Products, and will not unreasonably refuse to incorporate any changes thereto reasonably requested by Medtronic. MacroPore at its expense shall provide Medtronic from time to time as requested by Medtronic with a reasonable supply of Product sales and marketing materials in the English language. Pursuant to Section 3.5, Medtronic shall be responsible for the translation, adaptation and/or modification of MacroPore's sales and marketing materials as deemed appropriate by Medtronic, and MacroPore shall supply any artwork or other materials reasonably requested by Medtronic for use solely in connection therewith.

4.5 SALES LEADS. MacroPore shall forward to Medtronic all leads for sales of Products in the Cranial Field.

ARTICLE 5
ORDERS FOR PRODUCTS

5.1 PURCHASE ORDERS. Medtronic shall submit purchase orders for Products to MacroPore in writing, whether by mail, telecopier, telegram or otherwise, at the time that each forecast is delivered to MacroPore pursuant to Section 5.2. Each purchase order shall, at a minimum, set forth the product numbers, quantities (subject to Section 5.3), delivery dates, and shipping instructions and shipping addresses for all Products ordered. Each purchase order shall be subject to and governed by the terms of this Agreement. Purchase orders shall be binding upon MacroPore unless and to the extent the quantities specified therein exceed the amounts specified in the Plan. No partial shipment of an order shall constitute the acceptance of the entire order, absent the written acceptance of such entire order. The terms and conditions of this Agreement shall so govern and supersede any additional or contrary terms set forth in Medtronic's purchase order or any MacroPore or Medtronic acceptance, confirmation, invoice or other document unless duly signed by an officer of Medtronic and an officer of MacroPore and expressly stating and identifying which specific additional or contrary terms shall supersede the terms and conditions of this Agreement. Upon the execution of this Agreement, Medtronic will place a three-month purchase order for deliveries in January, February and March 2000. Subsequently, Medtronic will place orders for the next succeeding months on a monthly basis, at the time that it provides its forecast described in Section 5.2, with all such subsequent purchase orders submitted at least 60 days in advance of the earliest scheduled delivery date for such order.

5.2 MEDTRONIC'S FORECASTS. At the time that Medtronic places its order for the first month following the three months covered by the initial purchase order, Medtronic shall provide MacroPore with a six-month sales plan to be mutually agreed upon (but subject to Section 5.3 and Exhibit A) indicating by month the number of Products anticipated to be sold by Medtronic

or purchased by Medtronic for use as demonstration units (as updated as provided herein, the "Plan") in the Territory. The Plan shall be updated by Medtronic on a quarterly basis (on or before the first day of each subsequent quarter) for a rolling successive six-month period. Each Plan shall be used for purposes of facilitating Medtronic's marketing plans, MacroPore's manufacturing plans, and meeting the lead times required by certain of MacroPore's suppliers, but are not legally-binding on Medtronic or MacroPore in any manner.

5.3 ORDER LIMITATIONS. During the first 12 months of the Term, MacroPore shall maintain the ability to supply at least the "Guaranteed Supply Quantities" specified on Exhibit A hereto. Except as provided in the immediately proceeding sentence, MacroPore shall not be required to deliver quantities in excess of 100% of forecasted requirements, provided, however, that MacroPore shall use all commercially reasonable efforts to supply such excess.

5.4 MODIFICATION OF ORDERS. Medtronic may cancel or reschedule purchase orders for products only with MacroPore's prior written approval. Notwithstanding the foregoing, any purchase order may be cancelled by Medtronic as to any Products that are not delivered within 60 days after the delivery date requested by Medtronic pursuant to a purchase order, and any such cancellation shall not limit or affect any contract remedies available to Medtronic with respect thereto. Any such cancellation by Medtronic must be by written notice to MacroPore given within 10 business days after such 60th day.

5.5 DELIVERY TERMS. Subject to MacroPore's obligations in Section 4.2 above, all deliveries of Products shall be F.O.B. MacroPore's facility in California. Except as otherwise provided in Article 9 or Article 11 below, MacroPore shall have no further responsibility for risk of damage to or loss or delay of Products after their delivery at the aforesaid F.O.B point. All Product deliveries shall be made by a common carrier specified by Medtronic or, in the event that no carrier shall have been specified by Medtronic on or before the date 15 days prior to the requested shipment date, a reputable common carrier selected by MacroPore.

5.6 PRODUCT CHANGES. MacroPore shall not, without Medtronic's prior written consent, modify the Specifications for a Product in a manner that materially affects the performance or regulatory approval status of the Product or materially increases Medtronic's costs or expenses. Subject to the foregoing, MacroPore may modify the Specifications for the Product without the consent of Medtronic, provided that MacroPore notifies Medtronic of such modifications within 30 days. If such modifications affect the performance or applicable regulatory approvals of the Product, Medtronic shall not be obligated to purchase such altered Product.

5.7 CUSTOM PRODUCTS. In the event Medtronic is requested by a customer to provide customized Products, Medtronic shall provide the specifications for the customized Product to MacroPore. MacroPore will determine and provide to Medtronic the additional cost, if any, and the feasibility of providing the customized Product. Medtronic will thereafter notify MacroPore if it intends to provide such customer with the customized Product.

5.8 REPORTS. Medtronic shall provide MacroPore, on a quarterly basis, with reports reflecting Medtronic's sales of the Products (on a product-by-product basis).

ARTICLE 6
MINIMUM PURCHASE QUOTA

6.1 DETERMINATION OF QUOTE. During the first 12-month period of the Term, Medtronic shall submit purchase orders to purchase at least the minimum amount set forth on Exhibit A (the "Quota"). By the end of each quarter of such initial 12-month period, Medtronic shall have submitted purchase orders for at least the cumulative percentage of the Quota set forth on Exhibit A.

6.2 REDUCTIONS IN QUOTA. Notwithstanding Section 6.1, the Quota for any period shall be reduced (a) in the case of subpart (i) below by an amount equal to 1.5 times the aggregate transfer price of Products not supplied by MacroPore against purchase orders issued by Medtronic in accordance with Article 5, (b) in the case of subpart (ii) below, by an amount equal to 1.5 times the aggregate transfer price of Products affected by such recall or withdrawal, and (c) in the case of subpart (iii) below, by a pro rata amount of the Quota for the applicable period based upon the number of days of such period that have transpired prior to the removal of the restriction on sale referenced in such subpart:

(i) If MacroPore materially and substantially fails for any reason to deliver ordered Products by the date scheduled for delivery thereof pursuant to purchase orders issued by Medtronic in accordance with Article 5, including but not limited to a failure to deliver Products that conform to the then current Specifications and such failure is not cured within 30 days;

(ii) If a Product covered by this Agreement is recalled from the market or withdrawn from sale for reasons of product safety or quality as determined by any applicable governmental authority or by the mutual agreement of the parties; or

(iii) If Medtronic is restricted in the sale of Products in a market within the European Common Market that affects the CE Mark by any applicable regulatory authority because approval to sell the Product is pending, denied or revoked therein.

6.3 TERMINATION OF AGREEMENT. If Medtronic does not order at least the applicable Quota, as it may be modified as provided herein, and does not elect to make the Shortfall payment described below, MacroPore shall have the right, at its option, to terminate this Agreement. Notice of MacroPore's election to terminate this Agreement (the "Termination Notice") must be given by MacroPore in writing within 30 days following the period for which Medtronic has not satisfied the Quota, specifying the amount by which Medtronic's purchases for such period were below the Quota (the "Shortfall"). If within 30 days after such Termination Notice Medtronic either (i) places orders for the purchase of sufficient quantities of Products to make up the Shortfall and agrees to pay for such Products within 10 days after shipment thereof, or (ii) Medtronic pays MacroPore cash in the amount of 75% of the Shortfall, then MacroPore's Termination Notice will be deemed to be automatically withdrawn. If Medtronic pays MacroPore cash in the amount of 75% of the Shortfall, such payment shall be treated as a prepayment for Products to be ordered by Medtronic in the future and shall be applied toward the

purchase price of such future Product purchase orders as Medtronic directs. Termination of this Agreement shall be MacroPore's sole and exclusive remedy for any failure by Medtronic to purchase the applicable Quota.

ARTICLE 7
PRICES AND PAYMENTS

7.1 PRICES. Unless and until otherwise mutually agreed by the parties in writing, the purchase prices per unit of Products to Medtronic under this Agreement shall equal [***] of MacroPore's average selling price per unit for such Product, excluding any sales, use or excise tax, freight duty or insurance included therein, during the six-month period immediately prior to the date of this Agreement (the "Transfer Price"). Separate Transfer Prices will be established for sales in the United States and for each major international market. If MacroPore's sales were inadequate for purposes of establishing such average price, then the Transfer Price shall equal [***] of Medtronic's average selling price per unit for such Products, excluding any sales, use or excise tax, freight duty or insurance included therein, in such market during the initial twelve-month period after commencement of commercial sales of such Products in such market (the "Medtronic Pricing Period"). If the Transfer Price is to be based on the Medtronic Pricing Period, then during the Medtronic Pricing Period Medtronic shall pay MacroPore [***] of Medtronic's published list price as the estimated Transfer Price, and within 90 days after the end of the Medtronic Pricing Period, Medtronic or MacroPore, respectively, shall pay the other party the aggregate amount by which the estimated Transfer Price for Products purchased during the Medtronic Pricing Period is less than, or more than, respectively, the actual Transfer Price. Any prices referred to in any information provided to Medtronic by MacroPore (other than the transfer Prices for Products) are recommended prices only and Medtronic has no obligation to comply with any such recommendations.

7.2 PAYMENT TERMS. Payments made by Medtronic for Products purchased hereunder shall be due and payable in full within 30 days after the date of invoice by MacroPore. Any payments due hereunder which are not paid on the date such payments are due shall bear interest at the lesser of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law, calculated on the number of days such payment is delinquent. This Section 7.2 shall in no way limit any other remedies available to MacroPore.

7.3 TAXES. The transfer prices for Products established pursuant to this Article 7 do not include any sales, use, value added or similar taxes, customs, duties, or tariffs imposed by any governmental authority or agency on Products or any components thereof that are imported by Medtronic into any country (other than taxes on the net income of MacroPore), and Medtronic shall bear all such taxes and duties. MacroPore shall be required to take appropriate steps to minimize imposition of such taxes by filing sales exemption certificates and taking similar actions where applicable to the seller. When MacroPore has the legal obligation to collect and/or pay such taxes, the appropriate amount shall be added to Medtronic's invoice and paid by Medtronic, unless Medtronic provides MacroPore with a valid tax exemption certificate authorized by the appropriate taxing authority. Medtronic shall not be obligated to pay or reimburse MacroPore for taxes that are not imposed on the sale of Product to Medtronic.

ARTICLE 8
EMPLOYEES

8.1 OFFERS OF EMPLOYMENT. Medtronic shall have the right to interview and offer employment to some or all of MacroPore's sales organization. Those employees of MacroPore that accept such employment with Medtronic are referred to herein as "Hired Employees." The employment of all Hired Employees will be at will. Medtronic will set its own initial terms and conditions of employment for Hired Employees and others it may hire, including without limitation work rules, benefits and salary and wage structure, all as permitted by law.

8.2 COBRA. MacroPore will be responsible for satisfying obligations under Section 601 et seq. of ERISA and Section 4980B of the Code and any applicable similar state laws, to provide continuation coverage to or with respect to any MacroPore employee in accordance with law with respect to any "qualifying event" occurring up to the date of hiring such employee by Medtronic. Medtronic will be responsible for satisfying obligations under Section 601 et seq. of ERISA and Section 4980B of the Code and any applicable similar state laws, to provide continuation coverage to or with respect to any Hired Employee in accordance with law with respect to any "qualifying event" which occurs following the date of hire.

8.3 VACATION. Medtronic will assume all obligations to Hired Employees for any vacation entitlement and vacation pay entitlement as of the date of hire and MacroPore shall reimburse Medtronic for the amount of accrued vacation assumed.

8.4 WORKERS' COMPENSATION. MacroPore shall be responsible for all workers' compensation benefits, occupational diseases claims and employer liability claims payable to MacroPore employees with respect to (i) claims filed through the date such employee is hired by Medtronic and (ii) claims filed after such date resulting from a discrete event or injury occurring through such date. Medtronic shall be responsible for all workers' compensation benefits, and employer liability claims payable to Hired Employees with respect to a discrete event or injury occurring after the date of hire.

8.5 SEVERANCE. MacroPore shall be responsible for paying to any employee of its sales organization all termination or severance benefits, if any, that MacroPore is required to pay, pursuant to its contracts or policies or pursuant to law, to such employee.

8.6 NO THIRD PARTY BENEFICIARY. The provisions of this Article 8 are not intended to and shall not be construed as granting rights to or vesting rights in any party or creating any third party beneficiary, including, without limitation, any Affected Employee or any Hired Employee.

ARTICLE 9
INSPECTION, WARRANTY AND SERVICE

9.1 INSPECTION OF PRODUCT. Medtronic shall inspect all Products promptly upon receipt thereof, and in the event of any shortage, damage or discrepancy in or to a shipment of Products or in the event any of the Products fail to comply with the then current Specifications for the Products (except for latent defects not readily observable by Medtronic), Medtronic shall report the same to MacroPore within 60 days after delivery thereof to Medtronic and furnish such written evidence or other documentation as MacroPore reasonably may deem appropriate. If the

substantiating evidence delivered by Medtronic reasonably demonstrates that such shortage, damage or discrepancy or nonconformity with Specifications existed at the time of delivery of the Products, Medtronic may return the Products to MacroPore, at MacroPore's expense, and, at Medtronic's request, MacroPore shall use all reasonable efforts to deliver promptly replacement Products to Medtronic in accordance with the delivery procedures set forth herein. Any Products not rejected by Medtronic by written notice given to MacroPore within such 60-day period (other than Products containing latent defects not readily observable by Medtronic) shall be deemed to have been accepted by Medtronic. Following any such acceptance, the sole remedies of Medtronic with respect to damage to or defects in the Products shall be those set forth in Sections 9.2 and 11.1.

9.2 WARRANTY.

(a) MacroPore represents and warrants to Medtronic that all Products sold under this Agreement will have been designed, manufactured, labeled, packaged and sold to Medtronic in accordance with all applicable laws and regulations, including (as applicable) FDA GMP requirements, European Medical Device Directive requirements, ISO 9001 certification or successor requirements, and all other applicable manufacturing requirements. Upon prior written notice, MacroPore shall cause Medtronic's regulatory personnel to be provided with reasonable access from time to time to the facilities and records of MacroPore for the purpose of confirming MacroPore's and the Product's compliance with all applicable laws and regulations.

(b) MacroPore warrants to Medtronic and to Medtronic's customers that Products shall, when delivered to Medtronic, meet the Specifications and, for a period of 2 years (shelf life) after delivery of the Product to the customer, be free from defects in materials and workmanship. The foregoing express warranty is contingent upon proper use of the Products in the applications for which they were intended as indicated in the Product label claims. Medtronic shall invoice MacroPore for, and MacroPore shall promptly pay, all shipping, transportation, insurance and other expenses actually incurred in replacing defective Products that were under warranty. MacroPore will repair, replace or credit Medtronic's account for any Product that it reasonably determines was defective at the time of shipment to Medtronic or that does not conform to the express warranties herein; provided, however, that MacroPore shall have no obligation under this warranty to repair, make replacements, or grant credits necessitated in whole or in part by accidents; failure to maintain in accordance with any transportation, storage, handling, or maintenance, instructions supplied by MacroPore; damage by acts of nature, vandalism, burglary neglect or misuse; or other fault or negligence of Medtronic or (except for any strict liability of MacroPore) the customer or user. Prior to returning any Product alleged to be defective, Medtronic shall notify MacroPore in writing of the claimed defect and shall include the model and lot/serial number of such Product, as well as the number and date of the invoice therefor. No Product shall be returned without first obtaining a returned goods authorization from MacroPore, which authorization shall not be unreasonably withheld.

9.3 LIMITED WARRANTY. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY

SPECIFICALLY DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL MACROPORE'S LIABILITY FOR PRODUCT WARRANTY INCLUDE ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

ARTICLE 10
CERTAIN REPRESENTATIONS, WARRANTIES AND INDEMNITIES

10.1 REPRESENTATIONS AND WARRANTIES.

(a) MacroPore represents and warrants to Medtronic that the execution and delivery by MacroPore of this Agreement and the performance by MacroPore of its obligations hereunder have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or Bylaws of MacroPore, as amended, or any provision of any indenture, agreement or other instrument to which MacroPore or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of MacroPore. This Agreement has been duly executed and delivered by MacroPore and constitutes the legal, valid and binding obligation of MacroPore, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to the discretion of the courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.

(b) Medtronic represents and warrants to MacroPore that the execution and delivery by Medtronic of this Agreement and the performance by Medtronic of its obligations hereunder have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or Bylaws of Medtronic, as amended, or any provision of any indenture, agreement or other instrument to which Medtronic or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of Medtronic. This Agreement has been duly executed and delivered by Medtronic and constitutes the legal, valid and binding obligation of Medtronic, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to the discretion of the courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.

ARTICLE 11
INDEMNIFICATION

11.1 MACROPORE'S LIABILITY. MacroPore shall indemnify, defend and hold harmless Medtronic and each of its subsidiaries, officers, directors, employees, shareholders and distributors from and against and in respect of any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, interest and penalties, costs and expenses (including, without limitation, reasonable legal fees and disbursements incurred in connection therewith and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection with any action, suit, proceeding, claim, appeal, demand, assessment or judgment) finally awarded ("Indemnifiable Losses"), resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of (i) any breach of representation, warranty, or agreement on the part of MacroPore under this Agreement, (ii) Product Liability Damages with respect to the Products, or (iii) other negligence or intentional misconduct of MacroPore; provided that in no event shall MacroPore be liable for matters for which Medtronic is responsible under Section 11.2 below or for punitive or exemplary damages. MacroPore shall maintain product liability insurance or self-insurance in such amounts as ordinary good business practice for its type of business would make advisable and shall provide Medtronic with evidence of this coverage.

11.2 MEDTRONIC'S LIABILITY. Medtronic shall indemnify, defend and hold harmless MacroPore and each of its subsidiaries, officers, directors, employees, shareholders and suppliers from and against and in respect of any and all Indemnifiable Losses resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of (i) any breach of representation, warranty, or agreement on the part of Medtronic under this Agreement, (ii) product claims whether written or oral, made or alleged to be made, by Medtronic in its advertising, publicity, promotion, or sale of any Products where such product claims were not provided by or approved by MacroPore, (iii) negligent handling by Medtronic of the Products or changes, additions or modifications to the Products by Medtronic, or (iv) other negligence or intentional misconduct of Medtronic; provided that in no event shall Medtronic be liable for matters for which MacroPore is responsible under Section 11.1 above or for punitive or exemplary damages. Medtronic shall maintain product liability insurance or self-insurance in such amounts as ordinary good business practice for its type of business would make advisable and shall provide MacroPore with evidence of this coverage.

11.3 PROCEDURE. If a claim by a third party is made and a party (the "Indemnitee") intends to claim indemnification under this Article 11, the Indemnitee shall promptly notify the other party (the "Indemnitor") in writing of any claim in respect of which the Indemnitee or any of its subsidiaries, directors, officers, employees, shareholders, suppliers or distributors intends to claim such indemnification and the Indemnitor shall have sole control of the defense and/or settlement thereof, provided that the Indemnitee may participate in any such proceeding with counsel of its choice at its own expense. The indemnity agreement in this Article 11 shall not apply to amounts paid in settlement of any Indemnifiable Losses if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, if adversely prejudicial to its ability to defend such action, shall relieve such Indemnitor of any liability to the Indemnitee under this Article 11, but the

omission to so deliver written notice to the Indemnitor shall not relieve the Indemnitor of any liability that it may otherwise have to any Indemnitee other than under this Article 11. If the Indemnitor fails to provide defense of the claim, and diligently defend or settle the same after receipt of notice from Indemnitee of, and a reasonable opportunity to cure such failure, the Indemnitee may defend or settle the claim without prejudice to its rights to indemnification hereunder, provided that the Indemnitee does so diligently and in good faith and further does not enter into any settlement or agree to any stipulation that would adversely affect the rights of the Indemnitor or impose any additional obligation on the Indemnitor without the Indemnitor's prior written consent (which consent will not be unreasonably withheld). The Indemnitee under this Article 11, its employees and agents, shall cooperate fully with the Indemnitor and its legal representatives and provide full information in the investigation of any Indemnifiable Losses, in order to be covered by this indemnification.

ARTICLE 12
TERM AND TERMINATION

12.1 TERM. This Agreement shall take effect as of the date hereof and shall continue in force until the fifth anniversary of the date hereof, and shall automatically renew for successive five-year periods unless either party gives the other party written notice of non-renewal at least 180 days prior to such renewal date (the "Term").

12.2 TERMINATION. Notwithstanding the provisions of Section 12.1 above, this Agreement may be terminated in accordance with the following provisions:

(a) MacroPore may terminate this Agreement in the manner described in Section 6.3 hereof;

(b) Except as described in Section 6.3, a party may terminate this Agreement by giving notice in writing to the other party if the other party is in breach of any material representation, warranty or covenant of this Agreement and, except as otherwise provided herein, shall have failed to cure such breach within 60 days after receipt of written notice thereof from the first party;

(c) A party may terminate this Agreement at any time by giving notice in writing to the other party, which notice shall be effective upon dispatch, should the other party become insolvent, make an assignment for the benefit of creditors, go into liquidation or receivership or otherwise lose legal control of its business; or

(d) A party may terminate this Agreement by giving notice in writing to the other party should an event of Force Majeure preventing performance by such other party continue for more than 180 consecutive days as provided in Article 13 below.

12.3 RIGHTS AND OBLIGATIONS ON TERMINATION. In the event of termination of this Agreement for any reason, the parties shall have the following rights and obligations:

(a) Termination of this Agreement shall not release either party from the obligation to make payment of all amounts previously due and payable.

(b) The terminating party shall have the right, at its option, to cancel any or all purchase orders that provide for delivery after the effective date of termination.

(c) Medtronic shall have the right, at its option, to require MacroPore to repurchase from Medtronic all of Medtronic's inventory of Products (excluding demonstration units and Products with less than 6 months shelf life remaining as of the effective date of termination) as of the termination date at MacroPore's invoiced price (and inclusive of any shipping charges or taxes, but net of any price adjustments, credits or other allowances) to Medtronic for such Products. Medtronic may exercise its option under this Section 12.3(c) by notifying MacroPore in writing no later than 30 days after the effective termination date. Medtronic shall be permitted to resell any such inventory of Products that MacroPore does not repurchase from Medtronic.

(d) The parties' obligations pursuant to Articles 9, 11 and 14 and Sections 3.6, 12.3, 12.4, and 15.1 hereof shall survive termination of this Agreement. All other provisions of this Agreement shall terminate upon termination of this Agreement.

(e) Upon expiration or termination of this agreement, Medtronic shall use reasonable best efforts to transfer ownership to MacroPore of all Product authorizations, registrations, permits and approvals of any kind with respect to Products and applications therefor, including without limitation, marketing approval applications, and other governmental approvals, registrations and the like, at MacroPore's cost and expense, and shall execute such documents and perform such acts as may be necessary, useful or convenient to perfect such transfer.

(f) For a period of one year following expiration or termination of this Agreement, neither party shall solicit or cause to be solicited for employment any employees of the other party; provided that, if this Agreement is terminated pursuant to Section 6.3, MacroPore may, for a period of 60 days from and after such termination, interview and offer employment to former MacroPore employees hired by Medtronic pursuant to Section 8.1.

12.4 TERMINATION OF SUBDISTRIBUTORS. If MacroPore terminates this Agreement in accordance with its rights under Section 12.2, Medtronic shall have sole responsibility for termination of any subdistributor, including any costs or expenses associated therewith, and shall indemnify and hold MacroPore harmless from and against any claim, loss, damage or expense (including reasonable attorneys' fees) suffered or incurred by MacroPore relating to the termination of any subdistributor appointed by Medtronic.

ARTICLE 13
FAILURE TO SUPPLY AND FORCE MAJEURE

13.1 NOTICE OF FORCE MAJEURE. Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure.

13.2 SUSPENSION OF PERFORMANCE. Subject to Section 13.3 below, during the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder (except for the obligations to pay any amounts due and owing hereunder) to the extent that such suspension is commercially reasonable.

13.3 EXERCISE OF LICENSE UPON FAILURE OF SUPPLY. Upon a Failure of Supply, Medtronic shall have the right to exercise its license rights granted pursuant to Section 13.4 below to manufacture and sell such Product (but not any other Product) itself or have such Product manufactured by others.

13.4 LICENSE GRANT.

(a) MacroPore hereby grants Medtronic (i) an exclusive, sublicensable, worldwide, license to the Licensed Intellectual Property to make, have made, use, distribute, sell, offer for sale, have sold, import and otherwise commercialize and exploit Products in the Cranial Field during the Term. Medtronic may not exercise such license unless and until the occurrence of a Failure of Supply.

(b) The license granted herein shall be royalty free with respect to any Products manufactured or supplied to Medtronic by MacroPore or any Affiliate of MacroPore. If Medtronic exercises its right pursuant to Section 13.3 to make or have made by a third party a Product, then subject to the terms of this Agreement, Medtronic shall pay to MacroPore a royalty equal to [**********] of Medtronic's Net Sales of such Product.

(c) Within sixty (60) days after the end of each Medtronic fiscal quarter, Medtronic shall provide MacroPore with a written report indicating the amount of Net Sales of Products during such quarter and the amount of the royalties due for such quarter. Simultaneously with making such report, Medtronic shall pay to MacroPore the amount of royalties then due.

(d) Medtronic agrees to keep accurate written records sufficient in detail to enable the royalties payable under this Agreement by Medtronic to be determined and verified. Such records for a particular quarter shall be retained by Medtronic for a period of not less than three years after the end of such quarter.

(e) Upon reasonable notice and during regular business hours, Medtronic shall from time to time (but no more frequently than once annually) make available the records referred to in subsection (d) above for audit at MacroPore's expense by independent representatives selected by MacroPore to verify the accuracy of the reports provided to MacroPore. Such representatives shall execute a suitable confidentiality agreement reasonably acceptable to Medtronic prior to conducting such audit. Such representatives may disclose to MacroPore only their conclusions regarding the accuracy and completeness of royalty payments and of records related thereto, and shall not disclose Medtronic's confidential business information to MacroPore without the prior written consent of Medtronic.

13.5 TECHNOLOGY TRANSFER. Upon Medtronic's request any time after a Failure of Supply, MacroPore shall promptly provide to Medtronic, or a third party designated by Medtronic, as applicable, copies of such technical documentation and related know-how and trade secrets, and training as is reasonably necessary for a skilled manufacturer to make such Product; provided that any such third party shall agree to maintain the confidentiality of all such information to the same extent that Medtronic is obligated to do so under this Agreement, and Medtronic will reimburse MacroPore for salary and reasonable travel and lodging expenses for MacroPore personnel with respect to training requested by Medtronic at a location other than MacroPore's facility to the extent such expenses are substantiated by expense receipts.

13.6 MAINTAIN LICENSES IN FORCE. MacroPore shall comply with all of the provisions of, and shall maintain in full force and effect, all license agreements with third parties pursuant to which MacroPore is licensee of intellectual property included in the Licensed Intellectual Property. MacroPore shall promptly notify Medtronic if any such third party licensor alleges any breach by MacroPore of any such license agreement. Medtronic shall be entitled, but not obligated, to cure any alleged breach by MacroPore of such license agreement and set-off the cost of such cure against amounts otherwise owed to MacroPore hereunder.

13.7 NO LIABILITY. MacroPore shall have no obligation or any liability under Sections 9.2 or 11.1(ii) with respect to any Products produced by Medtronic or its third party designee pursuant to the license granted in this Article 13.

ARTICLE 14
INTELLECTUAL PROPERTY

14.1 TRADEMARK LICENSE. MacroPore hereby grants Medtronic a royalty-free license to use all trademarks, trade names and logotypes of MacroPore relating to the Products solely in connection with the sale or other distribution, promotion, advertising and/or maintenance of the Products in the Cranial Field. Medtronic shall acquire no right, title or interest in such MacroPore trademarks, trade names and logotypes, other than the license provided for above, and Medtronic shall not use any MacroPore trademarks, trade names and logotypes as part of Medtronic's corporate, trade name, trademark or logotype or permit any third party under Medtronic's control to do so without the prior written consent of MacroPore. To the extent permitted by local law, any statutory powers which would be granted to Medtronic by virtue of its local use of MacroPore's trademarks or its licensee status are excluded. Medtronic shall in addition have the right to promote and sell the Products under trademarks, trade names and logotypes of Medtronic selected by Medtronic, which trademarks, trade names and logotypes shall be and shall remain the property of Medtronic, provided however, that Medtronic agrees to use reasonable efforts to credit MacroPore as the manufacturer, and to include the brand name, on packaging, brochures and advertisements specific to the Products.

14.2 TRADEMARK INFRINGEMENT. Medtronic shall promptly notify MacroPore of any use by any third party of MacroPore's trademarks, trade names or logotypes or any use by such third parties of similar marks that may constitute an infringement or passing off of MacroPore's trademarks, trade names or logotypes of which Medtronic has knowledge. MacroPore reserves the right in its sole discretion to institute any proceedings against such third-party infringers and Medtronic shall refrain from doing so. Medtronic agrees to cooperate fully with MacroPore in

any action taken by MacroPore against such third parties, provided that all expenses of such action shall be borne by MacroPore and all damages that may be awarded or agreed upon in settlement of such action shall accrue to MacroPore.

14.3 TERMINATION OF USE OF TRADEMARKS. Medtronic acknowledges MacroPore's proprietary rights in and to MacroPore's trademarks, trade names and logotypes, and Medtronic hereby waives all right to any trademarks, trade names and logotypes now or hereafter originated by MacroPore. Medtronic shall not after the date of this Agreement adopt, use or register any words, phrases or symbols that are identical to or confusingly similar to any of MacroPore's trademarks. Upon termination of this Agreement, Medtronic shall cease using MacroPore's trademarks, trade names and logotypes in any manner, subject to Medtronic's right, if any, to continue to sell Products under Section 12.3(c).

14.4 PATENT RIGHTS.

(a) DEFENSE OF CLAIMS. MacroPore shall defend, or at its option settle, any suit instituted against Medtronic that is based on an allegation that any Product constitutes an infringement of any patent or any other intellectual property right. MacroPore shall have sole control of defense of any such action, including any appeals and negotiations for the settlement or compromise thereof and shall have full authority to enter into a binding settlement or compromise; provided that MacroPore shall not enter into any settlement or compromise that may adversely affect Medtronic without Medtronic's consent, which consent shall not be unreasonably withheld. MacroPore shall indemnify, subject to the limitations set forth herein, Medtronic against any final award of damages and costs made against Medtronic and any settlement amounts as a result of any such action. In order to qualify for such indemnification, Medtronic shall notify MacroPore promptly in writing of such claim, suit or proceeding and give MacroPore such information and assistance as MacroPore may reasonably request to settle and defend any such claim; provided the failure to give such notice, information and assistance shall only relieve MacroPore of liability under this subsection to the extent such failure adversely affects MacroPore's ability to defend such action.

(b) LIMITATION OF LIABILITY. MacroPore shall have no liability of any kind to Medtronic under Section 14.4(a) or based upon any other claim Medtronic may have to the extent any such claim is based upon or arises out of (a) the use of any Product in combination with an apparatus or device not manufactured, supplied or approved by MacroPore, (b) the use of any Product in a manner for which it was not designed or intended to be used, or (c) any modification of any Product by Medtronic or any third party that causes it to become infringing.

(c) REPLACEMENT PRODUCT. Notwithstanding the foregoing, if it is adjudicatively determined that any Product infringes, or in MacroPore's sole opinion, may be found to infringe a third party's patent or other intellectual property rights, or if the sale or use of the Products is, as a result, enjoined, then MacroPore shall, at its option and expense, either: (i) procure for Medtronic the right under such patent to sell or use, as appropriate, the Products; or (ii) replace the Products with other noninfringing functionally equivalent products; or (iii) modify the Products to make the Products

functionally equivalent and noninfringing, remove any prior version of the Products in Medtronic's inventory and refund the aggregate payments made therefor by Medtronic; or (iv) if the use of the Products is prevented by injunction, discontinue Product sales under the Agreement and remove any Products in Medtronic's inventory and refund the aggregate payments paid therefor by Medtronic, in which event MacroPore shall promptly refund to Medtronic a pro rata portion (based on the portion of the original Term remaining) of the $1,500,000 paid by Medtronic pursuant to Section 2.2.

14.5 OWNERSHIP. MacroPore represents and warrants to Medtronic the following: MacroPore owns or possesses licenses or other rights to use all Intellectual Property used in the research, design, development, manufacture or sale of the Products (the "MacroPore Intellectual Property"), free and clear of any liens, charges, security interests, mortgages, pledges, restrictions, or any other encumbrances of any kind which are inconsistent with the rights granted to Medtronic hereunder. To the knowledge of MacroPore, the MacroPore Intellectual Property is valid and has not been challenged in any judicial or administrative proceeding. MacroPore has taken all necessary steps or appropriate actions to record its interests, or to protect its rights, in the MacroPore Intellectual Property. To the knowledge of MacroPore, no person or entity nor such person's or entity's business or products has infringed, misused, misappropriated or conflicted with the MacroPore Intellectual Property or currently is infringing, misusing, misappropriating or conflicting with the MacroPore Intellectual Property. To the knowledge of MacroPore, all proprietary technical information developed by and belonging to MacroPore that has not been patented has been kept confidential.

14.6 PROTECTION OF MACROPORE'S INTELLECTUAL PROPERTY AND IMPROVEMENTS. MacroPore shall be responsible for filing, prosecuting and maintaining all US and foreign patents and copyrights and applications therefor to the extent it deems necessary or appropriate to protect the MacroPore Intellectual Property.

ARTICLE 15
MISCELLANEOUS

15.1 NONDISCLOSURE. The parties agree not to disclose or use (except as permitted or required for performance by the party receiving such Confidential Information of its rights or duties hereunder) any Confidential Information of the other party obtained during the during the term of this Agreement until the expiration of five years after the receiving party's receipt of such Confidential Information. Each party further agrees to take appropriate measures to prevent any such prohibited disclosure of Confidential Information by its present and future employees, officers, agents, subsidiaries, or consultants during such period.

15.2 PUBLIC ANNOUNCEMENT. In the event any party proposes to issue any press release or public announcement concerning any provisions of this Agreement or the transactions contemplated hereby, such party shall so advise the other parties hereto, and the parties shall thereafter use their best efforts to cause a mutually agreeable release or announcement to be issued. Neither party will publicly disclose or divulge any provisions of this Agreement or the transactions contemplated hereby without the other party's written consent, except as may be required by applicable law or stock exchange regulation, and except for communications to such

party's employees or customers or investors or prospective investors (subject to appropriate confidentiality obligations).

15.3 COMPLETE AGREEMENT. This Agreement, the Investment Agreement, the Investors' Rights Agreement, the Supplemental Rights Agreement, the Supply Agreement, and the Schedules and Exhibits hereto and thereto, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements whether written or oral relating hereto.

15.4 WAIVER, DISCHARGE, AMENDMENT, ETC. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall not, absent an express written waiver signed by the party making such waiver specifying the provision being waived, be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of the party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Any amendment to this Agreement shall be in writing and signed by the parties hereto.

15.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors or assigns of the parties hereto; provided, that (i) the rights and obligations of MacroPore herein may not be assigned except to any person who succeeds to substantially all of the assets and business of MacroPore to which this Agreement relates, and (ii) the rights and obligations of Medtronic herein may not be assigned except to any person who succeeds to substantially all of that portion of Medtronic's business to which this Agreement relates.

15.6 NOTICES. All notices or other communications to a party required or permitted hereunder shall be in writing and shall be delivered personally or by facsimile (receipt confirmed electronically) to such party (or, in the case of an entity, to an executive officer of such party) or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

if to Medtronic, to:

Medtronic, Inc.
Corporate Center
7000 Central Avenue N.E.
Minneapolis, MN 55432
Attention: General Counsel
FAX (612) 572-5459

with a copy to:

Medtronic, Inc.
Corporate Center
7000 Central Avenue N.E.
Minneapolis, MN 55432
Attention: Vice President and Chief Development Officer
FAX (612) 572-5404

if to MacroPore, to:

MacroPore, Inc.
6740 Top Gun Street
San Diego, CA 92121
Attention: Christopher J. Calhoun
FAX (858) 458-0995

with a copy to:

MacroPore, Inc.
6740 Top Gun Street
San Diego, CA 92121
Attention: Vice President of Finance
FAX (858) 458-0994

Any party may change the above-specified recipient and/or mailing address by notice to all other parties given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by telecopy) or on the day shown on the return receipt (if delivered by mail or delivery service).

15.7 EXPENSES. Except as expressly provided herein, MacroPore and Medtronic shall each pay their own expenses incident to this Agreement and the preparation for, and consummation of, the transactions provided for herein.

15.8 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, including all matters of construction, validity, performance and enforcement, without giving effect to principles of conflict of laws.

15.9 TITLES AND HEADINGS; CONSTRUCTION. The titles and headings to the Articles and Sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

15.10 ILLEGALITY: SEVERABILITY. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15.11 RELATIONSHIP. This Agreement does not make either party the employee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. In fulfilling its obligations pursuant to this Agreement, each party shall be acting as an independent contractor.

15.12 BENEFIT. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

15.13 SURVIVAL. All of the representations, warranties, and covenants made in this Agreement, and all terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such termination and continue thereafter in full force and effect.

15.14 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed as original and all of which together shall constitute one instrument.

15.15 EXECUTION OF FURTHER DOCUMENTS. Each party agrees to execute and deliver without further consideration any further applications, licenses, assignments or other documents, and to perform such other lawful acts as the other party may reasonably require to fully secure and/or evidence the rights or interests herein.

IN WITNESS WHEREOF, each of the parties has caused this Distribution Agreement to be executed in the manner appropriate to each, as of the date first above written.

MACROPORE, INC.

By: /s/ Christopher J. Calhoun

Its: Vice Chairman, Chief Executive Officer

MEDTRONIC, INC.

By: /s/ Michael D. Ellwein

Its: Vice President and Chief Development Officer

EXHIBIT A
QUOTA

During the first 12-month of the Term, Medtronic shall submit purchase orders for at least [********] of Product (based on Transfer Price to Medtronic) (the "Quota"). By the end of each three-month quarter of such initial 12-month period, Medtronic shall have ordered at least the following cumulative percentage of the Quota, and MacroPore shall supply all Products so ordered up to the following cumulative percentage of the Quota:

Quarter	Medtronic Cumulative Minimum Order (as % of Quota)	MacroPore Cumulative Guaranteed Supply (as % of Quota)
First	[*****]	[*****]
Second	[*****]	[*****]
Third	[*****]	[*****]
Fourth	[*****]	[*****]

AMENDMENT NO. 1
TO
DISTRIBUTION AGREEMENT

This Amendment No. 1, effective as of December 22, 2000, is to that certain Distribution Agreement (the "Agreement"), dated as of January 5, 2000, by and between MacroPore, Inc., a Delaware corporation ("MacroPore") and Medtronic, Inc. ("Medtronic"), a Minnesota corporation.

WHEREAS, MacroPore and Medtronic desire to amend the Agreement as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, hereby agree as follows:

1. Section 7.1 (Prices) of the Agreement is hereby amended by deleting Section 7.1 in its entirety and inserting the following in its place.

"Section 7.1) PRICES

(a) Unless and until otherwise mutually agreed upon by the parties in writing, the purchase price per unit to Medtronic (the "Transfer Price") under this Agreement shall be based on the price list in effect at the time of MacroPore's receipt of the order from Medtronic (the "Price List") as set forth on Exhibit B; PROVIDED, HOWEVER, that the Transfer Price for all Product sales from MacroPore to Medtronic from January 5, 2000 to the date hereof shall be the Transfer Price as set forth on Exhibit B. MacroPore established the attached Price List based on [***] of the average selling price per unit for each Product, excluding any sales, use or excise tax, freight, duty or insurance included therein, during the six-month period immediately prior to the date of the Price List.

(b) The Price List shall be reviewed by MacroPore and Medtronic on the six month anniversary of the date hereof and every six months thereafter (the "Six Month Review"), with any changes in these prices to take effect upon delivery of the revised Price List to Medtronic. MacroPore shall prepare the revised Price List, to be prepared after each Six Month Review, on the same basis as the initial Price List.

(c) New products may be added to the Price List at any time by 30 day prior written notice to Medtronic. In the event that a new Product is added to the Price List, the Transfer Price shall be based on [**] of the estimated selling price per unit for such Product until the next Six Month Review.

(d) In the event sales of a Product already on the Price List were inadequate to establish an average selling price during the previous six month period, MacroPore shall set the Transfer Price based on [***] of the estimated selling price per unit for such Product, which price may be based on the Transfer Price for that Product from the previous Price List.

(e) In the event MacroPore and Medtronic's review of the Price List results in a change to the Transfer Price for any of the Products on the Price List, all such changes will apply to the Transfer Price of future sales of that Product and shall not be applied retroactively to previous sales of that Product to Medtronic. Separate Transfer Prices will be established for sales in the United States and for sales in the international market. The prices for customized products are not included in the Price List but shall be determined in accordance with Section 5.7 herein."

2. The Agreement is hereby amended by inserting Exhibit B attached hereto immediately after Exhibit A to the Agreement.

3. Except as amended hereby, the Agreement shall remain unchanged and in full force and effect.

4. This Amendment No. 1 and the Agreement constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede any and all prior agreements and undertakings, oral or written, concerning the subject matter hereof. This Agreement may not be changed or terminated orally, and may only be changed or terminated by a writing signed by the party against whom such change or termination is sought.

5. This Amendment No. 1 may be executed in any number of counterparts and by facsimile, each of which, when executed, shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

* * * * * *

IN WITNESS WHEREOF, this Amendment No. 1 has been duly executed by the parties as of the date first set forth above.

MACROPORE, INC.,
a Delaware corporation

By: /s/ Charles E. Galetto

Name: Charles E. Galetto
Its: VP - Finance

MEDTRONIC, INC.,
a Minnesota corporation

By: /s/ Michael D. Ellwein

Name: Michael D. Ellwein
Its: VP and Chief Development Officer

EXHIBIT B
PRICE LIST

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR THE ENTIRE PRICE LIST.

DEVELOPMENT AND SUPPLY AGREEMENT

THIS DEVELOPMENT AND SUPPLY AGREEMENT (the "AGREEMENT") is made and entered into as of January 5, 2000 (the "EFFECTIVE DATE") between MACROPORE, INC. ("MACROPORE"), a Delaware corporation, and MEDTRONIC, INC. (as defined below, "MEDTRONIC"), a Minnesota corporation.

WITNESSETH:

WHEREAS, MacroPore has developed bioabsorbable surgical implants for use in, among other areas, bone fixation and reconstruction in the craniofacial skeleton and, on even date herewith, MacroPore and Medtronic have entered into a Distribution Agreement (the "DISTRIBUTION AGREEMENT") pursuant to which Medtronic is granted exclusive worldwide distribution rights with respect to such products; and

WHEREAS, the parties desire MacroPore to develop bioabsorbable [**********] and [**********] pursuant to Medtronic's designs and specifications and to manufacture and supply such developed products to Medtronic; and

WHEREAS, MacroPore and Medtronic's Affiliate, Medtronic Asset Management, Inc. ("MAMI"), intend to enter into a Series D Preferred Stock Purchase Agreement (the "INVESTMENT AGREEMENT") pursuant to which MAMI will purchase Series D Preferred Stock of MacroPore and receive various rights; and

WHEREAS, it is a condition to MAMI's willingness to purchase such MacroPore Series D Preferred Stock that the parties enter into this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
DEFINITIONS

1.1 SPECIFIC DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"AFFILIATE" of a specified person (natural or juridical) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" shall mean ownership of more than 50% of the shares of stock entitled to vote for the election of directors in the case of a corporation, and more than 50% of the voting power in the case of a business entity other than a corporation.

"AGREEMENT" means this Agreement and all Exhibits and Schedules hereto.

"CONFIDENTIAL INFORMATION" means know-how, trade secrets, and unpublished information disclosed (whether before or during the term of this Agreement) by one of the parties (the "disclosing party") to the other party or such other party's designee pursuant to Section 11.5 (the

"receiving party"), and which is marked as proprietary or confidential as provided below, excluding information that:

(a) was already in the possession of receiving party prior to its receipt from the disclosing party (provided that the receiving party is able to provide the disclosing party with reasonable documentary proof thereof);

(b) is or becomes part of the public domain by reason of acts not attributable to the receiving party;

(c) is or becomes available to receiving party from a source other than the disclosing party which source, to the best of receiving party's knowledge, has rightfully obtained such information and has no obligation of nondisclosure or confidentiality to the disclosing party with respect thereto;

(d) is made available by the disclosing party to a third party unaffiliated with the disclosing party on an unrestricted basis;

(e) is independently developed by the receiving party completely without reference to any Confidential Information of the disclosing party, as evidenced by the receiving party's written records; or

(f) has been or must be publicly disclosed by reason of legal, accounting or regulatory requirements beyond the reasonable control, and despite the reasonable efforts, of the receiving party.

All Confidential Information disclosed by one party to the other under this Agreement shall be in writing and bear a legend "Proprietary," "Confidential" or words of similar import or, if disclosed in any manner other than writing, shall be followed by confirmation that such information is confidential by the disclosing party within 30 days.

Specific aspects or details of Confidential Information shall not be deemed to be within the public domain merely because the aspects or details of the Confidential Information is embraced by general disclosures in the public domain. In addition, any combination of Confidential Information shall not be considered in the public domain or in the prior possession of the receiving party merely because individual elements thereof are in the public domain or in the prior possession of the receiving party unless the combination and its principles are in the public domain or in the prior possession of the receiving party.

"DEVELOPED PRODUCTS" means as defined in Section 2.3.

"FAILURE OF SUPPLY" means (i) MacroPore's failure, for any reason other than Force Majeure, to deliver any Developed Product ordered in accordance with the provisions of Article 5 by the date scheduled for delivery thereof, including but not limited to a failure to deliver Developed Products which conforms to the Specifications therefor, which failure is not cured within two months after MacroPore is notified of such failure, (ii) MacroPore's failure due to Force Majeure to deliver any Developed Product ordered in accordance with the provisions of Article 5 by the date scheduled for delivery thereof, including but not limited to a failure to deliver Developed Product which

conforms to the Specifications therefor, which failure is not cured within three months after MacroPore is notified of such failure, or (iii) MacroPore's failure on any five occasions within any 24-month period, for any reason other than Force Majeure, to deliver any Developed Product ordered in accordance with the provisions of Article 5 within 30 days after the respective dates scheduled for delivery thereof, including but not limited to a failure to deliver Developed Product which conforms to the Specifications therefor.

"FDA" means the United States Food and Drug Administration.

"FORCE MAJEURE" means any event or condition, not existing as of the date of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part the performance by one of the parties of its obligations hereunder, such as an act of government, war or related actions, civil insurrection, riot, sabotage, strike, epidemic, fire, flood, windstorm, and similar events.

"GMP" means Good Manufacturing Practices as defined in 21 CFR Parts 210 through 226 and Parts 600 through 680.

"INTELLECTUAL PROPERTY" means letters patent and patent applications; trademarks, service marks and registrations thereof and applications therefor; copyrights and copyright registrations and applications; mask works and registrations thereof, all inventions, discoveries, ideas, technology, know-how, trade secrets, data, information, processes, formulas, drawings and designs, licenses, computer programs and software; and all amendments, modifications, and improvements to any of the foregoing.

"[***************]" means those medical devices (other than [************]) designed to be [**********] as the parties may agree to develop hereunder.

"INVENTION" means any invention, discovery, know-how, trade secret, data, information, technology, process or concept, whether or not patented or patentable, and whether or not memorialized in writing.

"KNOWLEDGE" means actual knowledge of a fact or the knowledge that such person could reasonably be expected to have based on reasonable inquiry. The "knowledge" of an entity shall include the knowledge of such entity's employees.

"LICENSED INTELLECTUAL PROPERTY" means, with respect to a Failure of Supply of a particular Developed Product, all Intellectual Property used by MacroPore in connection with the manufacture or sale of such Developed Product at the time of such Failure of Supply.

"MACROPORE" means MacroPore, Inc. and its Affiliates.

"MEDTRONIC" means Medtronic, Inc. and its Affiliates.

"NET SALES" of Developed Products for purposes of Article 11 with respect to a particular period means the amounts that Medtronic or any Affiliate of Medtronic receives from third parties (eliminating transactions among Affiliates of Medtronic and/or Medtronic) for net sales of

Developed Products during such period, excluding sales, use or excise tax, freight, duty or insurance included therein, returns, discounts and allowances, credits or repayments due to rejections, defects or returns, provided that if Medtronic or any Affiliate of Medtronic sells at a single price or rate a packaged combination of products, not all of which if sold individually would be Developed Products, then "Net Sales" with respect to such sales of packaged products shall equal the number of units of Developed Products sold as part of such packaged products (less rejections, defects and returns) multiplied by either (i) the respective average net selling price during such period of the same type of Developed Product sold individually, or (ii) the average net selling price during such period for a comparable product (if the same type of Developed Product is not sold individually), in either case excluding sales, use or excise tax, freight, duty or insurance included therein.

"PMA" means a Premarket Approval Application as defined in 21 CFR Part 814.

"PRODUCT LIABILITY DAMAGES" means any liability, claim or expense, including but not limited to reasonable attorneys' fees and medical expenses, arising in whole or in part out of claims of third parties for personal injury or loss of or damage to property relating to or arising out of the Developed Products, whether based on strict liability in tort, negligent manufacture of product, or any other allegation of liability arising directly from the design, testing, manufacture, packaging, labeling (including instructions for use), or sale of the Developed Products.

"SAFETY" means the relative freedom from harmful effect to persons affected, directly or indirectly, by a product when prudently administered, taking into consideration the character of the product in relation to the condition of the recipient at the time. This definition of "safety" is essentially the definition of "safety" as used in 21 CFR part 600.

"SPECIFICATIONS" means the specifications for the Developed Products as determined by Medtronic.

"[**********]" means those medical devices (other than [**********]) designed to be [implanted in the human body for the treatment of spinal disease, deformity or trauma as the parties may agree to develop hereunder.

"STATEMENT OF WORK" means, with respect to each [**********] and/or [**********], the mutually-agreed upon and signed written description of the development process for such product, and shall include unless otherwise agreed between the parties: a detailed description of such product; a description of each phase in such development; a list of goals (or "milestones") and target dates for achievement of such milestones and completion of each phase; and such other details as the parties may agree in writing. A Statement of Work shall include any mutually agreed-upon written amendments thereto.

1.2 OTHER TERMS. Other terms may be defined elsewhere in the text of this Agreement and shall have the meaning indicated throughout this Agreement.

1.3 DEFINITIONAL PROVISIONS.

The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provisions of this Agreement.

The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

References to an "Exhibit" or to a "Schedule" are, unless otherwise specified, to one of the Exhibits or Schedules attached to or referenced in this Agreement, and references to an "Article" or a "Section" are, unless otherwise specified, to one of the Articles or Sections of this Agreement.

The term "person" includes any individual, partnership, joint venture, corporation, trust, unincorporated organization or government or any department or agency thereof.

The term "dollars" or "$" shall refer to the currency of the United States of America.

ARTICLE 2
LICENSE AND DEVELOPMENT OF PRODUCTS

2.1 LICENSE TO MACROPORE. Medtronic hereby grants MacroPore a non-exclusive license to use all Intellectual Property owned by or licensed to (with the right to sublicense) Medtronic used or usable in the development or manufacture of the [**********] and the [**********] during the Term of this Agreement, solely for the purpose of development, manufacture and sale to Medtronic of Developed Products. MacroPore shall not use any Intellectual Property of Medtronic except for the development, manufacture and sale to Medtronic of Developed Products.

2.2 EXCLUSIVITY. During the term of this Agreement, MacroPore shall not develop manufacture or sell any products or devices for use in the field of spinal fixation, stabilization and/or fusion, except for Developed Products to be supplied to Medtronic hereunder.

2.3 DEVELOPMENT EFFORTS. MacroPore shall be responsible for developing the ability, equipment and processes to manufacture [**********] and [**********] from poly-lactic acid (or other resorbable materials as agreed to by Medtronic) pursuant to Statements of Work. Those [**********] and [**********] which MacroPore demonstrates to Medtronic's reasonable satisfaction can be manufactured from poly-lactic acid on a commercially feasible scale and without any material adverse effect on the functionality thereof (versus the functionality of a product manufactured in the same design but from other materials) are referred to as "Developed Products". If either Medtronic or MacroPore notifies the other party in writing of a proposal for a potential Developed Product, MacroPore and Medtronic shall, within thirty (30) days thereafter, each designate the appropriate personnel to meet and/or correspond with the appropriate personnel of the other party with a view to evaluating the technical and commercial feasibility of such proposed Developed Product. Attached hereto as Exhibit A is notice of proposed potential Development Products to be initiated at the signing of this Agreement. If the parties mutually determine in their discretion that research and/or development of such proposed

Developed Product appears to be desirable and technically and commercially feasible, MacroPore and Medtronic shall each use good faith reasonable efforts to agree upon a Statement of Work for such proposed Developed Product. Such Statement of Work shall, when signed by each of Medtronic and MacroPore, become subject to the general terms and provisions of this Agreement. Subject to the terms and conditions of this Agreement, Medtronic and MacroPore shall each use good faith reasonable efforts to perform their respective responsibilities under each Statement of Work within the timeframes specified in such Statement of Work. Any changes to a Statement of Work will require mutual written agreement by the parties.

2.4 REGULATORY APPROVALS.

(a) Medtronic shall be responsible obtaining all necessary regulatory approvals for the commercial sale of the Developed Products, including the preparation of the clinical study protocols, selection of investigational sites, preparation of the investigator's brochures, instruction and training of clinical investigators, monitoring the performance of clinical trials, data collection and analysis, reporting of adverse events, preparation and prosecution of regulatory submissions, and post approval clinical studies All regulatory approvals for the Developed Products will be in Medtronic's name and owned by Medtronic.

(b) MacroPore shall supply to Medtronic such quantities of Developed Products as is reasonably required by Medtronic to obtain necessary regulatory approvals. Medtronic shall pay MacroPore an amount equal to MacroPore's direct cost of materials and labor for such Developed Products used in clinical trials.

(c) MacroPore will grant Medtronic the right of reference to MacroPore's regulatory files with the FDA or other appropriate government agencies as necessary or helpful for support of Medtronic's regulatory submissions with respect to Developed Products and, upon Medtronic's request participate in any discussions with the FDA or clinical investigators with respect thereto. MacroPore represents and warrants to Medtronic that MacroPore's poly-lactic acid material has been approved by the FDA for Safety in long term implantable devices.

2.5 TERMINATION OF DEVELOPMENT STATEMENT OF WORK. Medtronic shall be entitled to terminate any Statement of Work for a Developed Product or potential Developed Product if Medtronic, in its sole discretion, determines that such Developed Product will not be technically or commercially feasible or will have only limited commercial value to Medtronic.

ARTICLE 3
GENERAL OBLIGATIONS OF MEDTRONIC

3.1 SALES OF DEVELOPED PRODUCTS. Medtronic shall be solely responsible for marketing and selling all Developed Products.

3.2 QUALITY CONTROL. Medtronic agrees to follow reasonable quality control standards with respect to the storage, preservation, sale and use of the Developed Products purchased under this Agreement.

3.3 RECORDS AND RECALL. Medtronic shall maintain complete and accurate records of all Developed Products sold by Medtronic and its subdistributors in sufficient detail to enable

Medtronic to conduct an effective recall of Developed Products if Medtronic determines that such a recall is required or otherwise necessary or appropriate. In the event of a recall of any of the Developed Products, MacroPore will cooperate with and assist Medtronic in effecting such recall.

3.4 REGULATORY APPROVALS.

(a) CLINICALS. Medtronic shall be responsible for all clinical study design, investigator selection, and data analysis in connection with clinical trials of the Developed Products. MacroPore shall give Medtronic such assistance in connection with such clinical studies as Medtronic may reasonably request.

(b) DEVICE APPROVALS. Medtronic shall be responsible for filing, obtaining and maintaining all necessary regulatory approvals for the importation and sale of Developed Products. To the extent permitted by law, all foreign regulatory approvals shall be owned by Medtronic and shall be in the name of Medtronic.

(c) EXPORT. Medtronic shall be responsible for obtaining all export licenses and permits as may be required to export the Developed Products from the country of manufacture into the particular countries where such Developed Products are delivered. MacroPore shall cooperate fully with Medtronic in its efforts to obtain any such approvals.

ARTICLE 4
GENERAL OBLIGATIONS OF MACROPORE

4.1 MANUFACTURE AND SUPPLY OF DEVELOPED PRODUCTS. MacroPore shall use commercially reasonable efforts to manufacture, or have manufactured, Developed Products in accordance with the Specifications and to ship such Developed Products to Medtronic in the quantities ordered by Medtronic pursuant to Article 5 of this Agreement. MacroPore shall be responsible for packaging in accordance with packaging specifications to be mutually agreed upon by Medtronic and MacroPore, and for any necessary sterilization of Developed Products purchased under this Agreement in accordance with the Specifications.

4.2 GOOD MANUFACTURING PRACTICES/QUALITY SYSTEMS REGULATIONS. MacroPore shall be responsible for compliance with present and future applicable statutes, laws, ordinances and regulations of national, federal, state and local governments now or hereafter in effect relating to the [design,] manufacture and/or quality of Developed Products. Without limitation of the foregoing, MacroPore represents and warrants to Medtronic that all Developed Products sold and delivered to Medtronic under this Agreement will have been manufactured in accordance with all applicable requirements. MacroPore shall cause Medtronic's regulatory personnel to be provided with reasonable access from time to time to the facilities and records of MacroPore for the purpose of confirming MacroPore's compliance with this Section 4.2.

4.3 TRAINING. MacroPore shall provide Medtronic with such training as Medtronic may reasonably request in connection with the sale of Developed Products. Medtronic shall reimburse MacroPore for travel and other out-of-pocket costs reasonably incurred by MacroPore in connection with such training upon submission by MacroPore of appropriate documentation thereof.

4.4 PRODUCT LITERATURE AND PACKAGING. MacroPore will give Medtronic such assistance in connection with the preparation of Developed Product packaging, labeling and operations and technical manuals for use with the Developed Products as reasonably requested by Medtronic. Medtronic shall be responsible for the preparation of sales and marketing materials as deemed appropriate by Medtronic, and MacroPore shall supply any artwork or other materials reasonably requested by Medtronic in connection therewith.

ARTICLE 5
ORDERS FOR PRODUCTS

5.1 PURCHASE ORDERS. Medtronic shall submit purchase orders for Developed Products to MacroPore in writing, whether by mail, telecopier, telegram or otherwise, at the time that each forecast is delivered to MacroPore pursuant to Section 5.3. Each purchase order shall, at a minimum, set forth the product numbers, quantities (subject to Section 5.3), delivery dates, and shipping instructions and shipping addresses for all Developed Products ordered. Purchase orders shall be binding upon MacroPore unless and to the extent the quantities specified therein exceed the amounts specified in the Plan. Each purchase order shall be subject to and governed by the terms of this Agreement. No partial shipment of an order shall constitute the acceptance of the entire order, absent the written acceptance of such entire order. The terms and conditions of this Agreement shall so govern and supersede any additional or contrary terms set forth in Medtronic's purchase order or any MacroPore or Medtronic acceptance, confirmation, invoice or other document unless duly signed by an officer of Medtronic and an officer of MacroPore and expressly stating and identifying which specific additional or contrary terms shall supersede the terms and conditions of this Agreement.

5.2 FIRST ORDER. The first purchase order for a Developed Product will be placed by Medtronic approximately 90 days prior to commercial release of the Developed Product. Subsequently, Medtronic will place orders for the next succeeding months on a monthly basis, at the time that it provides its forecast described in Section 5.3, with all such subsequent purchase orders submitted at least 60 days in advance of the earliest scheduled delivery date for such order.

5.3 MEDTRONIC'S FORECASTS. At the time that Medtronic places its first order for a Developed Product, Medtronic shall provide MacroPore with a six-month sales plan to be mutually agreed upon indicating by month the number of such Developed Products anticipated to be sold by Medtronic or purchased by Medtronic for use as demonstration units (as updated as provided herein, the "Plan"). The Plan shall be updated by Medtronic on a quarterly basis (on or before the first day of each subsequent month) for a rolling successive six-month period. Each Plan shall be used for purposes of facilitating Medtronic's marketing plans, MacroPore's manufacturing plans, and meeting the lead times required by certain of MacroPore's suppliers, but are not legally binding on Medtronic or MacroPore in any manner.

5.4 ORDER LIMITATIONS. MacroPore shall not be required to deliver quantities in excess of 100% of forecasted requirements for the first three months of any Plan, provided, however, that MacroPore shall use all commercially reasonable efforts to supply such excess.

5.5 MODIFICATION OF ORDERS. Medtronic may cancel or reschedule purchase orders for products only with MacroPore's prior written approval. Notwithstanding the foregoing, any purchase order may be cancelled by Medtronic as to any Developed Products that are not delivered within 60 days after the delivery date requested by Medtronic pursuant to a purchase order, and any such cancellation shall not limit or affect any contract remedies available to Medtronic with respect thereto. Any such cancellation by Medtronic must be by written notice to MacroPore given within 15 business days after such 60th day.

5.6 DELIVERY TERMS. All deliveries of Developed Products shall be F.O.B. MacroPore's facility in California. Except as otherwise provided in Article 7 or Article 9 below, MacroPore shall have no further responsibility for risk of damage to or loss or delay of Developed Products after their delivery at the aforesaid F.O.B. point. All Product deliveries shall be made by a common carrier specified by Medtronic or, in the event that no carrier shall have been specified by Medtronic on or before the date 15 days prior to the requested shipment date, a reputable common carrier selected by MacroPore.

5.7 PRODUCT CHANGES. MacroPore shall not, without Medtronic's prior written consent, modify the Specifications for a Product in a manner that materially affects the performance or regulatory approval status of the Product or materially increases Medtronic's costs or expenses.

5.8 CUSTOM DEVELOPED PRODUCTS. In the event Medtronic is requested by a customer to provide customized Developed Products, Medtronic shall provide the specifications for the customized Product to MacroPore. MacroPore will determine and provide to Medtronic the additional cost, if any, and the feasibility of providing the customized Product. Medtronic will thereafter notify MacroPore if it intends to provide such customer with the customized Developed Product.

ARTICLE 6
PRICES AND PAYMENTS

6.1 PRICES. Unless and until otherwise mutually agreed by the parties in writing, the purchase prices per unit of Developed Products to Medtronic under this Agreement (the "Transfer Price") shall be (i) for Developed Products that are [**********], [***] of Medtronic's average net selling price per unit during the six-month period following commercial release of such Developed Product in such market, and (ii) for Developed Products that are [**********], [***] of Medtronic's average net selling price per unit during the six-month period following commercial release of such Developed Product in such market; provided that in no event shall the Transfer Price for any Developed Products be less than [****] of MacroPore's per unit direct cost of manufacturing. Separate Transfer Prices will be established for sales in the United States market and for each major international market. Until six months after commercial release of a Developed Product in a particular market, Medtronic's average net selling price per unit shall be based on Medtronic's catalog list price. If Medtronic sells the Developed Product as part of a packaged combination of products or instruments, then Medtronic's sale price of the Developed Product shall equal either (i) the respective average net selling price during such period of the same type of Developed Product sold individually, or (ii) the average net selling price during such period for a comparable product (if the same type of Developed Product is not

sold individually). Medtronic's net selling price shall exclude sales, use or excise tax, freight, duty or insurance included therein. MacroPore and Medtronic agree to review the Transfer Price at least annually to determine if adjustments are appropriate, taking into account then market conditions. Medtronic and MacroPore agree to keep accurate written records sufficient in detail to enable Medtronic's average selling price and MacroPore's direct cost of manufacturing, respectively, of Developed Products to be determined and verified. Such records for a particular quarter shall be retained for a period of not less than three years. Upon reasonable notice and during regular business hours, each party shall from time to time (but no more frequently than once annually) make available such records for audit at the other party's expense by independent representatives selected by such other party to verify the accuracy of the reports provided to such other party. Such representatives shall execute a suitable confidentiality agreement reasonably acceptable to the party whose records are being audited prior to conducting such audit. Such representatives may disclose to such other party only their conclusions regarding the accuracy and completeness of records related thereto, and shall not disclose confidential business information to such other party without the prior written consent of Medtronic.

6.2 PAYMENT TERMS. Payments made by Medtronic for Developed Products purchased hereunder shall be due and payable in full within 30 days after the date of invoice by MacroPore. Any payments due hereunder which are not paid on the date such payments are due shall be subject to interest at the rate of one and one-half percent (1 1/2%) per month calculated on the number of days such payment is delinquent.

6.3 TAXES. The transfer prices for Developed Products established pursuant to this Article 6 do not include any sales, use, value added or similar taxes, customs, duties, or tariffs imposed by any governmental authority or agency on Developed Products or any components thereof that are imported by Medtronic into any country (other than taxes on the net income of MacroPore), and Medtronic shall bear all such taxes and duties. MacroPore shall be required to take appropriate steps to minimize imposition of such taxes by filing sales exemption certificates and taking similar actions where applicable to the seller. When MacroPore has the legal obligation to collect and/or pay such taxes, the appropriate amount shall be added to Medtronic's invoice and paid by Medtronic, unless Medtronic provides MacroPore with a valid tax exemption certificate authorized by the appropriate taxing authority. Medtronic shall not be obligated to pay or reimburse MacroPore for taxes that are not imposed on the sale of Product to Medtronic.

ARTICLE 7
INSPECTION, WARRANTY AND SERVICE

7.1 INSPECTION OF PRODUCT. Medtronic shall inspect all Developed Products promptly upon receipt thereof, and in the event of any shortage, damage or discrepancy in or to a shipment of Developed Products or in the event any of the Developed Products fail to comply with the then current Specifications for the Developed Products (except for latent defects not readily observable by Medtronic), Medtronic shall report the same to MacroPore within 60 days after delivery thereof to Medtronic and furnish such written evidence or other documentation as MacroPore reasonably may deem appropriate. If the substantiating evidence delivered by Medtronic reasonably demonstrates that such shortage, damage or discrepancy or nonconformity with Specifications existed at the time of delivery of the Developed Products, Medtronic may return the Developed Products to MacroPore, at MacroPore's expense, and, at Medtronic's

request, MacroPore shall use all reasonable efforts to deliver promptly replacement Developed Products to Medtronic in accordance with the delivery procedures set forth herein. Any Developed Products not rejected by Medtronic by written notice given to MacroPore within such 60-day period (other than Developed Products containing latent defects not readily observable by Medtronic) shall be deemed to have been accepted by Medtronic. Following any such acceptance, the sole remedies of Medtronic with respect to damage to or defects in the Developed Products shall be those set forth in Sections 7.2 and 9.1.

7.2 WARRANTY.

(a) MacroPore represents and warrants to Medtronic that all Developed Products sold under this Agreement will have been manufactured and packaged in accordance with all applicable laws and regulations, including (as applicable) FDA GMP requirements, European Medical Device Directive requirements, ISO 9001 certification or successor requirements, and all other applicable manufacturing requirements. Upon prior written notice, MacroPore shall cause Medtronic's regulatory personnel to be provided with reasonable access from time to time to the facilities and records of MacroPore for the purpose of confirming MacroPore's and the Product's compliance with all applicable laws and regulations.

(b) MacroPore warrants to Medtronic and to Medtronic's customers that Developed Products shall, when delivered to Medtronic, meet the Specifications and, for a period of one year after delivery of the Product to the customer but not more than two years after receipt by Medtronic, be free from defects in materials and workmanship. The foregoing express warranty is contingent upon proper use of the Developed Products in the applications for which they were intended as indicated in the Product label claims. Medtronic shall invoice MacroPore for, and MacroPore shall promptly pay, all shipping, transportation, insurance and other expenses actually incurred in replacing defective Developed Products that were under warranty. MacroPore will repair, replace or credit Medtronic's account for any Product that it reasonably determines was defective at the time of shipment to Medtronic or that does not conform to the express warranties herein; provided, however, that MacroPore shall have no obligation under this warranty to repair or make replacements or grant credits necessitated in whole or in part by accidents; failure to maintain in accordance with any transportation, storage, handling, or maintenance, instructions supplied by MacroPore; damage by acts of nature, vandalism, burglary neglect or misuse; or other fault or negligence of Medtronic or (except for any strict liability of MacroPore) the customer or user. Prior to returning any Product alleged to be defective, Medtronic shall notify MacroPore in writing of the claimed defect and shall include the model and lot/serial number of such Product, as well as the number and date of the invoice therefor. No Product shall be returned without first obtaining a returned goods authorization from MacroPore, which authorization shall not be unreasonably withheld.

7.3 LIMITED WARRANTY. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY SPECIFICALLY DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL MACROPORE'S LIABILITY FOR PRODUCT WARRANTY INCLUDE ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

ARTICLE 8
CERTAIN REPRESENTATIONS, WARRANTIES AND INDEMNITIES

8.1 REPRESENTATIONS AND WARRANTIES.

(a) MacroPore represents and warrants to Medtronic that the execution and delivery by MacroPore of this Agreement and the performance by MacroPore of its obligations hereunder have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or Bylaws of MacroPore, as amended, or any provision of any indenture, agreement or other instrument to which MacroPore or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of MacroPore. This Agreement has been duly executed and delivered by MacroPore and constitutes the legal, valid and binding obligation of MacroPore, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to the discretion of the courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.

(b) Medtronic represents and warrants to MacroPore that the execution and delivery by Medtronic of this Agreement and the performance by Medtronic of its obligations hereunder have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or Bylaws of Medtronic, as amended, or any provision of any indenture, agreement or other instrument to which Medtronic or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of Medtronic. This Agreement has been duly executed and delivered by Medtronic and constitutes the legal, valid and binding obligation of Medtronic, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to the discretion of the courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.

(c) Medtronic represents and warrants to MacroPore that the requirements it specifies for Developed Products and the information or designs it provides to MacroPore for incorporation into Developed Products under this Agreement will not infringe any Intellectual Property rights of any third party. MacroPore represents and warrants to Medtronic that the Intellectual Property related to poly-lactic acid used by MacroPore in the manufacture of Developed Products under this Agreement will not infringe any Intellectual Property rights of any third party.

ARTICLE 9
INDEMNIFICATION

9.1 MACROPORE'S LIABILITY. MacroPore shall indemnify, defend and hold harmless Medtronic and each of its subsidiaries, officers, directors, employees, shareholders and

distributors from and against and in respect of any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, interest and penalties, costs and expenses (including, without limitation, reasonable legal fees and disbursements incurred in connection therewith and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection with any action, suit, proceeding, claim, appeal, demand, assessment or judgment) finally awarded ("Indemnifiable Losses"), resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of (i) any breach of representation, warranty, or agreement on the part of MacroPore under this Agreement, or (ii) other negligence or intentional misconduct of MacroPore; provided that in no event shall MacroPore be liable for matters for which Medtronic is responsible under Section 9.2 below or for punitive or exemplary damages. MacroPore shall maintain product liability insurance or self-insurance in such amounts as ordinary good business practice for its type of business would make advisable and shall provide Medtronic with evidence of this coverage.

9.2 MEDTRONIC'S LIABILITY. Medtronic shall indemnify, defend and hold harmless MacroPore and each of its subsidiaries, officers, directors, employees, shareholders and suppliers from and against and in respect of any and all Indemnifiable Losses resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of (i) any breach of representation, warranty, or agreement on the part of Medtronic under this Agreement, (ii) Product Liability Damages with respect to the Developed Products (except to the extent Medtronic has a claim against MacroPore pursuant to Section 9.1 above) or (iii) other negligence or intentional misconduct of Medtronic; provided that in no event shall Medtronic be liable for matters for which MacroPore is responsible under Section 9.1 above or for punitive or exemplary damages. Medtronic shall maintain product liability insurance or self-insurance in such amounts as ordinary good business practice for its type of business would make advisable and shall provide MacroPore with evidence of this coverage.

9.3 PROCEDURE. If a claim by a third party is made and a party (the "Indemnitee") intends to claim indemnification under this Article 9, the Indemnitee shall promptly notify the other party (the "Indemnitor") in writing of any claim in respect of which the Indemnitee or any of its subsidiaries, directors, officers, employees, shareholders, suppliers or distributors intends to claim such indemnification and the Indemnitor shall have sole control of the defense and/or settlement thereof, provided that the Indemnitee may participate in any such proceeding with counsel of its choice at its own expense. The indemnity agreement in this Article 9 shall not apply to amounts paid in settlement of any Indemnifiable Losses if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, if adversely prejudicial to its ability to defend such action, shall relieve such Indemnitor of any liability to the Indemnitee under this Article 9 but the omission to so deliver written notice to the Indemnitor shall not relieve the Indemnitor of any liability that it may otherwise have to any Indemnitee other than under this Article 9. If the Indemnitor fails to provide defense of the claim, and diligently defend or settle the same after receipt of notice from Indemnitee of, and a reasonable opportunity to cure, such failure, the Indemnitee may defend or settle the claim without prejudice to its rights to indemnification hereunder, provided that the Indemnitee does so diligently and in good faith and further does not enter into any settlement or agree to any stipulation that would adversely affect the rights of the Indemnitor or impose any additional obligation on the Indemnitor without the Indemnitor's prior

written consent (which consent will not be unreasonably withheld). The Indemnitee under this Article 9, its employees and agents, shall cooperate fully with the Indemnitor and its legal representatives and provide full information in the investigation of any Indemnifiable Losses covered by this indemnification.

ARTICLE 10
TERM AND TERMINATION

10.1 TERM. This Agreement shall take effect as of the date hereof and shall continue in force until the fifth anniversary of the date hereof, and shall automatically renew for successive five-year periods unless either party gives the other party written notice of non-renewal at least 180 days prior to such renewal date (the "Term").

10.2 TERMINATION. Notwithstanding the provisions of Section 10.1 above, this Agreement may be terminated in accordance with the following provisions:

(a) A party may terminate this Agreement by giving notice in writing to the other party if the other party is in breach of any material representation, warranty or covenant of this Agreement and, except as otherwise provided herein, shall have failed to cure such breach within 60 days after receipt of written notice thereof from the first party;

(b) A party may terminate this Agreement at any time by giving notice in writing to the other party, which notice shall be effective upon dispatch, should the other party become insolvent, make an assignment for the benefit of creditors, go into liquidation or receivership or otherwise lose legal control of its business; or

(c) A party may terminate this Agreement by giving notice in writing to the other party should an event of Force Majeure preventing performance by such other party continue for more than 180 consecutive days as provided in Article 11 below.

10.3 RIGHTS AND OBLIGATIONS ON TERMINATION. In the event of termination of this Agreement for any reason, the parties shall have the following rights and obligations:

(a) Termination of this Agreement shall not release either party from the obligation to make payment of all amounts previously due and payable.

(b) The terminating party shall have the right, at its option, to cancel any or all purchase orders that provide for delivery after the effective date of termination.

(c) The parties' obligations pursuant to Articles 7, 9 and 12 and Sections 3.3, 10.3 and 13.1 hereof and any and all other terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive termination of this Agreement. All other provisions of this Agreement shall terminate upon termination of this Agreement.

ARTICLE 11
FAILURE TO SUPPLY AND FORCE MAJEURE

11.1 NOTICE OF FORCE MAJEURE. Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure.

11.2 SUSPENSION OF PERFORMANCE. Subject to Section 11.3 below, during the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder (except for the obligation to pay any amounts due and owing hereunder) to the extent that such suspension is commercially reasonable.

11.3 EXERCISE OF LICENSE UPON FAILURE OF SUPPLY. Upon a Failure of Supply, Medtronic shall have the right to exercise its license rights granted pursuant to Section 11.4 below to manufacture and sell such Developed Product (but not any other Developed Product) itself or have such Product manufactured by others.

11.4 LICENSE GRANT.

(a) MacroPore hereby grants Medtronic (i) an exclusive, sublicensable, worldwide, license to the Licensed Intellectual Property to make, have made, use, distribute, sell, offer for sale, have sold, import and otherwise commercialize and exploit Developed Products during the Term. Medtronic may not exercise such license unless and until the occurrence of a Failure of Supply.

(b) The license granted herein shall be royalty free with respect to any Developed Products manufactured or supplied to Medtronic by MacroPore or any Affiliate of MacroPore. If Medtronic exercises its right pursuant to Section 11.3 to make or have made by a third party a Developed Product, then subject to the terms of this Agreement, Medtronic shall pay to MacroPore a royalty equal to [**********] of Medtronic's Net Sales of such Developed Product.

(c) Within sixty (60) days after the end of each Medtronic fiscal quarter, Medtronic shall provide MacroPore with a written report indicating the amount of Net Sales of Developed Products during such quarter and the amount of the royalties due for such quarter. Simultaneously with making such report, Medtronic shall pay to MacroPore the amount of royalties then due.

(d) Medtronic agrees to keep accurate written records sufficient in detail to enable the royalties payable under this Agreement by Medtronic to be determined and verified. Such records for a particular quarter shall be retained by Medtronic for a period of not less than three years after the end of such quarter.

(e) Upon reasonable notice and during regular business hours, Medtronic shall from time to time (but no more frequently than once annually) make available the records referred to in

subsection (d) above for audit at MacroPore's expense by independent representatives selected by MacroPore to verify the accuracy of the reports provided to MacroPore. Such representatives shall execute a suitable confidentiality agreement reasonably acceptable to Medtronic prior to conducting such audit. Such representatives may disclose to MacroPore only their conclusions regarding the accuracy and completeness of royalty payments and of records related thereto, and shall not disclose Medtronic's confidential business information to MacroPore without the prior written consent of Medtronic.

11.5 TECHNOLOGY TRANSFER. Upon Medtronic's request any time after a Failure of Supply, MacroPore shall promptly provide to Medtronic, or a third party designated by Medtronic, as applicable, copies of such technical documentation and related know-how and trade secrets, and training as is reasonably necessary for a skilled manufacturer to make such Product; provided that any such third party shall agree to maintain the confidentiality of all such information to the same extent that Medtronic is obligated to do so under this Agreement, and Medtronic will reimburse MacroPore for salary and reasonable travel and lodging expenses for MacroPore personnel with respect to training requested by Medtronic at a location other than MacroPore's facility to the extent such expenses are substantiated by expense receipts.

11.6 MAINTAIN LICENSES IN FORCE. MacroPore shall comply with all of the provisions of, and shall maintain in full force and effect, all license agreements with third parties pursuant to which MacroPore is licensee of intellectual property included in the Licensed Intellectual Property. MacroPore shall promptly notify Medtronic if any such third party licensor alleges any breach by MacroPore of any such license agreement. Medtronic shall be entitled, but not obligated, to cure any alleged breach by MacroPore of such license agreement and set-off the cost of such cure against amounts otherwise owed to MacroPore hereunder.

11.7 NO LIABILITY. MacroPore shall have no obligation or any liability under Section 7.2 with respect to any Developed Products produced by Medtronic or its third party designee pursuant to the license granted in this Article 11.

ARTICLE 12
INTELLECTUAL PROPERTY

12.1 TRADEMARKS. MacroPore hereby grants Medtronic a royalty-free license to use all trademarks, trade names and logotypes of MacroPore relating to the Developed Products solely in connection with the sale or other distribution, promotion, advertising and/or maintenance of the Developed Products. Medtronic shall acquire no right, title or interest in such MacroPore trademarks, trade names and logotypes, other than the license provided for above, and Medtronic shall not use any MacroPore trademarks, trade names and logotypes as part of Medtronic's corporate or trade name, or trademark or logotype or permit any third party under Medtronic's control to do so without the prior written consent of MacroPore. To the extent permitted by local law, any statutory powers which would be granted to Medtronic by virtue of its local use of MacroPore's trademarks or its licensee status are excluded. Medtronic shall, in addition, have the right to promote and sell the Developed Products under trademarks, trade names and logotypes of Medtronic selected by Medtronic, which trademarks, trade names and logotypes shall be and shall remain the property of Medtronic.

12.2 TRADEMARK INFRINGEMENT. Each party shall promptly notify the other party of any use by any third party of such other party's trademarks, trade names or logotypes or any use by such third parties of similar marks that may constitute an infringement or passing off of such other party's trademarks, trade names or logotypes of which such first party has knowledge. The owner of such trademark(s) reserves the right in its sole discretion to institute any proceedings against such third-party infringers and the other party shall refrain from doing so. Each party agrees to cooperate fully with the other party in any action taken by such other party against such third parties, provided that all expenses of such action shall be borne by such other party and all damages that may be awarded or agreed upon in settlement of such action shall accrue to such other party.

12.3 TERMINATION OF USE OF TRADEMARKS. Medtronic acknowledges MacroPore's proprietary rights in and to MacroPore's trademarks, trade names and logotypes, and Medtronic hereby waives all right to any trademarks, trade names and logotypes now or hereafter originated by MacroPore. Medtronic shall not after the date of this Agreement adopt, use or register any words, phrases or symbols that are identical to or confusingly similar to any of MacroPore's trademarks. Upon termination of this Agreement, Medtronic shall cease using MacroPore's trademarks, trade names and logotypes in any manner, subject to Medtronic's right, if any, to continue to sell its remaining inventory of Developed Products.

12.4 MEDTRONIC PROPERTY. All tooling, patterns, dies, gauges, jobs, fixtures, and all specifications, drawings, samples, designs, software, firmware, programs, formulae, and other items and information, including, without limitations improvements to the Developed Product furnished by Medtronic to MacroPore in connection with this Agreement shall only be used in the performance of work for Medtronic; and shall remain the property of Medtronic; and together with all copies thereof shall be disposed of or returned in good repair, normal wear and tear excepted, by MacroPore to Medtronic at Medtronic's direction and expense upon Medtronic's request. MacroPore assumes risk of loss and damage to said items while in its possession or under its control. MacroPore shall notify Medtronic promptly whenever any items of Medtronic's tangible property are in need of repair or replacement. Medtronic's property shall be marked or otherwise adequately identified by MacroPore as property of Medtronic for use only under this Agreement and shall be safely stored. MacroPore waives any right it may have in law or equity to withhold Medtronic's property.

12.5 PATENT RIGHTS.

(a) DEFENSE OF CLAIMS. Medtronic shall defend, or at its option settle, any suit instituted against Medtronic that is based on an allegation that any Developed Product constitutes an infringement of any patent or any other intellectual property right. Medtronic shall have sole control of defense of any such action, including any appeals and negotiations for the settlement or compromise thereof and shall have full authority to enter into a binding settlement or compromise; provided that Medtronic shall not enter into any settlement or compromise that may adversely affect MacroPore without MacroPore's consent, which consent shall not be unreasonably withheld. Medtronic shall indemnify, subject to the limitations set forth herein, MacroPore against any final award of damages and costs made against MacroPore and any settlement amounts as a result of any such action. MacroPore shall notify Medtronic promptly in

writing of such claim, suit or proceeding and give Medtronic such information and assistance as Medtronic may reasonably request to settle and defend any such claim.

(b) LIMITATION OF LIABILITY. Medtronic shall have no liability of any kind to MacroPore under Section 10.5 or based upon any other claim MacroPore may have to the extent any such claim is based upon or arises out of the use of poly-lactic acid or any manufacturing or processing of Developed Product.

12.6 PROTECTION OF INTELLECTUAL PROPERTY. Each party shall be responsible for and have control of filing, prosecuting and maintaining all US and foreign patents and copyrights and applications therefor owned by it, and no party shall have any obligation to obtain or maintain any patent or copyright except as it deems necessary or appropriate to protect such party's Intellectual Property.

12.7 OWNERSHIP OF INVENTIONS. Subject to the terms of this Agreement, (a) any Invention conceived, reduced to practice or otherwise made, developed or acquired by one or more employees or agents of MacroPore shall be the property of MacroPore, (b) any Invention conceived, reduced to practice or otherwise made, developed or acquired by one or more employees or agents of Medtronic shall be the property of Medtronic, and (c) MacroPore and Medtronic shall each have an undivided one-half interest in any Invention jointly conceived, reduced to practice or otherwise made, developed or acquired by one or more employees or agents of MacroPore and one or more employees or agents of Medtronic; provided that neither party shall exploit such jointly-owned Invention without the written consent of the other party.

ARTICLE 13
MISCELLANEOUS

13.1 NONDISCLOSURE. The parties agree not to disclose or use (except as permitted or required for performance by the party receiving such Confidential Information of its rights or duties hereunder) any Confidential Information of the other party obtained during the during the term of this Agreement until the expiration of five years after the receiving party's receipt of such Confidential Information. Each party further agrees to take appropriate measures to prevent any such prohibited disclosure of Confidential Information by its present and future employees, officers, agents, subsidiaries, or consultants during such period.

13.2 PUBLIC ANNOUNCEMENT. In the event any party proposes to issue any press release or public announcement concerning any provisions of this Agreement or the transactions contemplated hereby, such party shall so advise the other parties hereto, and the parties shall thereafter use their best efforts to cause a mutually agreeable release or announcement to be issued. Neither party will publicly disclose or divulge any provisions of this Agreement or the transactions contemplated hereby without the other party's written consent, except as may be required by applicable law or stock exchange regulation, and except for communications to such party's employees or customers or investors or prospective investors (subject to appropriate confidentiality obligations).

13.3 COMPLETE AGREEMENT. This Agreement, the Investment Agreement, the Investors' Rights Agreement, the Supplemental Rights Agreement, the Distribution Agreement, and the

Schedules and Exhibits hereto and thereto, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements whether written or oral relating hereto.

13.4 WAIVER, DISCHARGE, AMENDMENT, ETC. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall not, absent an express written waiver signed by the party making such waiver specifying the provision being waived, be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of the party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Any amendment to this Agreement shall be in writing and signed by the parties hereto.

13.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors or assigns of the parties hereto; provided, that (i) the rights and obligations of MacroPore herein may not be assigned except to any person who succeeds to substantially all of the assets and business of MacroPore to which this Agreement relates, and (ii) the rights and obligations of Medtronic herein may not be assigned except to any person who succeeds to substantially all of that portion of Medtronic's business to which this Agreement relates.

13.6 NOTICES. All notices or other communications to a party required or permitted hereunder shall be in writing and shall be delivered personally or by facsimile (receipt confirmed electronically) to such party (or, in the case of an entity, to an executive officer of such party) or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

if to Medtronic, to:

Medtronic, Inc.
Corporate Center
7000 Central Avenue N.E.
Minneapolis, MN 55432
Attention: General Counsel
Facsimile: (612) 572-5459

with a copy to:

Medtronic, Inc.
Corporate Center
7000 Central Avenue N.E.
Minneapolis, MN 55432
Attention: Vice President and Chief Development Officer
Facsimile: (612) 572-5404

if to MacroPore, to:

MacroPore, Inc.
6740 Top Gun Street
San Diego, CA 92121
Attention: Christopher J. Calhoun
Facsimile: (858) 458-0995

with a copy to:

MacroPore, Inc.
6740 Top Gun Street
San Diego, CA 92121
Attention: Vice President of Finance
Facsimile: (858) 458-0994

Any party may change the above-specified recipient and/or mailing address by notice to all other parties given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by telecopy) or on the day shown on the return receipt (if delivered by mail or delivery service).

13.7 EXPENSES. Except as expressly provided herein, MacroPore and Medtronic shall each pay their own expenses incident to this Agreement and the preparation for, and consummation of, the transactions provided for herein.

13.8 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, including all matters of construction, validity, performance and enforcement, without giving effect to principles of conflict of laws.

13.9 TITLES AND HEADINGS; CONSTRUCTION. The titles and headings to the Articles and Sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

13.10 ILLEGALITY; SEVERABILITY. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13.11 RELATIONSHIP. This Agreement does not make either party the employee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. In fulfilling its obligations pursuant to this Agreement, each party shall be acting as an independent contractor.

13.12 BENEFIT. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.13 SURVIVAL. All of the representations, warranties, and covenants made in this Agreement, and all terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such termination and continue thereafter in full force and effect.

13.14 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed as original and all of which together shall constitute one instrument.

13.15 EXECUTION OF FURTHER DOCUMENTS. Each party agrees to execute and deliver without further consideration any further applications, licenses, assignments or other documents, and to perform such other lawful acts as the other party may reasonably require to fully secure and/or evidence the rights or interests herein.

IN WITNESS WHEREOF, each of the parties has caused this Development and Supply Agreement to be executed in the manner appropriate to each, as of the date first above written.

MACROPORE, INC.

By: /s/ Christopher J. Calhoun

Its: Vice-Chairman and Chief Executive Officer

MEDTRONIC, INC.

By: /s/ Michael D. Ellwein

Its: VP and Chief Development Officer

EXHIBIT A

PROPOSED POTENTIAL DEVELOPMENT PRODUCTS

1. [**********]

2. [**********]

3. [**********]

EXHIBIT 10.5

AMENDMENT NO. 1
TO
DEVELOPMENT AND SUPPLY AGREEMENT

This Amendment No. 1, effective as of December 22, 2000, is to that certain Development and Supply Agreement (the "Agreement"), dated as of January 5, 2000, by and between MacroPore, Inc., a Delaware corporation ("MacroPore") and Medtronic, Inc. ("Medtronic"), a Minnesota corporation.

WHEREAS, MacroPore and Medtronic desire to amend the Agreement as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, hereby agree as follows:

1. Section 6.1 (Prices) of the Agreement shall be deleted in its entirety and the following inserted in its place.

"Section 6.1) PRICES.

(a) Unless and until otherwise mutually agreed upon by the parties in writing, the purchase price per unit of Developed Products to Medtronic (the "Transfer Price") under this Agreement shall be based on the price list in effect at the time of receipt of the order (the "Price List") to be set forth on Exhibit B to this Agreement. The Price List shall be reviewed by MacroPore and Medtronic on the six month anniversary of the date of the initial Price List and every six months thereafter, with any changes to the Price List to take effect upon delivery of the revised Price List to Medtronic. New Developed Products may be added to the Price List at any time by 30 day prior written notice to Medtronic. In the event MacroPore and Medtronic's review of the Price List results in a change to the Transfer Price for any of the Developed Products on the Price List, all such changes will apply to the Transfer Price of future sales and shall not be applied retroactively to previous sales of that Developed Product to Medtronic. Separate Transfer Prices will be established for sales in the United States and for sales in the international market. The prices for customized products are not included in the Price List but shall be determined in accordance with Section 5.8 herein.

(b) MacroPore will establish the Price List (i) for Developed Products that are [**********] based on [***]of the

estimated average selling price per unit for each Product, excluding any sales, use or excise tax, freight, duty or insurance included therein and (ii) for Developed Products that are [**********] based on [***] of the estimated average selling price per unit for each Product, excluding any sales, use or excise tax, freight, duty or insurance included therein; provided that in no event shall the Transfer Price for any Developed Product be less than [***] of MacroPore's per unit direct cost of manufacturing.

(c) If Medtronic sells the Developed Product as part of a packaged combination of products or instruments, then Medtronic's sale price of the Developed product shall equal either (i) the respective average net selling price during such period of the same type of Developed Product sold individually, or (ii) the average net selling price during such period for a comparable product (if the same type of Developed Product is not sold individually).

(d) Medtronic and MacroPore agree to keep accurate written records sufficient in detail to enable Medtronic's average selling price and MacroPore's direct cost of manufacturing, respectively, of Developed Products to be determined and verified. Such records for a particular quarter shall be retained for a period of not less than three years. Upon reasonable notice and during regular business hours, each party shall from time to time (but no more frequently than once annually) make available such records for audit at the other party's expense by independent representatives selected by such other party to verify the accuracy of the reports provided to such other party. Such representatives shall execute a suitable confidentiality agreement reasonable acceptable to the party whose records are being audited prior to conducting such audit. Such representatives may disclose to such other party only their conclusions regarding the accuracy and completeness of records related thereto, and shall not disclose confidential business information to such other party without the prior written consent of Medtronic.

2. The Agreement will be amended by inserting Exhibit B immediately after Exhibit A to the Agreement as soon as Exhibit B becomes available.

3. Except as amended hereby, the Agreement shall remain unchanged and in full force and effect.

4. This Amendment No. 1 and the Agreement constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede any and all prior agreements and undertakings, oral or written, concerning the subject matter hereof. This Agreement may not be changed or terminated orally, and may only be changed or terminated by a writing signed by the party against whom such change or termination is sought.

5. This Amendment No. 1 may be executed in any number of counterparts and by facsimile, each of which, when executed, shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

* * * * *

IN WITNESS WHEREOF, this Amendment No. 1 has been duly executed by the parties as of the date first set forth above.

MACROPORE, INC.,
a Delaware corporation

By: /s/ Charles E. Galetto

Name: Charles E. Galetto
Its: VP - Finance

MEDTRONIC, INC.,
a Minnesota corporation

By: /s/ Michael D. Ellwein

Name: Michael D. Ellwein
Its: Vice President and Chief Development Officer

EXHIBIT 16.1

March 30, 2001

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Commissioners:

We have read the statements made by MacroPore, Inc. (copy attached), which we understand will be filed with the Commission, pursuant to Item 14 of Form 10, as part of the Company's Form 10 report dated March 30, 2001. We agree with the statements concerning our Firm made in Item 14 of such Form 10.

Very truly yours,

/s/ PricewaterhouseCoopers LLP