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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) **October 8, 2002**

MacroPore Biosurgery, Inc.

(Exact name of registrant as specified in charter)

Delaware	**0-32501**	**33-0827593**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS 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**

MacroPore, Inc.
(Former name or former address, if changed since last report.)

Item 2. ***Acquisition or Disposition of Assets.***

On October 8, 2002, we sold substantially all of the assets of our Craniomaxillofacial (head and face) bone fixation product line of business to a subsidiary of Medtronic, Inc. As part of this sale, we also granted the subsidiary an exclusive license of certain intangible assets related to this product line. In exchange, we received an initial payment of $13 million in cash and can receive additional payments totaling up to $8 million based on meeting milestones related to transfer of the technology for the acquired product line and successful clinical outcomes for our faster-resorbing polymer product.

The Craniomaxillofacial bone fixation product line includes bioresorbable surgical implant products for the head and face with applications in trauma, reconstructive procedures and interventional surgeries. The sale also included use of our bioresorbable implants for repair of the bone harvest site in the iliac crest. Medtronic, Inc. has been distributing this product line since January 2000 through its Neurological Technology division. Our sales of Craniomaxillofacial products accounted for $3,875,000 million of revenue, which was 69% of our total revenue, in 2001. For the first nine months of 2002, this product line contributed $2,302,000 million of revenue, which was 32.3% of our total revenue for that period.

On the same day, we paid Medtronic, Inc. $4 million in cash to amend our existing distribution agreement to remove a contractual right of first offer for distributorship to our bioabsorbable thin film products in various types of surgery. Medtronic continues to retain its right of first offer for distributorship to our other products in all fields and to our bioabsorbable thin film products in the spinal field. In addition, we agreed to extend the term of our existing global co-development and supply agreement with Medtronic, Inc. for spinal implants to 2012.

Medtronic, Inc. continues to be a significant stockholder of the company and our largest customer, as the distributor of our biosurgery products in the spinal field.

While we remain committed to and enthusiastic about the market for our bioabsorbable fixation products for other parts of the body (including spinal fixation), we are also refocusing our business toward opportunities in tissue repair and regeneration and the prevention of post surgical adhesions which we believe have higher growth potential. We will be able to use the proceeds from the sale of this product line to fund these new opportunities.

Item 5. ***Other Events.***

On October 7, 2002, we entered into a series of agreements with independent stockholders of StemSource, Inc. ("StemSource"), a stem-cell therapy research company, to purchase approximately 2.7 million common shares for approximately $1.86 million, which increased our overall ownership interest in StemSource to 38.2%.

On October 9, 2002, we issued a press release announcing that we signed a strategic merger agreement with StemSource to acquire the remaining outstanding shares of StemSource in exchange for approximately 1.44 million of our shares. The acquisition of StemSource is expected to be consummated later in 2002, subject to StemSource stockholder approval and other standard closing conditions. We believe StemSource's stem-cell therapies are promising and may be used to successfully treat patients with a variety of diseases. We also believe that these stem-cell therapies may potentially be usable in conjunction with our

bioresorbable implant and fixation products. We intend to use some of the proceeds from the sale of the Craniomaxillofacial bone fixation product line (described in Item 2 above) to ensure funding of StemSource's ongoing research and development efforts.

Item 7. ***Financial Statements, Pro Forma Financial Information and Exhibits.***

(a) Not applicable.

(b) Not applicable.

(c) 2.1* Asset Purchase Agreement, dated September 30, 2002, by and between MacroPore Biosurgery, Inc. and Medtronic PS Medical, Inc.

2.2* License Agreement, dated October 8, 2002, between MacroPore Biosurgery, Inc. and Medtronic PS Medical, Inc.

2.3 Amended and Restated Distribution Agreement dated October 8, 2002, between MacroPore Biosurgery, Inc. and Medtronic, Inc.

2.4* Amendment No. 2 to Development and Supply Agreement, dated September 30, 2002, between MacroPore Biosurgery, Inc. and Medtronic, Inc.

99.1 MacroPore Biosurgery, Inc. press release dated October 9, 2002.

* Certain portions of this Exhibit were omitted by redacting a portion of the text (the "Mark"). This Exhibit has been filed separately with the Secretary of the Commission without the Mark pursuant to our Application Requesting Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

SIGNATURES

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

MACROPORE BIOSURGERY, INC.

DATE: October 23, 2002

By: /s/ CHRISTOPHER J. CALHOUN

Name: Christopher J. Calhoun
Title: Chief Executive Officer

EXHIBIT INDEX

Exhibit	
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SIGNATURES
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Exhibit 2.1

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of September 30, 2002, by and among **Medtronic PS Medical, Inc.** (as defined herein, "Medtronic"), a California corporation, **MacroPore Biosurgery, Inc.** (as defined herein, "MacroPore"), a Delaware corporation, and the "Signing Shareholder" (as defined herein), solely with respect to Section 5.11.

WITNESSETH:

WHEREAS, MacroPore has developed, manufactures and sells Bioabsorbable Implants for use in the Field of Use; and

WHEREAS, the parties hereto desire that MacroPore sell, transfer and assign to Medtronic, and Medtronic purchase from MacroPore, certain Specified Assets relating to the Field of Use Business (as such terms are defined herein) on the terms and for the consideration hereinafter provided; and

WHEREAS, as a condition to Medtronic's purchase of the Specified Assets, MacroPore will grant Medtronic a perpetual worldwide exclusive royalty-free license to certain intangible assets relating to the Field of Use Business pursuant to a License Agreement in the form attached hereto as **Exhibit A** (the "License Agreement"); and

WHEREAS, to induce Medtronic to enter into this Agreement and purchase the Specified Assets, MacroPore and the Signing Shareholders agree not to compete with Medtronic in the Field of Use.

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained herein, and subject to the terms and conditions set forth herein, the parties hereto 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 referenced below:

"Accessories" means products, devices or instruments that are not implanted but are used or marketed for use in connection with the preparation or implantation of Bioabsorbable Implants, including and limited to those accessories listed on **Exhibit B** hereto. For avoidance of doubt, for purposes of Section 5.7 (back-up supply), "Accessories" refers to those Accessories that are manufactured (in whole or in part) by MacroPore, and for purposes of Section 5.10 (supply of raw materials), "Accessories" refers to those Accessories that are supplied to MacroPore in final form.

"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.

"Amended and Restated Distribution Agreement" means that certain Amended and Restated Distribution Agreement by and between Medtronic and MacroPore in the form attached hereto as **Exhibit C**.

"Assignment and Assumption Agreement" means the agreement in the form attached hereto as **Exhibit D** between MacroPore and Medtronic under which MacroPore shall assign to Medtronic, and Medtronic shall assume from MacroPore, all of MacroPore's rights and obligations, to the extent such rights and obligations arise following the Closing, under the Contracts.

"Assumed Liabilities" means the liabilities described in Section 2.4(e).

"Bill of Sale" means the document delivered by MacroPore to Medtronic under which MacroPore shall convey to Medtronic unencumbered title to the Specified Assets, in the form attached hereto as **Exhibit E**.

"Bioabsorbable Implants" means bioabsorbable and/or bioresorbable implant products, including but not limited to Faster Resorbing Polymer and similar products, for use in medical applications, including without limitation, bone fixation and reconstruction, but specifically excluding the following: MacroPore's bioabsorbable and/or bioresorbable thin film products, including TS surgical film (Surgi-Wrap™); MacroPore bioabsorbable and/or bioresorbable drug delivery products, systems and devices specifically adapted for use with a drug developed by or for MacroPore or licensed to MacroPore by a party other than Medtronic; and bioabsorbable and/or bioresorbable products, systems and devices of MacroPore adapted for use with stem cells or growth factors by or for MacroPore by a party other than Medtronic. Notwithstanding the forgoing, if a bioabsorbable and/or bioresorbable implant product can be used without stem cells, growth factors, and/or as a drug delivery vehicle, that product by itself (without the inclusion of a specific drug to be delivered, stem cell or growth factor) is included in this definition of Bioabsorbable Implants.

"Business" means any and all of MacroPore's business activities as conducted to the date of Closing.

"Closing" and *"Closing Date"* have the meanings set forth in Section 8.1.

"Code" means the Internal Revenue Code of 1986, as amended.

"Competing Product" means any product, product line, process, formulation or service (including any component thereof or research to develop information primarily for its usefulness in connection therewith) that is designed, developed, manufactured, marketed or sold by anyone other than Medtronic and is of a similar type, performs similar functions, or is used for the same purposes as a Licensed Product (as defined in the License Agreement), and shall specifically include, but not be limited to MacroPore's bioabsorbable TS surgical film (Surgi-Wrap™) to the extent used in the Field of Use, bioabsorbable drug delivery products, and bioabsorbable products with stem cells or growth factors.

"Confidential Information" means information disclosed by or on behalf of one of the parties (the "*disclosing party*") to the other party (the "*receiving party*"), generated under this Agreement, or otherwise learned by the receiving party from the disclosing party, excluding information which:

(a) was already in the possession of the receiving party prior to its original receipt from the disclosing party (provided that the receiving party is able to provide the disclosing party with written proof thereof and, if received from a third party, that such information was acquired without any party's breach of a confidentiality or non-disclosure obligation to the disclosing party related to such information);

(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 the receiving party from a source other than the disclosing party which source has rightfully obtained such information and has no direct or indirect obligation of non-disclosure or confidentiality to the disclosing party with respect thereto; or

(d) has been independently developed by or for the receiving party without breach of this Agreement or use of any Confidential Information of the other party (provided that the receiving party is able to provide the disclosing party with written proof thereof).

"Contract(s)" means those contracts, purchase or sale orders, leases, licenses, commitments and other agreements listed on the Letter of Assets attached hereto as **Exhibit G**.

"Current Distribution Agreement" has the meaning set forth in Section 5.16(a).

"Disclosure Letter" means the disclosure letter dated September 29, 2002 delivered by MacroPore to Medtronic prior to the execution of this Agreement.

"Environmental Laws" means and includes any one or more of the following: (a) the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. § 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6921 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Occupational Safety and Health Act of 1976, 29 U.S.C. § 651, all as they may be amended from time to time; any other federal, state, county, municipal, local or other statute, law, ordinance or regulation that relates to or deals with Hazardous Substances, human health or the environment, all as they may be amended from time to time; and all regulations promulgated by a regulatory body pursuant to any of the foregoing statutes, laws, regulations, or ordinances; and (b) to the extent that they apply specifically to MacroPore, judgments, orders, decrees, injunctions, permits, concessions, grants, franchises, licenses or agreements, to the extent that either (a) or (b) relate to safety, human health, the environment or emissions, discharges, or releases of Hazardous Substances into the environment including ambient air, surface water, ground water, facilities, structures, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, Hazardous Substances, or wastes or the investigation, clean-up, or other remediation thereof.

"Excluded Assets" has the meaning set forth in Section 2.2.

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

"Faster Resorbing Polymer" means the polymer currently in development by MacroPore that is composed of [***] and has product characteristics of [***]

"Field of Use" means any skeletal fixation and/or reconstruction application in each case and only to the extent that the application pertains to neurosurgery (cranial and skull base only), craniomaxillofacial, oral maxillofacial, reconstructive (head/face only), otolaryngology, orthognathic, mandibular, plastic surgery (head/face only), and/or iliac crest.

"Field of Use Bioabsorbable Implants" means bioabsorbable implants that are designed, developed, manufactured, marketed or sold for use in the Field of Use.

"Field of Use Business" means MacroPore's activities in connection with the development, manufacturing, and sale of Field of Use Bioabsorbable Implants and Accessories, as conducted by MacroPore to the date of Closing.

"Goleta Facility" means Medtronic's facility located at 125 Cremona Drive, Goleta, California 93117-5503.

"Hazardous Substance" means asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products, pesticides, fertilizers, or any other substance that is dangerous, toxic, or hazardous, or that is a pollutant, contaminant, chemical, material or substance defined as hazardous or as a pollutant or contaminant in, or the use, transportation, storage, release or disposal of which is regulated by, any Environmental Laws.

"Intellectual Property" means (a) patents and all divisions, continuations, continuations-in-part, revisions, reissues and re-examinations relative thereto; (b) copyrights and all works of authorship including all translations, adaptations, combinations, compilations and derivations of each of the foregoing; (c) trademarks, trade names, brand names, service marks, service names, trade dress, logos and corporate names including all translations, adaptations, combinations and derivations thereof, together with all common law rights and all goodwill associated with each of the foregoing; (d) technology, know-how, methods, processes, systems, trade secrets, inventions (whether or not patentable, copyrightable or susceptible to any other form of legal protection and whether or not reduced to practice), proprietary data, formulae, research and development data, and confidential information (including conceptions, ideas, innovations, manufacturing, development and production techniques, drawings, specifications, designs, proposals, financial and accounting data, business and marketing plans, customer and supplier lists and related information and documentation), in each case irrespective of whether in human or machine readable form; (e) computer software (including both source and object code) and all related program listings and data, systems, user and other documentation; (f) mask works; (g) all other forms of right by which one may effectively exclude another from using or otherwise enjoying any and each of the foregoing; and (h) all applications for any and each of the foregoing including applications for patent or registration, together with all registrations, renewals and extensions for any and each of the foregoing.

"Inventory" or *"Inventories"* means finished goods, raw materials and ingredients, work-in-process, consignment goods, wares and merchandise.

"Know-How" means all know-how, trade secrets, expertise, inventions, discoveries and technical information owned by or licensed (with the right to sublicense) to MacroPore which are necessary or useful for designing, developing, processing, manufacturing, using or selling Licensed Products (as defined in the License Agreement), including but not limited to information embodied in drawings, designs, copyrights, copyright registrations and applications, trademarks, service marks and registrations thereof and applications therefor, patent applications, material specifications, processing instructions, formulas, equipment specifications, product specifications, confidential data, computer software, electronic files, research notebooks, invention disclosures, research and development reports and the like related thereto, and all amendments, modifications and improvements to any of the foregoing.

"Know-How Transfer" shall have the meaning set forth in Section 5.6 hereof.

"knowledge" of MacroPore means actual knowledge of MacroPore's officers, directors, Signing Shareholders or management or the knowledge that any of such persons would reasonably be expected to have assuming reasonable inquiry of any facts or circumstances actually known to and recognized by such person to create significant doubt concerning the accuracy of any representation, warranty, or statement without regard to such "knowledge" qualifier.

"Letter of Assets" means the listing of assets attached hereto as **Exhibit G**.

"Liens" means liens, mortgages, charges, security interests, pledges, encumbrances, assessments, restrictions or other third-party claims of any nature.

"License Agreement" has the meaning set forth in the recitals.

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

"MacroPore Intellectual Property" means all right, title and interest in and to all Intellectual Property that is used in or is necessary to the conduct of the Field of Use Business, including the development, manufacture and sale of the Faster Resorbing Polymer.

"MacroPore Product Information" means all records, reports (internal and external), submissions (internal and external), data, files, marketing materials, specifications, manufacturing documentation and quality assurance information associated with any products or concepts, or development or manufacturing thereof, that have been created, initiated and/or conducted by MacroPore relating to the Specified Assets and/or the Field of Use Bioabsorbable Implants.

"MacroPore Regulatory Information" means all authorizations, permits, licenses, records, reports (internal and external), submissions (internal and external), data and files associated with regulatory requirements and communications between MacroPore and outside regulatory bodies worldwide, including without limitation the FDA, notified bodies, and other governmental agencies, relating to the Specified Assets and/or the Field of Use Bioabsorbable Implants, including but not limited to those listed in Section 3.7 of the Disclosure Letter.

"Material Adverse Effect" means an effect (other than an effect caused by changes to the economy in general) that, individually or in the aggregate with other related effects, is or could reasonably be expected to be materially adverse to the business, prospects, results of operation or condition (financial or otherwise) of the Specified Assets or the Field of Use Business, considered as a whole, or is or could reasonably be expected to be materially adverse to the ability of Medtronic to conduct following the Closing the manufacture and/or sale of Field of Use Bioabsorbable Implants as presently conducted or contemplated to be conducted by MacroPore; provided, however, that any of the following, individually or in the aggregate, shall not constitute a "Material Adverse Effect" on or with respect to MacroPore: (a) any changes, events or effects including without limitation, any acts of terrorism, affecting the United States economy or world economy as a whole or affecting generally the industry in which MacroPore operates (and not specially affecting MacroPore); (b) any adverse changes, events or effects that are demonstrated to be caused by the announcement or pendency of the transactions contemplated in this Agreement; (c) the lack of success of MacroPore in retaining existing employees or of Medtronic in hiring MacroPore employees or other employees who are material to Medtronic's ability to operate the Field of Use Business or MacroPore's ability to fulfill its obligations under this Agreement; or (d) any changes resulting from compliance by MacroPore with the terms of, or the taking of any action expressly contemplated, permitted or required by, this Agreement.

"Medtronic" means Medtronic PS Medical, Inc. and its Affiliates.

"Post-Installation Period" means the period of time that begins on the date of final installation of the necessary Specified Assets at the Goleta Facility and ends one year following that date.

"Product Liability" means any liability, claim or expense related to the Business, including but not limited to reasonable attorneys' fees and medical expenses, arising in whole or in part out of a breach of any express or implied product warranty, strict liability in tort, negligent manufacture of product, negligent provision of services, product recall, or any other allegation of liability arising from the design, testing, manufacture, packaging, labeling (including instructions for use), marketing, distribution or sale of products (whether for clinical trial purposes, commercial use or otherwise).

"Purchase Price" has the meaning set forth in Section 2.3.

"Retained Liabilities" has the meaning set forth in Section 2.5.

"Signing Shareholder" means Christopher J. Calhoun.

"Specified Assets" means all of the assets set forth on the Letter of Assets, together with all MacroPore Product Information and MacroPore Regulatory Information. Expressly excluded from the Specified Assets is any and all Inventory of MacroPore; provided, however, that copies of certain

MacroPore Product Information and MacroPore Regulatory Information necessary for the continuing operation of MacroPore's remaining business, as reasonably agreed to by the parties, may be retained by MacroPore, but such right to retain copies shall not give MacroPore any ownership of or license or FDA right of reference to any MacroPore Regulatory Information.

"Successful Clinical Outcome Data" means data resulting from a clinical study according to protocols attached hereto as **Exhibit F** which show appropriate healing as specified in **Exhibit F**.

"Transfer and Sales Taxes" means all sales tax, use taxes, stamp taxes, conveyance taxes, transfer taxes, filing fees, recording fees, prepayment fees or penalties, reporting fees and other similar duties, taxes and fees, if any, imposed upon, or resulting from, the transfer of the Specified Assets or the Assumed Liabilities hereunder and the filing of any instruments relating to such transfer.

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.

ARTICLE 2
PURCHASE, SALE AND TRANSFER OF SPECIFIED ASSETS

2.1) *Purchased Assets.* Upon the terms and subject to the conditions set forth in this Agreement, effective as of the Closing, MacroPore agrees to sell, transfer, assign and convey to Medtronic, and Medtronic agrees to purchase, the Specified Assets, which assets MacroPore represents and warrants includes all assets, contracts and rights used in or necessary to the conduct of the Field of Use Business, other than the MacroPore Intellectual Property licensed to Medtronic pursuant to the License Agreement and other than the Excluded Assets.

2.2) *Excluded Assets.* MacroPore shall retain all of its respective right, title and interest in and to all Inventory, all rights to any receivables or other payments accruing prior to the Closing Date, all other assets specified on **Exhibit I** (the "Excluded Assets").

2.3) *Purchase Price.* The total consideration from Medtronic for the Specified Assets (the "Purchase Price") shall be Twenty-One Million Dollars ($21,000,000), subject to the contingencies set forth in Section 2.4 hereof.

2.4) *Payment of Purchase Price.* The Purchase Price shall be paid as follows:

(a) On the Closing Date, Medtronic shall wire transfer to a bank account designated in writing by MacroPore the sum of Thirteen Million Dollars ($13,000,000).

(b) On the later of (i) 90 days following the Closing Date, or (ii) the date MacroPore shall have complied with its obligations under Section 5.3 and the Training Period has been completed under Section 5.5 hereof, Medtronic shall wire transfer to a bank account designated by MacroPore the sum of One Million Dollars ($1,000,000).

(c) Within 10 business days following the date that MacroPore shall have completed the Know-How Transfer, Medtronic shall wire transfer to a bank account designated by MacroPore (i) if the Know-How Transfer shall have been completed before the end of the Post-Installation Period, the sum of Two Million Dollars ($2,000,000) or (ii) if the Know-How Transfer shall have been completed after the Post-Installation Period but prior to the two-year anniversary of the beginning of the Post-Installation Period, the sum of One Million Dollars ($1,000,000).

(d) If MacroPore achieves Successful Clinical Outcome Data for its Faster Resorbing Polymer within three years of the date hereof, then, within 10 business days following the date on which MacroPore achieves and delivers to Medtronic Successful Clinical Outcome Data for its Faster Resorbing Polymer, Medtronic shall wire transfer to a bank account designated by MacroPore the sum of Five Million Dollars ($5,000,000); provided, however, that if Medtronic sells products incorporating the Faster Resorbing Polymer to more than 50 separate accounts prior to MacroPore achieving Successful Clinical Outcome Data for its Faster Resorbing Polymer, then Medtronic shall, (i) within 10 business days following this 51st sale, wire transfer to a bank account designated by MacroPore the sum of One Million Dollars ($1,000,000); and (ii) if MacroPore achieves Successful Clinical Outcome Data following Medtronic's 51stsale but prior to the three-year anniversary of the date hereof, wire transfer to a bank account designated by MacroPore the sum of Four Million Dollars ($4,000,000). Medtronic agrees to keep accurate written records sufficient in detail to enable the number of accounts to which Medtronic sells products incorporating the Faster Resorbing Polymer prior to MacroPore achieving Successful Clinical Outcome Data 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, Medtronic shall from time to time (but no more frequently than once annually) make available such records for audit at MacroPore's expense by independent representatives selected by MacroPore to verify the number of such accounts. 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 records related thereto, and shall not disclose confidential business information of Medtronic to MacroPore without the prior written consent of Medtronic.

(e) Subject to Section 2.5, at the Closing, Medtronic shall assume and agree to pay, perform and discharge in due course only those liabilities and obligations (the "Assumed Liabilities") that accrue for periods subsequent to the Closing under those contracts listed on the Letter of Assets and any other contracts that Medtronic may, in its discretion, elect in writing at or following the Closing to assume (it being understood that Medtronic shall not assume any liabilities or obligations, or portions thereof, with respect to such contracts, including any breaches, defaults or other events or actions thereunder, that arise or are accrued or that should have been accrued as of or for periods prior to the Closing) and all liabilities arising from Medtronic's operation of the Field of Use Business after the Closing.

2.5) *Retained Liabilities.* The parties agree that Medtronic is not, nor shall be considered, the successor to MacroPore, and that Medtronic does not hereby agree to assume or become liable to pay, perform or discharge any obligation or liability whatsoever of MacroPore or relating to the Specified Assets or any former or present employees of MacroPore, including those that may be hired by Medtronic, except as expressly provided for in Section 2.4(e). Section 2.4(e) and the Letter of Assets notwithstanding, and without limitation of the foregoing provisions of this Section 2.5, it is expressly agreed and understood that Medtronic shall not assume any of the following obligations or liabilities of MacroPore:

(a) any obligation, commitment or liability of or claim against MacroPore that may arise from any lawsuits, actions or proceedings against MacroPore, or any obligation or liability of MacroPore under any Environmental Laws or Regulations related to or arising out of events occurring prior to Closing;

(b) any Product Liability relating to (i) any product sold, or service performed, by MacroPore prior to the Closing Date, or (ii) any finished goods manufactured prior to the Closing Date so long as such products are not repackaged, resterilized or otherwise physically modified by Medtronic; or

(c) any other liability, obligation or undertaking of MacroPore of any kind or nature whatsoever, whether known or unknown, fixed or contingent, determined or determinable, due or not yet due, or otherwise, that is not expressly assumed by Medtronic under Section 2.4(e).

2.6) *Allocation of Purchase Price.* Set forth in a letter to be delivered by Medtronic to MacroPore concurrently with the execution and delivery of this Agreement is an allocation of the Purchase Price for tax purposes among the Specified Assets. The allocation has been agreed to by MacroPore and Medtronic after arm's-length negotiations and in accordance with Section 1060 of the Code and other applicable laws. MacroPore and Medtronic will, to the extent permitted by applicable law, adopt and utilize the amounts allocated to each asset or class of assets, as such allocations may be adjusted pursuant to this Agreement, for purposes of all federal, state, local and other tax returns or reports, in any claim for refund, or otherwise with respect to such tax returns or reports. Each party agrees to timely file an IRS Form 8594 reflecting the allocation of the Purchase Price and the Assumed Liabilities among the Specified Assets for the taxable year that includes the Closing and to timely file any comparable or similar forms required by applicable state, local, and foreign tax laws. In the event of any adjustments to the Purchase Price, the parties shall prepare and timely file a supplemental asset acquisition statement on IRS Form 8594 in accordance with the rules under Section 1060 of the Code and the Treasury regulations issued thereunder and shall prepare and timely file any comparable or similar form required by applicable state, local, and foreign tax laws.

2.7) *Transfer and Sales Taxes.* MacroPore shall promptly pay all Transfer and Sales Taxes. The Purchase Price includes an amount sufficient to satisfy the Transfer and Sales Taxes to be paid by MacroPore.

2.8) *Transfer of Specified Assets.* MacroPore shall (i) on a date to be mutually agreed to by both parties in accordance with **Schedule 2.8**, deliver the Specified Assets to Medtronic, FOB the receiving dock of the Goleta Facility, and (ii) be responsible for removal, packing, shipment and for all risk of loss with respect to the Specified Assets until the Specified Assets are so delivered to the receiving dock of the Goleta Facility.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF MACROPORE

MacroPore represents and warrants to Medtronic that, except as set forth in the section of the Disclosure Letter numbered to correspond to the section of this Article 3 to which such exception relates:

3.1) *Organization; Directors and Officers.* MacroPore is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. MacroPore has all necessary power and authority to own its properties and assets and conduct the business presently being conducted by it.

3.2) *Authority.* MacroPore has full power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized, executed, and delivered by MacroPore, and constitutes a legal, valid and binding agreement of MacroPore, enforceable against it in accordance with its terms, subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and (b) laws relating to the availability of specific performance, injunctive relief or other equitable remedies. No further proceeding on the part of MacroPore is necessary to authorize this Agreement and the transactions contemplated hereby. Neither the execution and delivery of this Agreement nor compliance by MacroPore with its terms and provisions will violate (i) any provision of the certificate of incorporation, bylaws or other governing instruments of MacroPore, (ii) any contract, permit or license of MacroPore, or (iii) any law, statute, regulation, injunction, order or decree of any government agency or authority or court to which MacroPore or any of the Specified Assets is subject.

3.3) *Financial Statements.*

(a) Attached hereto as **Schedule 3.3(a)** is a true and complete copy of a statement of costs, net of excess capacity costs, (including direct labor, direct materials, and variable overhead) and margins of the Field of Use Business as of the date hereof (the "Schedule 3.3 Cost Statements"). The Schedule 3.3 Cost Statements are true and correct and fairly and accurately present in all material respects the costs and margins of the Field of Use Business as of such

date, and have been prepared on a basis consistent with MacroPore's past practice. The Schedule 3.3 Cost Statements are in accordance with the books and records of MacroPore.

(b) Attached hereto as **Schedule 3.3(b)** is a true and correct statement of the manufacturing yields experienced by MacroPore with respect to the manufacture of Bioabsorbable Implants during the 12-month period ended June 30, 2002. Schedule 3.3 has been prepared on a basis consistent with MacroPore's past practice.

3.4) *Absence of Undisclosed Liabilities.* MacroPore has not incurred any undisclosed debts, liabilities, claims against or obligations, and to MacroPore's knowledge, there is no reasonable legal basis therefor, that may adversely affect MacroPore's ability to perform its obligations hereunder or may adversely affect the ownership of the Specified Assets or the use thereof by Medtronic in the same manner currently used by MacroPore, whether accrued, absolute, contingent or otherwise, and whether due or to become due, including but not limited to liabilities on account of taxes, other governmental charges, duties, penalties, interest or fines. MacroPore has no claims or rights with respect to, nor has MacroPore created any Liens on, the Specified Assets.

3.5) *Absence of Certain Changes and Events.* Since December 31, 2001, there has not been any (i) Material Adverse Effect; or (ii) to MacroPore's knowledge, any occurrence or event that could reasonably be expected to have a Material Adverse Effect.

3.6) *Litigation and Claims.* There are no actions, suits, claims, or proceedings pending or, to MacroPore's knowledge, threatened against or by MacroPore relating to the Specified Assets, the

Assumed Liabilities or the subject matter of this Agreement, at law, in equity or otherwise, in, before, or by, any court, arbitrator, or governmental agency or authority. There are no unsatisfied judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency or by arbitration) against or affecting MacroPore relating to any of the Specified Assets or Assumed Liabilities. MacroPore has never incurred any uninsured or insured Product Liability, or received a claim based upon alleged Product Liability and, to MacroPore's knowledge, no basis for any such claim exists.

3.7) *Compliance with Law.* In conducting the Field of Use Business, MacroPore has not violated and is not in violation of any applicable law, ordinance or regulation of any governmental entity. All governmental approvals, registrations, notifications, permits, licenses and other permissions or authorizations (collectively, "*Authorizations*") required in connection with the conduct of the Field of Use Business are listed in Section 3.7 of the Disclosure Letter and have been obtained and are in full force and effect and are being complied with. Section 3.7 of the Disclosure Letter lists all regulatory clearances required in connection with the conduct of the Field of Use Business. MacroPore has not received any written notification of any asserted past or present violation in connection with the conduct of the Field of Use Business of any applicable law, ordinance or regulation, or any written complaint, inquiry or request for information from any governmental entity relating thereto. Neither MacroPore nor the Field of Use Business nor any of the Specified Assets is the subject of any federal, state or local enforcement action or, to the knowledge of MacroPore, other investigation, including but not limited to those relating to Environmental Laws. All documentation, correspondence, reports, data, analysis and certifications relating to or regarding any medical devices of the Field of Use Business, filed or delivered (or, if amended, as of the date for which such amendment speaks) by or on behalf of the Field of Use Business to any governmental authority, agency or body were true and accurate when so filed or delivered and remain true and accurate.

3.8) *Consents.* Section 3.8 of the Disclosure Letter lists each consent, approval, waiver or authorization (collectively, the "Consents"), that is legally or contractually required on the part of MacroPore to duly and validly transfer or assign to Medtronic any of the Specified Assets or Assumed Liabilities, including the Contracts, as contemplated hereby.

3.9) *Title to and Condition of Specified Assets*. MacroPore has full right, title and interest to the intangible Specified Assets and good and valid title to the tangible Specified Assets, free and clear of all Liens, except for those Liens specifically listed next to the Specified Asset in the Disclosure Letter, to the extent of the dollar amount of such Liens. The Specified Assets include all assets, rights, interests, claims necessary for or used in the conduct of the Field of Use Business, other than the MacroPore Intellectual Property licensed to Medtronic pursuant to the License Agreement and other than the Excluded Assets. The Specified Assets are suitable for the uses for which they are presently used by MacroPore, in normal operating condition and free from any significant defects, ordinary wear and tear excepted, and have been properly serviced and maintained by MacroPore. All of the Specified Assets are located at MacroPore's corporate headquarters at 6740 Top Gun Street, San Diego, CA 92121. Section 3.8 of the Disclosure Letter specifically identifies any person who knows and has the right (for his own account) to use confidential information, know-how, or other proprietary information, or who physically possesses, molds, tooling or any other property that either belongs to MacroPore and relates to the Field of Use Business or that is used in the operation by the Field of Use Business and sets forth the terms and purposes for which such party possesses the same.

3.10) *Intellectual Property.* All right, title and interest in and to the MacroPore Intellectual Property is owned by or licensed exclusively to MacroPore for use in connection with the Specified Assets and Field of Use Bioabsorbable Implants and, in some instances, also for other uses, without royalties, fees or commissions, and free and clear of any Liens. To MacroPore's knowledge, neither the use of the MacroPore Intellectual Property, nor any of the assets included in the Specified Assets, infringe or will infringe, misuse, or misappropriate the rights, including Intellectual Property rights or

contract rights, of others. The MacroPore Intellectual Property has not been challenged in any judicial or administrative proceeding. Neither any shareholder nor any employee or consultant of MacroPore (or the employer of any such consultant) has any rights in or to any of the MacroPore Intellectual Property. All patent applications are still pending in good standing and have not been abandoned, and all fees necessary to maintain such MacroPore Intellectual Property in full force and effect have been and as of the Closing will have been paid. No person nor such person's business nor any of its products has infringed, misused, or misappropriated the MacroPore Intellectual Property or currently is infringing, misusing, misappropriating or conflicting with such rights. MacroPore has valid confidentiality, assignment of invention and non-competition agreements with each person to whom confidential or trade secret information relating to the Field of Use Business has been disclosed and such Contracts are listed in the Letter of Assets.

3.11) *Relations with Suppliers.* To MacroPore's knowledge, no material supplier of MacroPore has cancelled any contract or order for provision of, and there has been no threat by any such supplier not to provide, raw materials, products, supplies, or services to the Field of Use Business when owned by

MacroPore or when owned by Medtronic.

3.12) *Product Liability Claims.* All products of the Business that MacroPore has manufactured, distributed or sold were merchantable, free from defects in design, specifications, processing, manufacture, material or workmanship, and suitable for the purpose for which they were sold. MacroPore has never with respect to the Business incurred any uninsured or insured Product Liability, or received a claim based upon alleged Product Liability with respect to the Business, and, to MacroPore's knowledge, no basis for any such claim exists. To MacroPore's knowledge, MacroPore does not have any liability or obligation with respect to any Product Liability relative to the Business, whether or not heretofore asserted, or product recalls related to products manufactured, distributed or sold at or prior to the Closing. Section 3.12 of the Disclosure Letter also sets forth a true, correct and complete list of all complaint, warranty claim and defective product claims related to the Business in the three (3) years prior to the date hereof.

3.13) *Environmental Matters.* Except as specifically set forth in Section 3.13 of the Disclosure Letter: (a) MacroPore has obtained, and is in compliance with, all permits, licenses or other approvals necessary under the Environmental Laws with respect to the Field of Use Business and the Specified Assets, and is in compliance with all Environmental Laws; (b) no capital or other expenditures are necessary so that the Field of Use Business and Specified Assets comply fully with any Environmental Law; (c) neither MacroPore nor the Field of Use Business or Specified Assets have been or are subject to any actual or, to MacroPore's knowledge, threatened investigations, administrative proceedings, litigation, regulatory hearings, or other action threatened, proposed or pending that alleges (i) actual or threatened violation of or noncompliance with any Environmental Law, or (ii) actual or threatened personal injury or property damage or contamination of any kind resulting from a release or threatened release of a Hazardous Substance with respect to the Field of Use Business and Specified Assets; (d) MacroPore has not taken or failed to take any action with respect to the Field of Use Business, the Specified Assets or the real property presently or formerly used in connection therewith that could reasonably be expected to result in (i) actual or threatened violation of or noncompliance with any Environmental Law, or (ii) actual or threatened personal injury or property damage or contamination resulting from a release of a Hazardous Substance that requires remediation or other similar corrective action under any applicable Environmental Laws; and (e) no Hazardous Substances have been used, manufactured, generated, transported, released or disposed of in violation of any Environmental Law by MacroPore. MacroPore has delivered to Medtronic true and complete copies of all reports, studies or tests in the possession of or initiated by MacroPore that pertain to Hazardous Substances or other environmental concerns regarding the Field of Use Business, the Specified Assets or any real property used in connection with the Field of Use Business or Specified Assets. With respect to the real property presently or formerly used in connection with MacroPore's business and assets, to MacroPore's

knowledge, (i) no above-ground or underground storage tanks for Hazardous Substances are or were present on such real property or any improvements or structures thereon, (ii) such real property is not listed on any published federal, state or local list of hazardous waste sites, (iii) no Lien in favor of any governmental authority in response to a release or threatened release of any Hazardous Substance has been filed or attached to such real property, (iv) no person other than MacroPore has used or is using any portion of such real property for the handling, processing, storage or disposal of Hazardous Substances except in compliance with applicable Environmental Laws, (v) in the course of any activities conducted by MacroPore, no Hazardous Substances have been generated or are being used on such real property except in compliance with applicable Environmental Laws, (vi) neither MacroPore nor any other person has caused or is causing any releases or threatened releases of Hazardous Substances near, on, to, from or under such real property, and (vii) any Hazardous Substances that have been generated by MacroPore on any of such real property have been transported offsite and have been treated or disposed of in compliance with applicable Environmental Laws.

3.14) *Employees.*

(a) No employee of Seller providing services for the Field of Use Business is subject to or otherwise restricted by any employment or noncompetition agreement between such employee and a former employer of such employee that would restrict such employee from being employed by, or such employee's employment with, Seller or (following the Closing) Medtronic in their capacity of providing services for the Field of Use Business.

(b) Set forth on Section 3.14(b) of the Disclosure Letter is a true and complete list of all current MacroPore employees with duties related primarily to the Field of Use Business and, with respect to each such employee thereon, the title, years of service, position, services performed, and salary or wages of such employee. No MacroPore employee listed on Section 3.14(b) is on short-term or long-term disability or other authorized leave of absence as of the date of such Schedule.

3.15) *Contracts.* Each Contract is valid and subsisting and is in full force and effect in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, and there have been no amendments, creditors modifications, or supplements to any such Contracts. Prior to the date of this Agreement, MacroPore has delivered to Medtronic true and complete copies of all such Contracts. There is no default by MacroPore or claim of default by MacroPore, or any other party thereto, under any such Contract and, to MacroPore's knowledge, no event has occurred that, with the passage of time or the giving of notice or both, could reasonably be expected to constitute a default by MacroPore or any other party thereto under any such Contract, or could reasonably be expected to permit modification, acceleration, or termination of any such Contract, or result in the creation of any Lien on any of the Specified Assets.

3.16) *No Finders.* No act of MacroPore or any of its Affiliates has given or will give rise to any claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment in connection with the transactions contemplated by this Agreement.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF MEDTRONIC

Medtronic represents and warrants to MacroPore as follows:

4.1) *Organization of Medtronic.* Medtronic is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Medtronic has all necessary power and authority to own its properties and assets and conduct the business presently being conducted by it.

4.2) *Authority.* Medtronic has full power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized, executed, and delivered by Medtronic, and constitutes a legal, valid and binding agreement of Medtronic, enforceable against Medtronic in accordance with its terms, subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and (b) laws relating to the availability of specific performance, injunctive relief or other equitable remedies. No further proceeding on the part of Medtronic is necessary to authorize this Agreement and the transactions contemplated hereby. Neither the execution and delivery of this Agreement nor compliance by Medtronic with its terms and provisions will violate (i) any provision of the articles of incorporation or bylaws of Medtronic, (ii) any contract, permit or license of Medtronic, or (iii) any law, statute, regulation, injunction, order or decree of any government agency or authority or court to which Medtronic or any of Medtronic's assets are subject.

4.3) *No Finders.* No act of Medtronic or any of its Affiliates has given or will give rise to any claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment in connection with the transactions contemplated by this Agreement.

4.4) *Litigation and Claims* There are no actions, suits, claims, or proceedings pending or, to Medtronic's knowledge, threatened against or by Medtronic relating to the Specified Assets or the subject matter of this Agreement, at law, in equity or otherwise, in, before, or by, any court, arbitrator, or governmental agency or authority that would prevent Medtronic from performing its obligations hereunder. There are no unsatisfied judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency or by arbitration) against or affecting Medtronic that would prevent Medtronic from performing its obligations hereunder.

ARTICLE 5
CERTAIN COVENANTS AND AGREEMENTS

5.1) *Approvals and Consents.* MacroPore will obtain, at its cost and expense, all approvals and Consents of all third parties necessary for the sale and transfer of the Specified Assets as contemplated herein.

5.2) *Preserve Accuracy of Representations and Warranties.* MacroPore shall refrain from taking any action or inaction, except with the prior written consent of Medtronic, that would render any representation, warranty, covenant, or agreement of MacroPore in this Agreement inaccurate or breached in any material respect as of the Closing. At all times prior to the Closing, MacroPore will promptly inform Medtronic in writing with respect to any matters hereafter arising that, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in the Disclosure Letter. Between the date hereof and the Closing, MacroPore will use all reasonable efforts to continue to operate the Field of Use Business according to its ordinary and usual course of business consistent with past practice.

5.3) *Pre-Closing Access to Information and Records.* Subject to Section 11.12, prior to the Closing and until the Know-How Transfer described in Section 5.6 is completed, MacroPore shall permit Medtronic and such persons as it may designate, at Medtronic's expense, to visit and inspect any of the properties of MacroPore relating to the Specified Assets and to examine the MacroPore Product Information and MacroPore Regulatory Information and take copies and extracts therefrom, all at reasonable times and upon reasonable notice.

5.4) *Further Assurances.* At such times and from time to time on and after the Closing Date, upon reasonable request by Medtronic, MacroPore will execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances that may reasonably be required for the better conveying, transferring, assigning, delivering and confirming ownership to, or reducing to the possession of, Medtronic or its respective successors and assigns all of the Specified Assets and to otherwise carry out the purposes of this Agreement.

5.5) *Training.* Until such time as Medtronic employees operating the Specified Assets at MacroPore's facility (prior to the transfer thereof to the Goleta Facility) have successfully completed the skills specified in **Schedule 5.5** (the "Training Period"), MacroPore shall make available to Medtronic, at MacroPore's facility and during regular business hours, knowledgeable MacroPore employees for the purpose of training Medtronic employees in all aspects of the manufacturing processes of the Field of Use Business. Both parties shall use commercially reasonable efforts to complete the training pursuant to **Schedules 2.8 and 5.5.**

5.6) *Know-How Transfer.* Both parties shall, pursuant to the schedule set forth in Schedule 5.6 attached hereto, use commercially reasonable efforts to transfer the Know-How from MacroPore to Medtronic within the Post-Installation Period. Such transfer shall be deemed to have been achieved only if Medtronic manufactures the Bioabsorbable Implants specified in **Schedule 5.6** meeting the specifications therefor and the quantity and yield requirements set forth in **Schedule 5.6** attached hereto (the "Know-How Transfer").

5.7) *Back-Up Supply.* For a period equal to the term of the Amended and Restated Distribution Agreement, MacroPore shall (upon orders placed by Medtronic) manufacture and supply Medtronic with any requirements for Field of Use Bioabsorbable Implants and those Accessories that are manufactured (in whole or in part) by MacroPore. The back-up supply of Field of Use Bioabsorbable Implants and Accessories shall be provided pursuant to the terms of the Amended and Restated Distribution Agreement, provided that after the transfer of the Specified Assets pursuant to

Section 2.1, Medtronic shall supply, at Medtronic's cost and expense, the tooling and any other Specified Assets reasonably necessary for MacroPore to manufacture and supply these requirements.

5.8) *Post-Closing Access to Information and Records.* From and after the Closing, Medtronic shall permit MacroPore and such persons as it may designate, at MacroPore's expense, access to the MacroPore Product Information and MacroPore Regulatory Information and to take copies and extracts therefrom, as and to the extent required for MacroPore to fulfill its obligations under Sections 5.5 and 5.6 and 5.7 hereof and for any other legitimate purpose, all at reasonable times and upon reasonable notice.

5.9) *Transition Support.* To further the transition efforts and the obligations of Section 5.6 hereof, at Medtronic's sole discretion, (i) Medtronic shall be allowed, but is not obligated, to solicit the Craniomaxillofacial / Neurosurgery employees set forth on Section 5.9 of the Disclosure Letter to work for Medtronic, and/or (ii) MacroPore employees shall provide consulting services as reasonably requested by Medtronic without cost to Medtronic, (x) for the Post-Installation Period, or, (y) if later, until such time as the Know-How Transfer has occurred.

5.10) *Supply of Raw Materials.* Until the earlier of (i) the end of the Post-Installation Period; or (ii) the date when a supplier reasonably acceptable to Medtronic commences delivery to Medtronic of its requirements of such raw material or Accessory related to the Field of Use Bioabsorbable Implants pursuant to an agreement reasonably acceptable to Medtronic, MacroPore shall, or shall cause its suppliers to, provide Medtronic with such raw material or Accessory at MacroPore's cost, including shipping and handling costs actually incurred; provided that Medtronic shall provide MacroPore non-cancelable purchase orders recognizing that lead times may be as much as four months, or, as otherwise required by MacroPore's supplier(s). MacroPore further agrees that it shall use commercially reasonable efforts to keep in effect all supply agreements between MacroPore and its suppliers, both before and during the period in which MacroPore is required to supply Medtronic with its raw material and Accessories requirements hereunder. MacroPore provides no warranty for the raw materials and Accessories supplied hereunder, except for and only to the extent of that specific warranty, if any, provided to MacroPore by MacroPore's supplier.

5.11 *Noncompetition Covenant.* The Signing Shareholder acknowledges that, as a significant shareholder of MacroPore, he will receive substantial benefit from Medtronic's purchase of the good will of the Field of Use Business. In exchange for this benefit, MacroPore and the Signing Shareholder agree as follows:

(a) For a period of [***] years from and after the Closing, MacroPore and Signing Shareholder agree that they will not, individually or otherwise, do any of the following:

(i) directly or indirectly, own any interest in, control, be employed by or associated with, or render services (including but not limited to services in research) to any person or entity, or subsidiary, subdivision, division, or joint venture of such entity (except Medtronic), in connection with the design, development, manufacture, license, distribution, marketing, or sale of a Competing Product in the Field of Use; provided, however, that MacroPore and the Signing Shareholder may purchase or otherwise acquire up to (but not more than) two percent of any class of publicly traded securities of any enterprise (but without participating in the activities of the enterprise);

(ii) directly or indirectly, solicit any of Medtronic's employees for the purpose of inducing them to leave their employment with Medtronic;

(iii) directly or indirectly, solicit, attempt to solicit, interfere, or attempt to interfere with Medtronic's relationship with its customers or potential customers, on behalf of any person or entity engaged in the design, development, manufacture, marketing, or sale of a Competing Product in the Field of Use; or

(iv) directly or indirectly design, develop, manufacture, license, distribute, market, or sell any Competing Product in the Field of Use.

(b) In addition, for a period of [***] years from and after the Closing, MacroPore shall, (i) take all necessary steps, including but not limited to express prohibitions set forth in its agreements and purchase orders, to prevent all distributors, sales representatives, licensees and customers of MacroPore or MacroPore's distributors, sales representatives or licensees from using or selling in the Field of Use any Competing Product that is or was designed, developed, distributed, marketed or sold by MacroPore; and (ii) be responsible for and indemnify Medtronic for all losses, costs and expenses related to actions or omissions of MacroPore or its distributors, sales representatives, licensees or customers relating to any failure to prevent such Competing Products from being sold or used in the Field of Use, and any breach by such distributors, sales representatives, licensees or customers (whether by action, inaction or otherwise) shall be deemed a breach by MacroPore of this Section 5.11. For avoidance of doubt, this subsection (b) is intended to require MacroPore to prevent Competing Products that are designed, developed, distributed, marketed or sold by MacroPore (other than Competing Products sold to or by Medtronic and other than Competing Products sold prior to the date hereof in the amounts and to the entities listed on **Schedule 5.16**) from being used in the Field of Use, and to give Medtronic all available remedies for any failure by MacroPore to do so. It does not apply to MacroPore's distributors' sales of their inventories which they had on hand as of the Closing Date.

(c) The parties acknowledge and agree that the market for the Field of Use Bioabsorbable Implants is worldwide and that the provisions of this Section 5.11 shall apply throughout the world.

(d) In addition to any other relief or remedies afforded by law or in equity, if MacroPore or any of its Affiliates, or the Signing Shareholders breaches its or their obligations under this Section 5.11, Medtronic shall be entitled, as a matter of right and without posting any bond or other security, to injunctive relief in any court of competent jurisdiction plus reasonable attorneys' fees for securing such relief. This shall not preclude the granting of any other appropriate relief including, without limitation, money damages against MacroPore and/or the Signing Shareholders for breach of this Section 5.11.

5.12 *No Solicitation of Other Offers.* Prior to the Closing, neither MacroPore nor any of its Affiliates shall directly or indirectly discuss or negotiate with any person (other than Medtronic and its agents), encourage the submission of inquiries, proposals or offers from any person (other than Medtronic), or otherwise provide information to any other person, with respect to the sale of the Specified Assets or the sale, licensing, distribution or other disposition of any of the Specified Assets.

5.13 *Maintenance of Specified Assets.* Until MacroPore shall have effected the transfer of the Specified Assets pursuant to Section 2.8 hereof, MacroPore shall (i) maintain insurance on the Specified Assets in an amount and on terms that are usual and customary in the industry, listing Medtronic as a loss payee; and (ii) maintain the condition of the Specified Assets so that such Specified Assets continue to be suitable for the uses for which they are used by MacroPore in the Field of Use Business, and are in normal operating condition and free from any significant defects, ordinary wear and tear excepted, including the usual and customary service and maintenance of such Specified Assets.

5.14 *Enforcement of Agreement(s).* If (i) the employment or engagement of any MacroPore employee or consultant is terminated and, following such termination, MacroPore obtains knowledge that such employee or consultant has used or disclosed the confidential information of MacroPore with respect to the Field of Use Business in violation of the terms of any agreement between such employee or consultant and MacroPore, or (ii) any other individual or entity has used or disclosed the confidential information of MacroPore with respect to the Field of Use Business in violation of the terms of any agreement between such individual or entity and MacroPore, then MacroPore shall

immediately notify Medtronic in writing of such violation. If Medtronic determines in good faith that such violation will result in material harm to Medtronic's manufacture and/or sale of Field of Use Bioabsorbable Implants, then MacroPore will, to the extent enforceable under California law, enforce any rights of MacroPore, its successors or assigns available under such agreements to prevent further violation by such party.

5.15) *Bulk Sales.* MacroPore shall indemnify Medtronic for any non-compliance with any applicable "Bulk Sales" laws as they pertain to MacroPore in connection with the sale of the Specified Assets to Medtronic.

5.16) *International Sales.*

(a) MacroPore represents and warrants to Medtronic that (i) except as set forth in Schedule 5.16, since January 1, 2001, MacroPore has not sold Products (as defined in the Distribution Agreement dated January 5, 2000, as amended by Amendment No. 1 to Distribution Agreement dated December 22, 2000 (the "Current Distribution Agreement")) for use in the Field of Use to any third party other than Medtronic, (ii) no third party listed on Schedule 5.16 (each a "Disclosed Third Party" and collectively the "Disclosed Third Parties"), has (w) the contractual right to require MacroPore or, after the Closing, Medtronic, to sell such products to it for use in the Field of Use, (x) a contractual right to have their inventory of such Products repurchased by MacroPore or Medtronic, (y) a contractual right to be compensated for any refusal by MacroPore or Medtronic to sell such Products to such third party, or (z) regulatory permits or approvals to sell such Products which would be required to be purchased from such third party by Medtronic or its distributor before selling such Products in such geographic area (excluding [***]); and (iii) no third party other than those listed on Schedule 5.16 (each an "Other Third Party" and collectively the "Other Third Parties"), has (w) any right to require MacroPore or, after the Closing, Medtronic, to sell such products to it for use in the Field of Use, (x) any right to have their inventory of such Products repurchased by MacroPore or Medtronic, (y) any right to be compensated for any refusal by MacroPore or Medtronic to sell such Products to such third party, or (z) regulatory permits or approvals to sell such Products which would be required to be purchased from such third party by Medtronic or its distributor before selling such Products in such geographic area. MacroPore shall not sell or transfer any additional Products (as defined in the Current Distribution Agreement) for use in the Field of Use to any third party.

(b) MacroPore shall be responsible for the payment of, and shall indemnify and hold harmless Medtronic from and against, (i) all costs and expenses incurred by Medtronic related to the termination, including but not limited to administrative costs, repurchases of inventory, and termination penalties or "goodwill" payments, of all contractual rights, if any, of Disclosed Third Parties to purchase and distribute any Products (as defined in the Current Distribution Agreement) for use in the Field of Use; (ii) costs and expenses in excess of [***] (in the aggregate) incurred by Medtronic related to the termination, including but not limited to administrative costs, repurchases of inventory, and termination penalties or "goodwill" payments, of all non-contractual rights, if any, of Disclosed Third Parties to purchase and distribute any Products (as defined in the Current Distribution Agreement) for use in the Field of Use; (iii) all costs and expenses incurred by Medtronic related to the termination, including but not limited to administrative costs, repurchases of inventory, and termination penalties or "goodwill" payments, of all rights, if any, of Other Third Parties to purchase and distribute any Products (as defined in the Current Distribution Agreement) for use in the Field of Use; (iv) costs and expenses in excess of [***] (in the aggregate) incurred by Medtronic related to the purchase by Medtronic or its distributor of any regulatory permits or approvals from a Disclosed Third Party to sell such Products which would be required for Medtronic or such distributor to sell such Products in [***]; and (v) all costs and expenses incurred by Medtronic related to the purchase by Medtronic or its distributor of any regulatory permits or approvals from an Other Third Party to sell such Products which would be required for Medtronic

or such distributor to sell such Products in any geographic area. Medtronic shall, in its sole discretion (such discretion not to be unreasonably withheld), allow MacroPore to participate in any negotiations with Disclosed Third Parties or Other Third Parties regarding items (i) and (ii) of this Section 5.16(b).

(c) Medtronic agrees that each distributor identified in Schedule 5.16 shall have the right to sell any remaining inventory of Products shipped to such distributor by MacroPore on or prior to September 20, 2002. The Sale of these remaining inventories shall not constitute a breach of the Section 5.11 Noncompetition Covenant.

(d) Medtronic hereby waives and releases MacroPore from any and all claims or causes or action alleging that MacroPore's sales of Products (as defined in the Current Distribution Agreement) prior to the date hereof as set forth in Schedule 5.16 constituted a breach by MacroPore of Medtronic's exclusive distribution rights under the Current Distribution Agreement. MacroPore hereby waives and releases Medtronic from any and all claims or causes or action alleging that Medtronic breached its obligation pursuant to Section 3.1 of the Current Distribution Agreement to use its reasonable best efforts to further the promotion, marketing, sale and/or other distribution of such Products.

5.17) *Re-Labeling.* From and after the Closing, MacroPore shall permit Medtronic and such persons as it may designate, at Medtronic's expense, access to the MacroPore's manufacturing records and to take copies and extracts therefrom, as and to the extent required for Medtronic to facilitate the re-labeling of products purchased by Medtronic under the Current Distribution Agreement, all at reasonable times and upon reasonable notice.

ARTICLE 6
CONDITIONS TO MEDTRONIC'S OBLIGATIONS

The obligations of Medtronic under this Agreement shall, at its option, be subject to the satisfaction, on or prior to the Closing Date, of all of the following conditions:

6.1) *Representations Warranties and Covenants.* The representations and warranties of MacroPore herein, without regard to any qualification or reference to "Material," "Material Adverse Effect," or similar variations thereof (a "Materiality Qualifier"), shall be true in all material respects on the Closing Date with the same effect as though made at such time. MacroPore shall in all material respects have performed all of its obligations and complied with all of its covenants herein prior to or as of the Closing Date. MacroPore shall have delivered to Medtronic a certificate in form and substance satisfactory to Medtronic dated as of the Closing Date and executed by its chief executive officer to all such effects.

6.2) *Approvals; Consents.* All permissions, releases, Consents or approvals, governmental or otherwise, necessary on the part of MacroPore and Medtronic to consummate the transactions contemplated hereunder shall have been obtained.

6.3) *Litigation Affecting Closing.* No suit, action or other proceeding shall be pending or threatened by any third party or by or before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated by this Agreement, and no governmental investigation that might result in any such suit, action or other proceeding shall be pending or threatened.

6.4) *Transfer Documents.* Medtronic shall have received from MacroPore such instruments of transfer, assignment, conveyance and other instruments sufficient to convey, transfer and assign to Medtronic all right, title and interest in the Specified Assets, free and clear of all Liens, all in form and substance reasonably satisfactory to Medtronic and its counsel, including but not limited to the Assignment and Assumption Agreement and the Bill of Sale.

6.5) *Transaction Documents.* MacroPore shall have executed and delivered the License Agreement, the Bill of Sale, the Assignment and Assumption Agreement, and the Amended and Restated Distribution Agreement.

ARTICLE 7
CONDITIONS TO MACROPORE'S OBLIGATIONS

The obligations of MacroPore under this Agreement shall, at its option, be subject to the satisfaction, on or prior to the Closing Date, of all of the following conditions:

7.1) *Representations, Warranties and Covenants.* The representations and warranties of Medtronic herein, without regard to any Materiality Qualifier shall be true in all material respects on the Closing Date with the same effect as though made at such time. Medtronic shall in all material respects have performed all of its obligations and complied with all of its covenants herein prior to or as of the Closing Date.

7.2) *Approvals; Consents.* All permissions, releases, Consents or approvals, governmental or otherwise, necessary on the part of MacroPore and Medtronic to consummate the transactions contemplated hereunder shall have been obtained.

7.3) *Litigation Affecting Closing.* No suit, action or other proceeding shall be pending or threatened by any third party or by or before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated by this Agreement, and no governmental investigation that might result in any such suit, action or other proceeding shall be pending or threatened.

7.4) *Transaction Documents.* Medtronic shall have executed and delivered the Assignment and Assumption Agreement, the License Agreement, the letter required by Section 2.6 hereof (allocation of purchase price), and the Amended and Restated Distribution Agreement.

ARTICLE 8
CLOSING

8.1) *Closing Date.* The consummation of the transactions provided for herein (the "Closing") shall take place at 9:00 a.m. (local time) on Friday, October 4, 2002, or as soon thereafter as all conditions to Closing have been satisfied or waived, or on such other date and/or at such other time as the parties may agree upon (the "Closing Date"). The Closing shall take place at such place or in such other manner (*e.g.*, by telecopy exchange of signature pages with originals to follow by overnight delivery) as the parties hereto may agree. Each party agrees to use its reasonable best efforts to ensure that all closing conditions to the other party's obligations are satisfied at or prior to the Closing.

8.2) *Proceedings.* All proceedings taken and all documents executed and delivered by the parties hereto at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delivered.

ARTICLE 9
INDEMNIFICATION

9.1) *Indemnification of Medtronic.* MacroPore shall indemnify, defend and hold harmless Medtronic and each of its subsidiaries, divisions, officers, directors, employees, and shareholders 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) whether or not involving a third-party claim (collectively "Indemnifiable Losses"), directly or indirectly resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of any one or more of the following:

(a) Any breach of any representation, warranty, covenant, obligation or agreement of MacroPore contained in this Agreement or any agreement, certificate or document executed and delivered by MacroPore pursuant hereto or in connection with any of the transactions contemplated by this Agreement; or

(b) Any liability or claimed liability of MacroPore not expressly assumed by Medtronic pursuant to this Agreement or any other agreement.

9.2) *Indemnification of MacroPore.* Medtronic shall indemnify, defend and hold harmless MacroPore and each of its subsidiaries, divisions, officers, directors, employees and shareholders 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 the following:

(a) Any breach of any representation, warranty, covenant, obligation or agreement of Medtronic contained in this Agreement or any agreement, certificate or document executed and delivered by Medtronic pursuant hereto or in connection with the transactions contemplated by this Agreement; or

(b) Any liability of MacroPore expressly assumed by Medtronic pursuant to this Agreement or any other agreement; or

(c) Any liability of MacroPore for personal injury to Medtronic employees while receiving training at MacroPore's facility pursuant to the terms of this Agreement, unless due to the gross negligence or willful misconduct of MacroPore.

9.3) *Third-Party Claims and Other Claims.*

(a) If a claim by a third party is made against any indemnified party, and if the indemnified party intends to seek indemnity with respect thereto under this Article 9, such indemnified party shall promptly notify the indemnifying party of such claim; provided, however, that failure to give timely notice shall not affect the rights of the indemnified party so long as the failure to give timely notice does not adversely affect the indemnifying party's ability to defend such claim against a third party. If the indemnifying party acknowledges that the indemnified party is entitled to indemnification hereunder for such claim, the indemnifying party shall be entitled to settle or assume the defense of such claim, including the employment of counsel reasonably satisfactory to the indemnified party. If the indemnifying party elects to settle or defend such claim, the indemnifying party shall notify the indemnified party within thirty (30) days (but in no event less than twenty (20) days before any pleading, filing or response on behalf of the indemnified party is due) of the indemnifying party's intent to do so. If the indemnifying party elects not to settle or defend such claim or fails to notify the indemnified party of the election within thirty (30) days (or such shorter period provided above) after receipt of the indemnified party's notice of a claim of indemnity hereunder, the indemnified party shall have the right to contest, settle or compromise the claim without prejudice to any rights to indemnification hereunder. Regardless of which party is controlling the settlement or defense of any claim, (i) both the indemnified party and indemnifying party shall act in good faith, (ii) the indemnifying party shall not thereby permit to exist any lien, encumbrance or other adverse charge upon any asset of any indemnified party or of its subsidiaries, (iii) the indemnifying party shall permit the indemnified party to participate in such settlement or defense through counsel chosen by the indemnified party, with all fees, costs and expenses of such counsel borne by the indemnified party, unless the indemnifying party and indemnified party have available inconsistent defenses to such third-party claim, in which case such fees, costs and expenses shall be borne by the indemnifying party, (iv) no entry of judgment or settlement of a claim may be agreed to without the written consent of the indemnified party, which consent shall not be unreasonably withheld, and (v) the indemnifying party shall promptly reimburse the indemnified party for the Indemnified Amount as incurred by the indemnified party pursuant to this Article 9. So long as the indemnifying party is reasonably contesting any such third party claim in good faith as permitted herein, the indemnified party shall not pay or settle any such claim (or, if it does, it shall not be indemnified for such settlement amount). The controlling party shall upon request deliver, or cause to be delivered, to the other party copies of all correspondence, pleadings, motions, briefs, appeals or other written statements relating to or submitted in connection with the settlement or defense of any such claim, and timely notices of any hearing or other court proceeding relating to such claim.

(b) A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought. Such notice shall state the amount of Indemnifiable Losses, if known, the method of computation thereof, and contain a reference to the provisions of the Agreement in respect to which such right of indemnification is claimed or arises. If the party from whom indemnification is sought disputes such claim, then the parties shall then follow the dispute resolution mechanism set forth on Exhibit H attached hereto.

9.4) *Indemnification Limitations.*

(a) MacroPore shall have no liability (for indemnification or otherwise) with respect to claims under Section 9.1 (other than claims for breaching Sections 5.11 or 5.16) until the total of all Indemnifiable Losses with respect to such matters, when added to the amount of all claims of Medtronic to indemnification under this Agreement and the License Agreement exceeds One Hundred Fifty Thousand Dollars ($150,000) (the "Threshold Amount") and then only for the amount by which such Indemnifiable Losses exceed the Threshold Amount. Notwithstanding anything to the contrary in the Agreement, the total amount of Indemnifiable Losses (other than

claims for breaching Sections 5.11 or 5.16) that MacroPore shall be obligated to pay to Medtronic in the aggregate shall not exceed the lesser of eighty percent (80%) of the total Purchase Price or the portion of the Purchase Price actually paid to and received by MacroPore pursuant to the terms of the Agreement (i.e., if the total amount of Indemnifiable Losses exceeds the portion of Purchase Price actually paid to MacroPore prior to such time but is less than 80% of the total Purchase Price, then Medtronic shall only offset such amounts against future installments of the Purchase Price up to the maximum of 80% of the total Purchase Price).

(b) In addition to any other remedies the indemnified party may have, the indemnified party shall be entitled to set-off any claims to indemnification hereunder against any amounts otherwise owed by the indemnified party or its Affiliates to the indemnifying party as follows: (i) one-half of the amount of Indemnifiable Losses which the indemnified party determines in good faith have been suffered or incurred (excluding Indemnifiable Losses that are merely threatened) may be set-off any time after such Indemnifiable Losses are suffered or incurred, and (ii) the remaining amount of such claim to indemnification may be set-off any time after such claim is finally determined. If the amount of a set-off asserted by an indemnified party exceeds the amount of such party's finally determined claim to indemnification, then such excess shall be promptly paid by the indemnified party upon such final determination, together with simple interest at the rate of six percent (6%) per annum on such excess accrued from the originally scheduled payment date against which such set-off was asserted.

(c) None of the limitations in this Section 9.4 shall in any way limit or prohibit any claim or cause of action based on fraud.

9.5) *Cooperation as to Indemnified Liability.* Each party hereto shall cooperate fully with the other parties with respect to access to books, records, or other documentation within such party's control, if deemed reasonably necessary or appropriate by any party in the defense of any claim that may give rise to indemnification hereunder.

9.6) *Nature of Indemnification.* The indemnified party's right to indemnification and payment of Indemnifiable Losses, or other remedy, based on the indemnifying party's representations, warranties, covenants and obligations, shall not be affected by any investigation conducted by the indemnified party or any knowledge acquired (or capable of being acquired) at any time by the indemnified party, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation. The parties recognize and agree that the representations, warranties and covenants operate as bargained for promises and risk allocation devices and that, accordingly, the parties' respective knowledge, and the waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, shall not affect the right to indemnification or payment of Indemnifiable Losses pursuant to this Article 9, or other remedy, based on such representations, warranties, covenants, and obligations.

9.7) *Tax Treatment.* The parties shall report any indemnification payment made pursuant to this Article 9 as a purchase price adjustment unless otherwise required by law.

ARTICLE 10
TERMINATION

10.1) *Termination Prior to Closing.* Notwithstanding any contrary provisions of this Agreement, the respective obligations of the parties hereto to consummate the Closing may be terminated and abandoned at any time at or before the Closing only as follows:

(a) By and at the option of Medtronic if the Closing shall not have occurred by November 1, 2002; provided that Medtronic shall not have breached in any material respect its obligations under

this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to consummate the Closing.

(b) By and at the option of MacroPore if the Closing shall not have occurred by November 1, 2002; provided that MacroPore shall not have breached in any material respect its obligations under this Agreement in any manner that shall have been the proximate cause of, or resulted in, the failure to consummate the Closing.

(c) At any time, without liability of any party to the others, upon the mutual written consent of MacroPore and Medtronic.

10.2) *No Waiver.* Nothing contained in this Article 10 shall be construed as a release or waiver by any party hereto of any of its rights against any other party arising out of any breach of this Agreement by the other party.

ARTICLE 11
MISCELLANEOUS

11.1) *Complete Agreement.* The Schedules and Exhibits to this Agreement shall be construed as an integral part of this Agreement to the same extent as if they had been set forth verbatim herein. This Agreement and the Schedules and Exhibits hereto 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.

11.2) *Survival of Representations and Warranties.* The representations and warranties contained in this Agreement shall survive and remain in full force and effect for two years after the Closing Date, except for the representations and warranties contained in Section 3.12 (Product Liability) or 3.13 (Environmental Matter), which claims shall survive until the expiration of all applicable statutes of limitation. No independent investigation by MacroPore or Medtronic, its counsel, or any of its agents or employees shall in any way limit or restrict the scope of the representations and warranties made by MacroPore or Medtronic in this Agreement.

11.3) *Waiver, Discharge, Amendment, Etc.* The failure of any party hereto to enforce at any time any of the provisions of this Agreement, shall in no way 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.

11.4) *Notices.* All notices hereunder shall be deemed given if in writing and delivered personally or sent by telecopy (with confirmation of transmission) or certified mail (return receipt requested) or reputable courier service to the parties at the following addresses (or at such other addresses as shall be specified by like notice):

if to Medtronic, to:

Medtronic, Inc.
World Headquarters
710 Medtronic Parkway
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
FAX No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
FAX No.: (763) 505-2542

and if to MacroPore, to:

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

with separate copies thereof addressed to:

MacroPore Biosurgery, Inc.
6740 Top Gun Street
San Diego, CA 92121
Attention: Manager of Legal Affairs
FAX (858) 458-0994

and

Brobeck, Phleger & Harrison LLP
12390 El Camino Real
San Diego, CA 92130
Attention: Hayden J. Trubitt, Esq.
FAX (858) 720-2555

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, by telecopy or by reputable courier service) or on the date that is three days after the date shown on the return receipt (if delivered by mail).

11.5) *Expenses.* Except as otherwise expressly provided herein, Medtronic and MacroPore shall each pay their own expenses (including, but not limited to, all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incident to this Agreement and the preparation for, and consummation of, the transactions provided for herein.

11.6) *Governing Law and Arbitration.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, including all matters of construction, validity, performance and enforcement, without giving effect to principles of conflict of laws. Any dispute arising out of or relating to this Agreement (including the formation, interpretation or alleged breach thereof) shall be settled by final and binding alternative dispute resolution conducted under the auspices of, and in accordance with, the provisions set forth in **Exhibit H**. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may be entered upon the arbitration award in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

11.7) *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); provided that, prior to disclosure of any provision of

this Agreement that either party considers particularly sensitive or confidential to any governmental agency or stock exchange, the parties shall cooperate to seek confidential treatment or other applicable limitations on the public availability of such information.

11.8) *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 the rights and obligations of MacroPore herein may not be assigned except that all such rights and obligations of MacroPore may be assigned to an entity that will succeed to substantially all of the polylactic-acid-related business of MacroPore, and the rights of Medtronic may be assigned only to an Affiliate of Medtronic or to such business organization that shall succeed to the business of Medtronic or of such subsidiary to which this Agreement relates.

11.9) *Titles and Headings; Construction.* The titles and headings to Sections herein and Exhibits and Schedules hereto 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. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective permitted successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

11.10) *Severability.* If any provision of this Agreement is held invalid, unenforceable or void by a court of competent jurisdiction, the remaining provisions shall nonetheless be enforceable according to their terms. In such case, the parties agree to negotiate in good faith to create an enforceable contractual provision to achieve the purpose of the invalid provision. Further, if any provision is held to be overbroad as written, such provision shall be deemed amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and shall be enforced as amended.

11.11) *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.

11.12) *Confidentiality.* Each party will (i) keep confidential, and not disclose to others, all Confidential Information of the other party, and (ii) not use any of the other party's Confidential Information for its own direct or indirect benefit, or the direct or indirect benefit of any third party, except that a party may use the other party's Confidential Information to the extent necessary to perform its duties and obligations, or to enforce such party's rights, under this Agreement, or to exercise such party's rights under the License Agreement. The foregoing shall not prohibit disclosures: (x) made to the receiving party's sub-distributors, employees or agents who have a "need to know" the other party's Confidential Information to the extent such disclosure is necessary to perform such party's duties and obligations, or to enforce such party's rights, under this Agreement or the License Agreement, provided that such sub-distributors, employees or agents agree in writing or are otherwise actually compelled to comply with the obligations of this Section 11.12, and the receiving party remains directly responsible to the disclosing party for their compliance; or (y) compelled to be made by any requirement of law or pursuant to any legal, regulatory or investigative proceeding before any court, or governmental or regulatory authority, agency or commission so long as the party so compelled to make disclosure of Confidential Information of the other party provides prior written notice to such other party so that the other party may seek a protective order or other remedy to protect the confidentiality of the Confidential Information and/or waive the compelled party's compliance with this Section 11.12, provided that all such information so disclosed (other than in a way which makes it generally available to the public) shall remain Confidential Information for all other purposes. If such protective order, other remedy or waiver is not obtained by the time the compelled party is required to comply, the compelled party may furnish only that portion of the Confidential Information of the other party that it is legally compelled, in the opinion of counsel, to disclose and shall request, at the other party's

expense, that such Confidential Information be accorded confidential treatment (if such procedure is available), including redaction of any payment terms specified herein. 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. This Section shall survive indefinitely with respect to manufacturing information and, with respect to all other Confidential Information, for a period of three years from and after the Closing or any termination of this Agreement.

(Remainder of page intentionally blank; signatures follow on next page)

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

MEDTRONIC PS MEDICAL, INC.

By: _____

Its: *Vice President*

MACROPORE, INC.

By: _____

Its _____

SOLELY AS TO SECTION 5.11

_____

Chris Calhoun

SCHEDULES:

2.8	—	Transition Timetable
3.3(a)	—	Cost Statements
3.3(b)	—	Manufacturing Yields
5.5	—	Training
5.6	—	Know-How Transfer
5.16		International CMF Distributor List

EXHIBITS:

A	—	License Agreement
B	—	Accessories
C	—	Amended and Restated Distribution Agreement
D	—	Assignment and Assumption Agreement
E	—	Bill of Sale
F	—	Successful Clinical Outcome Data Protocols
G	—	Letter of Assets
H	—	Alternative Dispute Resolution
I	—	Excluded Assets

The following Schedules and Exhibits have been omitted in accordance with Regulation S-K Item 601(b)(2). MacroPore Biosurgery, Inc. agrees to provide a copy of any omitted Schedule or Exhibit to the Securities and Exchange Commission upon request.

SCHEDULES:

2.8	—	Transition Timetable [For Training, Know-How & Equipment Transfer]
3.3(a)	—	Cost Statements [MacroPore's costs to produce Craniomaxillofacial Products]
3.3(b)	—	Manufacturing Yields [Method for Determining Yields]
5.5	—	Training
5.6	—	Know-How Transfer [Schedule used to determine when Know-How Transfer is complete]
5.16	—	International CMF Distributor List

EXHIBITS:

A	—	Form of License Agreement [The executed License Agreement has been filed with this Form 8-K as Exhibit 2.2]
B	—	Accessories [List of accessories used in the Business]
C	—	Form of Amended and Restated Distribution Agreement [The executed Amended and Restated Distribution Agreement has been filed with this Form 8-K as Exhibit 2.2]
D	—	Form of Assignment and Assumption Agreement [Standard Form]
E	—	Form of Bill of Sale [Standard Form]
F	—	Successful Clinical Outcome Data Protocols [Study protocol to be used to determine marketability of the Faster Resorbing Polymer]
G	—	Letter of Assets [List of all fixtures, molds, machines and equipment to be transferred to Medtronic]
H	—	Alternative Dispute Resolution
I	—	Excluded Assets [List of assets not to be transferred to Medtronic]

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ASSET PURCHASE AGREEMENT
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ARTICLE 2 PURCHASE, SALE AND TRANSFER OF SPECIFIED ASSETS
ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF MACROPORE
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF MEDTRONIC
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*** Certain confidential portions of this Exhibit were omitted by means of blackout of the text (the "Mark"). This Exhibit has been filed separately with the Secretary of the Commission without the Mark pursuant to the Company's Application Requesting Confidential Treatment under Rule 24b-2 under the Securities and Exchange Act of 1934.

Exhibit 2.2

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into as of October 8, 2002, (the "Effective Date") between **Macropore Biosurgery, Inc.**, ("MPI"), a Delaware corporation, and **Medtronic PS Medical, Inc.**, a California corporation ("Medtronic").

WITNESSETH:

WHEREAS, Medtronic and MPI have entered into an Asset Purchase Agreement dated September 30, 2002 pursuant to which MPI is selling Medtronic certain assets (the "Purchase Agreement"); and

WHEREAS, as part of the transaction between the parties relating to the Purchase Agreement, MPI will exclusively license to Medtronic rights to certain intellectual property in accordance with the terms of the Agreement; and

WHEREAS, the execution and delivery of this Agreement is a condition precedent to the consummation of the Purchase Agreement.

AGREEMENTS:

NOW THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, and in the Purchase Agreement 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 definitions and terms shall have the designated meanings:

"*Affiliate*" has the meaning set forth in the Purchase Agreement.

"*Agreement*" means this Agreement and all Exhibits hereto.

"*Bioabsorbable Implants*" means bioabsorbable and/or bioresorbable implant products, including but not limited to Faster Resorbing Polymer and similar products, for use in medical applications, including without limitation, bone fixation and reconstruction, but specifically excluding the following: MPI's bioabsorbable and/or bioresorbable thin film products, including TS surgical film (Surgi-Wrap™); MPI bioabsorbable and/or bioresorbable drug delivery products, systems and devices specifically adapted for use with a drug developed by or for MPI or licensed to MPI by a party other than Medtronic; and bioabsorbable and/or bioresorbable products, systems and devices of MPI adapted for use with stem cells or growth factors by or for MPI by a party other than Medtronic. Notwithstanding the forgoing, if a bioabsorbable and/or bioresorbable implant product can be used without stem cells, growth factors, and/or as a drug delivery vehicle, that product by itself (without the inclusion of a specific drug to be delivered, stem cell or growth factor) is included in this definition of Bioabsorbable Implants.

"*Confidential Information*" means Intellectual Property (as defined below) disclosed (whether before or during the term of this Agreement) by or on behalf of one of the parties (the "*disclosing party*") to the other party (the "*receiving party*"), generated under this Agreement, or otherwise learned by the receiving party from the disclosing party, excluding information which:

(a) was already in the possession of the receiving party prior to its original receipt from the disclosing party (provided that the receiving party is able to provide the disclosing party with written proof thereof and, if received from a third party, that such information was acquired without any party's breach of a confidentiality or non-disclosure obligation to the disclosing party related to such information);

(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 the receiving party from a source other than the disclosing party which source has rightfully obtained such information and has no direct or indirect obligation of non-disclosure or confidentiality to the disclosing party with respect thereto; or

(d) has been independently developed by or for the receiving party without breach of this Agreement or use of any Confidential Information of the other party (provided that the receiving party is able to provide the disclosing party with written proof thereof).

"*Expiration*" or "*Expired*" means, with respect to a particular patent, the patent's expiration, abandonment, cancellation, disclaimer, award to another party other than MPI or Medtronic in an interference proceeding, or declaration of invalidity or unenforceability by a court or other authority of competent jurisdiction (including final rejection in a re-examination or re-issue proceeding).

"*Faster Resorbing Polymer*" means the polymer currently in development by MPI that is composed of [***] and has product characteristics of [***]

"*Field of Use*" means any skeletal fixation and/or reconstruction application in each case and only to the extent that the application pertains to neurosurgery (cranial and skull base only), craniomaxillofacial, oral maxillofacial, reconstructive (head/face only), otolaryngology, orthognathic, mandibular, plastic surgery (head/face only), and/or iliac crest.

"*Field of Use Business*" means MPI's activities in connection with the design, development, manufacturing, and sale of Bioabsorbable Implants for use in the Field of Use, as conducted by MPI to the date of this Agreement.

"*Intellectual Property*" means U.S. and foreign patents and patent applications, trademarks, service marks and registrations thereof and applications therefor, copyrights and copyright registrations and applications, mask works and registrations thereof, know-how, trade secrets, inventions, discoveries, ideas, technology, data, information, methods, processes, drawings, designs, licenses, computer programs and software, and technical information including but not limited to information embodied in material specifications, processing instructions, equipment specifications, product specifications, confidential data, electronic files, research notebooks, invention disclosures, research and development reports and the like related thereto, and all amendments, modifications, and improvements to any of the foregoing.

"*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.

"*Know-How*" shall have the meaning set forth in the Purchase Agreement.

"*Knowledge*" shall have the meaning set forth in the Purchase Agreement.

"*Licensed Product(s)*" means Bioabsorbable Implants covered by MPI Intellectual Property or MPI Improvement Intellectual Property and accessories developed for use with or currently marketed with such Bioabsorbable Implants.

"*MPI Improvement Intellectual Property*" means any MPI Intellectual Property (as defined below) covering any and all improvements and modifications to Bioabsorbable Implants and future generations of Bioabsorbable Implants owned or controlled by MPI during the five year period following the effective date of this Agreement, including without limitation, rights to MPI's Faster Resorbing Polymer arising after the effective date of this Agreement.

"*MPI Intellectual Property*" means the Intellectual Property related to or useful in the Field of Use, including: (a) Patents related to the Bioabsorbable Implants and/or the Specified Assets; (b) copyrights and all works of authorship including all translations, adaptations, combinations, compilations and derivations of each of the foregoing owned or controlled by MPI related to the Bioabsorbable Implants and/or the Specified Assets; (c) Trademarks; (d) Know-How; (e) computer software (including both source and object code) and all related program listings and data, systems, user and other documentation owned or controlled by MPI related to the Bioabsorbable Implants and/or the Specified Assets; (f) mask works owned or controlled by MPI related to the Bioabsorbable Implants and/or the Specified Assets; (g) all other forms of right by which one may effectively exclude another from using or otherwise enjoying any and each of the foregoing; and (h) all applications for any and each of the foregoing including applications for patent or registration, together with all registrations, renewals and extensions for any and each of the foregoing. MPI Intellectual Property does not include Intellectual Property to the extent that such Intellectual Property covers solely bioabsorbable thin film implants, such as MPI's SurgiWrap™, drug delivery products or systems, stem cell products or systems, or growth factor products or systems developed by or on behalf of MPI by a party other than Medtronic.

"*Patents*" means: (a) the patents and patent applications, together with any patents that may issue based thereon, set forth on **Exhibit A**; (b) any other patents or patent applications now or hereafter owned by or licensed (with the right to sublicense) to MPI that are necessary or useful for designing, developing, processing, manufacturing, using or selling Licensed Products; (c) all continuation, divisional, re-issue, re-examination and substitution applications that may be filed by or for the benefit of MPI based on the foregoing referenced patents or patent application, together with any patents that may issue based thereon; and (d) all foreign applications that may be filed by or for the benefit of MPI based on the foregoing referenced U.S. patents and patent applications, together with all patents which may issue based thereon.

"*Specified Assets*" has the meaning set forth in the Purchase Agreement.

"*Trademarks*" means (a) the trademark and trademark applications, together with any registrations that may issue based thereon, set forth on **Exhibit B**; and (b) any other U.S. or foreign trademarks, service marks, trademark applications, service mark applications, trademark registrations, service mark registrations, now or hereafter owned by or licensed (with the right to sublicense) to MPI used in connection with the sale of Licensed Products.

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, limited liability company, trust, unincorporated organization or government or any department or agency thereof.

ARTICLE 2
LICENSE TO MEDTRONIC

2.1 *Grant of License.* Subject to the terms and conditions of this Agreement, MPI hereby grants to Medtronic and its Affiliates a perpetual, worldwide, sublicensable (subject to the limitations set forth in Section 2.4 below), exclusive, royalty-free license to the MPI Intellectual Property and MPI Improvement Intellectual Property to make, have made, use, import, offer to sell, sell and distribute Licensed Products in the Field of Use and otherwise to commercialize and exploit the MPI Intellectual Property and MPI Improvement Intellectual Property in the Field of Use, including, without limitation, an exclusive, royalty-free license to use the specified Trademarks in connection with the development, manufacture, sale, marketing and other exploitation of Licensed Products in the Field of Use. MPI grants no license whatsoever except as expressly provided in the previous sentence and MPI retains all rights worldwide to make, have made, use import, offer to sell, sell and distribute products and otherwise to commercialize and exploit the MPI Intellectual Property and MPI Improvement Intellectual Property including Trademarks for all applications outside the Field of Use. No licenses or right to the MPI Intellectual Property and MPI Improvement Intellectual Property are granted to Medtronic by implication. For the avoidance of doubt, Medtronic and its Affiliates shall have the right to make, have made, use, import, offer to sell, sell and distribute Licensed Products in the Field of Use that include products or systems embodying improvements or modifications to Bioabsorbable Implants and/or accessories useful with Bioabsorbable Implants made by or for Medtronic without the assistance of MPI.

2.2 *Assistance.* MPI shall, upon Medtronic's reasonable request from time to time, provide to Medtronic at no charge writings, drawings and materials, if any, that document the MPI Intellectual Property or MPI Improvement Intellectual Property, including copies of any patents, patent applications and documents representing embodiments of the MPI Intellectual Property and/or MPI Improvement Intellectual Property. In addition, for a period of seven years from the Effective Date of this Agreement, MPI will provide reasonable explanation and assistance to Medtronic to allow Medtronic to understand the inventions covered by the MPI Intellectual Property or MPI Improvement Intellectual Property.

2.3 *Quality Control.* Medtronic agrees that its use of the Trademarks including the nature and quality of the services provided and the Licensed Products sold by it in connection with the Trademarks shall conform to standards set by and shall be under MPI's control. The parties agree that Medtronic shall be in compliance with MPI quality standards regarding the use of the Trademarks with the Licensed Products so long as Medtronic maintains the level of quality characterized by the services and goods currently offered by MPI related to the Field of Use Business. Medtronic agrees to cooperate with MPI in facilitating MPI's control of such nature and quality and to supply MPI with specimens of use of the Trademarks upon request. Medtronic shall comply with all applicable laws and regulations and obtain all appropriate government approvals pertaining to the sale, distribution and advertising of Licensed Products.

2.4 *Restriction on Sublicense.* Medtronic's right to sublicense its rights hereunder shall be limited as follows: (a) Medtronic shall be responsible for and indemnify MPI for actions or omissions of sublicensees and any breach by the sublicensee (whether by action, omission or otherwise) shall be deemed a breach by Medtronic; (b) all sublicense agreements shall contain terms at least as protective

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of the MPI Intellectual Property and MPI Improvement Intellectual Property as the terms in this Agreement; and (c) all sublicense agreements shall expressly state that MPI retains all right, title, and interest in and to all MPI Intellectual Property and MPI Improvement Intellectual Property, other than those rights herein licensed to Medtronic and its Affiliates, and there shall be no license or rights granted by implication.

ARTICLE 3
ADDITIONAL OBLIGATIONS

3.1 *Maintain Licenses in Force.* MPI shall comply with all of the provisions of, and shall maintain in full force and effect for the maximum duration thereof as defined in the current contractual provisions thereof, all license agreements with third parties pursuant to which MPI is licensee of Intellectual Property included in the MPI Intellectual Property or MPI Improvement Intellectual Property necessary for or related to the conduct of the Field of Use Business, including without limitation the licenses set forth on **Exhibit C**. MPI shall promptly notify Medtronic if any such third party licensor alleges any breach by MPI of any such license agreement. If it is reasonable for Medtronic to do so under the circumstances, Medtronic shall be entitled, but not obligated, to cure any alleged breach by MPI of such license agreement and entitled to indemnification from MPI pursuant to Sections 6.1, 6.4 and 6.5. MPI agrees to maintain in full force and effect all MPI Intellectual Property and MPI Improvement Intellectual Property covering applications within the Field of Use, or if MPI wishes to abandon any such MPI Intellectual Property or MPI Improvement Intellectual Property, it shall notify Medtronic in writing at least ninety days before any abandonment of such MPI Intellectual Property or MPI Improvement Intellectual Property and Medtronic shall have the right, but not the obligation, to maintain such MPI Intellectual Property or MPI Improvement Intellectual Property in full force and effect at its expense. MPI also agrees that it shall not transfer any of its rights, title or interest in the MPI Intellectual Property or MPI Improvement Intellectual Property to any third party without first notifying such third party of Medtronic's rights under this Agreement and obtaining such third party's express agreement to assume MPI's obligations under this Agreement.

ARTICLE 4
INTELLECTUAL PROPERTY

4.1 *Confidentiality.* Each party will, for the term of this Agreement and thereafter, (i) keep confidential and not disclose to others, all Confidential Information of the other party, and (ii) not use any of the other party's Confidential Information for its own direct or indirect benefit, or the direct or indirect benefit of any third party, except that a party may use the other party's Confidential Information to the extent necessary to perform its duties and obligations, or to enforce such party's rights, under this Agreement If the Confidential Information is part of the MPI Intellectual Property or MPI Improvement Intellectual Property, Medtronic and its Affiliates may use it within the scope of the licenses granted in Section 2.1 herein. For the avoidance of doubt, the parties agree that any assistance and any documentation related to the assistance provided to Medtronic by MPI pursuant to Section 2.2 will be considered Confidential Information of MPI unless it falls within one of the exclusions set forth in the definition of Confidential Information. The foregoing shall not prohibit disclosures: (x) made to the receiving party's sub-distributors, employees or agents who have a "need to know" the other party's Confidential Information to the extent such disclosure is necessary to perform such party's duties and obligations, or to enforce such party's rights, under this Agreement, provided that such sub-distributors, employees or agents agree in writing or are otherwise actually compelled to comply with the obligations of this Section 4.1, and the receiving party remains directly responsible

to the disclosing party for their compliance; or (y) compelled to be made by any requirement of law or pursuant to any legal, regulatory or investigative proceeding before any court, or governmental or regulatory authority, agency or commission so long as the party so compelled to make disclosure of Confidential Information of the other party provides prior written notice to such other party so that the other party may seek a protective order or other remedy to protect the confidentiality of the Confidential Information and/or waive the compelled party's compliance with this Section 4.1, provided that all such information so disclosed (other than in a way which makes it generally available to the public) shall remain Confidential Information for all other purposes. If such protective order, other remedy or waiver is not obtained by the time the compelled party is required to comply, the compelled party may furnish only that portion of the Confidential Information of the other party that it is legally compelled, in the

opinion of counsel, to disclose and shall request, at the other party's expense, that such Confidential Information be accorded confidential treatment (if such procedure is available), including redaction of any payment terms specified herein. 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.

4.2 *Protection of MPI Intellectual Property and MPI Improvement Intellectual Property.* During the six year period following the effective date of this Agreement, MPI shall inform Medtronic on a semi-annual basis of any Invention, improvement, upgrading or modification it has made during the first five years of this Agreement arising out of MPI Intellectual Property or MPI Improvement Intellectual Property. MPI shall have the right to control the filing, prosecution and maintenance of any Patent related to such Invention, improvement, upgrading or modification. MPI shall notify Medtronic of the filing of any application for patent covering any such Invention, improvement upgrading or modification and agrees to cooperate with Medtronic to reasonably assure that all such application(s) will cover, to MPI's knowledge, all patentable items of commercial interest and importance to Medtronic in the Field of Use. MPI shall notify Medtronic of any office actions received by MPI for the Patents within a reasonable amount of time after receiving such office actions and shall allow Medtronic to discuss with MPI responses to such office actions relating to claims covering applications in the Field of Use. If MPI decides to abandon a claim of a pending patent application within the Patents Medtronic may continue prosecution of such claim at Medtronic's expense (such claim hereafter referred to as a "Medtronic Claim"). If a Medtronic Claim issues in a Patent then such Medtronic Claim shall be included within the license grant to Medtronic. Each party shall cooperate with the other party, as reasonably requested, to execute all lawful papers and instruments and to make all rightful oaths and declarations as may be necessary in the preparation, prosecution, maintenance and enforcement of any and all Patents to which this Article 4 applies.

4.3 *Prosecution of Infringement of MPI Intellectual Property and MPI Improvement Intellectual Property.* Each of Medtronic and MPI shall promptly notify the other if it knows or has reason to believe that rights to the MPI Intellectual Property or MPI Improvement Intellectual Property in the Field of Use are being infringed or misappropriated by a third party or that such infringement or misappropriation is threatened. Medtronic shall have the first right to prosecute such alleged infringement or misappropriation for Medtronic's own account. In the event Medtronic elects to prosecute such alleged infringement or misappropriation for its own account, Medtronic shall be solely responsible for payment of all of its own costs of prosecution and of negotiating settlement, and shall retain all proceeds from such prosecution. Medtronic's prosecution of such infringement shall be by counsel reasonably acceptable to MPI. Medtronic shall have the right to join MPI as a party plaintiff to any such proceeding if Medtronic believes it is necessary to successfully prosecute such infringement or misappropriation. MPI shall cooperate in connection with the initiation and prosecution by Medtronic of such suit. Notwithstanding the foregoing, MPI shall have the right to initiate or join in any prosecution concerning the MPI Intellectual Property or the MPI Improvement Intellectual Property. In the event MPI initiates or joins as a plaintiff in any such action involving the MPI Intellectual Property or the MPI Improvement Intellectual Property, Medtronic and MPI shall attempt to agree on a sharing ratio which shall apply to the expenses of prosecution and to the proceeds of prosecution. If Medtronic and MPI cannot agree, the ratio shall be that of the proceeds attributable to applications in the Field of Use to that attributable to applications outside of the Field of Use. In any case where Medtronic exercises its first right to prosecute, Medtronic shall control the handling of the case; provided, that if the alleged infringer challenges the validity of a claim of a Patent which has primary applicability outside the Field of Use, MPI shall control the handling of that portion of the case. If Medtronic does not prosecute any infringement involving the MPI Intellectual Property or the MPI Improvement Intellectual Property in the Field of Use, then MPI shall be entitled to prosecute it without any participation by Medtronic and to keep all proceeds from such prosecution.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 *Representations of MPI.* MPI represents, warrants and covenants to Medtronic that:

(a) MPI is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full corporate power to conduct the business in which it is presently engaged and to enter into and perform its obligations under this Agreement.

(b) MPI has taken all necessary corporate action under the laws of the state of its incorporation and its certificate of incorporation and by-laws to authorize the execution and consummation of this Agreement and this Agreement constitutes the valid and legally binding agreement of MPI enforceable against MPI in accordance with the terms hereof, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein will violate any provision of the certificate of incorporation or bylaws of MPI or any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court or governmental agency or instrumentality, domestic or foreign, or conflict with or result in any breach of any of the terms of or constitute a default under or result in termination of or the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature pursuant to the terms of any contract or agreement to which MPI is a party or by which MPI or any of its assets is bound.

(d) The MPI Intellectual Property includes all Intellectual Property that is used in or necessary to the conduct of the Field of Use Business, including the development, manufacture and sale of the Faster Resorbing Polymer. MPI exclusively owns, or has valid and subsisting exclusive license rights (with the right to sublicense) to all Intellectual Property necessary for or related to the conduct of the Field of Use Business, subject to no lien, charge, security interest, mortgage, pledge, restriction, adverse claim or any other encumbrance whatsoever (and without any obligation to any person or entity for royalties, fees or commissions). No current or former stockholder, employee or consultant of MPI has any rights in or to any of the MPI Intellectual Property or the MPI Improvement Intellectual Property. The MPI Intellectual Property is valid and enforceable and has not been successfully challenged

and is not currently being challenged in any judicial or administrative proceeding. MPI's execution and performance of this Agreement, the transactions contemplated herein and Medtronic's use of the MPI Intellectual Property as it is currently being used in the Field of Use Business will not infringe, misappropriate, misuse or conflict with the rights, including patent and other Intellectual Property or contractual rights, of third parties. MPI has the rights and authority to enter into this Agreement and to grant the license granted herein. Except as described **Exhibit E**, to MPI's Knowledge no person or entity nor such person's or entity's business or products has infringed, misused, misappropriated or conflicted with the MPI Intellectual Property or currently is infringing, misusing, misappropriating or conflicting with such MPI Intellectual Property.

(e) There are no actions, suits, claims, disputes or proceedings or governmental investigations pending or to MPI's Knowledge threatened against MPI or any of its Affiliates with respect to the MPI Intellectual Property or the use thereof by MPI, either at law or in equity, before any court or administrative agency or before any governmental department, commission, board, bureau, agency or instrumentality, or before any arbitration board or panel whether located in the United States or a foreign country. MPI has not failed to comply with any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court or other governmental agency or instrumentality, domestic or foreign, with respect to the Field of Use Business.

(f) All MPI Intellectual Property identified in Exhibits A and B have the status indicated therein and all applications are still pending in good standing and have not been abandoned. The patents identified in **Exhibit A** constitute all of the current patents and patent applications having applicability to Licensed Products and necessary for or related to the conduct of the Field of Use Business. MPI has made all statutorily required filings, if any, to record its interests and taken reasonable actions to protect its rights in the MPI Intellectual Property and all Intellectual Property necessary for the conduct of the Field of Use Business.

5.2 *Representations of Medtronic.* Medtronic represents, warrants and covenants to MPI that:

(a) Medtronic is a corporation duly organized, validly existing, and in good standing under the laws of the State of California and has full corporate power to conduct the business in which it is presently engaged and to enter into and perform its obligations under this Agreement.

(b) Medtronic has taken all necessary corporate action under the laws of the state of its incorporation and its articles of incorporation and bylaws to authorize the execution and consummation of this Agreement and this Agreement constitutes the valid and legally binding agreement of Medtronic enforceable against Medtronic in accordance with the terms hereof, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein will violate any provision of the articles and bylaws of Medtronic or any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court or governmental agency or instrumentality, domestic or foreign, or conflict with or result in any breach of any of the terms of or constitute a default under or result in termination of or the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature pursuant to the terms of any contract or agreement to which Medtronic is a party or by which Medtronic or any of its assets is bound.

ARTICLE 6
INDEMNIFICATION

6.1 *Indemnification by MPI.* MPI shall indemnify, defend and hold harmless Medtronic and each of its subsidiaries, officers, directors, shareholder, employees, agents and affiliates (collectively, all such indemnitees are referred to in this Section as "Medtronic") against and in respect of any and all claims, demands, losses, obligations, liabilities, damages, deficiencies, actions, settlements, judgments, costs and expenses which Medtronic may incur or suffer or with which it may be faced (including reasonable costs and legal fees incident thereto or in seeking indemnification therefor), (referred to as "Costs") arising out of or based upon the breach by MPI of any of its representations, warranties, covenants or agreements contained or incorporated in this Agreement or any agreement, certificate or document executed and delivered to Medtronic by MPI in connection with the transactions hereunder. An amount for which Medtronic is entitled to indemnification pursuant hereto is referred to as an "Indemnified Amount."

6.2 *Indemnification by Medtronic.* Medtronic shall indemnify, defend and hold harmless MPI and each of its subsidiaries, officers, directors, shareholder, employees, agents and affiliates (collectively, all such indemnitees are referred to in this Section as "MPI") against and in respect of any and all claims, demands, losses, obligations, liabilities, damages, deficiencies, actions, settlements, judgments, costs and expenses which MPI may incur or suffer or with which it may be faced (including reasonable costs and legal fees incident thereto or in seeking indemnification therefor), (referred to as "Costs") arising out of or based upon the breach by Medtronic of any of its representations, warranties, covenants or agreements contained or incorporated in this Agreement. An amount for which MPI is entitled to indemnification pursuant hereto is referred to as an "Indemnified Amount."

6.3 *Third Party Claims.* If a claim by a third party is made against any indemnified party, and if the indemnified party intends to seek indemnity with respect thereto under this Article 6, such indemnified party shall promptly notify the indemnifying party of such claim; provided, however, that failure to give timely notice shall not affect the rights of the indemnified party so long as the failure to give timely notice does not adversely affect the indemnifying party's ability to defend such claim against a third party. If the indemnifying party acknowledges that the indemnified party is entitled to indemnification hereunder for such claim, the indemnifying party shall be entitled to settle or assume the defense of such claim, including the employment of counsel reasonably satisfactory to the indemnified party. If the indemnifying party elects to settle or defend such claim, the indemnifying party shall notify the indemnified party within thirty (30) days (but in no event less than twenty (20) days before any pleading, filing or response on behalf of the indemnified party is due) of the indemnifying party's intent to do so. If the indemnifying party elects not to settle or defend such claim or fails to notify the indemnified party of the election within thirty (30) days (or such shorter period provided above) after receipt of the indemnified party's notice of a claim of indemnity hereunder, the indemnified party shall have the right to contest, settle or compromise the claim without prejudice to any rights to indemnification hereunder. Regardless of which party is controlling the settlement of defense of any claim, (a) both the indemnified party and indemnifying party shall act in good faith, (b) the indemnifying party shall not thereby permit to exist

any lien, encumbrance or other adverse charge upon any asset of any indemnified party or of its subsidiaries, (c) the indemnifying party shall permit the indemnified party to participate in such settlement or defense through counsel chosen by the indemnified party, with all fees, costs and expenses of such counsel borne by the indemnified party, unless the indemnifying party and indemnified party have available inconsistent defenses to such third-party claim, in which case such fees, costs and expenses shall be borne by the indemnifying party, (d) no entry of judgment or settlement of a claim may be agreed to without the written consent of the indemnified party, which consent shall not be unreasonably withheld, and (e) the indemnifying party shall promptly reimburse the indemnified party for the Indemnified Amount as incurred by the indemnified party pursuant to this Article 6. So long as the indemnifying party is reasonably contesting any such third party claim in good faith and the foregoing clause (b) is being complied with, the indemnified party shall not pay or settle any such claim (or, if it does, it shall not be indemnified for such settlement amount). The controlling party shall upon request deliver, or cause to be delivered, to the other party copies of all correspondence, pleadings, motions, briefs, appeals or other written statements relating to or submitted in connection with the settlement or defense of any such claim, and timely notices of any hearing or other court proceeding relating to such claim.

6.4 *Set-Off.* If Medtronic is entitled to indemnification under this Article 6, Medtronic shall be entitled in its discretion, without limitation of any other rights or remedies of Medtronic, to set-off any claims to indemnification hereunder against any amounts otherwise owed by Medtronic or its Affiliates to MPI as follows: (i) one-half of the Indemnified Amount which Medtronic determines in good faith has been suffered or incurred (excluding Indemnified Amounts that are merely threatened) may be set-off any time after such Indemnifiaed Amount is suffered or incurred, and (ii) the remaining amount of such claim to indemnification may be set-off any time after such claim is finally determined. If the amount of a set-off asserted by Medtronic exceeds the amount of Medtronic's finally determined claim to indemnification, then such excess shall be promptly paid by the indemnified party upon such final determination, together with simple interest at the rate of six percent (6%) per annum on such excess accrued from the originally scheduled payment date against which such set-off was asserted.

6.5 *Non-Third Party Claims.* A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought. Such notice shall state the amount of the Indemnified Amount, if known, the method of computation thereof, and contain a reference to the provisions of this Agreement in respect to which such right of indemnification is claimed or arises. If the party from whom indemnification is sought disputes such

claim then the parties shall then follow the dispute resolution mechanism set forth on **Exhibit D** attached hereto.

6.6) *Indemnification Limitations.*

(a) MPI shall have no liability (for indemnification or otherwise) with respect to claims under Article 6 until the total of all Indemnifiable Losses with respect to such matters, when added to the amount of all claims of Medtronic to indemnification under the Asset Purchase Agreement exceeds One Hundred Fifty Thousand Dollars ($150,000) (the "Threshold Amount") and then only for the amount by which such Indemnifiable Losses exceed the Threshold Amount. Notwithstanding anything to the contrary in the Agreement, the total amount of Indemnifiable Losses that MPI shall be obligated to pay to Medtronic in the aggregate shall not exceed the lesser of eighty percent (80%) of the total Purchase Price or the portion of the Purchase Price actually paid to and received by MPI pursuant to the terms of the Asset Purchase Agreement (i.e., if the total amount of Indemnified Amounts exceeds the portion of the Purchase Price actually paid to MPII prior to such time but is less than 80% of the total Purchase Price, then Medtronic shall only offset such amounts against future installments of the Purchase Price up to the maximum of 80% of the total Purchase Price).

(b) None of the limitations in this Section 6.6 shall in any way limit or prohibit any claim or cause of action based on fraud.

6.7) *Cooperation as to Indemnified Liability.* Each party hereto shall cooperate fully with the other parties with respect to access to books, records, or other documentation within such party's control, if deemed reasonably necessary or appropriate by any party in the defense of any claim that may give rise to indemnification hereunder.

6.8) *Nature of Indemnification.* The indemnified party's right to indemnification and payment of Indemnifiable Amounts, or other remedy, based on the indemnifying party's representations, warranties, covenants and obligations, shall not be affected by any investigation conducted by the indemnified party or any knowledge acquired (or capable of being acquired) at any time by the indemnified party, whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation. The parties recognize and agree that the representations, warranties and covenants operate as bargained for promises and risk allocation devices and that, accordingly, the parties' respective knowledge, and the waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, shall not affect the right to indemnification or payment of Indemnifiable pursuant to this Article 6, or other remedy, based on such representations, warranties, covenants, and obligations.

ARTICLE 7
TERM AND TERMINATION

7.1 *Term.* Unless otherwise terminated under provisions of Section 7.2, this Agreement shall continue until such time as all MPI Patents licensed pursuant to Section 2.1 have Expired. Termination of this Agreement for any reason will not affect Section 4.1 or the exclusive license rights granted to Medtronic in Section 2.1, which shall survive termination of this Agreement.

7.2 *Termination.* Medtronic may terminate this Agreement, at its option and without prejudice to any of its other legal and equitable rights and remedies, by giving MPI notice in writing at least thirty (30) days in advance of the effective date of such termination.

ARTICLE 8
FORCE MAJEURE

8.1 *Force Majeure.* Neither party shall be in default because of any failure to perform such party's obligations under this Agreement if such failure arises from causes beyond the control of such party ("the first party") and without the fault or negligence of such first party, including without limitation, Acts of God or of the public enemy, acts of terrorism, acts of the Government in either its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, or freight embargoes (each a "Force Majeure Event"). In each instance, the failure to perform must be beyond the reasonable control and without the fault or negligence of the first party.

8.2 *Notice.* If it appears that performance under of obligations may be delayed by a Force Majeure Event, the first party will immediately notify the other party as soon as practicable in writing at the address specified in this Agreement. During the period that the performance by one of the parties of its obligations has been suspended by reason of a Force Majeure Event, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

ARTICLE 9
MISCELLANEOUS

9.1 *Assignment.* Neither party shall have the right to assign or otherwise transfer its rights and obligations under this Agreement (whether by merger, share exchange, combination or consolidation of any type, operation of Law, purchase or otherwise) except with the prior written consent of the other party, which consent will not be unreasonably withheld, provided that, either Medtronic or MPI may, without a need for consent, assign its respective rights and obligations pursuant to this Agreement to any person who, by merger, share exchange, combination or consolidation of any type, purchase, operation of law, asset purchase or otherwise, acquires substantially all of the business of the assigning party to which this Agreement relates. Any prohibited assignment shall be null and void.

9.2 *Complete Agreement.* This Agreement, the Purchase Agreement and the Exhibits of each 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.

9.3 *Governing Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, including all matters of construction, validity, performance and enforcement, without giving effect to principles of conflict of laws.

9.4 *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.

9.5 *Notices.* All notices hereunder shall be deemed given if in writing and delivered personally or sent by telecopy (with confirmation of transmission) or certified mail (return receipt requested) or reputable courier service to the parties at the following addresses (or at such other addresses as shall be specified by like notice):

if to Medtronic, to:

Medtronic, Inc.
World Headquarters
710 Medtronic Parkway
Minneapolis, MN 55432-5604

with duplicate copies thereof addressed to

Attention: General Counsel
FAX: (763) 572-5459
and

Attention: Vice President and Chief Development Officer
FAX.: (763) 505-2542

and if to MacroPore, to:

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

with duplicate copies thereof addressed to:

MacroPore, Inc.
6740 Top Gun Street
San Diego, CA 92121
Attention: Manager of Legal Affairs
FAX (858) 458-0994

and

Brobeck, Phleger & Harrison LLP
12390 El Camino Real
San Diego, CA 92130
Attention Hayden J. Trubitt, Esq.
FAX (858) 720-2555

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, by telecopy or by reputable courier service) or three business days after the date sent (if delivered by mail).

9.6 *Expenses.* Except as expressly provided herein, MPI and Medtronic shall each pay their own expenses incident to this Agreement and the preparation for, and consummation of, the transactions provided for herein.

9.7 *Titles and headings; Construction.* The titles and headings to Sections and Articles 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.

9.8 *Severability.* If any provision of this Agreement is held invalid, illegal or unenforceable, such provision shall be enforced to the maximum extent permissible and the remaining provisions shall nonetheless be enforceable according to their terms.

9.9 *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.

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

9.11 *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, subject to applicable statutes of limitations.

9.12 *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.

9.13 *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 request to fully secure and/or evidence the rights or interests herein.

9.14 *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); provided that, prior to disclosure of any provision of this Agreement that either party considers particularly sensitive or confidential to any governmental agency or stock exchange, the parties shall cooperate to seek confidential treatment or other applicable limitations on the public availability of such information..

9.15 *Dispute Resolution.* Any dispute arising out of or relating to this Agreement (including the formation, interpretation or alleged breach thereof) shall be settled by final and binding alternative dispute resolution conducted under the auspices of, and in accordance with, the provisions set forth in **Exhibit D**. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may be entered upon the arbitration award in any court having jurisdiction thereof.

Notwithstanding the foregoing, a party may seek interim injunctive relief from any court of competent jurisdiction.

(Remainder of page intentionally blank; signatures follow on next page)

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

MACROPORE BIOSURGERY, INC.

By: _____

Its: _____

MEDTRONIC PS MEDICAL, INC.

By: _____

Its: _____

The following Exhibits have been omitted in accordance with Regulation S-K Item 601(b)(2). MacroPore Biosurgery, Inc. agrees to provide a copy of any omitted Exhibit to the Securities and Exchange Commission upon request.

Exhibit A— Patents: Patents and Patent applications used in the Field of Use Business.

Exhibit B— Trademarks and Service Marks: Trademark registrations and documents evidencing common law trademarks, tradenames and service marks used in the Field of Use Business.

Exhibit C— Licenses

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Exhibit 2.3

AMENDED AND RESTATED DISTRIBUTION AGREEMENT

THIS AMENDED AND RESTATED DISTRIBUTION AGREEMENT (this "Restated Distribution Agreement") is entered into as of this 8th day of October, 2002 by and among **MEDTRONIC, INC.**, a Minnesota corporation and **MACROPORE BIOSURGERY, INC.**, formerly known as MacroPore, Inc., a Delaware corporation.

RECITALS

WHEREAS, Medtronic, Inc. and MacroPore, Inc. entered into that certain Distribution Agreement dated January 5, 2000, as amended by Amendment No. 1 to Distribution Agreement dated December 22, 2000 (as amended, the "Distribution Agreement") pursuant to which MacroPore, Inc. appointed Medtronic, Inc. as MacroPore, Inc.'s exclusive distributor of Products in the Cranial Field (as such terms are defined in the Distribution Agreement), under terms and conditions set forth in the Distribution Agreement; and

WHEREAS, Medtronic PS Medical, Inc. (a wholly-owned subsidiary of Medtronic, Inc., hereinafter referred to as Medtronic PS Medical) and MacroPore Biosurgery, Inc. have entered into an Asset Purchase Agreement dated September 30, 2002 (the "Asset Purchase Agreement") whereby Medtronic PS Medical has agreed to acquire the Specified Assets (as defined in the Asset Purchase Agreement) of MacroPore Biosurgery, Inc.; and

WHEREAS, it is a condition to Medtronic PS Medical's willingness to purchase the Specified Assets that the parties enter into this Restated Distribution Agreement; and

WHEREAS, after consummation of the Asset Purchase Agreement, MacroPore is precluded from manufacturing and marketing Products in the Cranial Field, except as a backup supplier to Medtronic PS Medical as contemplated by the Asset Purchase Agreement, and this Restated Distribution Agreement is intended only to cover that backup supply relationship. The parties intend that the Distribution Agreement, as in effect before this Restated Distribution Agreement, shall govern the supply/distribution arrangements which existed before the date of consummation of the Asset Purchase Agreement. Finally, the parties confirm that from and after the date of this Restated Distribution Agreement, Medtronic shall have no rights under this Restated Distribution Agreement (or under the prior Distribution Agreement) to distribute any Products (or other MacroPore products) for use outside of the Cranial Field.

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 Restated Distribution 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 (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 any skeletal fixation and/or reconstruction application in each case and only to the extent that the application pertains to neurosurgery (cranial and skull base only), craniomaxillofacial, oral maxillofacial, reconstructive (head/face only), otolaryngology, orthognathic, mandibular, plastic surgery (head/face only), and/or iliac crest.

"Direct Manufacturing Cost" of MacroPore with respect to a Product for a particular period means MacroPore's per unit average direct material, direct labor and variable manufacturing overhead costs for such Product during such period.

"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.

"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.

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

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

"Products" means all products, devices, systems and instruments now or hereafter during the Term (as defined in Section 10.1) 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™ product line, the "Faster Resorbing Polymer" (as defined in the Asset Purchase Agreement) and similar products, and those "Accessories" (as referenced in Section 5.7 of the Asset Purchase Agreement) that are manufactured (in whole or in part) by MacroPore, 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, and also including those "special order" customized Products currently made by MacroPore. MacroPore's bioabsorbable TS surgical film (Surgi-Wrap™); bioresorbable drug delivery products, systems and devices; stem cell products, systems and devices; and growth factors are specifically excluded from this definition of Products.

"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, limited liability company, 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.
GENERAL OBLIGATIONS OF MEDTRONIC

2.1) *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 Restated Distribution 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.

2.2) *Import Approvals.* Except for 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.

ARTICLE 3.
GENERAL OBLIGATIONS OF MACROPORE

3.1) *Manufacture and Supply of Products.* MacroPore shall manufacture Products in accordance with the Specifications and to ship such Products to Medtronic (i.e., Medtronic PS Medical) in the quantities ordered by Medtronic (i.e., Medtronic PS Medical) pursuant to Article 4 of this Restated Distribution Agreement as needed by Medtronic as backup supply as contemplated by Section 5.7 of the Asset Purchase 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 Restated Distribution Agreement in accordance with the Specifications.

3.2) *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 Products. Without limitation of the foregoing, MacroPore represents and warrants to Medtronic that all Products sold and delivered to Medtronic under this Restated Distribution 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 3.2.

ARTICLE 4.
ORDERS FOR PRODUCTS

4.1) *Purchase Orders.* Medtronic shall submit purchase orders for Products to MacroPore in writing, whether by mail, telecopier, or otherwise. Each purchase order shall, at a minimum, set forth the product numbers, quantities, 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 to the extent submitted at least 60 days in advance of the earliest scheduled delivery date for such order. Orders placed for Products containing the "Faster Resorbing Polymer" and similar products require six months' advance notice (or as otherwise required by the raw material supplier) prior to the earliest scheduled delivery date to be binding, unless MacroPore has on hand, or Medtronic supplies to MacroPore (with a corresponding Transfer Price reduction to reflect Medtronic's supply of the raw material), adequate raw material to produce such orders. 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 Restated

Distribution 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 Restated Distribution Agreement. Medtronic will place orders as necessary, with all such purchase orders submitted at least 60 days in advance of the earliest scheduled delivery date for such order (subject to the "Faster Resorbing Polymer" exception as specified above in this Section 4.1). For certain products it may be necessary to temporarily transfer certain molds or other Specified Assets, including tooling, to MacroPore's facility to complete manufacturing. Medtronic agrees to cooperate and bear the entire cost and risk of such transfer if and when such transfers are required, subject to MacroPore's obligation to use reasonable care to protect and maintain such assets.

4.2) *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.

4.3) *Delivery Terms.* Subject to MacroPore's obligations in Section 3.2 above, all deliveries of 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 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.

4.4) *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.

ARTICLE 5.
PRICES AND PAYMENTS

5.1) *Prices.* The purchase price per unit of Products to Medtronic under this Restated Distribution Agreement ("Transfer Prices") shall be as set forth on **Exhibit A** attached hereto. MacroPore represents that such Transfer Price for each Product equals MacroPore's Direct Manufacturing Cost for such Product during the 12-month period ended June 30, 2002.

5.2) *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 5.2 shall in no way limit any other remedies available to MacroPore.

5.3) *Taxes.* The Transfer Prices for Products established pursuant to this Article 5 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 6.
EMPLOYEES

6.1) *Offers of Employment.* Medtronic shall have the right to interview and offer employment to some or all of MacroPore's Craniomaxillofacial / Neurosurgery employees set forth on Section 5.9 of the Disclosure Letter relating to of the Asset Purchase Agreement for a period of 90 days after the date of consummation of the Asset Purchase Agreement. 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.

6.2) *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.

6.3) *Vacation.* MacroPore will promptly pay each Hired Employee for such Hired Employee's vacation accrued but unused to the date of such person's termination of employment with MacroPore.

6.4) *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.

6.5) *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.

6.6) *No Third Party Beneficiary.* The provisions of this Article 6 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 Hired Employee.

ARTICLE 7.
INSPECTION, WARRANTY AND SERVICE

7.1) *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 7.2 and 9.1.

7.2) *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 equal to the greater of three years after sterilization (shelf life) or two years 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.

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 Restated Distribution 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 Certificate 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 Restated Distribution 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 Restated Distribution 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 Certificate 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 Restated Distribution 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 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 Restated Distribution 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 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 Restated Distribution 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 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, in order to be covered by this indemnification.

ARTICLE 10.
TERM AND TERMINATION

10.1) *Term.* This Restated Distribution Agreement shall continue in force until completion of the Know-How Transfer, as defined in the Asset Purchase Agreement (the "Term").

10.2) *Termination.* Notwithstanding the provisions of Section 10.1 above, this Restated Distribution Agreement may be terminated by Medtronic for any reason upon 30 days' advance written notice.

10.3) *Rights and Obligations on Termination.* In the event of termination of this Restated Distribution Agreement, the parties shall have the following rights and obligations:

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

(b) The parties' obligations pursuant to Articles 7 and 9 and Sections 2.1, 2.2, 10.3, and 12.1 hereof shall survive termination of this Restated Distribution Agreement. All other provisions of this Restated Distribution Agreement shall terminate upon termination of this Restated Distribution Agreement.

ARTICLE 11.
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 Restated Distribution 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.

ARTICLE 12.
MISCELLANEOUS

12.1) *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 Restated Distribution Agreement. 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.

12.2) *Public Announcement.* In the event any party proposes to issue any press release or public announcement concerning any provisions of this Restated Distribution 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 Restated Distribution 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); provided that, prior to disclosure of any provision of this Agreement that either party considers particularly sensitive or confidential to any governmental agency or stock exchange, the parties shall cooperate to seek confidential treatment or other applicable limitations on the public availability of such information.

12.3) *Complete Agreement.* This Restated Distribution Agreement and the Exhibit hereto and the Asset Purchase Agreement, 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.

12.4) *Waiver, Discharge, Amendment, Etc.* The failure of any party hereto to enforce at any time any of the provisions of this Restated Distribution 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 Restated Distribution

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 Restated Distribution Agreement shall be held to be a waiver of any other or subsequent breach. Any amendment to this Restated Distribution Agreement shall be in writing and signed by the parties hereto.

12.5) *Successors and Assigns.* This Restated Distribution 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 Restated Distribution 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 Restated Distribution Agreement relates.

12.6) *Notices.* All notices hereunder shall be deemed given if in writing and delivered personally or sent by telecopy (with confirmation of transmission) or certified mail (return receipt requested) or reputable courier service to the parties at the following addresses (or at such other addresses as shall be specified by like notice):

if to Medtronic, to:

Medtronic, Inc.
World Headquarters
710 Medtronic Parkway
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Telecopier No.: (763) 572-5459
and

Attention: Vice President and Chief Development Officer
Telecopier No.: (763) 505-2542

and if to MacroPore, to:

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

with a copy to:

MacroPore Biosurgery, Inc.
6740 Top Gun Street
San Diego, CA 92121
Attention: In-House Counsel
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, by telecopy or by reputable courier service) or on the date shown on the return receipt (if delivered by mail).

12.7) *Expenses.* Except as expressly provided herein, MacroPore and Medtronic shall each pay their own expenses incident to this Restated Distribution Agreement and the preparation for, and consummation of, the transactions provided for herein.

12.8) *Governing Law.* This Restated Distribution 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.

12.9) *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 Restated Distribution Agreement. This Restated Distribution Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Restated Distribution Agreement to be drafted.

12.10) *Illegality; Severability.* In case any provision of this Restated Distribution 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.

12.11) *Relationship.* This Restated Distribution 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 Restated Distribution Agreement, each party shall be acting as an independent contractor.

12.12) *Benefit.* Nothing in this Restated Distribution 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 Restated Distribution Agreement.

12.13) *Survival.* All of the representations, warranties, and covenants made in this Restated Distribution 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.

12.14) *Counterparts.* This Restated Distribution 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.

12.15) *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 Amended and Restated Distribution Agreement to be executed in the manner appropriate to each, as of the date first above written.

MACROPORE BIOSURGERY, INC.

By: _____

Its: _____

MEDTRONIC, INC.

By: _____

Its: _____

The following Exhibits have been omitted in accordance with Regulation S-K Item 601(b)(2). MacroPore Biosurgery, Inc. agrees to provide a copy of any omitted Exhibit to the Securities and Exchange Commission upon request.

Exhibit A (Section 1)—Implant Description and Pricing

Exhibit A (Section 2)—Accessory Description and Pricing

QuickLinks

AMENDED AND RESTATED DISTRIBUTION AGREEMENT
RECITALS
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QuickLinks -- Click here to rapidly navigate through this document

*** Certain confidential portions of this Exhibit were omitted by means of blackout of the text (the "Mark"). This Exhibit has been filed separately with the Secretary of the Commission without the Mark pursuant to the Company's Application Requesting Confidential Treatment under Rule 24b-2 under the Securities and Exchange Act of 1934.

Exhibit 2.4

AMENDMENT NO. 2 TO DEVELOPMENT AND SUPPLY AGREEMENT

THIS AMENDMENT NO. 2 TO DEVELOPMENT AND SUPPLY AGREEMENT (this "Amendment") is entered into as of this 30th day of September, 2002 by and among **MEDTRONIC, INC.**, a Minnesota corporation ("Medtronic") and **MACROPORE BIOSURGERY, INC.**, formerly known as MacroPore, Inc. ("MacroPore"), a Delaware corporation.

RECITALS

WHEREAS, Medtronic and MacroPore entered into that certain Development and Supply Agreement dated January 5, 2000, as amended by Amendment No. 1 to Development and Supply Agreement dated December 22, 2000 (as amended, the "Agreement") pursuant to which MacroPore agreed to develop bioabsorbable spinal implants and [***] pursuant to Medtronic's designs and specifications and to manufacture and supply such developed products to Medtronic; and

WHEREAS, Medtronic and MacroPore also entered into that certain Distribution Agreement dated January 5, 2000, as amended by Amendment No. 1 to Distribution Agreement dated December 22, 2000 (as amended, the "Distribution Agreement") pursuant to which MacroPore appointed Medtronic as MacroPore's exclusive distributor of Products in the Cranial Field (as such terms are defined in the Distribution Agreement), under terms and conditions set forth in the Distribution Agreement; and

WHEREAS, the parties desire to amend the Agreement to include rights regarding TS Surgical Film (as defined herein), to extend the term of the Agreement, and to limit Medtronic's right of first offer for distribution rights in non-cranial fields as provided in the Distribution 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 are hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
DEFINITIONS

"*Direct Manufacturing Cost*" of MacroPore with respect to a Product for a particular period means MacroPore's per unit average direct material, direct labor and variable manufacturing overhead costs for such Product during such period.

"*MacroPore TS Surgical Film Fields*" means the following applications to the extent outside the Spinal Field: general and abdominal surgery (pleural cavity, peritoneal cavity, musculature, vasculature); cardio thoracic surgery (pericardial covering, cardiac muscle covering, pericardial cavity); skin, dermis and epidermis repair and/or healing; tendon, ligament, or cartilage repair or healing; application of TS Surgical Film to the arms, legs, hands and feet; obstetrics and gynecology; breast reconstruction/augmentation; non-skeletal ocular; digestive tract, ENT soft tissue applications and dental.

"*Spinal Field*" means all applications related to the anatomy of the spine including, but not limited to, the following: spinal fixation, stabilization and/or fusion, spinal cord coverings, exiting nerve root coverings, cauda equina coverings, lamina coverings and vertebral column-cervical, thoracic, lumbar and sacral.

"*TS Surgical Film*" means MacroPore's SurgiWrap™ bioabsorbable surgical film products which are less than 0.5 millimeters in thickness, and any other bioabsorbable PLDLA and/or poly-caprilactone surgical film products offered by MacroPore and which are less than 0.5 millimeters in thickness. The

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TS Surgical Film (to the extent used in the Spinal Field) shall be referred to as a "Developed Product" for contractual convenience only. By such reference, MacroPore grants Medtronic an exclusive world-wide license to distribute the TS Surgical Film in the Spinal Field. The TS Surgical Film and all intellectual property rights thereto are owned exclusively by MacroPore for all other purposes. The TS Surgical Film shall not be considered "Developed Products" with respect to the Agreement's recitals, the definition of Licensed Intellectual Property, and Sections 12.1 and 12.5(a).

ARTICLE 2
AMENDMENT

2.1 Section 2.3 (Development Efforts) of the Agreement shall be deleted in its entirety and the following inserted in its place:

"2.3) *Development Efforts.* MacroPore shall be responsible for developing the ability, equipment and processes to manufacture Spinal Implants and [***] from poly-lactic acid (or other resorbable materials as agreed to by Medtronic) pursuant to Statements of Work. Those Spinal Implants 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), together with TS Surgical Film, 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."

2.2 Section 2.4(a) (Regulatory Approvals) of the Agreement shall be deleted in its entirety and the following inserted in its place:

"2.4) *Regulatory Approvals.*

(a) Medtronic shall be responsible for obtaining all necessary regulatory approvals for the commercial sale of the Developed Products (with the exception of TS Surgical Film), 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 obtained by Medtronic for the Developed Products (except for TS Surgical Film) will be in Medtronic's name and owned by Medtronic. All regulatory approvals obtained by MacroPore for the Developed Products will be in MacroPore's name and owned by MacroPore."

2.3 Section 3.4(a) and (b) (Regulatory Approvals) of the Agreement shall be deleted in their entirety and the following inserted in their place:

"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 (with the exception of TS Surgical Film). 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 (with the exception of TS Surgical Film). To the extent permitted by law, all foreign regulatory approvals obtained by Medtronic shall be owned by Medtronic and shall be in the name of Medtronic. All foreign regulatory approvals obtained by MacroPore will be in MacroPore's name and owned by MacroPore"

2.4 A new Section 4.5 (Regulatory Approvals) shall be inserted as follows:

"4.5 *Regulatory Approvals.*

(a) *Clinicals.* MacroPore shall be responsible for any and all clinical study design, investigator selection, data analysis in connection with clinical trials of the TS Surgical Film. 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 for filing, obtaining and maintaining any and all necessary regulatory approvals or clearances for the importation and/or commercialization of TS Surgical Film ("Device Approvals"). 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 TS Surgical Film 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 TS Surgical Film from the country of manufacture into the particular countries where such TS Surgical Film are delivered. Medtronic shall cooperate fully with MacroPore in its efforts to obtain any such approvals."

2.5 Section 6.1(b) (Prices) of the Agreement shall be deleted in its entirety and the following inserted in its place.

"6.1 *Prices.*

(b) MacroPore will establish the Price List (i) for Developed Products that are Spinal Implants 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; (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; and (iii) for Developed Products that are TS Surgical Film 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 Direct Manufacturing Cost for such Product during the preceding six-month period upon which the Price List is based."

2.6 Section 10.1 (Term) of the Agreement shall be deleted in its entirety and the following inserted in its place.

"10.1 *Term.* This Agreement shall continue in force until the September 30, 2012 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")."

2.7 Section 13.2 (Public Announcement) of the Agreement shall be deleted in its entirety and the following inserted in its place.

"*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); provided that, prior to disclosure of any provision of this Agreement that either party considers particularly sensitive or confidential to any governmental agency or stock exchange, the parties shall cooperate to seek confidential treatment or other applicable limitations on the public availability of such information."

ARTICLE 3
RIGHT OF FIRST OFFER FOR DISTRIBUTION

3.1 *Right of First Offer for Distribution Rights.*

(a) From and after the signing of that certain Amended and Restated Distribution Agreement by and between Medtronic and MacroPore (the "Amended and Restated Distribution Agreement") until (i) January 5, 2005 for any MacroPore products, devices, systems and instruments now or hereafter developed, manufactured, produced or sold by MacroPore; and (ii) until January 5, 2006 for MacroPore products, devices, systems and instruments now or hereafter developed, manufactured, produced or sold by MacroPore that relate to plates or mesh for orthopedic applications, MacroPore shall not enter into any definitive agreement with respect to the grant by MacroPore of distribution, sales representative, or sales or marketing license rights with respect thereto (such proposed grant of such rights referred to as a "Proposed Transaction") unless (x) such Proposed Transaction relates to the grant of distribution, sales representative or sales or marketing license rights with respect to TS Surgical Film for use exclusively in one or more of the MacroPore TS Surgical Film Fields; or (y) Medtronic is given MacroPore's Notice (as defined below) with respect thereto and MacroPore complies with the terms of this Section 3.1.

(b) If (i) MacroPore receives a bona fide offer or written indication of interest from a third party to enter into a Proposed Transaction (other than a Proposed Transaction described in Section 3.1(a)(x)) which MacroPore is willing to accept, or (ii) MacroPore determines to seek a third party to enter into a Proposed Transaction (other than a Proposed Transaction described in Section 3.1(a)(x)), 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 3.1 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, subject to Section 3.1(e), 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 3.1 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 3.1.

(e) Nothing in this Section 3.1 shall limit, modify or diminish, or permit MacroPore to enter into any Proposed Transaction in conflict with, Medtronic's (or its Affiliates') rights under the Asset Purchase Agreement by and between Medtronic PS Medical, Inc. and MacroPore of even date herewith, that certain License Agreement by and between Medtronic PS Medical, Inc. and MacroPore contemplated by such Asset Purchase Agreement, or that certain Amended and Restated Distribution Agreement by and between Medtronic and MacroPore contemplated by such Asset Purchase Agreement (the "Amended and Restated Distribution Agreement").

(f) This Section 3.1 expressly supersedes that certain Temporary Waiver of Right of First Offer for International Distribution Rights of MacroPore Bioresorbable Films (Surgi-Wrap) dated June 21, 2002 between MacroPore and Medtronic as Amended.

3.2 *Payment for Limited Waiver of First Offer Rights.* In consideration of Medtronic's waiver of distribution and sales representative and sales or marketing license rights with respect to TS Surgical Film for use exclusively in one or more of the MacroPore TS Surgical Film Fields, MacroPore shall pay Medtronic the sum of Four Million Dollars ($4,000,000). Such payment shall be made by wire transfer to an account designated in writing by Medtronic on the date of signing the Amended and Restated Distribution Agreement.

ARTICLE 4
MISCELLANEOUS

4.1 *Effect on Amendment.* Except as amended hereby, the Agreement shall remain unchanged and in full force and effect.

4.2 *Complete Agreement.* This Amendment and the Agreement, as amended hereby, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all other prior agreements whether written or oral relating hereto.

4.3 *Governing Law.* This Amendment 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.

4.4 *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 Amendment. This Amendment shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Amendment to be drafted.

4.5 *Illegality; Severability.* In case any provision of this Amendment 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.

4.6 *Counterparts.* This Amendment 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.

IN WITNESS WHEREOF, each of the parties has caused this Amendment No. 2 to Development and Supply Agreement to be executed in the manner appropriate to each, as of the date first written above.

MACROPORE BIOSURGERY, INC.

By: _____

Its: _____

MEDTRONIC, INC.

By: _____

Its: Vice President and Chief Development Officer

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Exhibit 99.1

MacroPore Biosurgery Signs Agreement to Acquire StemSource, Inc., a Company with Breakthrough Technology to Deliver Clinical Applications of Adult Stem Cells

San Diego / Frankfurt, October 9th, 2002.—MacroPore Biosurgery, Inc. (Frankfurt Stock Exchange: XMP) announced today that it has signed a strategic merger agreement to acquire the remaining outstanding shares of StemSource, Inc. (a privately held company located in Thousand Oaks, CA) in exchange for approximately 1.44 million MacroPore Biosurgery shares.

StemSource is a pioneer in the extraction, cryo-preservation and clinical application of adult stem cells derived from adipose (fat) tissue. "The acquisition of the StemSource technology is a key part of our strategic vision for MacroPore Biosurgery to establish a leadership position in the use of adult stem cells to provide regenerative therapies for the treatment of many debilitating medical conditions. This technology ideally complements our existing market-leading bioresorbable platform," stated Christopher J. Calhoun, CEO of MacroPore Biosurgery. "We have a remarkable opportunity to make regenerative medicine broadly available to physicians and patients in the very near future."

Scientific evidence from around the globe suggests that stem cells are the key component in regenerative medicine. StemSource technology utilizes adult stem cells derived from adipose tissue. These cells deliver substantial clinical advantages over embryonic stem cells. Although embryonic stem cells potentially hold enormous promise, they are subject to a number of scientific, moral and ethical limitations, and clinical therapies remain more than a decade away. Numerous clinical studies now indicate that adult stem cells can successfully treat patients with a variety of diseases. "Our pre-clinical and early clinical work has demonstrated that adipose tissue is a rich source of adult stem cells with enormous potential to treat a range of clinical disorders. More importantly, we've developed proprietary devices and techniques to harvest the cells from fat and we've proven their ability to differentiate into nerve, muscle, bone, and cartilage," said Marc H. Hedrick, MD, CEO of StemSource.

"StemSource's proprietary technology yields stem cells in quantities that exceed the quantity of stem cells from other adult donor sites by a multiple of up to 100, and can do so at much lower cost. Additionally, the use of the patient's own cells as an autologous cell therapy involves a substantially lower regulatory hurdle because there is no chance of transferring a communicable disease or rejection of the cells by the body," stated John K. Fraser, PhD, Chief Scientific Officer of StemSource. "We believe our technology could have a significant impact on a variety of clinical problems, including diseases such as Parkinson's, Alzheimer's, spinal cord injuries, stroke, heart disease, and diabetes," adds Fraser.

StemSource began generating revenues from its autologous stem cell banking service in early 2002 and anticipates tissue-based revenues in 2-3 years. "We are adopting an aggressive, pragmatic, clinically-oriented focus toward placing this remarkable capability in the hands of surgeons sooner rather than later," added Calhoun. "We expect to see a visible contribution to revenues in 2003, without a significant increase in operating expenses."

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MacroPore Biosurgery is a leading developer and manufacturer of bioresorbable surgical implants to aid in the reconstruction, repair and regeneration of bone and soft tissue throughout the body. Some of the company's implants, designed for use in orthopedic and spinal surgery, are distributed through Medtronic, while other products from our platform technologies are distributed through both our direct US sales force and an international distribution network. MacroPore Biosurgery is traded on the Frankfort Stock Exchange in Germany under the symbol 'XMP'. For further information please visit the web site *www.macropore.com*.

Forward-Looking Statements Disclaimer:

This press release includes forward-looking statements regarding events and financial trends which may affect MacroPore Biosurgery's future operating results and financial position. Such statements are subject to risks and uncertainties that could cause MacroPore Biosurgery's actual results and financial position to differ materially. Some of these risks include our reliance on distribution through Medtronic, scientific development risk at StemSource, and our history of losses. MacroPore Biosurgery assumes no responsibility to publicly release the results of any revision of forward-looking statements to reflect trends or circumstances after the date they are made or to reflect the occurrence of unanticipated events.

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