CARDOVASCULAR SYSTEMS INC

FORM 10-Q
(Quarterly Report)

Filed 05/05/17 for the Period Ending 03/31/17

Address 1225 OLD HWY 8 NW
          ST. PAUL, MN, 55112
Telephone 651-259-1600
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Symbol CSII
SIC Code 3841 - Surgical and Medical Instruments and Apparatus
Industry Medical Equipment, Supplies & Distribution
Sector Healthcare
Fiscal Year 06/30
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended March 31, 2017

Commission File No. 000-52082

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

Delaware
(State or other jurisdiction of incorporation or organization)

1225 Old Highway 8 Northwest
St. Paul, Minnesota 55112-6416
(Address of principal executive offices, including zip code)

Registrant’s telephone number, including area code: (651) 259-1600

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒
Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐
Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

The number of shares outstanding of the registrant’s common stock as of April 28, 2017 was: Common Stock, $0.001 par value per share, 32,712,058 shares.
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Cardiovascular Systems, Inc.

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### Cardiovascular Systems, Inc.
#### Consolidated Balance Sheets
(Dollars in thousands, except per share and share amounts)
(Unaudited)

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<tr>
<th></th>
<th>March 31, 2017</th>
<th>June 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$103,130</td>
<td>$60,638</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>27,877</td>
<td>23,128</td>
</tr>
<tr>
<td>Inventories</td>
<td>16,605</td>
<td>17,440</td>
</tr>
<tr>
<td>Marketable securities</td>
<td>741</td>
<td>684</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>3,479</td>
<td>2,992</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>151,832</td>
<td>104,882</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>30,213</td>
<td>32,471</td>
</tr>
<tr>
<td>Patents, net</td>
<td>4,752</td>
<td>5,013</td>
</tr>
<tr>
<td>Other assets</td>
<td>60</td>
<td>40</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>$186,857</strong></td>
<td><strong>$142,406</strong></td>
</tr>
<tr>
<td><strong>LIABILITIES AND STOCKHOLDERS' EQUITY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$8,813</td>
<td>$8,506</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>29,837</td>
<td>26,993</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>38,650</td>
<td>35,499</td>
</tr>
<tr>
<td>Long-term liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing obligation</td>
<td>20,973</td>
<td>—</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>10,000</td>
<td>—</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>3,752</td>
<td>6,010</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>73,375</td>
<td>41,509</td>
</tr>
<tr>
<td>Commitments and contingencies (see Note 6)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Common stock, $0.001 par value; authorized 100,000,000 common shares at March 31, 2017 and June 30, 2016; issued and outstanding 32,703,971 at March 31, 2017 and 32,792,497 at June 30, 2016, respectively</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>Additional paid in capital</td>
<td>443,427</td>
<td>428,235</td>
</tr>
<tr>
<td>Accumulated other comprehensive income</td>
<td>97</td>
<td>40</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(330,075)</td>
<td>(327,411)</td>
</tr>
<tr>
<td><strong>Total stockholders' equity</strong></td>
<td>113,482</td>
<td>100,897</td>
</tr>
<tr>
<td><strong>Total liabilities and stockholders’ equity</strong></td>
<td><strong>$186,857</strong></td>
<td><strong>$142,406</strong></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these unaudited consolidated financial statements.
Cardiovascular Systems, Inc.
Consolidated Statements of Operations
(Dollars in thousands, except per share and share amounts)
(Unaudited)

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
<th></th>
<th>Nine Months Ended March 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenues</td>
<td>$ 52,144</td>
<td>$ 44,461</td>
<td>$ 151,987</td>
<td>$ 129,724</td>
</tr>
<tr>
<td>Cost of goods sold</td>
<td>11,139</td>
<td>8,725</td>
<td>29,768</td>
<td>25,567</td>
</tr>
<tr>
<td>Gross profit</td>
<td>41,005</td>
<td>35,736</td>
<td>122,219</td>
<td>104,157</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Selling, general and administrative</td>
<td>37,332</td>
<td>42,338</td>
<td>108,191</td>
<td>124,991</td>
</tr>
<tr>
<td>Research and development</td>
<td>5,432</td>
<td>5,748</td>
<td>16,572</td>
<td>19,895</td>
</tr>
<tr>
<td>Restructuring</td>
<td>—</td>
<td>2,376</td>
<td>—</td>
<td>2,376</td>
</tr>
<tr>
<td>Legal settlement</td>
<td>—</td>
<td>8,000</td>
<td>—</td>
<td>8,000</td>
</tr>
<tr>
<td>Total expenses</td>
<td>42,764</td>
<td>58,462</td>
<td>124,763</td>
<td>155,262</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(1,759)</td>
<td>(22,726)</td>
<td>(2,544)</td>
<td>(51,105)</td>
</tr>
<tr>
<td>Other (income) and expense, net</td>
<td>(28)</td>
<td>(21)</td>
<td>(46)</td>
<td>(22)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(1,731)</td>
<td>(22,705)</td>
<td>(2,498)</td>
<td>(51,083)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>18</td>
<td>11</td>
<td>66</td>
<td>57</td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (1,749)</td>
<td>$ (22,716)</td>
<td>$ (2,564)</td>
<td>$ (51,140)</td>
</tr>
<tr>
<td>Basic and diluted earnings per share</td>
<td>$ (0.05)</td>
<td>$ (0.69)</td>
<td>$ (0.08)</td>
<td>$ (1.57)</td>
</tr>
<tr>
<td>Basic and diluted weighted average shares outstanding</td>
<td>32,650,974</td>
<td>32,711,341</td>
<td>32,232,409</td>
<td>32,491,271</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these unaudited consolidated financial statements.
## Cardiovascular Systems, Inc.
### Consolidated Statements of Comprehensive Loss
(Dollars in thousands)
(Unaudited)

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
<th></th>
<th>Nine Months Ended March 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (1,749)</td>
<td>$ (22,716)</td>
<td>$ (2,564)</td>
<td>$ (51,140)</td>
</tr>
<tr>
<td><strong>Other comprehensive income (loss):</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrealized gain (loss) on available for sale securities</td>
<td>20</td>
<td>37</td>
<td>57</td>
<td>(5)</td>
</tr>
<tr>
<td><strong>Comprehensive loss</strong></td>
<td>$ (1,729)</td>
<td>$ (22,679)</td>
<td>$ (2,507)</td>
<td>$ (51,145)</td>
</tr>
</tbody>
</table>

*The accompanying notes are an integral part of these unaudited consolidated financial statements.*
## Cardiovascular Systems, Inc.
### Consolidated Statements of Cash Flows
(Dollars in thousands)
(UNAUDITED)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss</td>
<td>$ (2,564)</td>
<td>$ (51,140)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash used in operations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation of property and equipment</td>
<td>2,932</td>
<td>2,728</td>
</tr>
<tr>
<td>Amortization and write-off of patents</td>
<td>883</td>
<td>215</td>
</tr>
<tr>
<td>Provision for doubtful accounts</td>
<td>315</td>
<td>600</td>
</tr>
<tr>
<td>Loss on disposal of property and equipment</td>
<td>158</td>
<td>8</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>8,336</td>
<td>10,392</td>
</tr>
<tr>
<td>Changes in assets and liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>(5,064)</td>
<td>7,532</td>
</tr>
<tr>
<td>Inventories</td>
<td>835</td>
<td>(4,260)</td>
</tr>
<tr>
<td>Prepaid expenses and other assets</td>
<td>(153)</td>
<td>2,354</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>190</td>
<td>(1,400)</td>
</tr>
<tr>
<td>Accrued expenses and other liabilities</td>
<td>615</td>
<td>12,771</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>10,000</td>
<td>—</td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities</td>
<td>16,483</td>
<td>(20,200)</td>
</tr>
<tr>
<td>Cash flows from investing activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchases of property and equipment</td>
<td>(841)</td>
<td>(3,245)</td>
</tr>
<tr>
<td>Issuance of convertible note receivable</td>
<td>—</td>
<td>(350)</td>
</tr>
<tr>
<td>Purchases of marketable securities</td>
<td>—</td>
<td>(37)</td>
</tr>
<tr>
<td>Costs incurred in connection with patents</td>
<td>(496)</td>
<td>(512)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(1,337)</td>
<td>(4,144)</td>
</tr>
<tr>
<td>Cash flows from financing activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from employee stock purchase plan</td>
<td>1,400</td>
<td>1,670</td>
</tr>
<tr>
<td>Exercise of stock options</td>
<td>5,002</td>
<td>1,006</td>
</tr>
<tr>
<td>Proceeds from financing</td>
<td>20,944</td>
<td>—</td>
</tr>
<tr>
<td>Net cash provided by financing activities</td>
<td>27,346</td>
<td>2,676</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>42,492</td>
<td>(21,668)</td>
</tr>
</tbody>
</table>

| Cash and cash equivalents |  |
|---------------------------|  |
| Beginning of period | 60,638 | 83,842 |
| End of period | $ 103,130 | $ 62,174 |

The accompanying notes are an integral part of these unaudited consolidated financial statements.
1. Business Overview

Company Description

Cardiovascular Systems, Inc. (the “Company”) develops, manufactures and markets devices for the treatment of vascular diseases. The Company’s peripheral arterial disease (“PAD”) products, the Diamondback 360® Peripheral Orbital Atherectomy System (“OAS”) and the Stealth 360°® Peripheral OAS, are catheter-based platforms capable of treating a broad range of plaque types, including calcified plaque, in leg arteries both above and below the knee, and address many of the limitations associated with other surgical, catheter and pharmacological treatment alternatives. These devices use small access sheaths that can provide procedural benefits and allow physicians to treat PAD patients in a variety of vessel sizes, including the small and tortuous vessels located below the knee through alternative access sites in the ankle and foot as well as in the groin.

In October 2013, the Company received premarket approval from the United States Food and Drug Administration (“FDA”) to market the Diamondback 360® Coronary OAS as a treatment for severely calcified coronary arteries. In March 2017, the Company received approval from the FDA to market the Diamondback 360® Coronary OAS Micro Crown. The Coronary OAS Micro Crown is the only atherectomy device designed to treat both tight, calcific lesions and up to 4mm vessels.

The Company is currently only selling its products in the United States. In November 2016, the Company signed an exclusive distribution agreement with Medikit Co., Ltd. (“Medikit”) to sell its Diamondback 360® Coronary and Peripheral OAS in Japan. In March 2017, the Company received approval from Japan’s Ministry of Health, Labor and Welfare for its Diamondback 360® Coronary OAS Micro Crown. Pending reimbursement approval, Japan would become the first international market for any of the Company’s products. The Company is currently evaluating options for additional international expansion to maximize the coronary and peripheral market opportunities.

2. Summary of Significant Accounting Policies

Interim Financial Statements

The Company prepared the unaudited interim consolidated financial statements and related unaudited financial information in the footnotes in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and the rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial statements. The year-end consolidated balance sheet was derived from the Company’s audited consolidated financial statements, but does not include all disclosures as required by GAAP. These interim consolidated financial statements reflect all adjustments consisting of normal recurring accrals, which, in the opinion of management, are necessary for a fair statement of the Company’s consolidated financial position, the results of its operations and its cash flows for the interim periods. These interim consolidated financial statements should be read in conjunction with the consolidated annual financial statements and the notes thereto included in the Form 10-K filed by the Company with the SEC on August 25, 2016. The nature of the Company’s business is such that the results of any interim period may not be indicative of the results to be expected for the entire year.

Use of Estimates

The preparation of the Company’s consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Stock-Based Compensation

The Company has stock-based compensation plans, which include stock options, nonvested share awards, and an employee stock purchase plan. Fair value of option awards is determined using option-pricing models, fair value of nonvested share awards with market conditions is determined using the Monte Carlo simulation, and fair value of nonvested share awards that vest based upon performance or service conditions is determined by the closing market price of the Company's stock on the
Revenue Recognition

The Company sells its products almost exclusively via direct shipment to hospitals or clinics. The Company recognizes revenue when all of the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred; the sales price is fixed or determinable; and collectability is reasonably assured. The Company records estimated sales returns, discounts and rebates as a reduction of net sales.

Costs related to products delivered are recognized in the period revenue is recognized. Cost of goods sold consists primarily of raw materials, direct labor, and manufacturing overhead.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2014-09, “Revenue From Contracts with Customers.” The guidance requires an entity to recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which an entity expects to be entitled in exchange for those goods or services. The guidance also requires expanded disclosures relating to the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. Additionally, qualitative and quantitative disclosures are required about contract costs, significant judgments and changes in judgments, and assets recognized from the costs to obtain or fulfill a contract. ASU 2014-09 was initially to be effective for annual periods beginning after December 15, 2016, including interim periods within that reporting period, using one of two prescribed retrospective methods. Early adoption was not to be permitted. In August 2015, the FASB issued ASU 2015-14 to defer the effective date of ASU 2014-09 by one year and allow early adoption for all entities but not before the original public entity effective date. The guidance is effective for the Company on July 1, 2018. During 2016, the FASB also issued ASU 2016-08, "Principal versus Agent Considerations (Reporting Revenue Gross versus Net)”; ASU 2016-10, "Identifying Performance Obligations and Licensing"; ASU 2016-12, "Narrow-Scope Improvements and Practical Expedients", and ASU 2016-20, "Technical Corrections and Improvements to Topic 606, Revenue from Contracts with Customers," which amend ASU No. 2014-09. ASU 2016-08 is not applicable to the Company. ASU 2016-10 clarifies how entities would determine whether promised goods or services are separately identifiable from other promises in a contract and, therefore, would be accounted for separately. The guidance would also allow entities to disregard goods or services that are immaterial in the context of a contract and provides an accounting policy election to account for shipping and handling activities as fulfillment costs rather than as additional promised services. ASU 2016-12 addressed implementation issues relative to transition (adding a practical expedient for contract modifications and clarifying what constitutes a completed contract when employing ASU 2014-09’s full or modified retrospective transition methods), collectability, noncash consideration, and the presentation of sales and other similar-type taxes (allowing entities to exclude sales-type taxes collected from transaction price). ASU 2016-20 makes certain technical corrections and provide additional guidance in the areas of disclosure of performance obligations, provisions for losses on certain types of contracts, scope, and other areas. The Company is currently evaluating the potential impact and method of adoption of ASU 2014-09, as amended, on the Company's consolidated financial statements and related disclosures and are comparing current policies and practices to the requirements of the standard.

In August 2014, the FASB issued ASU No. 2014-15, “Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern.” The guidance requires management to perform interim and annual assessments of an entity's ability to continue as a going concern within one year of the date of issuance of the entity's financial statements. The entity must also provide certain disclosures if there is substantial doubt about the entity's ability to continue as a going concern. ASU 2014-15 is effective for annual periods ending after December 15, 2016, and interim periods thereafter. Early adoption is permitted. The guidance is effective for the Company as of June 30, 2017. The Company does not anticipate an impact on its financial statements upon adoption.

In July 2015, the FASB issued ASU No. 2015-11, “Simplifying the Measurement of Inventory.” The guidance requires an entity to measure inventory within the scope of the ASU at the lower of cost and net realizable value. ASU 2015-11 is effective for annual periods, including interim periods within those annual periods, beginning after December 15, 2016 and should be applied prospectively. Early adoption is permitted. The guidance is effective for the Company on July 1, 2017. The Company does not anticipate a material impact on its financial statements upon adoption.

In November 2015, the FASB issued ASU 2015-17, “Balance Sheet Classification of Deferred Taxes.” The guidance requires that all deferred tax assets and liabilities, along with any related valuation allowance, be classified as noncurrent on the balance sheet. ASU 2015-17 is effective for annual periods, including interim periods within those annual periods, beginning after
December 15, 2016 and can be applied either prospectively or retrospectively. Early adoption is permitted. The guidance is effective for the Company on July 1, 2017. The Company does not anticipate a material impact on its financial statements upon adoption.

In February 2016, the FASB issued ASU 2016-02, “Leases.” The guidance requires lessees to recognize the assets and liabilities that arise from leases on the balance sheet. ASU 2016-02 is effective for annual periods beginning after December 15, 2018, including interim periods within those annual periods, and should be applied using a modified retrospective approach. Early adoption is permitted. The guidance is effective for the Company on July 1, 2019. The Company is currently evaluating the timing, method of adoption and impact of the new lease guidance on its financial statements.

In March 2016, the FASB issued ASU 2016-09, “Stock Compensation.” The guidance simplifies several aspects related to the accounting for share-based payment transactions, including the accounting for income taxes, classification on the statement of cash flows, forfeitures, and statutory withholding requirements. ASU 2016-09 is effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Early adoption is permitted and transition requirements vary based on the amendments adopted. The guidance is effective for the Company on July 1, 2017. The Company is currently evaluating the impact of the stock compensation guidance on its financial statements.

In June 2016, the FASB issued ASU No. 2016-13, “Measurement of Credit Losses on Financial Instruments,” which revises guidance for the accounting for credit losses on financial instruments within its scope. The new standard introduces an approach, based on expected losses, to estimate credit losses on certain types of financial instruments and modifies the impairment model for available-for-sale debt securities. The new approach to estimating credit losses (referred to as the current expected credit losses model) applies to most financial assets measured at amortized cost and certain other instruments, including trade and other receivables, loans, held-to-maturity debt securities, net investments in leases and off-balance-sheet credit exposures. ASU 2016-13 is effective for annual periods beginning after December 15, 2019, including interim periods within those fiscal years. Early adoption is permitted and should be applied as a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is adopted. The guidance is effective for the Company on July 1, 2020. The Company does not anticipate a material impact on its financial statements upon adoption.

3. Selected Consolidated Financial Statement Information

**Accounts Receivable, Net**

Accounts receivable consists of the following:

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2017</th>
<th>June 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts receivable</td>
<td>$ 28,751</td>
<td>$ 23,840</td>
</tr>
<tr>
<td>Less: Allowance for doubtful accounts</td>
<td>(874)</td>
<td>(712)</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>$ 27,877</td>
<td>$ 23,128</td>
</tr>
</tbody>
</table>

**Inventories**

Inventories consist of the following:

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2017</th>
<th>June 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw materials</td>
<td>$ 7,419</td>
<td>$ 7,439</td>
</tr>
<tr>
<td>Work in process</td>
<td>1,021</td>
<td>1,142</td>
</tr>
<tr>
<td>Finished goods</td>
<td>8,165</td>
<td>8,859</td>
</tr>
<tr>
<td>Inventories</td>
<td>$ 16,605</td>
<td>$ 17,440</td>
</tr>
</tbody>
</table>
## Property and Equipment, Net

Property and equipment consists of the following:

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2017</th>
<th>June 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land</strong></td>
<td>$500</td>
<td>$500</td>
</tr>
<tr>
<td><strong>Building</strong></td>
<td>22,420</td>
<td>22,575</td>
</tr>
<tr>
<td><strong>Equipment</strong></td>
<td>16,194</td>
<td>14,141</td>
</tr>
<tr>
<td><strong>Furniture</strong></td>
<td>2,708</td>
<td>2,709</td>
</tr>
<tr>
<td><strong>Leasehold improvements</strong></td>
<td>86</td>
<td>86</td>
</tr>
<tr>
<td><strong>Construction in progress</strong></td>
<td>310</td>
<td>1,533</td>
</tr>
<tr>
<td><strong>Less: Accumulated depreciation</strong></td>
<td>(12,005)</td>
<td>(9,073)</td>
</tr>
<tr>
<td><strong>Property and equipment, net</strong></td>
<td>$30,213</td>
<td>$32,471</td>
</tr>
</tbody>
</table>

On December 29, 2016, the Company entered into a Purchase and Sale Agreement, as subsequently amended (collectively, the “Sale Agreement”), with Krishna Holdings, LLC (the “Buyer”), providing for the sale to Buyer of the Company’s headquarters facility in St. Paul, Minnesota (the “Facility”), for a cash purchase price of $21,500. On March 30, 2017, the sale of the Facility under the Sale Agreement closed. The Company received proceeds of approximately $20,944 ( $21,500, less $556 of transaction expenses). The net proceeds are to be used for working capital and general corporate purposes. In connection with the sale, the Company recorded an impairment charge of $158.

Under the Sale Agreement, the Company entered into a Lease Agreement (the “Lease Agreement”) with Krishna Holdings, LLC, Apex Holdings, LLC, Kashi Associates, LLC, Keva Holdings, LLC, S&V Ventures, LLC, Polo Group LLC, SPAV Holdings LLC, Star Associates LLC, and The Global Villa, LLC (collectively, the “Landlord”). As the lease terms resulted in a capital lease classification, the Company accounted for the sale and leaseback of the Facility as a financing transaction where the assets remain on the Company's balance sheet. See Note 4 for further discussion on future payment obligations under the Lease Agreement.

## Accrued Expenses

Accrued expenses consist of the following:

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2017</th>
<th>June 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Salaries and bonus</strong></td>
<td>$5,890</td>
<td>$4,305</td>
</tr>
<tr>
<td><strong>Commissions</strong></td>
<td>7,590</td>
<td>7,788</td>
</tr>
<tr>
<td><strong>Accrued vacation</strong></td>
<td>3,430</td>
<td>3,498</td>
</tr>
<tr>
<td><strong>Accrued excise, sales and other taxes</strong></td>
<td>3,507</td>
<td>3,372</td>
</tr>
<tr>
<td><strong>Accrued litigation</strong></td>
<td>2,600</td>
<td>—</td>
</tr>
<tr>
<td><strong>Legal settlement</strong></td>
<td>1,806</td>
<td>3,872</td>
</tr>
<tr>
<td><strong>Warranty reserve</strong></td>
<td>1,545</td>
<td>145</td>
</tr>
<tr>
<td><strong>Clinical studies</strong></td>
<td>565</td>
<td>1,757</td>
</tr>
<tr>
<td><strong>Restructuring</strong></td>
<td>307</td>
<td>1,337</td>
</tr>
<tr>
<td><strong>Other accrued expenses</strong></td>
<td>2,597</td>
<td>919</td>
</tr>
<tr>
<td><strong>Total Accrued expenses</strong></td>
<td>$29,837</td>
<td>$26,993</td>
</tr>
</tbody>
</table>
Legal Settlement

On June 28, 2016, the Company entered into a Settlement Agreement (the “Settlement Agreement”) with the United States of America, acting through the Department of Justice (the “DOJ”) and on behalf of the Office of Inspector General of the Department of Health and Human Services, and Travis Thams, to resolve the investigation by the DOJ and the Civil Action underlying such investigation. Under the Settlement Agreement, the Company agreed to pay $8,000 (the “Settlement Amount”), as follows: an initial payment of $3,000, paid on July 1, 2016, with the remaining $5,000, which bears interest at 1.8% per annum, payable in 11 equal quarterly installments, beginning January 1, 2017. The amount payable within the next twelve months is included in accrued expenses (as noted in the table above) with the long-term portion included in other liabilities (as noted in the table below). Under the Settlement Agreement, if the Company makes a single payment in excess of $2,000, which payment is not covered by an insurance policy, in settlement of any claims before paying the full Settlement Amount, the remaining unpaid balance of the Settlement Amount will become immediately due and payable, with interest accruing on the unpaid principal portion at an interest rate of 1.8% per annum.

Restructuring

On March 31, 2016, the Company announced a restructuring to reduce costs as a part of its plan to progress towards profitability and positive cash flow. As a result, the Company recorded a restructuring expense of $2,364 during the year ended June 30, 2016, which was comprised of severance and other employee related costs.

The following table provides information regarding the restructuring accrual:

<table>
<thead>
<tr>
<th></th>
<th>Severance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restructuring accrual at June 30, 2016</td>
<td>$1,521</td>
</tr>
<tr>
<td>Cash payments</td>
<td>(1,189)</td>
</tr>
<tr>
<td>Restructuring accrual at March 31, 2017</td>
<td>$332</td>
</tr>
</tbody>
</table>

The Company anticipates that $307 of the restructuring accrual at March 31, 2017 will be paid within the next twelve months and is therefore recorded in accrued expenses on the consolidated balance sheet. Estimated payments of $25 are recorded in other liabilities on the consolidated balance sheet. The Company does not anticipate additional restructuring costs in the near future.

CEO Departure

On February 29, 2016, the Company’s former Chief Executive Officer (“CEO”) resigned from his positions as President and CEO of the Company and as a director of the Company. The Company and the former CEO entered into a Separation Agreement with benefits consistent with the Company’s Amended and Restated Executive Officer Severance Plan. The total expense related to the former CEO’s departure was $1,507 and was recorded in selling, general and administrative expenses for the year ended June 30, 2016. As of March 31, 2017, $570 of the package benefits is recorded in accrued expenses (included in salaries and bonus in the table above) and $19 is recorded in other liabilities (included in accrued severance in the table below) on the consolidated balance sheet, representing the long-term portion of the former CEO’s benefits.

Pump Recall

In April 2017, the Company initiated a voluntary recall of one type of its saline infusion pumps. The Company plans to recall and replace approximately 900 units currently in customer inventory and recorded a reserve for approximately $1,535 of expenses during the three months ended March 31, 2017. The warranty reserve above includes $1,378 of estimated costs related to the recall and replacement of all affected saline infusion pumps. The Company also recorded approximately $60 of accrued consulting fees included in the table above, as well as an inventory reserve of $97 for pumps currently in its inventory.
Other Liabilities

Other non-current liabilities consist of the following:

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2017</th>
<th>June 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal settlement</td>
<td>2,771</td>
<td>4,128</td>
</tr>
<tr>
<td>Deferred compensation</td>
<td>379</td>
<td>684</td>
</tr>
<tr>
<td>Deferred grant incentive</td>
<td>476</td>
<td>486</td>
</tr>
<tr>
<td>Accrued severance</td>
<td>44</td>
<td>610</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>82</td>
<td>102</td>
</tr>
<tr>
<td><strong>Total Other liabilities</strong></td>
<td><strong>$3,752</strong></td>
<td><strong>$6,010</strong></td>
</tr>
</tbody>
</table>

Deferred Revenue

In November 2016, the Company signed an exclusive distribution agreement with Medikit to sell its Diamondback 360® Coronary and Peripheral OAS in Japan. To secure exclusive distribution rights, Medikit made an upfront payment of $10,000 to the Company, which is refundable based on the occurrence of certain events during the term of the agreement. The Company has classified the upfront payment as long-term based on its expectation of when revenue will be recognized. The classification will be re-evaluated on a quarterly basis.

4. Debt

Revolving Credit Facility

On March 31, 2017, the Company entered into a Loan and Security Agreement (the “Loan Agreement”) with Silicon Valley Bank (“SVB”). The Loan Agreement provides for a senior, secured revolving credit facility (the “Revolver”) of $40,000 (the “Maximum Dollar Amount”).

Advances under the Revolver may be made from time to time up to the Maximum Dollar Amount, subject to certain borrowing limitations. The Revolver has a maturity date of March 31, 2020 and bears interest at a floating per annum rate equal to the Wall Street Journal prime rate, less 0.25%. Interest on borrowings is due monthly and the principal balance is due at maturity. Borrowings up to $10,000 are available on a non-formula basis. Borrowings above $10,000 are based on (i) 85% of eligible domestic accounts receivable, and (ii) the lesser of 50% of eligible inventory or $5,000, subject to adjustment as defined in Loan Agreement. Upon the Revolver’s maturity, any outstanding principal balance, unpaid accrued interest, and all other obligations under the Revolver will be due and payable. The Company will incur a fee equal to 1% of the Maximum Dollar Amount upon termination of the Loan Agreement or the Revolver for any reason prior to the maturity date, unless refinanced with SVB.

The Company’s obligations under the Loan Agreement are secured by certain of the Company’s assets, including, among other things, accounts receivable, deposit accounts, inventory, equipment, general intangibles and records pertaining to the foregoing. The collateral does not include the Company’s intellectual property, but the Company has agreed not to encumber its intellectual property without the consent of SVB. The Loan Agreement contains customary covenants limiting the Company’s ability to, among other things, incur debt or liens, make certain investments and loans, enter into transactions with affiliates, undergo certain fundamental changes, dispose of assets, or change the nature of its business. In addition, the Loan Agreement contains financial covenants requiring the Company to maintain, at all times when any amounts are outstanding under the Revolver, either (i) minimum unrestricted cash at SVB and unused availability on the Revolver of at least $10,000 or (ii) minimum trailing three-month Adjusted EBITDA of $1,000. If the Company does not comply with the various covenants under the Loan Agreement, the interest rate on outstanding amounts will increase by 5% and SVB may, subject to various customary cure rights, decline to provide additional advances under the Revolver, require the immediate payment of all amounts outstanding under the Revolver, and foreclose on all collateral.

Under the Loan Agreement, the Company paid SVB a non-refundable commitment fee of $80, which will be amortized to interest expense over the term of the Loan Agreement. The Company is required to pay a fee equal to 0.35% per annum on the unused portion of the Revolver, payable quarterly in arrears. SVB’s obligations to advance funds under the Revolver are subject to an initial collateral examination to be completed within 90 days of the effective date of the Loan Agreement. The Company is not obligated to draw any funds under the Revolver and no amounts are outstanding as of March 31, 2017.
Financing Obligation

In connection with the sale of the Facility, the Company entered into an agreement to lease the Facility. The Lease Agreement has an initial term of fifteen years, with four consecutive renewal options of five years each at the Company's option, with a base annual rent in the first year of $1,638 and annual escalations of 3% thereafter. Rent during subsequent renewal terms will be at the then fair market rental rate. As the lease terms resulted in a capital lease classification, the Company accounted for the sale and leaseback of the Facility as a financing transaction where the assets remain on the Company's balance sheet and a financing obligation was recorded for $20,944. As lease payments are made, they will be allocated between interest expense and a reduction of the financing obligation, resulting in a value of the financing obligation that is equivalent to the net book value of the assets at the end of the lease term. The effective interest rate is 7.97%. At the end of the lease (including any renewal option terms), the Company will remove the assets and financing obligation from its balance sheet.

Future payments under the initial term of the Lease Agreement as of March 31, 2017 are as follows:

<table>
<thead>
<tr>
<th>Three months ended June 30, 2017</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$ 1,650</td>
</tr>
<tr>
<td>2019</td>
<td>$ 1,699</td>
</tr>
<tr>
<td>2020</td>
<td>$ 1,750</td>
</tr>
<tr>
<td>2021</td>
<td>$ 1,803</td>
</tr>
<tr>
<td>Thereafter</td>
<td>$ 23,144</td>
</tr>
<tr>
<td></td>
<td>$ 30,319</td>
</tr>
</tbody>
</table>

Deferred Compensation Plan

The Company offers certain members of management and highly compensated employees the opportunity to defer up to 100% of their base salary (after 401(k), payroll tax and other deductions), performance bonus and discretionary bonus and elect to receive the deferred compensation at a fixed future date of participant’s choosing. Each participant may, at the time of his or her deferral election, choose to allocate the deferred compensation into investment alternatives set by the Human Resources and Compensation Committee. The amount payable to each participant under the plan will change in value based upon the investment selected by that participant and is classified as current or long-term on the Company's balance sheet based on the disbursement elections made by the participants. As of March 31, 2017, $362 of the amount payable is included in accrued liabilities and $379 is included in other liabilities on the consolidated balance sheet. Future distribution dates are July 1, 2017 and January 1, 2020.

The available-for-sale marketable securities are primarily comprised of investments with a fixed income and equity investments and consist of the following:

<table>
<thead>
<tr>
<th>Amortized Cost</th>
<th>Unrealized Gains</th>
<th>Unrealized Losses</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mutual funds</td>
<td>$ 644</td>
<td>$ 97</td>
<td>—</td>
</tr>
<tr>
<td>Total short-term investments</td>
<td>$ 644</td>
<td>$ 97</td>
<td>—</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amortized Cost</th>
<th>Unrealized Gains</th>
<th>Unrealized Losses</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mutual funds</td>
<td>$ 644</td>
<td>$ 40</td>
<td>—</td>
</tr>
<tr>
<td>Total short-term investments</td>
<td>$ 644</td>
<td>$ 40</td>
<td>—</td>
</tr>
</tbody>
</table>

During the nine months ended March 31, 2017 and 2016, there were $0 and $37, respectively, in purchases of available-for-sale securities. There were no sales or other-than-temporary impairments during the nine months ended March 31, 2017 and 2016, respectively.
The following table provides information by level for the Company's available-for-sale marketable securities that were measured at fair value on a recurring basis:

<table>
<thead>
<tr>
<th>Fair Value Measurements as of March 31, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using Inputs Considered as</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Level 1</td>
</tr>
<tr>
<td>-----------------</td>
</tr>
<tr>
<td>Mutual funds</td>
</tr>
<tr>
<td>Total short-term investments</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fair Value Measurements as of June 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using Inputs Considered as</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Level 1</td>
</tr>
<tr>
<td>-----------------</td>
</tr>
<tr>
<td>Mutual funds</td>
</tr>
<tr>
<td>Total short-term investments</td>
</tr>
</tbody>
</table>

The Company's marketable securities classified within Level 1 are valued using real-time quotes for transactions in active exchange markets. Marketable securities within Level 2 are valued using readily available pricing sources. There were no transfers of assets between Level 1 and Level 2 of the fair value measurement hierarchy during the nine months ended March 31, 2017. Any transfers between levels would be recognized on the date of the event or when a change in circumstances causes a transfer.

6. Stock Options and Restricted Stock Awards

The Company maintains the 2014 Equity Incentive Plan (the “2014 Plan”) for the purpose of granting equity awards to employees, directors and consultants. The 2014 Plan was approved by the Company’s stockholders and became effective in November 2014 and was subsequently amended in May 2015. The 2014 Plan replaced the 2007 Equity Incentive Plan (the “2007 Plan”), and no further equity awards may be granted under the 2007 Plan. The Company also maintains one other terminated plan, the 2003 Stock Option Plan (the “2003 Plan”) (the 2014 Plan, the 2007 Plan, and the 2003 Plan are collectively referred to as the “Plans”).

Stock Options

All options granted under the Plans become exercisable over periods established at the date of grant. The option exercise price, as determined by the Company’s management and Board of Directors, is generally not less than the estimated fair market value of the Company’s common stock at the date of grant. In addition, the Company has granted nonqualified stock options to a director outside of the Plans. An employee's vested options must be exercised at or within 90 days of termination to avoid forfeiture. As of March 31, 2017, all outstanding options were fully vested.

Stock option activity for the nine months ended March 31, 2017 is as follows:

| Options outstanding at June 30, 2016 | 606,879 | $ 10.14 |
| Options exercised                  | (490,804) | $ 10.40 |
| Options expired                     | (9,381) | $ 8.83 |
| Options outstanding at March 31, 2017| 106,694 | $ 9.10 |

(a) Includes the effect of options granted, exercised, forfeited or expired from the 2003 Plan and 2007 Plan, and options granted outside such plans.

Restricted Stock

For restricted stock awards that vest solely based on time, the fair value of each restricted stock award is equal to the fair market value of the Company’s common stock at the date of grant. Vesting of restricted stock awards generally ranges from one to three years. The estimated fair value of restricted stock awards, including the effect of estimated forfeitures, is recognized on a straight-line basis over the restricted stock’s vesting period.

14
Restricted stock award activity for the nine months ended March 31, 2017 is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number of Shares</th>
<th>Weighted Average Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding at June 30, 2016</td>
<td>957,689</td>
<td>$22.99</td>
</tr>
<tr>
<td>Granted</td>
<td>258,346</td>
<td>$21.80</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(390,637)</td>
<td>$12.34</td>
</tr>
<tr>
<td>Vested</td>
<td>(289,584)</td>
<td>$24.14</td>
</tr>
<tr>
<td>Outstanding at March 31, 2017</td>
<td>535,814</td>
<td>$21.44</td>
</tr>
</tbody>
</table>

Performance-Based Restricted Stock

On August 8, 2016 and August 17, 2016, the Company granted restricted stock awards to its executives and management. These awards included grants of an aggregate maximum 336,826 shares that vest based on the Company’s total shareholder return relative to total shareholder return of the Company’s peer group, as measured by the closing prices of the stock of the Company and the peer group members for the 90 trading days preceding July 1, 2016 compared to the closing prices of the stock of the Company and the peer group members for the 90 trading days preceding July 1, 2019. Vesting of these awards will be determined on the date that the Company’s Annual Report on Form 10-K for the fiscal year ending June 30, 2019 is filed.

To calculate the estimated fair value of these restricted stock awards with market conditions, the Company uses a Monte Carlo simulation, which uses the expected average stock prices to estimate the expected number of shares that will vest. The Monte Carlo simulation resulted in a fair value of approximately $4,032, which the Company will recognize as expense using the straight-line method over the period that the awards are expected to vest. Stock-based compensation expense related to an award with a market condition will be recognized regardless of whether the market condition is satisfied, provided that the requisite service has been provided.

Performance-based restricted stock award activity for the nine months ended March 31, 2017 is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number of Shares</th>
<th>Weighted Average Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding at June 30, 2016</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Granted</td>
<td>336,826</td>
<td>$11.97</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(2,321)</td>
<td>$11.97</td>
</tr>
<tr>
<td>Vested</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Outstanding at March 31, 2017</td>
<td>334,505</td>
<td>$11.97</td>
</tr>
</tbody>
</table>

7. Commitment and Contingencies

Operating Leases

The Company leases manufacturing and other space, as well as equipment, under lease agreements that expire at various dates through March 2020. Rental expenses were $164 and $140 for the three months ended March 31, 2017 and 2016, respectively, and $485 and $781 for the nine months ended March 31, 2017 and 2016, respectively.

Future minimum lease payments under the agreements as of March 31, 2017 are as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Three months ended June 30, 2017</td>
<td>$149</td>
</tr>
<tr>
<td>Fiscal 2018</td>
<td>524</td>
</tr>
<tr>
<td>Fiscal 2019</td>
<td>473</td>
</tr>
<tr>
<td>Fiscal 2020</td>
<td>353</td>
</tr>
<tr>
<td></td>
<td>$1,499</td>
</tr>
</tbody>
</table>
Stockholder Securities Litigation

With respect to Shoemaker v. Cardiovascular Systems, Inc. et al., 0:16-cv-00568 (D. Minn.) described in Note 9 of the notes to the consolidated annual financial statements, included in the Annual Report on Form 10-K filed by the Company with the SEC on August 25, 2016, the Company filed a motion to dismiss the complaint in this action on August 29, 2016. A hearing was held on the motion to dismiss on December 2, 2016. On March 29, 2017, the court granted the Company's motion to dismiss the complaint and dismissed the plaintiffs' amended complaint without prejudice. The court granted the plaintiffs' request for leave to amend their complaint, which amended complaint must be filed within 90 days of the court's order.

Stockholder Derivative Action

With respect to the stockholder derivative action described in Note 9 of the notes to the consolidated annual financial statements, included in the Annual Report on Form 10-K filed by the Company with the SEC on August 25, 2016, the parties filed with the court a stipulated order dismissing the derivative action without prejudice on November 17, 2016. The stipulated order of voluntary dismissal came after plaintiff had filed a notice of dismissal on October 19, 2016 and defendants filed a conditional opposition. Defendants had sought to have the court impose additional restrictions on plaintiff as a condition for granting the request for dismissal. The parties then engaged in discussions and resolved the issues, with the defendants withdrawing their opposition and an agreement being reached to have the case dismissed. On November 18, 2016, the court entered the order dismissing the action. Accordingly, the stockholder derivative action is no longer pending.

Other Matters

In the ordinary conduct of business, the Company is subject to various lawsuits and claims covering a wide range of matters including, but not limited to, employment claims and commercial disputes. While the outcome of these matters is uncertain, the Company does not believe there are any significant matters as of March 31, 2017 that are probable or estimable, for which the outcome could have a material adverse impact on its consolidated balance sheets or statements of operations.

8. Earnings Per Share

The following table presents a reconciliation of the numerators and denominators used in the basic and diluted earnings per common share computations (in thousands except share and per share amounts):

<table>
<thead>
<tr>
<th>Numerator</th>
<th>Three Months Ended March 31,</th>
<th>Nine Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss</td>
<td>$ (1,749)</td>
<td>$ (22,716)</td>
</tr>
<tr>
<td>Weighted average common shares outstanding – basic</td>
<td>32,650,974</td>
<td>32,711,341</td>
</tr>
<tr>
<td>Effect of dilutive stock options (1)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Effect of dilutive restricted stock units (2)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Effect of performance-based restricted stock awards (3)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Weighted average common shares outstanding – diluted</td>
<td>32,650,974</td>
<td>32,711,341</td>
</tr>
<tr>
<td>Earnings per common share – basic</td>
<td>$ (0.05)</td>
<td>$ (0.69)</td>
</tr>
<tr>
<td>Earnings per common share – diluted</td>
<td>$ (0.05)</td>
<td>$ (0.69)</td>
</tr>
</tbody>
</table>

(1) At March 31, 2017 and 2016, 106,694 and 606,879 stock options, respectively, were outstanding. The effect of the shares that would be issued upon exercise of these options has been excluded from the calculation of diluted loss per share because those shares are anti-dilutive.

(2) At March 31, 2017 and 2016, 349,430 and 305,031 additional shares of common stock, respectively, were issuable upon the settlement of outstanding restricted stock units. The effect of the shares that would be issued upon settlement of these restricted stock units has been excluded from the calculation of diluted loss per share because those shares are anti-dilutive.

(3) At March 31, 2017, 334,505 performance-based restricted stock awards were outstanding. The effect of the shares that would be issued upon vesting of these awards has been excluded from the calculation of diluted loss per share because those shares are anti-dilutive.
Unvested time-based restricted stock awards that contain nonforfeitable rights to dividends are participating securities and included in the computation of earnings per share pursuant to the two-class method. Under this method, earnings attributable to the Company are allocated between common stockholders and the participating awards, as if the awards were a second class of stock. During periods of net income, the calculation of earnings per share excludes the income attributable to participating securities in the numerator and the dilutive impact of these securities from the denominator. In the event of a net loss, undistributed earnings are not allocated to participating securities and the denominator excludes the dilutive impact of these securities as they do not share in the losses of the Company. During the three months and nine months ended March 31, 2017 and 2016, there were no undistributed earnings allocated to participating securities due to the net losses.

9. Subsequent Event

The Company is party to Steven Babyak v. Cardiovascular Systems, Inc., originally filed in the Superior Court of California, County of Los Angeles, on November 16, 2015. The plaintiff, a former Regional Sales Manager of the Company, made claims under California law relating to whistleblower retaliation; defamation; discrimination on the basis of association with protected group; harassment on the basis of sex in violation of FEHA; retaliation for exercising rights under FEHA; failure to prevent discrimination, harassment & retaliation in violation of FEHA; wrongful termination in violation of public policy; and violation of business & professions code. Following a jury trial that commenced on April 17, 2017, on April 24, 2017, the jury awarded the plaintiff $2,700 in compensatory damages with respect to his claims for whistleblower retaliation and wrongful termination in violation of public policy, and on April 25, 2017, the jury awarded the plaintiff $22,400 in punitive damages with respect to the same claims. The Company intends to vigorously challenge the verdict in the trial court and appeal.

The Company has accrued $2,600 in the three months ended March 31, 2017 based on the estimate of the range of the loss that the Company believes is probable of occurring. However, it is reasonably possible that the ultimate loss, if the Company is not able to successfully challenge the verdict, could be materially different than the amount that the Company has recorded. The Company will continue to monitor the accrual associated with this matter each reporting period and make adjustments, if necessary, based on additional facts as they arise. The amounts are reflected in selling, general and administrative expenses on the Company's consolidated statement of operations. Additionally, as of March 31, 2017, the Company has recorded a receivable of $1,300 associated with its present assessment of the probable amount of insurance proceeds the Company would receive related to the claim, based on the accrued amount of loss referenced above. The Company estimates insurance receivables based on an analysis of its policies, including their exclusions, an assessment of the nature of each claim and remaining coverage, information from its insurance carrier, and the probable loss range referenced above. The Company then records an amount it has concluded is probable. Similar to the accrual pertaining to this matter, the Company will continue to assess the probable amount of insurance proceeds expected to be received in this case each reporting period and make adjustments, if necessary, based on additional facts as they arise.
ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes appearing under Item 1 of Part I of this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis or set forth elsewhere in this quarterly report, including information with respect to our plans and strategy for our business and expected financial results, includes forward-looking statements that involve risks and uncertainties. You should review the “Risk Factors” discussed in our Form 10-K for the year ended June 30, 2016 and subsequent reports on Form 10-Q for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

OVERVIEW

We are a medical technology company leading the way in the effort to successfully treat patients suffering from peripheral and coronary artery diseases, including those with arterial calcium, the most difficult arterial disease to treat. We are committed to clinical rigor, constant innovation and a defining drive to set the industry standard to deliver safe and effective medical devices that improve lives of patients facing this difficult disease state.

Our peripheral arterial disease (“PAD”) products, the Diamondback 360® Peripheral Orbital Atherectomy System (“OAS”) (“Diamondback 360 Peripheral”), the Diamondback 360 60cm Peripheral OAS, the Diamondback 360 4 French 1.25 Peripheral OAS, the Diamondback 360 1.50 Peripheral OAS, the Diamondback 360 2.00 Peripheral OAS, and the Stealth 360® Peripheral OAS (“Stealth 360”), are catheter-based platforms capable of treating a broad range of plaque types in leg arteries both above and below the knee, including calcified plaque, and address many of the limitations associated with existing surgical, catheter and pharmacological treatment alternatives. The micro-invasive devices use small access sheaths that can provide procedural benefits and allow physicians to treat PAD patients in even the small and tortuous vessels located below the knee through alternative access sites in the ankle and foot as well as in the groin. We refer to each of the products above in this report as the “Peripheral OAS.”

In 2006, we obtained an investigational device exemption from the U.S. Food and Drug Administration (“FDA”) to conduct our pivotal OASIS PAD clinical trial, which was completed in January 2007. The OASIS clinical trial was a prospective 20-center study that involved 124 patients with 201 lesions.

The FDA granted us 510(k) clearance for the following Peripheral OAS as a therapy in patients with peripheral artery disease:

<table>
<thead>
<tr>
<th>FDA 510(k) Clearance Granted</th>
<th>Product</th>
<th>Commercial Introduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 2007</td>
<td>Diamondback 360 Peripheral</td>
<td>September 2007</td>
</tr>
<tr>
<td>March 2009</td>
<td>Predator 360 (1)</td>
<td>April 2009</td>
</tr>
<tr>
<td>March 2011</td>
<td>Stealth 360</td>
<td>March 2011</td>
</tr>
<tr>
<td>February 2014</td>
<td>Diamondback 360 60cm Peripheral</td>
<td>April 2014</td>
</tr>
<tr>
<td>April 2015</td>
<td>Diamondback 360 Low Profile Peripheral</td>
<td>July 2015</td>
</tr>
<tr>
<td>October 2015</td>
<td>Diamondback 360 1.50 Peripheral</td>
<td>January 2016</td>
</tr>
<tr>
<td>October 2015</td>
<td>Diamondback 360 2.00 Peripheral</td>
<td>January 2016</td>
</tr>
</tbody>
</table>

(1) We are not currently marketing this product.

Our coronary arterial disease (“CAD”) product, Diamondback 360® Coronary OAS (“Coronary OAS”), is marketed as a treatment for severely calcified coronary arteries. The Coronary OAS is a catheter-based platform designed to facilitate stent delivery in patients with CAD who are acceptable candidates for percutaneous transluminal coronary angioplasty or stenting due to de novo, severely calcified coronary artery lesions. The Coronary OAS design is similar to technology used in our Peripheral OAS, customized specifically for the coronary application.

A coronary application required us to conduct a clinical trial and file a premarket approval (“PMA”) application and obtain approval from the FDA. In March 2013, we completed submission of our PMA application to the FDA for our orbital atherectomy system to treat calcified coronary arteries. In October 2013, we received PMA from the FDA to market the Coronary OAS as a treatment for severely calcified coronary arteries. We commenced a commercial launch of our Coronary OAS following receipt of PMA. In March 2017, the Company received approval from the FDA to market the Diamondback 18...
Coronary OAS Micro Crown. The Coronary OAS Micro Crown is the only atherectomy device designed to both pilot tight, calcific lesions and treat up to 4mm vessels with a single device.

We market the Peripheral and Coronary OAS in the United States through a direct sales force and expend significant capital on our sales and marketing efforts to expand our customer base and utilization per customer. At our facilities, we assemble the saline infusion pump and the single-use catheter used in the Peripheral OAS and Coronary OAS with components purchased from third-party suppliers, as well as with components manufactured in-house. Supplemental products are purchased from third-party suppliers.

International

In October 2014, we received CE Mark for our Stealth 360 device and are currently evaluating the timing and structure of our plans to commercialize our products in Europe.

In November 2016, we signed an exclusive distribution agreement with Medikit Co., Ltd. (“Medikit”) to sell our Diamondback 360 Coronary and Peripheral OAS in Japan. In March 2017, we received approval from Japan’s Ministry of Health, Labor and Welfare for our Diamondback 360 Coronary OAS Micro Crown. Pending reimbursement approval, Japan would become the first international market for any of our products. We are currently evaluating options for additional international expansion to maximize the coronary and peripheral market opportunities.

CRITICAL ACCOUNTING POLICIES AND SIGNIFICANT JUDGMENTS AND ESTIMATES

Our management’s discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of our consolidated financial statements requires us to make estimates, assumptions and judgments that affect amounts reported in those statements. Our estimates, assumptions and judgments, including those related to revenue recognition, allowance for doubtful accounts, excess and obsolete inventory, and stock-based compensation, are updated as appropriate at least quarterly. We use authoritative pronouncements, our technical accounting knowledge, cumulative business experience, judgment and other factors in the selection and application of our accounting policies. While we believe that the estimates, assumptions and judgments that we use in preparing our consolidated financial statements are appropriate, these estimates, assumptions and judgments are subject to factors and uncertainties regarding their outcome. Therefore, actual results may materially differ from these estimates.

Some of our significant accounting policies require us to make subjective or complex judgments or estimates. An accounting estimate is considered to be critical if it meets both of the following criteria: (1) the estimate requires assumptions about matters that are highly uncertain at the time the accounting estimate is made, and (2) different estimates that reasonably could have been used, or changes in the estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of our financial condition, results of operations, or cash flows.

Our critical accounting policies are identified in our Annual Report on Form 10-K for the fiscal year ended June 30, 2016 in Management's Discussion and Analysis of Financial Condition and Results of Operations under the heading "Critical Accounting Policies and Significant Judgments and Estimates." During the quarter ended March 31, 2017, we entered into a lease agreement discussed below. There were no other significant changes to our critical accounting policies during the nine months ended March 31, 2017.

Financing Obligation. In connection with the sale of our headquarters (the "Facility"), we entered into an agreement to lease the Facility. As the lease terms resulted in a capital lease classification, we accounted for the sale and leaseback of the Facility as a financing transaction where the assets remain on our consolidated balance sheet and a financing obligation was recorded. The key assumptions used in the lease analysis were related to the Facility's fair value and the interest rate.

- Fair value - We used the most recent appraisal of the Facility, performed during the buyers' due diligence, as its fair value at the inception of the lease agreement. As the present value of minimum lease payments were more than 90% of this fair value, the lease was determined to be a capital lease. We reviewed all possible values and believe that the appraised value is the most appropriate for use in the lease analysis.
- Interest rate - We used our incremental borrowing rate based on a prior proposal for a term loan. Management reviewed various factors and determined that the interest rate used in the calculation is reasonable.
RESULTS OF OPERATIONS

The following table sets forth our results of operations expressed as dollar amounts (in thousands) and the changes between the specified periods expressed as percent increases or decreases:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenues</td>
<td>$ 52,144</td>
<td>$ 44,461</td>
<td>17.3%</td>
<td>$ 151,987</td>
<td>$ 129,724</td>
<td>17.2%</td>
</tr>
<tr>
<td>Cost of goods sold</td>
<td>11,139</td>
<td>8,725</td>
<td>27.7</td>
<td>29,768</td>
<td>25,567</td>
<td>16.4</td>
</tr>
<tr>
<td>Gross profit</td>
<td>41,005</td>
<td>35,736</td>
<td>14.7</td>
<td>122,219</td>
<td>104,157</td>
<td>17.3</td>
</tr>
</tbody>
</table>

Expenses:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>Percent Change</th>
<th>2017</th>
<th>2016</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling, general and administrative</td>
<td>37,332</td>
<td>42,338</td>
<td>(11.8)</td>
<td>108,191</td>
<td>124,991</td>
<td>(13.4)</td>
</tr>
<tr>
<td>Research and development</td>
<td>5,432</td>
<td>5,748</td>
<td>(5.5)</td>
<td>16,572</td>
<td>19,895</td>
<td>(16.7)</td>
</tr>
<tr>
<td>Restructuring</td>
<td>—</td>
<td>2,376</td>
<td>(100.0)</td>
<td>—</td>
<td>2,376</td>
<td>(100.0)</td>
</tr>
<tr>
<td>Legal settlement</td>
<td>—</td>
<td>8,000</td>
<td>(100.0)</td>
<td>—</td>
<td>8,000</td>
<td>(100.0)</td>
</tr>
<tr>
<td>Total expenses</td>
<td>42,764</td>
<td>58,462</td>
<td>(26.9)</td>
<td>124,763</td>
<td>155,262</td>
<td>(19.6)</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(1,759)</td>
<td>(22,726)</td>
<td>(92.3)</td>
<td>(2,544)</td>
<td>(51,105)</td>
<td>(95.0)</td>
</tr>
<tr>
<td>Other (income) and expense, net</td>
<td>(28)</td>
<td>(21)</td>
<td>33.3</td>
<td>(46)</td>
<td>(22)</td>
<td>109.1</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(1,731)</td>
<td>(22,705)</td>
<td>(92.4)</td>
<td>(2,498)</td>
<td>(51,083)</td>
<td>(95.1)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>18</td>
<td>11</td>
<td>63.6</td>
<td>66</td>
<td>57</td>
<td>15.8</td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (1,749)</td>
<td>$ (22,716)</td>
<td>(92.3)</td>
<td>$ (2,564)</td>
<td>$ (51,140)</td>
<td>(95.0)</td>
</tr>
</tbody>
</table>

Comparison of Three Months Ended March 31, 2017 with Three Months Ended March 31, 2016

Net revenues. Net revenues increased by $7.6 million, or 17.3%, from $44.5 million for the three months ended March 31, 2016 to $52.1 million for the three months ended March 31, 2017. This increase was attributable to higher sales of both our PAD and CAD Systems. PAD System revenues increased approximately $4.4 million, or 14.0%, due to 17.9% more devices sold in the three months ended March 31, 2017 than during the three months ended March 31, 2016. Sales of our CAD Systems increased $2.8 million, or 28.9%, due to 30.0% more devices sold in the three months ended March 31, 2017 than during the three months ended March 31, 2016. Other product revenue increased by $535,000, or 14.4%, primarily driven by increased sales of our PAD and CAD Systems, which the other products support.

Currently, all of our revenues are in the United States; however, we intend to sell internationally in the future and have commenced the process of seeking approval to do so in both Japan and Europe. In November 2016, we signed an exclusive distribution agreement with Medikit to sell our Diamondback 360® Coronary and Peripheral OAS in Japan, and in March 2017, we received approval from Japan’s Ministry of Health, Labor and Welfare for its Diamondback 360® Coronary OAS Micro Crown. In October 2014, we received CE Mark for the Stealth 360 and are currently evaluating the timing and structure of our plans to commercialize products in Europe. We expect our revenue to increase as we continue to increase the number of physicians using the devices, increase the usage per physician, introduce new and improved products, generate additional clinical data, and expand into new geographies.

Cost of Goods Sold. Cost of goods sold increased $2.4 million, or 27.7%, from $8.7 million for the three months ended March 31, 2016 to $11.1 million for the three months ended March 31, 2017. Cost of goods sold represents the cost of materials, labor and overhead for single-use catheters, guidewires, saline pumps, and other ancillary products. Cost of goods sold for the three months ended March 31, 2017 and 2016 includes $182,000 and $221,000, respectively, for stock-based compensation. The increase in cost of goods sold was primarily due to increased sales levels and a one-time charge of $1.5 million related to the initiation of a voluntary recall of one type of our saline infusion pumps, partially offset by lower costs per unit driven by manufacturing efficiencies and cost reductions. Gross margin decreased to 78.6% for the three months ended March 31, 2017 from 80.4% for the three months ended March 31, 2016 due to the saline pump reserve discussed above, partially offset by lower costs per unit. We expect that gross margin in the fourth quarter of fiscal 2017 will be higher than gross margin in the three months ended March 31, 2017. Quarterly margin fluctuations could occur based on production volumes, timing of new product introductions, sales mix, pricing changes, or other unanticipated circumstances.
Selling, General and Administrative Expenses. Our selling, general and administrative expenses decreased by $5.0 million, or 11.8%, from $42.3 million for the three months ended March 31, 2016 to $37.3 million for the three months ended March 31, 2017. The decrease was primarily due to commission plan changes, the $2.0 million of prior year costs associated with the departure of our former Chief Executive Officer (“CEO”), lower payroll-related expenses from a decrease in headcount from the three months ended March 31, 2016, and a reduction in legal expenses. Partially offsetting the decreases was a charge of $1.3 million for employment litigation costs and an increase in incentive compensation expense due to performance. Selling, general and administrative expenses for the three months ended March 31, 2017 and 2016 includes $1.9 million and $2.5 million, respectively, for stock-based compensation, which decreased due to the reduction in headcount, a change in vesting terms for our performance-based restricted stock awards granted in fiscal 2017 from those granted in fiscal 2016, and a change in the classes of employees entitled to equity awards. We expect our selling, general and administrative expenses for the fourth quarter of fiscal 2017 to be higher than the amounts incurred for the three months ended March 31, 2017.

Research and Development Expenses. Research and development expenses decreased by $316,000, or 5.5%, from $5.7 million for the three months ended March 31, 2016 to $5.4 million for the three months ended March 31, 2017. Research and development expenses relate to specific projects to develop new products or expand into new markets, such as the development of new versions of the PAD and CAD Systems, shaft designs and crown designs, and to PAD and CAD clinical trials. The decrease primarily related to the completion of enrollment in several of our clinical studies. Research and development expenses for the three months ended March 31, 2017 and 2016 includes $281,000 and $406,000, respectively, for stock-based compensation, which decreased due to the reduction in headcount. We expect research and development expenses in the fourth quarter of fiscal 2017 to be higher than amounts incurred for the three months ended March 31, 2017 due to the timing of projects and studies. Fluctuations could occur based on the number of projects and studies and the timing of expenditures.

Restructuring Charges. During the quarter ended March 31, 2016, we announced a broad-based restructuring to reduce costs as a key part of our plan to balance revenue growth with a pathway to profitability and positive cash flow. As a result, we recorded a restructuring expense of $2.4 million during the three months ended March 31, 2016, which was comprised of severance and other employee related costs.

Legal Settlement. On June 28, 2016, we entered into a Settlement Agreement with the United States of America, acting through the United States Attorney for the Western District of North Carolina (the “DOJ”) and on behalf of the Office of Inspector General of the Department of Health and Human Services, and Travis Thams (the “Relator”), to resolve the previously disclosed investigation by the DOJ and the qui tam complaint filed by the Relator pursuant to the False Claims Act in the United States District Court for the Western District of North Carolina, Charlotte Division. During the three months ended March 31, 2016, we agreed in principle to the terms of the settlement and recorded an $8.0 million legal settlement expense.


Net revenues. Net revenues increased by $22.3 million, or 17.2%, from $129.7 million for the nine months ended March 31, 2016 to $152.0 million for the nine months ended March 31, 2017. This increase was attributable to higher sales of both our PAD and CAD Systems. PAD System revenues increased approximately $10.8 million, or 11.5%, due to 12.4% more devices sold in the nine months ended March 31, 2017 than during the nine months ended March 31, 2016. Sales of our CAD Systems increased $9.6 million, or 37.4%, due to 37.6% more devices sold in the nine months ended March 31, 2017 than during the nine months ended March 31, 2016. Other product revenue increased by $1.9 million, or 18.4%, primarily driven by increased sales of our PAD and CAD Systems, which the other products support.

Cost of Goods Sold. Cost of goods sold increased $4.2 million, or 16.4%, from $25.6 million for the nine months ended March 31, 2016 to $29.8 million for the nine months ended March 31, 2017. Cost of goods sold represents the cost of materials, labor and overhead for single-use catheters, guidewires, saline pumps, and other ancillary products. Cost of goods sold for the nine months ended March 31, 2017 and 2016 includes $557,000 and $625,000, respectively, for stock-based compensation. The increase in cost of goods sold was primarily due to increased sales levels and a one-time charge of $1.5 million related to the initiation of a voluntary recall of one type of our saline infusion pumps, partially offset by lower costs per unit driven by manufacturing efficiencies and cost reductions. Gross margin increased to 80.4% for the nine months ended March 31, 2017 from 80.3% for the nine months ended March 31, 2016 due to lower costs per unit.
Selling, General and Administrative Expenses. Our selling, general and administrative expenses decreased by $16.8 million, or 13.4%, from $125.0 million for the nine months ended March 31, 2016 to $108.2 million for the nine months ended March 31, 2017. The decrease was primarily due to commission plan changes, lower payroll-related and travel expenses from a 7.0% decrease in headcount from the nine months ended March 31, 2016, $2.0 million of prior year costs associated with the departure of our former CEO, and a reduction in medical device excise tax expense due to the suspension of the tax effective January 1, 2016. Partially offsetting the decreases was a charge of $1.3 million for employment litigation costs and an increase in incentive compensation expense due to performance. Selling, general and administrative expenses for the nine months ended March 31, 2017 and 2016 includes $7.0 million and $8.5 million, respectively, for stock-based compensation, which decreased due to the reduction in headcount, a change in vesting terms for our performance-based restricted stock awards granted in fiscal 2017 from those granted in fiscal 2016, and a change in the classes of employees entitled to equity awards.

Research and Development Expenses. Research and development expenses decreased by $3.3 million, or 16.7%, from $19.9 million for the nine months ended March 31, 2016 to $16.6 million for the nine months ended March 31, 2017. Research and development expenses relate to specific projects to develop new products or expand into new markets, such as the development of new versions of the PAD and CAD Systems, shaft designs and crown designs, and to PAD and CAD clinical trials. The decrease primarily related to the completion of enrollment in several of our clinical studies and lower payroll-related expenses from a 6.4% decrease in headcount from the nine months ended March 31, 2016, partially offset by higher patent expense. Research and development expenses for the nine months ended March 31, 2017 and 2016 includes $822,000 and $1.2 million, respectively, for stock-based compensation, which decreased due to the reduction in headcount.

Restructuring Charges. During the quarter ended March 31, 2016, we announced a broad-based restructuring to reduce costs as a key part of our plan to balance revenue growth with a pathway to profitability and positive cash flow. As a result, we recorded a restructuring expense of $2.4 million during the nine months ended March 31, 2016, which was comprised of severance and other employee related costs.

Legal Settlement. On June 28, 2016, we entered into a Settlement Agreement with the United States of America, acting through the United States Attorney for the Western District of North Carolina (the “DOJ”) and on behalf of the Office of Inspector General of the Department of Health and Human Services, and Travis Thams (the “Relator”), to resolve the previously disclosed investigation by the DOJ and the qui tam complaint filed by the Relator pursuant to the False Claims Act in the United States District Court for the Western District of North Carolina, Charlotte Division. During the three months ended March 31, 2016, we agreed in principle to the terms of the settlement and recorded an $8.0 million legal settlement expense.

LIQUIDITY AND CAPITAL RESOURCES

We had cash and cash equivalents of $103.1 million and $60.6 million at March 31, 2017 and June 30, 2016, respectively. During the nine months ended March 31, 2017, net cash provided by operations was $16.5 million. As of March 31, 2017, we had an accumulated deficit of $330.1 million. We have historically funded our operating losses primarily from the issuance of common and preferred stock, convertible promissory notes, and debt.

Facility Sale

On December 29, 2016, we entered into a Purchase and Sale Agreement, as subsequently amended (collectively, the “Sale Agreement”), with Krishna Holdings, LLC (the “Buyer”), providing for the sale to Buyer of our headquarters facility in St. Paul, Minnesota (the “Facility”), for a cash purchase price of $21.5 million. On March 30, 2017, the sale of the Facility under the Sale Agreement closed. We received proceeds of approximately $20.9 million ($21.5 million less $56,000 of transaction expenses).

We intend to use the net proceeds from the sale for working capital and general corporate purposes, which may include, but are not limited to:

- the funding of clinical trials and studies;
- sales and marketing programs;
- expansion into international markets; and
- development of new products.

We may also use a portion of the net proceeds for the potential acquisition of, or investments in, businesses, technologies and products, although we have no current understandings, commitments or arrangements to do so. We cannot specify with certainty all of the particular uses for the net proceeds. Accordingly, we will retain broad discretion over the use of these net proceeds.

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Revolving Credit Facility

On March 31, 2017, we entered into a Loan and Security Agreement (the “Loan Agreement”) with Silicon Valley Bank (“SVB”). The Loan Agreement provides for a senior, secured revolving credit facility (the “Revolver”) of $40.0 million (the “Maximum Dollar Amount”).

Advances under the Revolver may be made from time to time up to the Maximum Dollar Amount, subject to certain borrowing limitations. The Revolver has a maturity date of March 31, 2020 and bears interest at a floating per annum rate equal to the Wall Street Journal prime rate, less 0.25%. Interest on borrowings is due monthly and the principal balance is due at maturity. Borrowings up to $10.0 million are available on a non-formula basis. Borrowings above $10.0 million are based on (i) 85% of eligible domestic accounts receivable, and (ii) the lesser of 50% of eligible inventory or $5.0 million, subject to adjustment as defined in Loan Agreement. Upon the Revolver’s maturity, any outstanding principal balance, unpaid accrued interest, and all other obligations under the Revolver will be due and payable. We will incur a fee equal to 1% of the Maximum Dollar Amount upon termination of the Loan Agreement or the Revolver for any reason prior to the maturity date, unless refinanced with SVB.

Our obligations under the Loan Agreement are secured by certain of our assets, including, among other things, accounts receivable, deposit accounts, inventory, equipment, general intangibles and records pertaining to the foregoing. The collateral does not include our intellectual property, but we agreed not to encumber our intellectual property without the consent of SVB. The Loan Agreement contains customary covenants limiting our ability to, among other things, incur debt or liens, make certain investments and loans, enter into transactions with affiliates, undergo certain fundamental changes, dispose of assets, or change the nature of its business. In addition, the Loan Agreement contains financial covenants requiring us to maintain, at all times when any amounts are outstanding under the Revolver, either (i) minimum unrestricted cash at SVB and unused availability on the Revolver of at least $10.0 million or (ii) minimum trailing three-month Adjusted EBITDA of $1.0 million. If we do not comply with the various covenants under the Loan Agreement, the interest rate on outstanding amounts will increase by 5% and SVB may, subject to various customary cure rights, decline to provide additional advances under the Revolver, require the immediate payment of all amounts outstanding under the Revolver, and foreclose on all collateral.

Under the Loan Agreement, we paid SVB a non-refundable commitment fee of $80,000 which will be amortized to interest expense over the term of the Loan Agreement. We are required to pay a fee equal to 0.35% per annum on the unused portion of the Revolver, payable quarterly in arrears. SVB’s obligations to advance funds under the Revolver are subject to an initial collateral examination to be completed within 90 days of the effective date of the Loan Agreement. We are not obligated to draw any funds under the Revolver and no amounts are outstanding as of March 31, 2017.

We currently do not have plans of borrowing under the Loan Agreement; however, if we did, it would be for purposes noted above.

Changes in Liquidity

Cash and Cash Equivalents. Cash and cash equivalents were $103.1 million at March 31, 2017 and $60.6 million at June 30, 2016. The increase is primarily attributable to net cash provided by our financing and operating activities during the nine months ended March 31, 2017.

Operating Activities. Net cash provided by (used in) operations was $16.5 million and $(20.2) million for the nine months ended March 31, 2017 and 2016, respectively. For the nine months ended March 31, 2017 and 2016, we had a net loss of $2.6 million and $51.1 million, respectively. Significant changes in working capital during these periods included:

- Cash (used in) provided by accounts receivable of $(5.1) million and $7.5 million during the nine months ended March 31, 2017 and 2016, respectively, was primarily due to the amount and timing of revenue and collections during the nine months ended March 31, 2017 and 2016.
- Cash provided by (used in) inventories was $835,000 and $(4.3) million during the nine months ended March 31, 2017 and 2016, respectively. For the nine months ended March 31, 2017, the amount of cash provided by inventories was primarily due to lower inventory levels from better inventory management. For the nine months ended March 31, 2016, the amount of cash used in inventories was primarily due to higher levels of finished goods for future sales.
- Cash (used in) provided by prepaid expenses and other current assets was $(153,000) and $2.4 million during the nine months ended March 31, 2017 and 2016, respectively, primarily due to payment timing of vendor deposits and other expenditures.
- Cash provided by (used in) accounts payable was $190,000 and $(1.4) million during the nine months ended March 31, 2017 and 2016, respectively, due to the amount and timing of purchases and vendor payments.
• Cash provided by accrued expenses and other liabilities was $615,000 and $12.8 million during the nine months ended March 31, 2017 and 2016, respectively. For the nine months ended March 31, 2017, the change in accrued expenses was primarily due to $3.4 million of settlement payments to the DOJ (discussed below), reduction of clinical accruals, severance payments, and the amount and timing of compensation payments. For the nine months ended March 31, 2016, the change in accrued expenses and other liabilities was primarily due to the restructuring accrual, benefits related to the former CEO’s departure, and the DOJ settlement.

• Cash provided by deferred revenue was $10.0 million during the nine months ended March 31, 2017. In connection with the exclusive distribution agreement with Medikit to sell our Diamondback 360® Coronary and Peripheral OAS in Japan, Medikit made an upfront payment of $10.0 million to us, which is refundable based on the occurrence of certain events during the term of the agreement.

Investing Activities. Net cash used in investing activities was $1.3 million and $4.1 million for the nine months ended March 31, 2017 and 2016, respectively, primarily related to the purchase of property and equipment and patents. Cash used during the nine months ended March 31, 2016 also included the issuance of a convertible note receivable.

Financing Activities. Net cash provided by financing activities was $27.3 million and $2.7 million for the nine months ended March 31, 2017 and 2016, respectively. During the nine months ended March 31, 2017, cash provided was primarily due to the sale-leaseback of our headquarters, as well as employee stock purchases and the exercise of stock options. Cash provided during the nine months ended March 31, 2016 was due to proceeds from employee stock purchases and the exercise of stock options.

Our future liquidity and capital requirements will be influenced by numerous factors, including the extent and duration of future operating losses, the level and timing of future sales and expenditures, the results and scope of ongoing research and product development programs, working capital required to support our business operations, the receipt of and time required to obtain regulatory clearances and approvals, our sales and marketing programs, the continuing acceptance of our products in the marketplace, competing technologies, market and regulatory developments, ongoing facility requirements, potential strategic transactions (including the potential acquisition of, or investments in, businesses, technologies and products), international expansion, and the existence, defense and resolution of legal proceedings. As of March 31, 2017, we believe our current cash and cash equivalents will be sufficient to fund working capital requirements, capital expenditures and operations for the foreseeable future, including at least the next twelve months, as well as to fund payments related to the DOJ settlement, expenses relating to implementation and compliance with our Corporate Integrity Agreement, payments under our lease agreements, payments related to our restructuring and departure of our former CEO and anticipated costs relating to litigation. We intend to retain any future earnings to support operations and to finance the growth and development of our business. We do not anticipate paying any dividends in the foreseeable future.

Legal Settlement

As previously discussed in our Annual Report on Form 10-K, filed with the SEC on August 25, 2016, on June 28, 2016, we entered into a Settlement Agreement with the DOJ, pursuant to which we agreed to pay $8.0 million (the “Settlement Amount”) as follows: an initial payment of $3.0 million, which we paid in July 2016, with the remaining $5.0 million, which bears interest at 1.8% per annum, payable in 11 equal quarterly installments, beginning in January 2017. Under the Settlement Agreement, if we make a single payment in excess of $2.0 million, which payment is not covered by an insurance policy, in settlement of any claims before paying the full Settlement Amount, the remaining unpaid balance of the Settlement Amount will become immediately due and payable, with interest accruing on the unpaid principal portion at an interest rate of 1.8% per annum. Accordingly, with respect to the employment litigation matter described below, in the event that a final, non-appealable judgement requires us to pay an amount more than $2.0 million that is not covered by an insurance policy, the remaining Settlement Amount, plus accrued interest, will be due and payable at the time of such payment.

In connection with the resolution of this matter, we entered into a five-year corporate integrity agreement (the “Corporate Integrity Agreement”) with the Office of Inspector General of the Department of Health and Human Services. The Corporate Integrity Agreement requires that we maintain our existing compliance programs and imposes certain expanded compliance-related requirements during the term of the Corporate Integrity Agreement, including establishment of specific procedures and requirements regarding consulting activities, co‐marketing activities and other interactions with healthcare professionals and healthcare institutions and the sale and marketing of our products; ongoing monitoring, reporting, certification and training obligations; and the engagement of an independent review organization to perform certain auditing and reviews and prepare certain reports regarding our compliance with federal health care programs. In the event of a breach of the Corporate Integrity Agreement, we could become liable for payment of certain stipulated penalties or could be excluded from participation in
federal health care programs. The Corporate Integrity Agreement will require us to invest additional amounts in our compliance program and pay fees and expenses of the independent review organization.

Restructuring

In March 2016, we announced a broad-based restructuring to reduce costs as a part of our plan to progress towards profitability and positive cash flow. As a result, we recorded a restructuring expense of $2.4 million during the year ended June 30, 2016, which was comprised of severance and other employee related costs. As of March 31, 2017, approximately $307,000 is payable over the next twelve months and $25,000 payable in subsequent periods. We do not anticipate additional restructuring costs. See Note 3 to our Consolidated Financial Statements included in Item 1 of Part I of this Quarterly Report on Form 10-Q for additional discussion.

CEO Departure

In February 2016, our former CEO resigned from his positions as President and CEO of the Company and as a director of the Company. The Company and the former CEO entered into a Separation Agreement with benefits consistent with our Amended and Restated Executive Officer Severance Plan. As of March 31, 2017, there was approximately $570,000 that will be paid within the next twelve months and estimated payments of $19,000 primarily payable in the subsequent twelve months. See Note 3 to our Consolidated Financial Statements included in Item 1 of Part I of this Quarterly Report on Form 10-Q for additional discussion.

Facility Lease

The Company entered into a Lease Agreement (the “Lease Agreement”) with Krishna Holdings, LLC, Apex Holdings, LLC, Kashi Associates, LLC, Keva Holdings, LLC, S&V Ventures, LLC, Polo Group LLC, SPAV Holdings LLC, Star Associates LLC, and The Global Villa, LLC (collectively, the “Landlord”). The Lease Agreement has an initial term of fifteen years, with four consecutive renewal options of five years each, with a base annual rent in the first year of $1.6 million and annual escalations of 3%. See Note 3 to our Consolidated Financial Statements included in Item 1 of Part I of this Quarterly Report on Form 10-Q for additional discussion.

Pump Recall

In April 2017, we initiated a voluntary recall of one type of our saline infusion pumps. We plan to recall and replace approximately 900 units currently in customer inventory and recorded a reserve for approximately $1.5 million of expenses during the three months ended March 31, 2017 related to the recall and replacement of all affected saline infusion pumps.

Employee Litigation

We are party to Steven Babyak v. Cardiovascular Systems, Inc., originally filed in the Superior Court of California, County of Los Angeles, on November 16, 2015. The plaintiff, a former Regional Sales Manager of the Company, made claims under California law relating to whistleblower retaliation; defamation; discrimination on the basis of association with protected group; harassment on the basis of sex in violation of FEHA; retaliation for exercising rights under FEHA; failure to prevent discrimination, harassment & retaliation in violation of FEHA; wrongful termination in violation of public policy; and violation of business & professions code. Following a jury trial that commenced on April 17, 2017, on April 24, 2017, the jury awarded the plaintiff $2.7 million in compensatory damages with respect to his claims for whistleblower retaliation and wrongful termination in violation of public policy, and on April 25, 2017, the jury awarded the plaintiff $22.4 million in punitive damages with respect to the same claims. We strongly believe that this case was incorrectly decided as to liability, the amount of compensatory damages, and the appropriateness and amount of punitive damages. We intend to vigorously challenge the verdict in the trial court and appeal. We have accrued $2.6 million in the three months ended March 31, 2017 based on our estimate of the range of possible losses and have recorded a receivable for $1.3 million of insurance proceeds related to the claim, under the guidance of ASC 450 and 210, respectively.
NON-GAAP FINANCIAL INFORMATION

To supplement our consolidated financial statements prepared in accordance with GAAP, our management uses a non-GAAP financial measure referred to as “Adjusted EBITDA.” The following table sets forth, for the periods indicated, a reconciliation of Adjusted EBITDA to the most comparable U.S. GAAP measure expressed as dollar amounts (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Nine Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (2,564)</td>
</tr>
<tr>
<td>Less: Other (income) and expense, net</td>
<td>(46)</td>
</tr>
<tr>
<td>Less: Provision for income taxes</td>
<td>66</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(2,544)</td>
</tr>
<tr>
<td>Add: Stock-based compensation</td>
<td>8,336</td>
</tr>
<tr>
<td>Add: Depreciation and amortization</td>
<td>3,100</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ 8,892</td>
</tr>
</tbody>
</table>

Adjusted EBITDA improved as compared to the prior year period due to the lower loss from operations as a result of higher revenues and lower costs, slightly offset by lower stock-based compensation as a result of reduced headcount.

Use and Economic Substance of Non-GAAP Financial Measures Used and Usefulness of Such Non-GAAP Financial Measures to Investors

We use Adjusted EBITDA as a supplemental measure of performance and believe this measure facilitates operating performance comparisons from period to period and company to company by factoring out potential differences caused by depreciation and amortization expense and non-cash charges such as stock-based compensation. Our management uses Adjusted EBITDA to analyze the underlying trends in our business, assess the performance of our core operations, establish operational goals and forecasts that are used to allocate resources and evaluate our performance period over period and in relation to our competitors’ operating results. Additionally, our management is partially evaluated on the basis of Adjusted EBITDA when determining achievement of their incentive compensation performance targets.

We believe that presenting Adjusted EBITDA provides investors greater transparency to the information used by our management for its financial and operational decision-making and allows investors to see our results “through the eyes” of management. We also believe that providing this information better enables our investors to understand our operating performance and evaluate the methodology used by our management to evaluate and measure such performance. The following is an explanation of each of the items that management excluded from Adjusted EBITDA and the reasons for excluding each of these individual items:

- **Stock-based compensation.** Our management believes that excluding this item from our non-GAAP results is useful to investors to understand the application of stock-based compensation guidance and its impact on our operational performance and ability to make additional investments in the Company, and it allows for greater transparency to certain line items in our financial statements.

- **Depreciation and amortization expense.** Our management believes that excluding these items from our non-GAAP results is useful to investors to understand our operational performance and ability to make additional investments in the company.

Material Limitations Associated with the Use of Non-GAAP Financial Measures and Manner in Which We Compensate for these Limitations

Non-GAAP financial measures have limitations as analytical tools and should not be considered in isolation or as a substitute for our financial results prepared in accordance with GAAP. Some of the limitations associated with our use of these non-GAAP financial measures are:

- Items such as stock-based compensation do not directly affect our cash flow position; however, such items reflect economic costs to us and are not reflected in our Adjusted EBITDA, and therefore these non-GAAP measures do not reflect the full economic effect of these items.
Non-GAAP financial measures are not based on any comprehensive set of accounting rules or principles and therefore other companies may calculate similarly titled non-GAAP financial measures differently than we do, limiting the usefulness of those measures for comparative purposes.

Our management exercises judgment in determining which types of charges or other items should be excluded from the non-GAAP financial measures we use.

We compensate for these limitations by relying primarily upon our GAAP results and using non-GAAP financial measures only supplementally.

INFLATION

We do not believe that inflation had a material impact on our business and operating results during the periods presented.

OFF-BALANCE SHEET ARRANGEMENTS

Since inception, we have not engaged in any off-balance sheet activities as defined in Item 303(a)(4) of Regulation S-K.

RECENT ACCOUNTING PRONOUNCEMENTS

For a description of recent accounting pronouncements, see Note 2 to the Consolidated Financial Statements included in Item 1 of Part I of this Quarterly Report on Form 10-Q.

PRIVATE SECURITIES LITIGATION REFORM ACT

The Private Securities Litigation Reform Act of 1995 provides a “safe harbor” for forward-looking statements. Such “forward-looking” information is included in this Form 10-Q and in other materials filed or to be filed by us with the Securities and Exchange Commission (as well as information included in oral statements or other written statements made or to be made by us). Forward-looking statements include all statements based on future expectations. This Form 10-Q contains forward-looking statements that involve risks and uncertainties, including (i) the expectation of selling our products internationally in the future and the timing and structure of our plans to do so; (ii) reimbursement approval for our devices in Japan; (iii) our plan to progress toward profitability and positive cash flow; (iv) the expectations regarding pending employment litigation, including related to damages and the challenge and appeal process; (v) our expectation that our revenue will increase; (vi) our expectation that gross margin in the fourth quarter of fiscal 2017 will be higher than gross margin in the three months ended March 31, 2017; (vii) our expectation of higher selling, general and administrative expenses in the fourth quarter of fiscal 2017 compared to the third quarter of fiscal 2017; (viii) our expectation that we will incur research and development expenses in the fourth quarter of fiscal 2017 higher than the amounts incurred for the three months ended March 31, 2017; (ix) our anticipation that we will not incur additional charges related to restructuring activities in the near term future; (x) our belief that our current cash and cash equivalents will be sufficient to fund working capital requirements, capital expenditures and operations for the foreseeable future, as well as to fund certain other anticipated expenses; (xi) our intention to retain any future earnings to support operations and to finance the growth and development of our business; (xii) our dividend expectations; (xiii) the expenses relating to the saline infusion pump recall; and (xiv) the anticipated impact of adoption of recent accounting pronouncements on our financial statements.

In some cases, you can identify forward-looking statements by the following words: “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “ongoing,” “plan,” “potential,” “predict,” “project,” “should,” “will,” “would,” or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. Forward-looking statements are only predictions and are not guarantees of performance. These statements are based on our management’s beliefs and assumptions, which in turn are based on their interpretation of currently available information.

These statements involve known and unknown risks, uncertainties and other factors that may cause our results or our industry’s actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. These factors include, but are not limited to, regulatory developments in the U.S., Japan and other foreign countries; FDA and similar Japanese and other foreign clearances and approvals; approval of our products for distribution in Japan and other foreign countries; approval of products for reimbursement and the level of reimbursement in the U.S., Japan and other foreign countries; dependence on market growth; agreements with third parties to sell their products; our ability to maintain our relationship with our distribution partner in Japan; the experience of physicians regarding the effectiveness and reliability of our products; the reluctance of physicians, hospitals and other organizations to accept new products; the potential for unanticipated delays in enrolling medical centers and patients for clinical trials; actual
clinical trial and study results; the impact of competitive products and pricing; unanticipated developments affecting our estimates regarding expenses, future revenues and capital requirements; the difficulty of successfully managing operating costs; our ability to manage our sales force strategy; actual research and development efforts and needs; our ability to obtain and maintain intellectual property protection for product candidates; our actual financial resources and our ability to obtain additional financing; fluctuations in results and expenses based on new product introductions, sales mix, unanticipated warranty claims, and the timing of project expenditures; our ability to manage costs; investigations or litigation threatened or initiated against us; court rulings; and general economic conditions. These and additional risks and uncertainties are described more fully in our Form 10-K filed with the SEC on August 25, 2016 and subsequent Quarterly Reports on Form 10-Q, including in Part II, Item 1A (Risk Factors) of this Quarterly Report on Form 10-Q. Copies of filings made with the SEC are available through the SEC’s electronic data gathering analysis and retrieval system (EDGAR) at www.sec.gov.

You should read these risk factors and the other cautionary statements made in this Form 10-Q as being applicable to all related forward-looking statements wherever they appear in this Form 10-Q. We cannot assure you that the forward-looking statements in this Form 10-Q will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. You should read this Form 10-Q completely. Other than as required by law, we undertake no obligation to update these forward-looking statements, even though our situation may change in the future.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The primary objective of our investment activity is to preserve our capital for the purpose of funding operations, while at the same time maximizing the income we receive from our investments without significantly increasing risk or decreasing availability. To achieve these objectives, our investment policy allows us to maintain a portfolio of cash equivalents and investments in a variety of marketable securities, including money market funds, U.S. government securities, and certain bank obligations. Our cash and cash equivalents as of March 31, 2017 include liquid money market accounts. Due to the short-term nature of these investments, we believe that there is no material exposure to interest rate risk.

Additionally, we have acquired certain available-for-sale marketable securities under our deferred compensation plan. See Note 5 to our Consolidated Financial Statements included in Item 1 of Part I of this Quarterly Report on Form 10-Q for additional information on these available-for-sale marketable securities.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our Chief Executive Officer and Chief Financial Officer, referred to collectively herein as the Certifying Officers, are responsible for establishing and maintaining our disclosure controls and procedures. The Certifying Officers have reviewed and evaluated the effectiveness of the Company’s disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934 (the “Exchange Act”)) as of March 31, 2017. Based on that review and evaluation, which included inquiries made to certain other employees of the Company, the Certifying Officers have concluded that, as of the end of the period covered by this Report, the Company’s disclosure controls and procedures, as designed and implemented, are effective.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three months ended March 31, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.
ITEM 1A. RISK FACTORS

In addition to the other information set forth in this report, including the important information in the section entitled “Private Securities Litigation Reform Act,” you should carefully consider the “Risk Factors” discussed in our Form 10-K for the year ended June 30, 2016 filed with the SEC on August 25, 2016 for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in this report and materially adversely affect our financial condition or future results. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial might materially adversely affect our actual business, financial condition and/or operating results. In addition, you should consider the following risk factors:
The recall of our saline infusion pumps could adversely affect our business and financial results, harm our reputation and result in legal claims against us.

In April 2017, we initiated a voluntary recall of one type of our saline infusion pumps. We plan to recall and replace approximately 900 units currently in customer inventory and recorded a reserve for approximately $1.5 million of expenses during the three months ended March 31, 2017 related to the recall and replacement of all affected saline infusion pumps. The saline infusion pump is an accessory required to operate our OAS.

While we have made design changes to this pump to address the issues that led to the recall, it is possible that we did not adequately assess the cause and effect of these issues and we may not have adequately modified the pump design in order to prevent these issues from happening in the future. We cannot predict or control any future actions by the FDA and other regulatory bodies with respect to this recall. We may experience delays in obtaining components of the pump from suppliers, which could cause delays in manufacturing replacement pumps, and we may not be able to replace all affected pumps in a timely manner. We could also discover additional versions or lots of our pumps that could be subject to recall. There can be no assurance that the FDA will approve any future designs and versions of the pump. Any of these matters could cause delays in the ability of our customers to perform procedures using our devices and prevent us from adding new customers who may not have access to other pumps that can be used in procedures, which could harm our reputation with customers, adversely affect our ability to generate revenue, and have an adverse effect on our financial condition and results of operations. The existence of the recall could harm our reputation, which could result in loss of both current and potential customers. This recall is diverting managerial and sales force attention and financial resources from other aspects of our business and may require us to incur more expense than we currently anticipate. In addition, this recall and any effects of it could subject us to legal claims or proceedings that would divert managerial and financial resources and could adversely impact our business and financial condition. While we carry liability insurance coverage and intend to maintain such insurance coverage in the future, there can be no assurance that we will be adequately protected from claims that are brought against us with respect to this recall.

The outcome of recent employment litigation recently decided against us could adversely affect our business and financial results, divert management’s attention from our business, and subject us to significant liabilities.

We are party to Steven Babyak v. Cardiovascular Systems, Inc., originally filed in the Superior Court of California, County of Los Angeles, on November 16, 2015. The plaintiff, a former Regional Sales Manager of the Company, made claims under California law relating to whistleblower retaliation; defamation; discrimination on the basis of association with protected group; harassment on the basis of sex in violation of FEHA; retaliation for exercising rights under FEHA; failure to prevent discrimination, harassment and retaliation in violation of FEHA; wrongful termination in violation of public policy; and violation of business & professions code. Following a jury trial that commenced on April 17, 2017, on April 24, 2017, the jury awarded the plaintiff $2.7 million in compensatory damages with respect to his claims for whistleblower retaliation and wrongful termination in violation of public policy, and on April 25, 2017, the jury awarded the plaintiff $22.4 million in punitive damages with respect to the same claims.

Although we strongly believe that this case was incorrectly decided and intend to vigorously challenge the verdict in the trial court and appeal, we are not able to predict the ultimate outcome of this case. This case has generated negative publicity against us, which could cause us reputational harm. Following our challenges and appeals, it is possible that this case could ultimately be resolved adversely to us, result in substantial damages, result in or be connected to additional claims, result in additional publicity, and divert management’s attention and resources, any of which could harm our business. Protracted litigation, both with respect to the challenge and appeal of this case and any new claims that may arise relating to this case, including any adverse outcomes, may have an adverse impact on our business, results of operations or financial condition and could subject us to additional adverse publicity and reputational harm and require us to incur significant legal fees. While we have insurance coverage relating to this case, there can be no assurance that the amounts available under such insurance will be sufficient to cover any payments we may ultimately be required to make.

We face a risk of non-compliance with the financial covenants in our loan and security agreement with Silicon Valley Bank.

We are party to a loan and security agreement with Silicon Valley Bank. This agreement requires us to maintain, among other things, either (i) minimum unrestricted cash at Silicon Valley Bank and unused availability on our line of credit of at least $10.0 million or (ii) minimum trailing three-month Adjusted EBITDA of $1.0 million and contains customary events of default, including, among others, the failure to comply with certain covenants or other agreements. Upon the occurrence and during the continuation of an event of default, amounts due under the agreements may be accelerated by Silicon Valley Bank. If we are unable to meet the financial or other covenants under the current loan and security agreement or negotiate future waivers or amendments of such covenants, events of default could occur under the agreement. Upon the occurrence and during the continuance of an event of default under the agreement, Silicon Valley Bank has available a range of remedies customary in

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these circumstances, including declaring all outstanding debt, together with accrued and unpaid interest thereon, to be due and payable, foreclosing on the assets securing the agreement and/or ceasing to provide additional loans under our line of credit, which could have a material adverse effect on us.

The restrictive covenants under this agreement could limit our ability to obtain future financing, withstand a future downturn in our business or the economy in general or otherwise conduct necessary corporate activities. The financial and restrictive covenants contained in this agreement could also adversely affect our ability to respond to changing economic and business conditions and place us at a competitive disadvantage relative to other companies that may be subject to fewer restrictions. Transactions that we may view as important opportunities, such as acquisitions, may be subject to the consent of Silicon Valley Bank, which consent may be withheld or granted subject to conditions specified at the time that may affect the attractiveness or viability of the transaction.

We lease our corporate headquarters, which subjects us to ongoing payment obligations and compliance with certain covenants.

On March 30, 2017, we completed the sale of our corporate headquarters. In connection with such sale, we entered into a lease agreement for our corporate headquarters, which has an initial term of fifteen years, with four consecutive renewal options of five years each. Under this lease, we are obligated to pay a base annual rent in the first year of $1,637,500 with annual escalations of 3%. If we are unable to make such rent payments or comply with the other covenants contained in the lease, the landlord could take certain actions against us, up to and including termination of the lease, which could have an adverse impact on our business, results of operations or financial conditions.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

On May 3, 2017, the U.S. Food and Drug Administration approved the Company’s premarket approval application supplement for a redesigned saline infusion pump to replace pumps subject to the voluntary recall initiated by the Company in April 2017.

ITEM 6. EXHIBITS

(a) Exhibits — See Exhibit Index on page following signatures
SIGNATURES

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

Dated: May 5, 2017

CARDIOVASCULAR SYSTEMS, INC.

By /s/ Scott R. Ward
Scott R. Ward
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

By /s/ Laurence L. Betterley
Laurence L. Betterley
Chief Financial Officer
(Principal Financial and Accounting Officer)
<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>First Amendment to Purchase and Sale Agreement, by and between Cardiovascular Systems, Inc. and Krishna Holdings, LLC, dated February 2, 2017 (previously filed with the SEC as an Exhibit to and incorporated herein by reference from the Company's Quarterly Report on Form 10-Q filed February 3, 2017).</td>
</tr>
<tr>
<td>10.2*</td>
<td>Second Amendment to Purchase and Sale Agreement, by and between Cardiovascular Systems, Inc. and Krishna Holdings, LLC, dated February 15, 2017.</td>
</tr>
<tr>
<td>10.3*</td>
<td>Third Amendment to Purchase and Sale Agreement, by and between Cardiovascular Systems, Inc. and Krishna Holdings, LLC, dated February 23, 2017.</td>
</tr>
<tr>
<td>10.4*</td>
<td>Fourth Amendment to Purchase and Sale Agreement, by and between Cardiovascular Systems, Inc. and Krishna Holdings, LLC, dated March 1, 2017.</td>
</tr>
<tr>
<td>10.5*</td>
<td>Loan and Security Agreement, by and between Cardiovascular Systems, Inc. and Silicon Valley Bank, dated March 31, 2017.</td>
</tr>
<tr>
<td>31.1*</td>
<td>Certification of Chairman, President and Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>32.1**</td>
<td>Certification of Chairman, President and Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>32.2**</td>
<td>Certification of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>101*</td>
<td>Financial statements from the quarterly report on Form 10-Q of the Company for the quarter ended March 31, 2017, formatted in XBRL: (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Comprehensive Loss, (iv) the Consolidated Statements of Cash Flows, and (v) the Notes to Financial Statements.</td>
</tr>
</tbody>
</table>

* Filed herewith.  
** Furnished herewith.
SECON OD AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT (the “Amendment”) is made and entered into as of February 15, 2017, by and between Cardiovascular Systems, Inc., a Delaware corporation (“Seller”), and Krishna Holdings, LLC, a Minnesota limited liability company and its assigns (“Purchaser”).

RECITALS:

A. Purchaser and Seller are parties to that certain Purchase and Sale Agreement dated as of December 29, 2016, as amended by that certain First Amendment to Purchase Agreement dated February 2, 2017 (collectively the “Purchase Agreement”).

B. Purchaser and Seller desire to amend the Purchase Agreement to extend the expiration of the Inspection Period.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing Recitals, which, by this reference thereto, are hereby incorporated into the body of this Amendment, and for other good, fair and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. Capitalized terms utilized in this Amendment and not separately defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Extension of Expiration of Inspection Period. The definition of Inspection Period in Section 5.03 is hereby amended by deleting the expiration date of "February 15, 2017," and replacing it with "February 22, 2017."

3. Miscellaneous. Except as expressly set forth in this Amendment, the Purchase Agreement remains unmodified and in full force and effect. The provisions of this Amendment inure to the benefit of Purchaser and Seller and shall be binding on their successors and assigns.

4. Counterparts. This Amendment may be executed in counterparts which taken together shall be considered one and the same instrument. Such counterparts may be evidenced by facsimile or electronic (PDF) signature pages.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Amendment as of the date first above written.
SELLER:
Cardiovascular Systems, Inc.

By: /s/ Jeffrey S. Points
Name: Jeffrey S. Points
Title: Corporate Controller & Treasurer

PURCHASER:
Krishna Holdings, LLC

By: /s/ Ashish Aggarwal
Name: Ashish Aggarwal
Title: Chief Manager
THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT (the “Amendment”) is made and entered into as of February 23, 2017, by and between Cardiovascular Systems, Inc., a Delaware corporation (“Seller”), and Krishna Holdings, LLC, a Minnesota limited liability company and its assigns (“Purchaser”).

RECITALS:

A. Purchaser and Seller are parties to that certain Purchase and Sale Agreement dated as of December 29, 2016, as amended by that certain First Amendment to Purchase Agreement dated February 2, 2017, and as amended by that certain Second Amendment to Purchase Agreement dated February 15, 2017 (collectively, the “Purchase Agreement”).

B. Purchaser and Seller desire to amend the Purchase Agreement to extend the expiration of the Inspection Period.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing Recitals, which, by this reference thereto, are hereby incorporated into the body of this Amendment, and for other good, fair and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. Capitalized terms utilized in this Amendment and not separately defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Extension of Expiration of Inspection Period. The definition of Inspection Period in Section 5.03 is hereby amended by deleting the expiration date of “February 22, 2017,” and replacing it with “March 1, 2017.”

3. Miscellaneous. Except as expressly set forth in this Amendment, the Purchase Agreement remains unmodified and in full force and effect. The provisions of this Amendment inure to the benefit of Purchaser and Seller and shall be binding on their successors and assigns.

4. Counterparts. This Amendment may be executed in counterparts which taken together shall be considered one and the same instrument. Such counterparts may be evidenced by facsimile or electronic (PDF) signature pages.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Amendment as of the date first above written.
SELLER:
Cardiovascular Systems, Inc.

By: /s/ Jeffrey S. Points
Name: Jeffrey S. Points
Title: Corporate Controller & Treasurer

PURCHASER:
Krishna Holdings, LLC

By: /s/ Ashish Aggarwal
Name: Ashish Aggarwal
Title: Chief Manager
FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (the “Amendment”) is made and entered into as of March 1, 2017, by and between Cardiovascular Systems, Inc., a Delaware corporation (“Seller”), and Krishna Holdings, LLC, a Minnesota limited liability company and its assign (“Purchaser”).

RECITALS:

A. Purchaser and Seller are parties to that certain Purchase and Sale Agreement dated as of December 29, 2016, as amended by that certain First Amendment to Purchase Agreement dated February 2, 2017, as amended by that certain Second Amendment to Purchase Agreement dated February 15, 2017 and as amended by that certain Third Amendment to Purchase Agreement dated February 23, 2017 (collectively, the “Purchase Agreement”).

B. Purchaser provided written objections to matters of title by letter from its counsel dated as of January 31, 2017 (“Purchaser’s Objections”).

C. Seller provided a response to Purchaser’s Objections by letter from its counsel dated as of February 9, 2017.

D. Purchaser and Seller desire to amend the Purchase Agreement to address resolving certain of Purchaser’s Objections and extending the expiration of the Inspection Period.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing Recitals, which, by this reference thereto, are hereby incorporated into the body of this Amendment, and for other good, fair and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms**. Capitalized terms utilized in this Amendment and not separately defined herein shall have the meanings ascribed to them in the Purchase Agreement

2. **Revised Lease Agreement**. The form of Lease Agreement attached to the Purchase Agreement as Exhibit C that is to be executed by Purchaser and Seller at Closing is hereby amended as follows:

   a. **Exhibit A, Defined Terms**, is hereby amended as follows:

      i. by adding the following defined term and definition: “‘Environmental Covenant’ means that certain Environmental Covenant and Easement by and between Lessee and the Minnesota Pollution Control Agency, which was filed of record with the Office of the Ramsey County Registrar of Titles on May 26, 2016, as Document No. T02558659.”
ii. by deleting the definition of “Remediation” and replacing it with the following terms: “Remediation’ means any response, remedial, removal, or corrective action, any activity to monitor, clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits, covenants, or action plans issued pursuant thereto, including without limitation, the Environmental Covenant or any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs, including without limitation, under the Environmental Covenant.”

b. Section 8.03(c) of the Lease Agreement is hereby deleted in its entirety and replaced with the following: “Indemnification. Lessee shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each of the Indemnified Parties from and against any and all Losses, including, but not limited to, all Costs of Remediation (whether or not performed voluntarily), arising out of or in any way relating to any Environmental Laws, Hazardous Materials, Regulated Substances, above or below ground storage tanks, the Environmental Covenant (including the obligations of the “owner” under the Environmental Covenant), and other environmental matters concerning the Property, to the extent caused by or through Lessee.

c. The following shall be added to the end of Section 8.02 of the Lease Agreement: “All references to any obligations of the “owner” in the Environmental Covenant shall apply solely to Lessee, and any failure by Lessee to comply with such obligations shall constitute an Event of Default under this Lease.”

3. Additional Seller Representation. The following Section 4.01(q) is hereby added: “Seller is in compliance with all of its obligations under the Environmental Covenant and Easement dated by and between Lessee and the Minnesota Pollution Control Agency, which was filed of record with the Office of the Ramsey County Registrar of Titles on May 26, 2016, as Document No. T02558659.”

4. Seller’s Closing Documents.

a. Section 5.01(a)(i) is hereby deleted and replaced in its entirety with the following: “The Deed, which will contain the following notice: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT UNDER MINN. STAT. CH. 114E, DATED MAY 18, 2016, RECORDED IN THE OFFICIAL PROPERTY RECORDS OF RAMSEY COUNTY, MINNESOTA AS DOCUMENT NO. 2558659.”

b. The following is hereby added as Section 5.01(a)(xi): “Seller will provide written notice to the Minnesota Pollution Control Agency within thirty (30) days after the Closing Date of the transfer of the title to the Property to Purchaser. The notice shall identify
the name and contact information of Purchaser, and the portion of the Property conveyed to Purchaser.”

c. The following is hereby added as Section 5.01(a)(xii): “Seller will use commercially reasonable efforts to deliver to Purchaser at Closing an executed Estoppel Certificate from the City of New Brighton, which Estoppel Certificate shall be substantially in the form attached to this Amendment as Exhibit A.”

d. The following is hereby added as Section 5.01(a)(xiii): “Seller will use commercially reasonable efforts to deliver to Purchaser at Closing an executed Certificate of Completion from the City of New Brighton in recordable form, as provided for in the Redevelopment Property Deed from the City of New Brighton to Seller, dated as of June 11, 2014, and recorded on June 12, 2014, with the Office of the Ramsey County Recorder as Document No. A04513752 and with the Office of the Ramsey County Registrar of Titles as Document No. T02507432.”

5. **Extension of Expiration of Inspection Period.** The definition of Inspection Period in Section 5.03 is hereby amended by deleting the expiration date of "March 1, 2017," and replacing it with "March 3, 2017."

6. **Approval of Improvements.** Purchaser acknowledges that Seller intends to make certain improvements to the Property after the Closing Date as described on attached Exhibit B (the “Planned Improvements”). Purchaser hereby consents to the Planned Improvements as required under Section 7.02 of the Lease.

7. **Miscellaneous.** Except as expressly set forth in this Amendment, the Purchase Agreement remains unmodified and in full force and effect. The provisions of this Amendment inure to the benefit of Purchaser and Seller and shall be binding on their successors and assigns.

8. **Counterparts.** This Amendment may be executed in counterparts which taken together shall be considered one and the same instrument. Such counterparts may be evidenced by facsimile or electronic (PDF) signature pages.
IN WITNESS WHEREOF, Seller and Purchaser have executed this Amendment as of the date first above written.

SELLER:

Cardiovascular Systems, Inc.

By: /s/ Jeffrey S. Points

Name: Jeffrey S. Points

Title: Corporate Controller & Treasurer
PURCHASER:

Krishna Holdings, LLC

By: /s/ Ashish Aggarwal

Name: Ashish Aggarwal

Title: Chief Manager
THIS LOAN AND SECURITY AGREEMENT (this “Agreement”) dated as of March 31, 2017 (the “Effective Date”) between SILICON VALLEY BANK, a California corporation (“Bank”), and CARDIOVASCULAR SYSTEMS, INC., a Delaware corporation (“Borrower”), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2 LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.2 Revolving Advances.

(a) Availability. Subject to the terms and conditions of this Agreement, receipt of the Initial Audit, and to deduction of Reserves, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

2.2.1 Letters of Credit.

(a) As part of the Revolving Line, Bank shall issue or have issued Letters of Credit denominated in Dollars or a Foreign Currency for Borrower’s account. The aggregate Dollar Equivalent amount utilized for the issuance of Letters of Credit shall at all times reduce the amount otherwise available for Advances under the Revolving Line. The aggregate Dollar Equivalent of the face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve) may not exceed Five Million Dollars ($5,000,000), minus (i) the sum of all amounts used for Cash Management Services, and minus (ii) the FX Reduction Amount.

(b) If, on the Revolving Line Maturity Date (or the effective date of any termination of this Agreement), there are any outstanding Letters of Credit, then on such date Borrower shall provide to Bank cash collateral in an amount equal to at least 105% (110% for Letters of Credit denominated in a Currency other than Dollars) of the aggregate Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or estimated by Bank to become due in connection therewith, to secure all of the Obligations relating to such Letters of Credit. All Letters of Credit shall be in form and substance acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank’s standard Application and Letter of Credit Agreement (the “Letter of Credit Application”). Borrower agrees to execute any further documentation in connection with the Letters of Credit as Bank may reasonably request. Borrower further agrees to be bound by the regulations and interpretations of the issuer of any Letters of Credit guarantied by Bank and opened for Borrower’s account or by Bank’s interpretations of any Letter of Credit issued by Bank for Borrower’s account, and Borrower understands and agrees that Bank shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower’s instructions or those contained in the Letters of Credit or any modifications, amendments, or supplements thereto, unless such error,
negligence, or mistake is directly caused by Bank’s gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order.

(c) The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional, and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, such Letters of Credit, and the Letter of Credit Application.

(d) Borrower may request that Bank issue a Letter of Credit payable in a Foreign Currency. If a demand for payment is made under any such Letter of Credit, Bank shall treat such demand as an Advance to Borrower of the Dollar Equivalent of the amount thereof (plus fees and charges in connection therewith such as wire, cable, SWIFT or similar charges).

(e) To guard against fluctuations in currency exchange rates, upon the issuance of any Letter of Credit payable in a Foreign Currency, Bank shall create a reserve (the “Letter of Credit Reserve”) under the Revolving Line in an amount equal to a percentage (which percentage shall be determined by Bank in its reasonable discretion) of the face amount of such Letter of Credit. The amount of the Letter of Credit Reserve may be adjusted by Bank from time to time to account for fluctuations in the exchange rate. The availability of funds under the Revolving Line shall be reduced by the amount of such Letter of Credit Reserve for as long as such Letter of Credit remains outstanding.

2.2.2 Foreign Exchange Sublimit. As part of the Revolving Line, Borrower may enter into foreign exchange contracts with Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency (each, a “FX Contract”) on a specified date (the “Settlement Date”). FX Contracts shall have a Settlement Date of at least one (1) FX Business Day after the contract date. The aggregate FX Reduction Amount at any one time may not exceed Five Million Dollars ($5,000,000), minus (i) the sum of all amounts used for Cash Management Services, and minus (ii) the aggregate Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve). The amount otherwise available for Credit Extensions under the Revolving Line shall be reduced by the FX Reduction Amount. Any amounts needed to fully reimburse Bank for any amounts not paid by Borrower in connection with FX Contracts will be treated as Advances under the Revolving Line and will accrue interest at the interest rate applicable to Advances.

2.2.3 Cash Management Services Sublimit. Borrower may use the Revolving Line in an aggregate amount not to exceed Five Million Dollars ($5,000,000), minus (i) the aggregate Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), and minus (ii) the FX Reduction Amount, for Bank’s cash management services, which may include merchant services, direct deposit of payroll, business credit card, and check cashing services identified in Bank’s various cash management services agreements (collectively, the “Cash Management Services”). Any amounts Bank pays on behalf of Borrower for any Cash Management Services will be treated as Advances under the Revolving Line and will accrue interest at the interest rate applicable to Advances.

2.3 Overadvances. If, at any time, the sum of (a) the outstanding principal amount of any Advances (including any amounts used for Cash Management Services), plus (b) the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), plus (c) the FX Reduction Amount exceeds the lesser of either the Revolving Line or the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the “Overadvance”). Without limiting Borrower’s obligation to repay Bank any Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at a per annum rate equal to the rate that is otherwise applicable to Advances plus five percent (5.00%).

2.4 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.4(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the Prime Rate minus one-quarter of one percent (0.25%), which interest rate shall be payable monthly in accordance with Section 2.4(d) below.
(b) **Default Rate**. Immediately upon the occurrence and during the continuance of an Event of Default, Loan Obligations shall bear interest at a rate per annum which is five percentage points (5.00%) above the rate that is otherwise applicable thereto (the “**Default Rate**”). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.4(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) **Adjustment to Interest Rate**. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) **Payment; Interest Computation**. Interest is payable monthly on each Payment Date and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 noon Pacific time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

2.5 **Fees**. Borrower shall pay to Bank:

(a) **Revolving Line Commitment Fee**. A fully earned, non-refundable commitment fee of Eighty Thousand Dollars ($80,000), payable on the Effective Date;

(b) **Termination Fee**. Upon termination of this Agreement or the termination of the Revolving Line for any reason prior to the Revolving Line Maturity Date, in addition to the payment of any other amounts then-owing, a termination fee in an amount equal to one percent (1.00%) of the Revolving Line; provided that no termination fee shall be charged if the credit facility hereunder is replaced with a new facility from Bank;

(c) **Unused Revolving Line Facility Fee**. Payable quarterly in arrears on the last day of the quarter in which the Effective Date occurs, on the last day of each quarter occurring thereafter prior to the Revolving Line Maturity Date, and on the Revolving Line Maturity Date, a fee (the “**Unused Revolving Line Facility Fee**”) in an amount equal to thirty-five one hundredths of one percent (0.35%) per annum of the average unused portion of the Revolving Line, as determined by Bank, computed on the basis of a year with the applicable number of days as set forth in Section 2.4(d). The unused portion of the Revolving Line, for purposes of this calculation, shall be calculated on a calendar year basis and shall equal the difference between (i) the Revolving Line, and (ii) the average for the period of the daily closing balance of the Revolving Line outstanding;

(d) **Letter of Credit Fee**. Bank’s customary fees and expenses for the issuance or renewal of Letters of Credit, upon the issuance of such Letter of Credit, each anniversary of the issuance during the term of such Letter of Credit, and upon the renewal of such Letter of Credit by Bank; and

(e) **Bank Expenses**. All Bank Expenses incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

(f) **Fees Fully Earned**. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank’s obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.5 pursuant to the terms of Section 2.7(b). Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.5.

2.6 **Payments**. All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 noon Pacific time on the date when due. Payments of principal and/or interest received after 12:00 noon Pacific time are considered received at the
opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

2.7 Application of Payments; Debit of Accounts.

(a) Notwithstanding any provision herein to the contrary, all payments received or collected by Bank (including proceeds for the realization of Collateral) after the occurrence and during the continuance of an Event of Default or after any or all of the Obligations have been accelerated pursuant to the terms and conditions of this Agreement (so long as such acceleration has not been rescinded) or upon the occurrence of an additional termination event (as defined under the respective Secured Rate Contract) with Borrower as the affected party (unless otherwise waived) or upon the designation of an early termination date with respect to any Secured Rate Contract with Borrower as the defaulting or affected party, shall be applied as follows:

(i) First, to payment of costs and expenses, including Bank Expenses, of Bank payable or reimbursable by Borrower under the Loan Documents;

(ii) Second, to (X) the payment of all accrued unpaid interest on the Obligations and fees owed to Bank, and (Y) the payment of any ordinary course settlement payments (including Unpaid Amounts) then due and payable to any Secured Swap Provider under its Secured Rate Contracts, after such ordinary course settlement payments have been reduced by the amount of any cash collateral that has been made available to such Secured Swap Provider to secure the obligations under such Secured Rate Contract;

(iii) Third, to (W) the payment of principal of the Loan Obligations including, without limitation any reimbursement obligations in respect of Letters of Credit that are then due and payable; (X) the payment of all termination payments (but excluding Unpaid Amounts paid under clause “second” above) under the Secured Rate Contracts then due and payable to any Secured Swap Provider, after such termination payments have been reduced by the amount of any cash collateral that has been made available to such Secured Swap Provider to secure the obligations under such Secured Rate Contract; (Y) the cash collateralization of 105% (110% for Letter of Credit denominated in a Currency other than Dollars), of the Dollar Equivalent of the face amount of any unmatured Letters of Credit to the extent not then due and payable; and (Z) the cash collateralization of any other unmatured Secured Swap Obligations in an amount necessary to secure the obligations of Borrower to any Secured Swap Provider under its Secured Rate Contracts;

(iv) Fourth, to payment of any other amounts owing constituting Obligations; and

(v) Fifth, any remainder shall be for the account of and paid to whomever may be lawfully entitled thereto.

In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided above until exhausted prior to the application to the next succeeding category and (y) Bank, each Secured Swap Provider and each other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to clauses second, third and fourth above. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(b) Bank, for itself and as agent for the Secured Swap Providers, may debit any of Borrower’s deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank or any Secured Swap Provider when due. These debits shall not constitute a set-off.

2.8 Withholding. Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority,
applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.8 shall survive the termination of this Agreement. Notwithstanding anything to the contrary contained herein, in no event shall the Borrower be required to pay or reimburse Bank for taxes imposed on the overall net income of Bank.

3 CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Unless otherwise agreed to by Bank, Bank’s obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed signatures to the Loan Documents (with original signatures to be delivered within two (2) Business Days after the Effective Date);

(b) the Operating Documents and long-form good standing certificates of Borrower certified by the Secretary of State (or equivalent agency) of Borrower’s jurisdiction of organization or formation and each jurisdiction in which Borrower is qualified to conduct business, each dated as of a date no earlier than thirty (30) days prior to the Effective Date;

(c) a secretary’s certificate of Borrower with respect to such Borrower’s Operating Documents, incumbency, specimen signatures and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(d) duly executed signatures to the completed Borrowing Resolutions for Borrower;

(e) certified copies, dated as of a recent date, of financing statement searches, as Bank may request, and, if requested by Bank, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(f) the Perfection Certificate of Borrower, together with the duly executed original signature thereto;

(g) a landlord’s consent in favor of Bank for 14750 Kirby Drive, Pearland, Texas 77047, by the landlord thereof, together with the duly executed original signatures thereto;

(h) a legal opinion of Borrower’s counsel dated as of the Effective Date together with the duly executed original signature thereto;

(i) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank; and

(j) payment of the fees and Bank Expenses then due as specified in Section 2.5 hereof.

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3.2 Conditions Precedent to all Credit Extensions. Bank’s obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) timely receipt of the Credit Extension request and any materials and documents required by Section 3.4;

(b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the proposed Credit Extension and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower’s representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(c) Bank determines to its reasonable satisfaction that there has not been a Material Adverse Change.

3.3 Covenant to Deliver. Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower’s obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank’s sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance (other than Advances under Sections 2.2.1 or 2.2.3) set forth in this Agreement, to obtain an Advance, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail or such other means as agreed to by Bank from time to time by 12:00 p.m. Pacific time on the Funding Date of the Advance. Such notice shall be made by Borrower through Bank’s online banking program, provided, however, if Borrower is not utilizing Bank’s online banking program, then such notice shall be in a written format acceptable to Bank that is executed by an Authorized Signer. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances. In connection with any such notification, Borrower must promptly deliver to Bank by electronic mail or through Bank’s online banking program such reports and information, including without limitation, sales journals, cash receipts journals, accounts receivable aging reports, as Bank may reasonably request. Bank shall credit proceeds of an Advance to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Advances are necessary to meet Obligations which have become due.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Bank, for itself and as agent for each Secured Swap Provider, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, for itself and as agent for each Secured Swap Provider, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

If this Agreement is terminated, Bank’s Lien in the Collateral shall continue until (i) the Obligations (excluding inchoate indemnity obligations) are repaid in full in cash; and (ii) any Contingent Obligations (excluding inchoate indemnity obligations but including unmatured Obligations arising under Letters of Credit, FX Forward Contracts, Cash Management Services and Secured Rate Contracts) are secured with cash collateral in an amount and on terms reasonably satisfactory to Bank and to each Secured Swap Provider. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank’s obligation to make Credit Extensions has
terminated, Bank shall, at the sole cost and expense of Borrower, promptly release its Liens in the Collateral and all rights therein shall revert to Borrower.

4.2 **Priority of Security Interest**. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank, for itself and as agent for each Secured Swap Provider, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

4.3 **Authorization to File Financing Statements**. Borrower hereby authorizes Bank, for itself and as agent for each Secured Swap Provider, to file appropriate financing statements as may be required under the Code. Such financing statements may indicate the Collateral as “all assets of the Debtor” or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank’s discretion.

5 **REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

5.1 **Due Organization, Authorization; Power and Authority**. Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified, licensed, or in good standing except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower’s business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled “Perfection Certificate” (the “Perfection Certificate”). Borrower represents and warrants to Bank that (a) Borrower’s exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower’s organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower’s place of business, or, if more than one, its chief executive office as well as Borrower’s mailing address (if different than its chief executive office); (e) except as stated in the Perfection Certificate, Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is (i) with respect to litigation disclosed therein, accurate and complete in all material respects; and (ii) with respect to all other information, accurate and complete, it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement. If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Bank of such occurrence and provide Bank with Borrower’s organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower’s organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law in any material respect, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected in any material respect, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect or except where the failure to do so could not reasonably be expected to have a material adverse effect on the Borrower’s business), or (v) in any material respect, conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower’s business.
5.2 Collateral. Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank’s Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the terms of Section 6.8(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. The Collateral shall not be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower’s business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower’s business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower’s knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower’s business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 Accounts Receivable; Inventory.

(a) For each Account with respect to which Advances are requested, on the date each Advance is requested and made, such Account shall be an Eligible Account.

(b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct in all material respects and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all material respects what they purport to be. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Report. To the best of Borrower’s knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

(c) For any item of Inventory consisting of Eligible Inventory in any Borrowing Base Report, such Inventory (i) consists of finished goods, in good, new, and salable condition, which is not perishable, returned, consigned, obsolete, not sellable, damaged, or defective, and is not comprised of raw materials, demonstrative or custom inventory, works in progress, packaging or shipping materials, or supplies; (ii) meets all applicable governmental standards in all material respects; (iii) has been manufactured in material compliance with the Fair Labor Standards Act; (iv) is not subject to any Liens, except the first priority Liens granted or in favor of Bank under this Agreement or any of the other Loan Documents; and (v) is located in the United States at the locations identified by Borrower in the Perfection Certificate where it maintains Inventory (or at any location permitted under Section 7.2).

5.4 Litigation. Except as previously disclosed to Bank in writing, there are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Two Hundred Fifty Thousand Dollars ($250,000).
5.5 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower’s consolidated financial condition and Borrower’s consolidated results of operations. There has not been any material deterioration in Borrower’s consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.6 Solvency. The fair salable value of Borrower’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower’s liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they become due.

5.7 Regulatory Compliance. Borrower is not an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower’s or any of its Subsidiaries’ properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable law. Borrower and each of its Subsidiaries have obtained all material consents, material approvals and material authorizations of, made all material declarations or material filings with, and given all material notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

5.8 Subsidiaries; Investments. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor.

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a “Permitted Lien.” Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.10 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).
5.12 Definition of “Knowledge.” For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower’s knowledge or awareness, to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation actually made, of any Responsible Officer.

5.13 Designation of Indebtedness under this Agreement as Senior Indebtedness. All principal of, interest (including all interest accruing after the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), and all fees, costs, expenses and other amounts accrued or due under this Agreement and under the Secured Rate Contracts shall constitute “Designated Senior Indebtedness” under the terms of any Subordinated Debt documents.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries’ legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower’s business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank, for itself and as agent for each Secured Swap Provider, in all of the Collateral. Borrower shall, upon request from Bank, promptly provide copies of any such obtained Governmental Approvals to Bank.

6.2 Financial Statements, Reports, Certificates. Provide Bank with the following:

(a) Borrowing Base Reports. For any month in which Obligations were outstanding under the Revolving Line, a Borrowing Base Report (and any schedules related thereto and including any other information requested by Bank with respect to Borrower’s Accounts) within thirty (30) days after the end of such month;

(b) Account Receivable/Accounts Payable Reports. For any month in which Obligations were outstanding under the Revolving Line, within thirty (30) days after the end of such month, (A) monthly accounts receivable agings, aged by invoice date, (B) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, (C) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports, Deferred Revenue report, and general ledger, and (D) monthly perpetual inventory reports for Inventory valued on a first-in, first-out basis at the lower of cost or market (in accordance with GAAP) or such other inventory reports as are requested by Bank in its good faith business judgment;

(c) Monthly Financial Statements. For any month in which Obligations were outstanding under the Revolving Line, as soon as available, but no later than thirty (30) days after the last day of each month, Borrower-prepared consolidated balance sheet, statement of cash flows and income statement covering Borrower’s consolidated operations for such month certified by a Responsible Officer and in a form reasonably acceptable to Bank (the “Monthly Financial Statements”);

(d) Quarterly Financial Statements. As soon as available, but no later than thirty (30) days after the last day of each quarter, Borrower-prepared consolidated balance sheet, statement of cash flows and income statement covering Borrower’s consolidated operations for such quarter certified by a Responsible Officer and in a form reasonably acceptable to Bank (the “Quarterly Financial Statements”). The delivery requirement under this Section 6.2(d) shall be deemed satisfied to the extent applicable Quarterly Financial Statements are included in or delivered with any reports or other materials delivered to the Bank pursuant to Section 6.2(b), below.
(e) **Compliance Certificates.** Within thirty (30) days after the last day of each month, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement, if applicable, and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(f) **Annual Operating Budget and Financial Projections.** Within thirty (30) days following the end of each fiscal year of Borrower, and promptly following any updates or amendments thereto, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by month or quarter) for the upcoming fiscal year of Borrower, and (B) annual financial projections for the following fiscal year (on a quarterly basis), in each case as presented to and approved by the Board, together with any related business forecasts used in the preparation of such annual financial projections;

(g) **Annual Audited Financial Statements.** As soon as available, and in any event within one hundred twenty (120) days following the end of Borrower’s fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank;

(h) **SEC Filings.** in the event that Borrower becomes subject to the reporting requirements under the Exchange Act within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower’s website on the Internet at Borrower’s website address; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents;

(i) **Other Statements.** Within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower’s security holders or to any holders of Subordinated Debt;

(j) **Legal Action Notice.** Promptly, and in any event within five (5) Business Days of Borrower’s knowledge thereof, notice of (i) any event or condition that constitutes an Event of Default, including a statement of the curative action that Borrower proposes to take with respect thereto, and (ii) any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Two Hundred Fifty Thousand Dollars ($250,000) or more, including a report regarding the actions that Borrower or such Subsidiary is taking or intends to take with respect thereto; and

(k) **Other Financial Information.** Other financial information reasonably requested by Bank.

6.3 **Accounts Receivable.**

(a) **Schedules and Documents Relating to Accounts.** Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 6.2, on forms reasonably acceptable to Bank; provided, however, that Borrower’s failure to execute and deliver the same shall not affect or limit Bank’s Lien and other rights in all of Borrower’s Accounts, nor shall Bank’s failure to advance or lend against a specific Account affect or limit Bank’s Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank’s request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.
Disputes. Borrower shall promptly notify Bank of all disputes and/or claims in excess of One Hundred Thousand Dollars ($100,000) relating to any Account. Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm’s-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, the total outstanding Advances will not exceed the lesser of the Revolving Line or the Borrowing Base.

Collection of Accounts. Borrower shall direct Account Debtors to deliver or transmit all proceeds of Accounts into a lockbox account, or such other “blocked account” as specified by Bank (either such account, the “Cash Collateral Account”). Whether or not an Event of Default has occurred and is continuing, Borrower shall immediately deliver all payments on and proceeds of Accounts to the Cash Collateral Account. Subject to Bank’s right to maintain a reserve pursuant to Section 6.3(g), all amounts received in the Cash Collateral Account shall be (i) applied to immediately reduce the Obligations when a Streamline Period is in effect (unless Bank, in its sole discretion, at times when an Event of Default exists, elects not to so apply such amounts), or (ii) transferred on a daily basis to Borrower’s operating account with Bank when a Streamline Period is in effect. Borrower hereby authorizes Bank to transfer to the Cash Collateral Account any amounts that Bank reasonably determines are proceeds of the Accounts (provided that Bank is under no obligation to do so and this allowance shall in no event relieve Borrower of its obligations hereunder).

Remittance of Proceeds. Deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, to be applied to reduce the outstanding Obligations under the Revolving Line, with all excess amounts transferred to an account of Borrower maintained at Bank, and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm’s-length transaction for an aggregate purchase price of One Hundred Thousand Dollars ($100,000) or less (for all such transactions in any fiscal year). Borrower agrees that it will not commingle proceeds of Collateral with any of..
Borrower’s other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this Section limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

6.5 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.6 Access to Collateral; Books and Records. In addition to the Initial Audit, at reasonable times, on five (5) Business Days’ notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower’s Books. The foregoing inspections and audits shall be conducted at Borrower’s expense and no more often than once every twelve (12) months (or more frequently as Bank in its sole discretion determines that conditions warrant) unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The foregoing inspections and audits shall be conducted at Borrower’s expense and the charge therefor shall be One Thousand Dollars ($1,000) per person per day (or such higher amount as shall represent Bank’s then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than ten (10) days in advance, and Borrower cancels or reschedules the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank’s rights or remedies) Borrower shall pay Bank a fee of One Thousand Dollars ($1,000) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling. Borrower and Bank acknowledge and agree that the Initial Audit shall be completed prior to the date that is ninety (90) days after the Effective Date.

6.7 Insurance.

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower’s industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are reasonably satisfactory to Bank. All property policies shall have a lender’s loss payable endorsement showing Bank as an additional loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral. For the avoidance of doubt, the foregoing shall only apply to Borrower’s personal property, and in no event shall Bank have an insurable interest with respect to real property of Borrower or be entitled to any proceeds payable under any insurance policy covering real property.

(b) Ensure that proceeds payable under any property policy with respect to personal property are, at Bank’s option, payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Fifty Thousand Dollars ($50,000) with respect to any loss, but not exceeding One Hundred Thousand Dollars ($100,000) in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations.

(c) At Bank’s request, Borrower shall deliver copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.7 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank thirty (30) days prior written notice before any such policy or policies shall be canceled. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and
Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.7, and take any action under the policies Bank deems prudent.

6.8 Operating Accounts.

(a) Maintain all of its operating and other deposit accounts with Bank and Bank’s Affiliates, with not less than seventy-five percent (75%) of Borrower’s excess cash and its investment and securities accounts at Bank and Bank’s Affiliates.

(b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank’s Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank’s Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower’s employees and identified to Bank by Borrower as such.

6.9 Financial Covenants. At all times while there are Obligations outstanding, Borrower shall demonstrate to Bank that it is in compliance with one (1) of the following financial covenants. In addition, prior to the making of each Advance, Borrower shall demonstrate to Bank that Borrower is in compliance with one (1) of the following financial covenants:

(a) Minimum Liquidity. Borrower shall maintain Liquidity (assuming that a Streamline Period is not in effect for purposes of calculating the Availability Amount) at all times, to be certified to Bank as of the last day of each month (or, if being measured in connection with the making of an Advance, calculated immediately prior to the making of such Advance) of at least Ten Million Dollars ($10,000,000).

OR

(b) Minimum Adjusted EBITDA. Borrower shall achieve, measured on a trailing three (3) month basis as of the last day of each month (or, if being measured in connection with the making of an Advance, calculated as of the last day of the month immediately preceding the request for such Advance), Adjusted EBITDA of at least One Million Dollars ($1,000,000).


(a) (i) Protect, defend and maintain the validity and enforceability of Intellectual Property material to the operation of Borrower’s business; (ii) promptly advise Bank in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of such Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower’s business to be abandoned, forfeited or dedicated to the public without Bank’s written consent.

(b) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed “Collateral” and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank’s rights and remedies under this Agreement and the other Loan Documents.

6.11 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and
6.12 **Formation or Acquisition of Subsidiaries**. Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, Borrower shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to cause such Subsidiary to become a co-borrower hereunder together with such appropriate financing statements and/or Control Agreements, all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank, for itself and as agent for each Secured Swap Provider, a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance reasonably satisfactory to Bank; and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, including one or more opinions of counsel satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.12 shall be a Loan Document and shall secure or guaranty (as applicable) all of the Obligations owing to Bank and any Secured Swap Provider.

6.13 **Further Assurances**. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank’s Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Bank, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

6.14 **Designated Senior Indebtedness**. Borrower shall designate all principal of, interest (including all interest accruing after the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), and all fees, costs, expenses, termination payments and other amounts accrued or due under this Agreement and under any Secured Rate Contract as “Designated Senior Indebtedness”, or such similar term, in any future Subordinated Debt incurred by Borrower after the date hereof, if such Subordinated Debt contains such term or similar term and if the effect of such designation is to grant to Bank and any Secured Swap Providers the same or similar rights as granted to Bank and such Secured Swap Providers as a holder of “Designated Senior Indebtedness” under the Subordinated Debt documents.

6.15 **Online Banking**. Utilize Bank’s online banking platform for all matters requested by Bank which shall include, without limitation (and without request by Bank for the following matters), uploading information pertaining to Accounts and Account Debtors, requesting approval for exceptions, requesting Credit Extensions, and uploading financial statements and other reports required to be delivered by this Agreement (including, without limitation, those described in Section 6.2 of this Agreement).

7 **NEGATIVE COVENANTS**

Borrower shall not do any of the following without Bank’s prior written consent:

7.1 **Dispositions**. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, “Transfer”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2 of this Agreement; (e) consisting of Borrower’s use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; (f) of non-
exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business; and (g) relating to the Permitted Sale and Leaseback Transaction.

7.2 **Changes in Business, Management Control, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; or (c) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within five (5) Business Days after such Key Person’s departure from Borrower; or (d) permit or suffer any Change in Control.

Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Fifty Thousand Dollars ($50,000) in Borrower’s assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Fifty Thousand Dollars ($50,000) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Fifty Thousand Dollars ($50,000) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank (which consent shall not be unreasonably withheld), and such bailee shall execute and deliver a bailee agreement in form and substance reasonably satisfactory to Bank.

7.3 **Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary), except for Permitted Acquisitions. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 **Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 **Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower’s or any Subsidiary’s Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of “Permitted Liens” herein.

7.6 **Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.8(b) hereof.

7.7 **Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock; provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock; and (iii) Borrower may repurchase the stock of former or current employees or consultants pursuant to stock repurchase agreements and stock incentive compensation programs, so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, provided that the aggregate amount of all such repurchases does not exceed One Hundred Thousand Dollars ($100,000) per fiscal year; or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (i) the Permitted Sale and Leaseback Transaction, upon fair and
reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non-affiliated Person; and (ii) transactions that are in the ordinary course of Borrower’s business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non-affiliated Person.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

7.10 Compliance. Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower’s business, or permit any of its Subsidiaries to do so to the same extent; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an “Event of Default”) under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Loan Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10(b), 6.12, 6.13, or violates any covenant in Section 7; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;
8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower’s assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower’s assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and is not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is, under any agreement to which Borrower or any guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Two Hundred Thousand Dollars ($200,000); or (b) any breach or default by Borrower or guarantor, the result of which could have a material adverse effect on Borrower’s or any guarantor’s business; provided, however, that the Event of Default under this Section 8.6 caused by the occurrence of a breach or default under such other agreement shall be cured or waived for purposes of this Agreement upon Bank receiving written notice from the party asserting such breach or default of such cure or waiver of the breach or default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Bank has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement or any Loan Document; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith business judgment of Bank be materially less advantageous to Borrower or any guarantor;

8.7 Judgments; Penalties. One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Thousand Dollars ($200,000) (in each case not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid (unless the terms thereof provide a later date for satisfaction or payment, in which case, the same shall not be satisfied or paid on or before such later date), or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any such subordination, intercreditor, or other similar agreement;

8.10 Governmental Approvals. Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any
decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) cause, or could reasonably be expected to cause, a Material Adverse Change, or (ii) adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to materially affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any required Governmental Approval in any other jurisdiction; or

8.11 Secured Rate Contracts. A default or an event of default occurs under any Secured Rate Contract and is continuing.

9 BANK’S RIGHTS AND REMEDIES

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank, for itself and as agent for each Secured Swap Provider, may, without notice or demand, do any or all of the following:

(a) declare all Loan Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower’s benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to 105% (110% for Letters of Credit denominated in a Currency other than Dollars), of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Loan Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit, and (iii) deposit with Bank, to hold as agent for the Secured Swap Providers, cash collateral in an amount determined by Bank and/or the Secured Swap Providers to be necessary to secure the unmatured obligations of Borrower under the Secured Rate Contracts, and Borrower shall forthwith deposit and pay such amounts;

(d) terminate any FX Contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank’s security interest in such funds. Borrower shall collect all payments in trust for Bank and, if requested by Bank, immediately deliver the payments to Bank in the form received from the Account Debtor, with proper endorsements for deposit;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank’s rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

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(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower’s labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank’s exercise of its rights under this Section, Borrower’s rights under all licenses and all franchise agreements inure to Bank’s benefit;

(i) place a “hold” on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower’s Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower’s name on any checks, payment instruments, or other forms of payment or security; (b) sign Borrower’s name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank’s or Borrower’s name, as Bank chooses); (d) make, settle, and adjust all claims under Borrower’s insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower’s name on any documents necessary to perfect or continue the perfection of Bank’s security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and the Loan Documents have been terminated. Bank’s foregoing appointment as Borrower’s attorney in fact, and all of Bank’s rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and the Loan Documents have been terminated.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Loan Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank’s waiver of any Event of Default.

9.4 Application of Payments and Proceeds. If an Event of Default has occurred and is continuing, Bank shall have the right to apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations, in the order specified in Section 2.7(a). Bank shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank and to any Secured Swap Provider for any deficiency. If Bank, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

9.5 Bank’s Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable to
Borrower or any Secured Swap Provider or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral, except to the extent such loss, damage or destruction is the direct result of Bank’s gross negligence or willful misconduct.

9.6 No Waiver; Remedies Cumulative. Bank’s failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank’s rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank’s exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank’s waiver of any Event of Default is not a continuing waiver. Bank’s delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the extent permitted by applicable law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10 Notices

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: Cardiovascular Systems, Inc.
1225 Old Highway 8 NW
Saint Paul, Minnesota 55112
Attn: Chief Financial Officer
Fax: (651) 259-1696
Email: LBetterley@csi360.com

with a copy to: Fredrikson & Byron P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
Attn: Levi J. Smith
Fax: (612) 492-7077
Email: lsmith@fredlaw.com

If to Bank: Silicon Valley Bank
275 Grove Street, Suite 2-200
Newton, MA 02466
Attn: Sam Subilia
Fax: 
Email: ssubilia@svb.com
11 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

Except as otherwise expressly provided in any of the Loan Documents, New York law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower’s actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

This Section 11 shall survive the termination of this Agreement.

12 GENERAL PROVISIONS

12.1 Termination Prior to Maturity Date; Survival. All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement’s termination shall continue to survive notwithstanding this Agreement’s termination.

12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank’s prior written consent (which may be granted or withheld in Bank’s discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank’s obligations, rights, and benefits under this Agreement and the other Loan Documents.

12.3 Indemnification. Borrower agrees to indemnify, defend and hold Bank, any Secured Swap Provider and its respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an “Indemnified Person”) harmless against: (a) all obligations, demands, claims, and liabilities (collectively, “Claims”) claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents or any Secured Rate Contract; and (b) all losses or expenses (including Bank Expenses) in any...
way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank or Secured Swap Provider and Borrower contemplated by the Loan Documents or any Secured Rate Contract (including reasonable attorneys’ fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person’s gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

12.4 **Time of Essence**. Time is of the essence for the performance of all Obligations in this Agreement, the other Loan Documents and the Secured Rate Contracts.

12.5 **Severability of Provisions**. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.6 **Correction of Loan Documents**. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties, provided that Bank promptly notifies Borrower of any such action.

12.7 **Amendments in Writing; Waiver; Integration**. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents. Notwithstanding anything to the contrary contained in this Agreement, no amendment, waiver or consent of this Agreement or any Loan Document altering the ratable treatment of the Secured Swap Obligations and resulting in such Secured Swap Obligations being junior in right of payment to principal on the Loan Obligations owing to Bank, or resulting in Secured Swap Obligations owing to any Secured Swap Provider becoming unsecured (other than releases and modifications of Liens permitted in accordance with the terms hereof), in each manner adverse to any Secured Swap Provider, shall be effective without the written consent of such Secured Swap Provider.

12.8 **Counterparts**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.9 **Confidentiality**. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank’s Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, “Bank Entities”); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use commercially reasonable efforts to obtain any prospective transferee’s or purchaser’s agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank’s regulators or as otherwise required in connection with Bank’s examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank’s possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.
Bank Entities may use confidential information for the development of databases, reporting purposes, and market analysis so long as such confidential information is aggregated and anonymized prior to distribution unless otherwise expressly permitted by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

12.10 Reserved.

12.11 Electronic Execution of Documents. The words “execution,” “signed,” “signature” and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.12 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.13 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement and the other Loan Documents. In cases of uncertainty this Agreement and the other Loan Documents shall be construed without regard to which of the parties caused the uncertainty to exist.

12.14 Relationship. The relationship of the parties to this Agreement and the other Loan Documents is determined solely by the provisions hereof and thereof. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm’s-length contract.

12.15 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns (except for any benefits, rights or remedies expressly granted herein to Secured Swap Providers); (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

13 DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amount that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“Account” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“Account Debtor” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“Acquisition” means the purchase or other acquisition (whether by merger, consolidation or otherwise) by Borrower of all or substantially all of the assets, stock or other equity interests of a Person.

“Adjusted EBITDA” means, for any measurement period, the sum of (a) EBITDA, minus (b) Unfinanced Capital Expenditures.

“Adjusted Quick Ratio” means, for any measurement period, the quotient of (a) Quick Assets, divided by (b) the sum of (i) Current Liabilities minus (ii) the current portion of Deferred Revenue.

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“Advance” or “Advances” means a revolving credit loan (or revolving credit loans) under the Revolving Line.

“Affiliate” is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“Agreement” is defined in the preamble hereof.

“Authorized Signer” is any individual listed in Borrower’s Borrowing Resolution (specifically or generally) who is authorized to execute the Loan Documents, including making (and executing, if applicable) any Credit Extension request, on behalf of Borrower.

“Availability Amount” is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base; minus (b) the aggregate Dollar Equivalent amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit plus an amount equal to the Letter of Credit Reserve); minus (c) the FX Reduction Amount; minus (d) any amounts used for Cash Management Services; and minus (e) the outstanding principal balance of any Advances.

“Bank” is defined in the preamble hereof.

“Bank Entities” is defined in Section 12.9.

“Bank Expenses” are all audit fees and expenses, costs, and expenses (including reasonable and documented attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

“Board” is Borrower’s board of directors.

“Borrower” is defined in the preamble hereof.

“Borrower’s Books” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Borrowing Base” is eighty-five percent (85%) of Eligible Accounts; provided, however, during a Streamline Period, the Borrowing Base shall also include (A) the lesser of (i) fifty percent (50%) of the value of Borrower’s Eligible Inventory (valued at the lower of cost or wholesale fair market value) or (ii) Five Million Dollars ($5,000,000) (provided, that in any event Advances based on Eligible Inventory shall not at any time exceed twenty-five percent (25%) of the total outstanding Advances at any time), plus (B) Ten Million Dollars ($10,000,000), in each case as determined by Bank from Borrower’s most recent Borrowing Base Report (and as may subsequently be updated by Bank in Bank’s sole discretion based upon information received by Bank including, without limitation, Accounts that are paid and/or billed following the date of the Borrowing Base Report); provided, however, that Bank has the right to decrease the foregoing amount and/or percentages in its good faith business judgment to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect the Collateral or its value.

“Borrowing Base Report” is that certain report of the value of certain Collateral in the form attached hereto as Exhibit C.

“Borrowing Resolutions” are, with respect to any Person, those resolutions adopted by such Person’s board of directors (and, if required under the terms of such Person’s Operating Documents, stockholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated
thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents and the Secured Rate Contracts to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents and the Secured Rate Contracts to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents and the Secured Rate Contracts, including making (and executing, if applicable) any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

“Business Day” is any day that is not a Saturday, Sunday or a day on which Bank is closed, except that if any determination of a “Business Day” shall relate to an FX Contract, the term “Business Day” shall mean a day on which dealings are carried on in the country of settlement of the Foreign Currency.

“Capital Expenditures” means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, plus (b) to the extent not covered by clause (a), the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or capitalized assets or the capital stock of any other Person.

“Cash Collateral Account” is defined in Section 6.3(c).

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; (c) Bank’s certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

“Cash Management Services” is defined in Section 2.2.3.

“Change in Control” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of twenty five percent (25%) or more of the ordinary voting power for the election of directors of Borrower (determined on a fully diluted basis) other than by the sale of Borrower’s equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of twelve (12) consecutive months, a majority of the members of the Board or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100%) of each class of outstanding capital stock of each Subsidiary of Borrower free and clear of all Liens (except Liens created by this Agreement); provided, that Borrower may own less than one hundred percent (100%) of each class of outstanding capital stock of any Subsidiary to the extent necessary for such Subsidiary to comply with applicable ownership laws of its jurisdiction of formation and/or operation.

“Claims” is defined in Section 12.3.
“Code” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“Collateral” is any and all properties, rights and assets of Borrower described on Exhibit A.

“Collateral Account” is any Deposit Account, Securities Account, or Commodity Account.

“Commodity Account” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“Compliance Certificate” is that certain certificate in the form attached hereto as Exhibit B.

“Contingent Obligation” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations under any Rate Contract, but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“Control Agreement” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“Copyrights” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“Credit Extension” is any Advance, any Overadvance, Letter of Credit, FX Contract, amount utilized for Cash Management Services, or any other extension of credit by Bank for Borrower’s benefit.

“Currency” is coined money and such other banknotes or other paper money as are authorized by law and circulate as a medium of exchange.

“Current Liabilities” are all obligations and liabilities of Borrower to Bank, plus, without duplication, the aggregate amount of Borrower’s Total Liabilities that mature within one (1) year.

“Default Rate” is defined in Section 2.4(b).

“Deferred Revenue” is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

“Deposit Account” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.
“Designated Deposit Account” is the account number ending (last three digits) _______, maintained by Borrower with Bank (provided, however, if no such account number is included, then the Designated Deposit Account shall be any deposit account of Borrower maintained with Bank as chosen by Bank).

“Dollars,” “dollars” or use of the sign “$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “$” sign to denote its currency or may be readily converted into lawful money of the United States.

“Dollar Equivalent” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“EBITDA” means, with respect to Borrower for any period, (a) the sum, without duplication, of the amounts for such period of (i) Net Income, plus (ii) Interest Expense, plus (iii) provisions for taxes based on income, plus (iv) total depreciation expense, plus (v) total amortization expense, plus (vi) non-cash stock compensation expense.

“Effective Date” is defined in the preamble hereof.

“Eligible Accounts” means Accounts which arise in the ordinary course of Borrower’s business that meet all Borrower’s representations and warranties in Section 5.3, that have been, at the option of Bank, confirmed in accordance with Section 6.3(e) of this Agreement, and are due and owing from Account Debtors deemed creditworthy by Bank in its good faith business judgment. Bank reserves the right at any time after the Effective Date to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

(a) Accounts for which the Account Debtor is Borrower’s Affiliate, officer, employee, or agent, and Accounts that are intercompany Accounts;

(b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;

(c) Accounts with credit balances over ninety (90) days from invoice date;

(d) Accounts owing from an Account Debtor if fifty percent (50%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date;

(e) Accounts owing from an Account Debtor which does not have its principal place of business in the United States;

(f) Accounts billed from and/or payable to Borrower outside of the United States unless Bank has a first priority, perfected security interest or other enforceable Lien in such Accounts under all applicable laws, including foreign laws (sometimes called foreign invoiced accounts);

(g) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts);

(h) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;
(i) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;

(j) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);

(k) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of Borrower’s failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);

(l) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor’s satisfaction of Borrower’s complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);

(m) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;

(n) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called “bill and hold” accounts);

(o) Accounts for which the Account Debtor has not been invoiced;

(p) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower’s business;

(q) Accounts for which Borrower has permitted Account Debtor’s payment to extend beyond ninety (90) days (including Accounts with a due date that is more than ninety (90) days from invoice date);

(r) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;

(s) Accounts arising from product returns and/or exchanges (sometimes called “warranty” or “RMA” accounts);

(t) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business;

(u) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);

(v) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed twenty-five percent (25%) of all Accounts, for the amounts that exceed that percentage, unless Bank approves in writing; and

(w) Accounts for which Bank in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by “refreshed” or “recycled” invoices.
“Eligible Inventory” means Inventory that meets all of Borrower’s representations and warranties in Section 5.3(c) and is otherwise acceptable to Bank in all respects.

“Equipment” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“ERISA” is the Employee Retirement Income Security Act of 1974, and its regulations.

“Event of Default” is defined in Section 8.


“Foreign Currency” means lawful money of a country other than the United States.

“Funding Date” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“FX Business Day” is any day when (a) Bank’s Foreign Exchange Department is conducting its normal business and (b) the Foreign Currency being purchased or sold by Borrower is available to Bank from the entity from which Bank shall buy or sell such Foreign Currency.

“FX Contract” is defined in Section 2.2.2.

“FX Reduction Amount” means, with respect to a given FX Contract, the notional amount thereof multiplied by the currency exchange risk factor for the currencies involved in the FX Contract, multiplied by the current foreign exchange spot rates, in each instance as determined and calculated by Bank in its reasonable discretion.

“GAAP” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“General Intangibles” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“Governmental Approval” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Indebtedness” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.
“Indemnified Person” is defined in Section 12.3.

“Initial Audit” is Bank’s inspection of Borrower’s Accounts, the Collateral, and Borrower’s Books, with results satisfactory to Bank in its sole and absolute discretion.

“Insolvency Proceeding” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;
(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
(c) any and all source code;
(d) any and all design rights which may be available to such Person;
(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“Interest Expense” means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower and its Subsidiaries, including, without limitation or duplication, the interest component of the Permitted Sale and Leaseback Transaction, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

“Inventory” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“ISDA Master Agreement” means, as modified or supplemented from time to time, the 1992 or 2002 ISDA Master Agreement and related schedule thereto, as published by the International Swaps and Derivatives Association, Inc., as supplemented by any credit support annex and confirmation confirming any transaction thereunder.

“Key Person” is each of Borrower’s (a) Chief Executive Officer, who is Scott R. Ward as of the Effective Date, and (b) Chief Financial Officer, who is Laurence L. Betterley as of the Effective Date.

“Letter of Credit” means a standby letter of credit issued by Bank or another institution based upon an application, guarantee, indemnity or similar agreement on the part of Bank as set forth in Section 2.2.1.
“**Letter of Credit Application**” is defined in Section 2.2.1(b).

“**Letter of Credit Reserve**” has the meaning set forth in Section 2.2.1(c).

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Liquidity**” is, as of any date of measurement, the sum of (i) Borrower’s unrestricted cash and Cash Equivalents maintained at Bank and/or Bank’s Affiliates, plus (ii) the Availability Amount.

“**Loan Documents**” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any guarantor, and any other present or future agreement by Borrower and/or any guarantor with or for the benefit of Bank in connection with this Agreement, all as amended, restated, or otherwise modified.

“**Loan Obligations**” are Borrower’s obligations to pay when due any debts, principal, interest, Bank Expenses, the Termination Fee, the Unused Revolving Line Facility Fee, and other amounts Borrower owes Bank now or later, whether under this Agreement, the Loan Documents, or otherwise, including, without limitation, all obligations relating to any and all Letters of Credit (including reimbursement obligations for drawn and undrawn Letters of Credit), Cash Management Services and FX Forward Contracts, and including interest accruing after Insolvency Proceedings begin and all debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower’s duties under the Loan Documents; provided, however, that the Loan Obligations shall not include the Secured Swap Obligations.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; (c) a material impairment of the prospect of repayment of any portion of the Obligations; or (d) Bank determines, based upon information available to it and in its reasonable judgment, that there is a reasonable likelihood that Borrower shall fail to comply with one or more of the financial covenants in Section 6.9 during the next succeeding financial reporting period.

“**Monthly Financial Statements**” is defined in Section 6.2(c).

“**Net Income**” means, as calculated on a consolidated basis for Borrower for any period as at any date of determination, the net profit (or loss), after provision for taxes, of Borrower for such period taken as a single accounting period.

“**Obligations**” mean the Loan Obligations and the Secured Swap Obligations.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Overadvance**” is defined in Section 2.3.

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“**Payment Date**” is, with respect to Advances, the last calendar day of each month.

“**Perfection Certificate**” is defined in Section 5.1.

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“Permitted Acquisition” or “Permitted Acquisitions” is any Acquisition by Borrower disclosed to Bank, provided that each of the following shall be applicable to each such Acquisition:

(a) no Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition;

(b) the entity or assets acquired in such Acquisition are in the same or similar line of business as Borrower is in as of the Effective Date or reasonably related thereto;

(c) the target of such Acquisition, if such acquisition is a stock acquisition, shall be an entity organized under the laws of any State in the United States and shall have a principal place in the United States;

(d) if the Acquisition includes a merger of Borrower, Borrower shall remain a surviving entity after giving effect to such Acquisition;

(e) Borrower shall provide Bank with written notice of the proposed Acquisition at least ten (10) Business Days prior to the anticipated closing date of the proposed Acquisition, and not less than five (5) Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and all other material documents relative to the proposed Acquisition (or if such acquisition agreement and other material documents are not in final form, drafts of such acquisition agreement and other material documents; provided, that Borrower shall deliver final forms of such acquisition agreement and other material documents promptly upon completion);

(f) the total consideration, including cash and the value of any non-cash consideration for all such Acquisitions, does not exceed Twenty Million Dollars ($20,000,000) in the aggregate;

(g) Immediately prior to, and after giving effect to, on a pro forma basis, the consummation of any such Acquisition, Borrower is in compliance with one (1) of the financial covenants set forth in Section 6.9;

(h) the Acquisition shall not constitute an Unfriendly Acquisition; and

(i) the entity or assets acquired in such Acquisition shall not be subject to any Lien other than (x) the first-priority Liens granted in favor of Bank, if applicable and (y) Permitted Liens.

“Permitted Indebtedness” is:

(a) Borrower’s Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) Indebtedness under Secured Rate Contracts;

(e) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(g) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder;

(h) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (g) above; provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be; and

-33-
Indebtedness relating to the Permitted Sale and Leaseback Transaction.

**Permitted Investments** are:

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which is shown on the Perfection Certificate;

(b) Investments consisting of Cash Equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of Secured Rate Contracts;

(e) Investments consisting of Collateral Accounts (but only to the extent that Borrower is permitted to maintain such accounts pursuant to Section 6.8 of this Agreement) in which Bank has a first priority perfected security interest;

(f) Investments accepted in connection with Transfers permitted by Section 7.1;

(g) Investments in an aggregate amount not to exceed One Hundred Thousand Dollars ($100,000) at any time consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Board;

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;

(j) Investments held at Bank or Bank’s Affiliates; and

(k) Investments related to Borrower’s deferred compensation plan(s).

**Permitted Liens** are:

(a) Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) Purchase money Liens securing no more than One Hundred Thousand Dollars ($100,000) in the aggregate amount outstanding (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;
(d) Liens consisting of pledges of cash, Cash Equivalents or government securities to secure Secured Rate Contracts permitted under Section 6.15;

(e) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(f) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(g) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(h) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(i) non-exclusive license of Intellectual Property granted to third parties in the ordinary course of business;

(j) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;

(k) Liens in favor of other financial institutions arising in connection with Borrower’s deposit and/or securities accounts held at such institutions, provided that (i) Bank has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts, and (ii) such accounts are permitted to be maintained pursuant to Section 6.8 of this Agreement; and

(l) Liens relating to the Permitted Sale and Leaseback Transaction.

“Permitted Sale and Leaseback Transaction” is any transaction pursuant to which Borrower sells the Real Property and enters into a related lease transaction whereby Borrower leases all or a portion of the Real Property.

“Person” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“Prime Rate” is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect, provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided, further, that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the “Prime Rate” shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Quarterly Financial Statements” is defined in Section 6.2(d).
“Quick Assets” is, on any date, the sum of Borrower’s (a) unrestricted and unencumbered cash and Cash Equivalents maintained with Bank or Bank’s Affiliates, plus (b) net billed accounts receivable determined according to GAAP.

“Rate Contracts” mean any swap agreement (as such term is defined in Section 101 of the Bankruptcy Code) and all other agreements or documents now existing or hereafter entered into by Borrower that provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction (other than FX Forward Contracts), currency swap, cross currency rate swap, currency option or any similar transaction, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging Borrower exposure to fluctuations in interest rates, currency exchange rates, loan, credit exchange, security, or commodity prices.

“Real Property” is that certain real property of Borrower located at 1225 Old Highway 8 NW, Saint Paul, Minnesota 55112.

“Registered Organization” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“Requirement of Law” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its good faith business judgment, reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in its good faith business judgment, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any guarantor, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Bank’s reasonable belief that any collateral report or financial information furnished by or on behalf of Borrower or any guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

“Responsible Officer” is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“Restricted License” is any material license or other material agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank’s right to sell any Collateral.

“Revolving Line” is an aggregate principal amount equal to Forty Million Dollars ($40,000,000).

“Revolving Line Maturity Date” is March 31, 2020.

“SEC” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“Secured Rate Contract” means any Rate Contract entered into in writing under an ISDA Master Agreement (a) between Borrower and a Secured Swap Provider; (b) has been provided or arranged by Bank or its Affiliate; and (c) if the Secured Swap Provider is not Bank or its Affiliate at the time of execution and delivery of such Rate Contract, Bank has acknowledged in writing such Rate Contract constitutes a “Secured Rate Contract” hereunder and Bank and such Secured Swap Provider have entered into an agency addendum to the ISDA Master Agreement.
“Secured Swap Obligations” are Borrower’s obligations to pay when due any and all amounts that Borrower owes any Secured Swap Provider, now or later, under any Secured Rate Contract, and including interest accruing after Insolvency Proceedings begin and all debts, liabilities, or obligations of Borrower assigned to any Secured Swap Provider, including the obligation to perform Borrower’s duties under the Secured Rate Contracts.

“Secured Swap Provider” means (i) Bank or an Affiliate of Bank (or a Person who was Bank or an Affiliate of Bank at the time of execution and delivery of a Secured Rate Contract) who has entered into a Secured Rate Contract with Borrower, or (ii) a Person with whom Borrower has entered into a Secured Rate Contract provided or arranged by Bank or an Affiliate of Bank, and any assignee thereof.

“Securities Account” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“Settlement Date” is defined in Section 2.2.2.

“Streamline Balance” is defined in the definition of Streamline Period.

“Streamline Period” is, on and after the Effective Date, provided no Event of Default has occurred and is continuing, the period (a) commencing on the first day of the month following the day that Borrower provides to Bank a written report that Borrower has, for each consecutive day in the immediately preceding month, as determined by Bank in its discretion, maintained an Adjusted Quick Ratio in an amount at all times greater than or equal to 1.25 to 1.00 (the “Streamline Balance”); and (b) terminating on the earlier to occur of (i) the occurrence of an Event of Default, and (ii) the first day thereafter in which Borrower fails to maintain the Streamline Balance, as determined by Bank in its discretion. Upon the termination of a Streamline Period, Borrower must maintain the Streamline Balance each consecutive day for one (1) calendar month, as determined by Bank in its discretion, prior to entering into a subsequent Streamline Period. Borrower shall give Bank prior written notice of Borrower’s election to enter into any such Streamline Period, and each such Streamline Period shall commence on the first day of the monthly period following the date Bank determines, in its reasonable discretion, that the Streamline Balance has been achieved.

“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

“Subsidiary” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

“Termination Fee” is the fee described in Section 2.5(b).

“Total Liabilities” is on any day, obligations that should, under GAAP, be classified as liabilities on Borrower’s consolidated balance sheet, including all Indebtedness, but excluding all Subordinated Debt.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“Transfer” is defined in Section 7.1.

“Unfinanced Capital Expenditures” means, with respect to any Person for any period, the aggregate of all Capital Expenditures by such Person and its Subsidiaries during such period that are paid in cash and are not financed.
or funded using proceeds from (a) the issuance of additional equity interests of Borrower, (b) Credit Extensions, (c) Subordinated Debt, (d) specific equipment financing, (e) asset sales, (f) insurance proceeds, or (g) government grants or other incentives, and in each instance determined in accordance with GAAP.

“Unfriendly Acquisition” is any Acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally governing body) of the Person to be acquired.

“Unpaid Amounts” has the meaning given such term in the Secured Rate Contact.

“Unused Revolving Line Facility Fee” is defined in Section 2.5(c).

[Signature page follows.]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

CARDIOVASCULAR SYSTEMS, INC.

By /s/ Laurence L. Betterley
Name: Laurence L. Betterley
Title: CFO

BANK:

SILICON VALLEY BANK

By /s/ Brian Powers
Name: Brian Powers
Title: VP
EXHIBIT A – COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower’s right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

all Borrower’s Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank’s security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank’s prior written consent.
EXHIBIT B
COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK  Date: 
FROM: CARDIOVASCULAR SYSTEMS, INC.

The undersigned authorized officer of Cardiovascular Systems, Inc. (“Borrower”) certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the “Agreement”), (1) Borrower is in complete compliance for the period ending _______________ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries, if any, relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under “Complies” column.

<table>
<thead>
<tr>
<th>Reporting Covenants</th>
<th>Required</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly financial statements with Compliance Certificate*</td>
<td>Monthly within 30 days</td>
<td>Yes</td>
</tr>
<tr>
<td>Quarterly financial statements with Compliance Certificate</td>
<td>Quarterly within 30 days</td>
<td>Yes</td>
</tr>
<tr>
<td>Annual financial statements (CPA Audited) + CC</td>
<td>FYE within 120 days</td>
<td>No</td>
</tr>
<tr>
<td>10-Q, 10-K and 8-K</td>
<td>Within 5 days after filing with SEC</td>
<td>N/A</td>
</tr>
<tr>
<td>A/R &amp; A/P Agings, Deferred Revenue reports and inventory reports*</td>
<td>Monthly within 30 days</td>
<td>Yes</td>
</tr>
<tr>
<td>Borrowing Base Reports*</td>
<td>Monthly within 30 days</td>
<td>Yes</td>
</tr>
<tr>
<td>Board approved projections</td>
<td>FYE within 30 days</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Financial Covenants **</th>
<th>Required</th>
<th>Actual</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Liquidity; or</td>
<td>$10,000,000</td>
<td>$</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Adjusted EBITDA</td>
<td>$1,000,000</td>
<td>$</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*For any month in which Obligations were outstanding under the Revolving Line
**Tested when there are Obligations outstanding and prior to each Advance

<table>
<thead>
<tr>
<th>Streamline Period</th>
<th>Applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted Quick Ratio &gt; 1.25:1.00</td>
<td>Yes No</td>
</tr>
</tbody>
</table>
The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and accurate as of the date of this Certificate.

The following are the exceptions with respect to the certification above: (If no exceptions exist, state “No exceptions to note.”)

----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Cardiovascular Systems, Inc.

By: 
Name: 
Title: 

BANK USE ONLY

Received by: ________________________
AUTHORIZED SIGNER
Date: ________________________

Verified: ________________________
AUTHORIZED SIGNER
Date: ________________________

Compliance Status: Yes No

2
SCHEDULE 1 TO COMPLIANCE CERTIFICATE

FINANCIAL COVENANTS OF BORROWER

In the event of a conflict between this Schedule and the Loan Agreement, the terms of the Loan Agreement shall govern.

I. Minimum Liquidity (Section 6.9(a))

Required: Borrower shall maintain Liquidity (assuming that a Streamline Period is not in effect for purposes of calculating the Availability Amount) at all times, to be certified to Bank as of the last day of each month (or, if being measured in connection with the making of an Advance, calculated immediately prior to the making of such Advance) of at least Ten Million Dollars ($10,000,000).

Actual:

A. Unrestricted cash and Cash Equivalents of Borrower maintained at Bank or Bank’s Affiliates $_
B. Availability Amount $_
C. Liquidity (line A plus line B) $_

Is line C equal to or greater than $10,000,000?

No, not in compliance ___ Yes, in compliance ___
II. **Minimum Adjusted EBITDA (Section 6.9(b))**

**Required:** Borrower shall achieve, measured on a trailing three (3) month basis as of the last day of each month (or, if being measured in connection with the making of an Advance, calculated as of the last day of the month immediately preceding the request for such Advance), Adjusted EBITDA of at least One Million Dollars ($1,000,000).

**Actual:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Net Income</td>
<td>$ _</td>
</tr>
<tr>
<td>B. To the extent included in the determination of Net Income</td>
<td></td>
</tr>
<tr>
<td>1. The provision for income taxes</td>
<td>$ _</td>
</tr>
<tr>
<td>2. Depreciation expense</td>
<td>$ _</td>
</tr>
<tr>
<td>3. Amortization expense</td>
<td>$ _</td>
</tr>
<tr>
<td>4. Interest Expense</td>
<td>$ _</td>
</tr>
<tr>
<td>5. Non-cash stock compensation expense</td>
<td>$ _</td>
</tr>
<tr>
<td>6. The sum of lines 1 through 5</td>
<td>$ _</td>
</tr>
<tr>
<td>C. Unfinanced Capital Expenditures</td>
<td>$ _</td>
</tr>
<tr>
<td>D. Adjusted EBITDA (line A plus line B minus line C)</td>
<td>$ _</td>
</tr>
</tbody>
</table>

Is line D equal to or greater than $1,000,000?

No, not in compliance | Yes, in compliance
### FOR PURPOSES OF THE STREAMLINE PERIOD AND CALCULATING THE ADJUSTED QUICK RATIO

**Adjusted Quick Ratio**

**Required:** 1.25:1.00

**Actual:**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Aggregate value of the unrestricted and unencumbered cash and Cash Equivalents</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of Borrower maintained with Bank or Bank’s Affiliates</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Aggregate value of the net billed accounts receivable of Borrower</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Quick Assets (the sum of line A plus line B)</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Aggregate value of Obligations to Bank</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>Without duplication of line D, the aggregate value of liabilities of Borrower</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(including all Indebtedness) that matures within one (1) year</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>Current Liabilities (the sum of line D plus line E)</td>
<td></td>
</tr>
<tr>
<td>G</td>
<td>Aggregate value of all amounts received or invoiced by Borrower in advance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of performance under contracts and not yet recognized as revenue</td>
<td></td>
</tr>
<tr>
<td>H</td>
<td>Line F minus line G</td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>Adjusted Quick Ratio (line C divided by line H)</td>
<td></td>
</tr>
</tbody>
</table>

Is line I equal to or greater than 1.25:1.00?

- No, Streamline Period not in effect
- Yes, Streamline Period in effect
EXHIBIT C

Borrowing Base Report

[To be provided by Bank]
LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of March 30, 2017 (the "Effective Date"), by Krishna Holdings LLC, a Minnesota limited liability company; Apex Holdings, LLC, a Minnesota limited liability company; Kashi Associates, LLC, a Minnesota limited liability company; Keva Holdings, LLC, a Minnesota limited liability company; S&V Ventures, LLC, a Minnesota limited liability company; Star Associates LLC, a Minnesota limited liability company; Polo Group LLC, a New York limited liability company; SPAV Holdings LLC, a Minnesota limited liability company; and The Global Villa, LLC, a Minnesota limited liability company (collectively "Lessor"), whose address is 3620 Wedgewood Lane North, Plymouth, MN 55441, and Cardiovascular Systems, Inc., a Delaware corporation ("Lessee"), whose address is 1225 Old Highway 8 NW, New Brighton, MN 55112. Capitalized terms not defined herein shall have the meanings set forth in Exhibit A hereto.

In consideration of the mutual covenants and agreements herein contained, Lessor and Lessee hereby covenant and agree as follows:

ARTICLE I
BASIC LEASE TERMS

Section 1.01. Property. The real property located at 1225 Old Highway 8 NW, New Brighton, MN 55112, as legally described on Exhibit B attached hereto and incorporated herein, including the improvements thereon and fixtures and appurtenances thereto.

Section 1.02. Initial Term Expiration Date. March 31, 2032.

Section 1.03. Extension Options. Four (4) extensions of five (5) years each, as described in Section 3.02.

Section 1.04. Base Annual Rental. One Million Six Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars ($1,637,500.00) as described in Article IV, payable in monthly installments of One Hundred Thirty-Six Thousand Four Hundred Fifty-Eight and 33/100 Dollars ($136,458.33).

Section 1.05. Rental Adjustment. Three percent (3%) per annum as of each Adjustment Date, as described in Section 4.02.

Section 1.06. Adjustment Date. The first anniversary of the Effective Date and annually thereafter during the Initial Lease Term (excluding any Extension Term).

Section 1.07. Lessee Tax Identification No. 41-1698056.

Section 1.08. Lessor Tax Identification Nos. __________________.
ARTICLE II

LEASE OF PROPERTY

Section 2.01. Lease. In consideration of Lessee’s payment of the Rental and other Monetary Obligations and Lessee’s performance of all other obligations hereunder, Lessor hereby leases to Lessee, and Lessee hereby takes and hires, the Property, “AS IS” and “WHERE IS” without representation or warranty by Lessor, and subject to the existing state of title, the parties in possession, any statement of facts which an accurate survey or physical inspection might reveal, and all Legal Requirements now or hereafter in effect.

Section 2.02. Quiet Enjoyment. So long as Lessee shall pay the Rental and other Monetary Obligations provided in this Lease and shall keep and perform all of the terms, covenants and conditions on its part contained herein, Lessee shall have, subject to the terms and conditions set forth herein, the right to the peaceful and quiet enjoyment and occupancy of the Property.

ARTICLE III

LEASE TERM; EXTENSION

Section 3.01. Initial Term. The initial term of this Lease (“Initial Term”) shall commence as of the Effective Date and shall expire at midnight on the Initial Term Expiration Date, unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to as the “Lease Term.”

Section 3.02. Extensions. Unless this Lease has expired or has been sooner terminated, or an Event of Default has occurred and is continuing at the time any extension option is exercised, Lessee shall have the right and option (each, an “Extension Option”) to extend the Initial Term for all and not less than all of the Property for four (4) additional successive periods of five (5) years each (each, an “Extension Term”), pursuant to the terms and conditions of this Lease then in effect.

Section 3.03. Notice of Exercise. Lessee may only exercise the Extension Options by giving its irrevocable written notice thereof to Lessor of its election to do so no later than nine (9) months prior to the expiration of the then-current Lease Term. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this Lease shall terminate on the last day of the Initial Term or, if applicable, the last day of the Extension Term then in effect. Notwithstanding the foregoing, if Lessee is entitled to exercise an option to renew but fails to give Lessor timely written notice of such exercise, then Lessor shall use commercially reasonable efforts to give Lessee written notice of such failure, and Lessee shall have the right to exercise such Extension Option by written notice to Lessor given within ten (10) Business Days after receipt of such notice. Upon the request of Lessor or Lessee, the parties hereto will, at the expense of Lessee, execute and exchange an instrument in recordable form setting forth the extension of the Lease Term in accordance with this Section 3.03.

Section 3.04. Removal of Personalty. Upon the expiration of the Lease Term, Lessee may remove from the Property all personal property, equipment and trade fixtures belonging to Lessee. Lessee shall repair any damage caused by such removal and shall leave all of the Property
clean and in good and working condition and repair inside and out, subject to normal wear and tear, casualty and condemnation. Any property of Lessee left on the Property on the tenth (10th) day following the expiration of the Lease Term shall, at Lessor's option, automatically and immediately become the property of Lessor.

ARTICLE IV

RENTAL AND OTHER MONETARY OBLIGATIONS

Section 4.01. Base Monthly Rental. During the Lease Term, on or before the first day of each calendar month, Lessee shall pay in advance the Base Monthly Rental then in effect. If the Effective Date is a date other than the first day of the month, Lessee shall pay to Lessor on the Effective Date the Base Monthly Rental prorated by multiplying the Base Monthly Rental by a fraction, the numerator of which is the number of days remaining in the month (including the Effective Date) for which Rental is being paid, and the denominator of which is the total number of days in such month.

Section 4.02. Adjustments During Initial Lease Term. During the Initial Lease Term (excluding any Extension Term), on the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the Rental Adjustment.

Section 4.03. Adjustment During Extension Terms. The Base Annual Rental for each Extension Term shall be equal to the then “Fair Market Rental Rate,” as hereinafter defined; provided, however, in no event shall the Fair Market Rental Rate be less than the Base Annual Rental in effect during the last year of the then expiring Initial Lease Term or Extension Term, as the case may be. As used herein, the "Fair Market Rental Rate" payable by Lessee for each Extension Term shall mean the Base Annual Rental for space comparable in size, location and quality to the Property for a comparable term, and in other comparable buildings in the vicinity of the Property, taking into consideration all out-of-pocket concessions generally being granted at such time for such comparable space, including the condition and value of existing tenant improvements in the Property. Lessor shall provide Lessee with its determination of the Fair Market Rental Rate within ten (10) days after receipt of Lessee's notice to extend the Lease Term. Lessee shall have thirty (30) days after receipt of Lessor's notice in which to notify Lessor of any objection thereto. In the event Lessee notifies Lessor of its objection to the computation of such rental rate, then the parties shall negotiate in good faith for a period not to exceed thirty (30) days in order to come to agreement thereon. In the event the parties are unable to agree upon such rate within such thirty (30) day period, then Lessee shall have the right within ten (10) days thereafter to require that Lessor and Lessee each, at its cost and by giving written notice to the other party, appoint a competent and impartial commercial real estate broker (hereinafter “broker”) with at least five (5) years’ full-time commercial real estate brokerage experience in the geographical area of the Property to set the Fair Market Rental Rate for the Extension Term. Each broker shall submit its valuation of the Fair Market Rental Rate in accordance herewith within ten (10) days after selection, and if the valuations are within ten percent (10%) of each other, then the valuations shall be averaged together to arrive at the Fair Market Rental Rate of the Property. In the event the valuations have a disparity greater than ten percent (10%), then the brokers shall select a third broker, who shall submit a valuation in accordance with the foregoing within ten (10) days after selection. The two valuations which are the closest to each other shall then be averaged together to arrive at the current Fair Market Rental Rate. Upon determination of the Fair Market Rental Rate for the
Extension Term in accordance with the terms outlined above, Lessor and Lessee shall immediately execute an amendment to the Lease Agreement. Such amendment shall set forth among other things, the Base Annual Rental for the Extension Term and the actual commencement date and expiration date of the Extension Term.

Section 4.04. Additional Rental. Lessee shall pay and discharge, as additional rental (“Additional Rental”), all sums of money required to be paid by Lessee under this Lease which are not specifically referred to as Rental. Lessee shall pay and discharge any Additional Rental when the same shall become due, provided that amounts which are billed to Lessor or any third party, but not to Lessee, shall be paid within fifteen (15) days after Lessor’s written demand for payment thereof. In no event shall Lessee be required to pay to Lessor any item of Additional Rental that Lessee is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

Section 4.05. Late Charges. Any payment that is not paid to Lessor within ten (10) days of the due date shall, in addition to any other remedy of Lessor, incur a late charge of two percent (2%) (which late charge is intended to compensate Lessor for the cost of handling and processing such delinquent payment and should not be considered interest); provided, however, in no event shall Lessee be obligated to pay a late charge higher than the maximum legal rate then in effect.

Section 4.06. Holdover. If Lessee remains in possession of the Property after the expiration of the Lease Term hereof, Lessee, at Lessor’s option and within Lessor’s sole discretion, may be deemed a tenant on a month-to-month basis and shall continue to pay Rentals and other Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifty percent (150%) of the last Base Monthly Rental payable under this Lease, and Lessee shall comply with all the terms of this Lease; provided that nothing herein nor the acceptance of Rental by Lessor shall be deemed a consent to such holding over.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LESSEE

The representations and warranties of Lessee contained in this Article V are being made to induce Lessor to enter into this Lease, and Lessor has relied, and will continue to rely, upon such representations and warranties. Lessee represents and warrants to Lessor as follows:

Section 5.01. Organization, Authority and Status of Lessee. Lessee has been duly organized or formed, is validly existing and in good standing under the laws of its state of formation and is qualified as a foreign corporation to do business in the State of Minnesota. All necessary and appropriate action has been taken to authorize the execution, delivery and performance by Lessee of this Lease and of the other documents, instruments and agreements provided for herein. Lessee is not, and if Lessee is a “disregarded entity,” the owner of such disregarded entity is not, a “nonresident alien,” “foreign corporation,” “foreign partnership,” “foreign trust,” “foreign estate,” or any other “person” that is not a “United States Person” as those terms are defined in the Code and the regulations promulgated thereunder. The Person who has executed this Lease on behalf of Lessee is duly authorized to do so.
Section 5.02. **Enforceability**. This Lease constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

Section 5.03. **Solvency**. There is no contemplated, pending or threatened Insolvency Event or similar proceedings, whether voluntary or involuntary, affecting Lessee or any Lessee Entity.

ARTICLE VI

**TAXES AND ASSESSMENTS; UTILITIES; INSURANCE**

Section 6.01. **Taxes**.

(a) **Payment**. Subject to the provisions of Section 6.01(b) below, Lessee shall pay and discharge, no later than the last day on which payment be made without penalty or interest, any and all taxes and installments of special assessments assessed against or imposed upon the Property or Lessee during the Lease Term related to or arising out of this Lease and the activities of the parties hereunder, including without limitation, (i) all taxes or assessments upon the Property or any part thereof and upon any personal property, trade fixtures and improvements located on the Property, whether belonging to Lessor or Lessee, or any tax or charge levied in lieu of such taxes and assessments; and (ii) all taxes, charges, license fees and or similar fees imposed by reason of the use of the Property by Lessee. Notwithstanding anything in clauses (i) through (ii) to the contrary, Lessee shall not be obligated to pay or reimburse Lessor for any taxes based on the net income of Lessor or any corporate franchise, estate, inheritance, gift tax or tax imposed on the transfer of Lessor’s interest in the Lease or the Property. Lessee shall have the right to pay special assessments in installments over the longest permissible periods.

(b) **Right to Contest**. Within thirty (30) days after each tax and assessment payment is required by this Section 6.01 to be paid, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor that taxes and assessments have been timely paid by Lessee. In the event Lessor receives a tax bill, Lessor shall use commercially reasonable efforts to forward said bill to Lessee within fifteen (15) days of Lessor’s receipt thereof. Lessee may, at its own expense, contest or cause to be contested (in the case of any item involving more than $100,000, after prior written notice to Lessor, which shall be given within fifteen (15) days of Lessee’s determination to contest any matter as permitted herein), by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto, provided that (i) neither the Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings; (ii) no Event of Default has occurred and is continuing; (iii) if and to the extent required by the applicable taxing authority and/or Lessor, Lessee posts a bond or takes other steps acceptable to such taxing authority and/or Lessor that removes such lien or stays enforcement thereof; and (iv) upon termination of such proceedings, it shall be the obligation of Lessee to pay the amount of any such tax and assessment or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including attorneys’ fees and disbursements), interest, penalties or other liabilities in connection therewith. Lessor shall at the request of Lessee, execute or join in the execution of any instruments or documents necessary in connection with such contest or proceedings, but Lessor shall incur no cost or obligation thereby.
(c) **Tax Escrow Account**. During the pendency of any uncured Event of Default hereunder, upon written notice from Lessor, Lessee shall pay or cause to be paid into a separate account (the "Tax Account") to be established by Lessee with a lending institution designated by Lessor (which Tax Account shall not be removed from such lending institution without the express prior approval of Lessor), and which Lessor may draw upon, a reserve amount sufficient to discharge the obligations of Lessee under Section 6.01 hereof with respect to real estate taxes for the applicable Fiscal Year as and when they become due (such amounts, the "Tax Escrow Amount"). During each month commencing with the first full calendar month following the receipt of said notice from Lessor, Lessee shall deposit into the Tax Account one twelfth of the Tax Escrow Amount so that as each installment of real estate taxes becomes due and payable, there are sufficient funds in the Tax Account to pay the same. If the amount of such and real estate taxes has not been definitively ascertained by Lessee at the time when any such monthly deposit is to be paid, Lessor shall require payment of the Tax Escrow Amount based upon the amount of real estate taxes paid for the preceding year, subject to adjustment as and when the amount of such real estate taxes are ascertained by Lessee. The Tax Escrow Amount in the Tax Account shall be and constitute additional security for the performance of Lessee’s obligations hereunder and shall, if there are sufficient funds in escrow, be used to pay taxes when due.

**Section 6.02. Utilities**. Lessee shall contract, in its own name, for and pay when due all charges for the connection and use of water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Property during the Lease Term.

**Section 6.03. Insurance**.

(a) **Coverage**. Throughout the Lease Term, Lessee shall maintain, with respect the Property, at its sole expense, the following types and amounts of insurance, in addition to such other insurance as Lessor may reasonably require from time to time:

(i) Insurance against loss or damage to real property and personal property under an “all risk” or “special form” insurance policy, which shall include coverage against all risks of direct physical loss, including but not limited to loss by fire, lightning, wind, terrorism, and other risks normally included in the standard ISO special form. Such insurance shall be in amounts not less than 100% of the full insurable replacement cost values.

(ii) Commercial general liability insurance, including products and completed operation liability, covering Lessor and Lessee against bodily injury liability, property damage liability and personal and advertising injury, and liability arising out of the ownership, maintenance, repair, condition or operation of the Property. Such insurance shall be in amounts of not less than $2,000,000 per occurrence for bodily injury and property damage, and $2,000,000 general aggregate. Such limits of insurance can be acquired through Commercial General liability and Umbrella liability policies.

(iii) Workers’ compensation and Employers Liability insurance with statutorily mandated limits covering all persons employed by Lessee on the Property in connection with any work done on or about the Property for which claims for death or bodily injury could be asserted against Lessor, Lessee or the Property.

(b) **Insurance Provisions**. All insurance policies shall:
(i) provide for a waiver of subrogation by the insurer as to claims against Lessor covered under the “all risk” or “special form” insurance policy described in Section 6.03(a)(i); 

(ii) be primary and provide that any “other insurance” clause in the insurance policy shall exclude any policies of insurance maintained by Lessor and the insurance policy shall not be brought into contribution with insurance maintained by Lessor;

(iii) contain deductibles not to exceed $100,000;

(iv) except for workers’ compensation insurance referred to in Section 6.03(a)(iii) above, name Lessor and any Lessor Affiliate or Lender requested by Lessor, as an “additional insured” with respect to liability insurance; and

(v) be issued by insurance companies licensed to do business in the state of Minnesota.

(c) **Blanket Policies**. Notwithstanding anything to the contrary in this Section 6.03, any insurance which Lessee is required to obtain pursuant to this Section 6.03 may be carried under a “blanket” policy or policies covering other Property or liabilities of Lessee provided that such “blanket” policy or policies otherwise comply with the provisions of this Section 6.03.

**ARTICLE VII**

**MAINTENANCE; ALTERATIONS**

**Section 7.01. Condition of Property; Maintenance**. Lessee hereby accepts the Property “AS IS” and “WHERE IS” with no representation or warranty of Lessor as to the condition thereof. Lessee shall, at its sole cost and expense, be responsible for (a) keeping all of the building, structures and improvements erected on the Property in good order and repair, free from actual or constructive waste, subject to ordinary wear and tear; (b) the repair or reconstruction of any building, structures or improvements erected on the Property damaged or destroyed by a Casualty; and (c) subject to Section 7.02, making all necessary structural, non-structural, exterior and interior repairs to any building, structures or improvements erected on the Property. In the event that necessary repairs may be covered by a construction, manufacturer’s or installer’s Warranty (collectively, “Warranties”), Lessee shall use its best efforts to enforce the terms of such Warranty.

**Section 7.02. Alterations and Improvements**. During the Lease Term, Lessee shall not alter the exterior, structural, plumbing or electrical elements of the Property in any manner without the written consent of Lessor, which consent shall not be unreasonably withheld or conditioned; provided, however, Lessee may undertake non-structural alterations to the Property that cost less than $50,000, individually, and do not materially affect the exterior appearance of the Property, without Lessor's prior written consent. If Lessor’s consent is required hereunder and Lessor consents to the making of any such alterations, the same shall be made by Lessee at Lessee’s sole expense by a licensed contractor and according to plans and specifications approved by Lessor and subject to such other conditions as Lessor shall reasonably require. Any work at any time commenced by Lessee on the Property shall be prosecuted diligently to completion, shall be of good workmanship and materials shall not void, invalidate or otherwise compromise any existing
Warranty, and shall comply fully with all the terms of this Lease and all Legal Requirements. Upon completion of any alterations individually costing $50,000 or more, Lessee shall promptly provide Lessor with evidence of full payment to all laborers and materialmen contributing to the alterations. Lessee shall keep the Property free from any liens arising out of any work performed on, or materials furnished to, the Property.

ARTICLE VIII

USE OF THE PROPERTY; COMPLIANCE

Section 8.01. Use. During the Lease Term, the Property shall be used for the operation of a Permitted Facility.

Section 8.02. Compliance. Lessee’s use and occupation of the Property, and the condition thereof, shall, at Lessee’s sole cost and expense, comply fully with all Legal Requirements and all restrictions, covenants and encumbrances of record, and any owner obligations under such Legal Requirements, or restrictions, covenants and encumbrances of record, with respect to the Property, in either event, the failure with which to comply could have a Material Adverse Effect. Lessee shall obtain, maintain and comply with all required licenses and permits, both governmental and private, to use and operate the Property as a Permitted Facility. Lessee will use its best efforts to prevent any act or condition to exist on or about the Property that will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase. All references to any obligations of the “owner” in the Environmental Covenant shall apply solely to Lessee, and any failure by Lessee to comply with such obligations shall constitute an Event of Default under this Lease (subject to the notice and cure period set forth in Section 12.01(f)).

Section 8.03. Environmental.

(a) Covenants.

(i) Lessee covenants to Lessor during the Lease Term, subject to the limitations of subsection (ii) below, as follows:

(A) All uses and operations on or of the Property, whether by Lessee or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto.

(B) There shall be no Releases in, on, under or from the Property, except in Permitted Amounts.

(C) There shall be no Hazardous Materials or Regulated Substances in, on or under the Property, except in Permitted Amounts. Above and below ground storage tanks shall be properly permitted and only used as permitted.

(D) Lessee shall not act or fail to act or allow any other tenant, occupant, guest, customer or other user of the Property to act or fail to act
in any way that (1) materially increases a risk to human health or the environment, (2) poses an unreasonable or unacceptable risk of harm to any Person or the environment (whether on or off any of the Property), (3) has a Material Adverse Effect, or (4) is contrary to any material requirement set forth in the insurance policies maintained by Lessee or Lessor, or (5) constitutes a public or private nuisance.

(ii) Notwithstanding any provision of this Lease to the contrary, an Event of Default shall not be deemed to have occurred as a result of the failure of Lessee to satisfy any one or more of the covenants set forth in subsections (A) through (D) above provided that Lessee shall be in compliance in all material respects with the requirements of any Governmental Authority with respect to the Remediation of any Release at the Property.

(b) **Remediation**. Lessee shall, at its sole cost and expense, and without limiting any other provision of this Lease, effectuate any Remediation required of Lessee by any Governmental Authority of any condition (including, but not limited to, a Release or Threatened Release) in, on, under or from the Property and take any other reasonable action deemed necessary by any Governmental Authority for protection of human health or the environment. Should Lessee fail to undertake any required Remediation in accordance with the preceding sentence within a commercially reasonable time frame, Lessor, after written notice to Lessee and Lessee's failure to immediately undertake such Remediation, shall be permitted to complete such Remediation, and all Costs incurred in connection therewith shall be paid by Lessee. Any Cost so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor.

(c) **Indemnification**. Lessee shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each of the Indemnified Parties from and against any and all Losses, including, but not limited to, all Costs of Remediation (whether or not performed voluntarily), arising out of or in any way relating to any Environmental Laws, Hazardous Materials, Regulated Substances, above or below ground storage tanks, the Environmental Covenant (including the obligations of the “owner” under the Environmental Covenant), and other environmental matters concerning the Property, to the extent caused by or through Lessee.

(d) **Survival**. The obligations of Lessee and the rights and remedies of Lessor under this Section 8.03 shall survive the termination, expiration and/or release of this Lease.

**ARTICLE IX**

**ADDITIONAL COVENANTS**

**Section 9.01. Inspection**. Lessor and its authorized representatives shall have the right, at all reasonable times and upon giving reasonable prior notice (except in the event of an emergency, in which case no prior notice shall be required), to enter the Property or any part thereof and inspect the same. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee’s business, any loss of occupancy or quiet enjoyment of the Property and any other loss occasioned by such entry, but, subject to Section 10.01, excluding damages arising as a result of the gross negligence or willful misconduct of Lessor. Notwithstanding the foregoing,
Lessor shall exercise its inspection rights in a manner that does not interfere with Lessee’s use of the Property.

Section 9.02. Estoppel Certificate. At any time, and from time to time, Lessee shall, promptly and in no event later than ten (10) days after a request from Lessor or any Lender or mortgagee of Lessor, execute, acknowledge and deliver to Lessor or such Lender or mortgagee, as the case may be, a certificate in the form supplied by Lessor, certifying: (a) that Lessee has accepted the Property; (b) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefor; (c) the commencement and expiration dates of the Lease Term; (d) the date to which the Rentals have been paid under this Lease and the amount thereof then payable; (e) whether there are then any existing defaults by Lessor in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (f) that no notice has been received by Lessee of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (g) the capacity of the Person executing such certificate, and that such Person is duly authorized to execute the same on behalf of Lessee; and (h) any other information reasonably requested by Lessor or any Lender or mortgagee, as the case may be.

ARTICLE X

RELEASE AND INDEMNIFICATION

Section 10.01. Release and Indemnification. Lessee agrees to use and occupy the Property at its own risk and hereby releases Lessor and Lessor’s agents and employees from all claims for any damage, compensation, liability, injury, loss or claim from any cause, other than gross negligence or willful misconduct of Lessor, its agents or employees, relative to or arising from (i) loss or damage to Lessee’s personal property or improvements that Lessee may remove pursuant to Section 3.04 hereof; (ii) any injury to person or damage to property on or about the Property; (iii) any criminal act on or about the Property; or (iv) interference with Lessee’s business operations or loss of occupancy or use of the Property from Lessor’s right to access or enter the Property under this Lease. Lessee acknowledges and agrees that Lessor has no duty or obligation to provide security for the Property. Lessee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses (excluding Losses suffered by an Indemnified Party arising out of the gross negligence or willful misconduct of such Indemnified Party) caused by, incurred or resulting from Lessee’s operations or occurring in or about the Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Lessee or any Person thereon, supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Lessee, its officers, employees, agents or other Persons. It is expressly understood and agreed that Lessee’s obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason whatsoever.

ARTICLE XI

CONDEMNATION AND CASUALTY

10
Section 11.01. Notification. Lessee shall promptly give Lessor written notice of (a) any Condemnation of any of the Property, (b) the commencement of any proceedings or negotiations which might result in a Condemnation of any of the Property, and (c) any Casualty to any of the Property or any part thereof. Such notice shall provide a general description of the nature and extent of such Condemnation, proceedings, negotiations or Casualty, and shall include copies of any documents or notices received in connection therewith. Thereafter, Lessee shall promptly send Lessor copies of all notices, correspondence and pleadings relating to any such Condemnation, proceedings, negotiations or Casualty.

Section 11.02. Total Condemnation. In the event of a Condemnation of all or substantially all of any of the Property, and if as a result of such Condemnation: (i) access to the Property to and from the publicly dedicated roads adjacent to the Property as of the Effective Date is permanently and materially impaired such that Lessee no longer has access to such dedicated road; (ii) there is insufficient parking to operate the Property as a Permitted Facility under applicable Laws; or (iii) the Condemnation includes a portion of the building such that the remaining portion is unsuitable for use as a Permitted Facility, as determined by Lessee in the exercise of good faith business judgment (and Lessee provides to Lessor an officer’s certificate executed by an officer of Lessee certifying to the same) (each such event, a “Total Condemnation”), then, in such event:

(a) Termination of Lease. On the date of the Total Condemnation, all obligations of either party hereunder with respect to the Property shall cease; provided, however, that Lessee’s obligations to the Indemnified Parties under any indemnification provisions of this Lease with respect to the Property and Lessee’s obligation to pay Rental and all other Monetary Obligations (whether payable to Lessor or a third party) accruing under this Lease with respect to the Property prior to the date of termination shall survive such termination. If the date of such Total Condemnation is other than the first day of a month, the Base Monthly Rental for the month in which such Total Condemnation occurs shall be apportioned based on the date of the Total Condemnation.

(b) Net Award. Subject to Section 11.07 below, Lessor shall be entitled to receive the entire Net Award in connection with a Total Condemnation without deduction for any estate vested in Lessee by this Lease, and Lessee hereby expressly assigns to Lessor all of its right, title and interest in and to every such Net Award and agrees that Lessee shall not be entitled to any Net Award or other payment for the value of Lessee’s leasehold interest in this Lease.

Section 11.03. Partial Condemnation or Casualty. In the event of a Condemnation which is not a Total Condemnation (each such event, a “Partial Condemnation”), or in the event of a Casualty:

(a) Net Awards. All Net Awards shall be paid to Lessor.

(b) Continuance of Lease. This Lease shall continue in full force and effect upon the following terms:

(i) All Rental and other Monetary Obligations due under this Lease shall continue unabated.
Lessee shall promptly commence and diligently prosecute restoration of the Property to the same condition, as nearly as practicable, as prior to such Partial Condemnation or Casualty as approved by Lessor; provided, however, that Lessee shall have no obligation to incur costs in excess of the Net Award or insurance proceeds, as applicable, made available by Lessor to Lessee hereunder. Upon the written request of Lessee (accompanied by evidence reasonably satisfactory to Lessor that such amount has been paid or is due and payable and is properly part of such costs, and that Lessee has complied with the terms of Section 7.02 in connection with the restoration), Lessor shall promptly make available in installments, subject to reasonable conditions for disbursement imposed by Lessor, an amount up to but not exceeding the amount of any Net Award received by Lessor with respect to such Partial Condemnation or Casualty.

(c) Notwithstanding the foregoing, if a Casualty cannot reasonably be expected to be restored within three hundred sixty-five (365) days of the date of such Casualty as reasonably determined by Lessee, then Lessee shall have the right to terminate this Lease Agreement upon delivery of written notice to Lessor. The termination will be effective as of the date of the Casualty. Upon such termination, all obligations of either party hereunder with respect to the Property shall cease; provided, however, that Lessee’s obligations to the Indemnified Parties under any indemnification provisions of this Lease with respect to the Property and Lessee’s obligation to pay Rental and all other Monetary Obligations (whether payable to Lessor or a third party) accruing under this Lease with respect to the Property prior to the date of termination shall survive such termination. If the date of such Casualty is other than the first day of a month, the Base Monthly Rental for the month in which such Casualty occurs shall be apportioned based on the date of the Casualty.

Section 11.04. Temporary Taking. In the event of a Condemnation of all or any part of the Property for a temporary use (a "Temporary Taking"), this Lease shall remain in full force and effect without any reduction of Base Annual Rental, Additional Rental or any other Monetary Obligation payable hereunder. Except as provided below, Lessee shall be entitled to the entire Net Award for a Temporary Taking, unless the period of occupation and use by the condemning authorities shall extend beyond the date of expiration of this Lease, in which event the Net Award made for such Temporary Taking shall be apportioned between Lessor and Lessee as of the date of such expiration.

Section 11.05. Adjustment of Losses. Any loss under any property damage insurance required to be maintained by Lessee shall be adjusted by Lessor and Lessee. Any Net Award relating to a Total Condemnation or a Partial Condemnation shall be adjusted by Lessor or, at Lessor’s election, Lessee. Notwithstanding the foregoing or any other provisions of this Section 11.05 to the contrary, if at the time of any Condemnation or any Casualty or at any time thereafter an Event of Default shall have occurred and be continuing, Lessor is hereby authorized and empowered but shall not be obligated, in the name and on behalf of Lessee and otherwise, to file and prosecute Lessee’s claim, if any, for a Net Award on account of such Condemnation or such Casualty and to collect such Net Award and apply the same to the curing of such Event of Default and any other then existing Event of Default under this Lease and/or to the payment of any amounts owed by Lessee to Lessor under this Lease, in such order, priority and proportions as Lessor in its discretion shall deem proper.
**Section 11.06. Lessee Obligation in Event of Casualty.** During all periods of time following a Casualty, Lessee shall take reasonable steps to ensure that the Property is secure and does not pose any risk of harm to any adjoining property and Persons (including owners or occupants of such adjoining property).

**Section 11.07. Lessee Awards and Payments.** Notwithstanding any provision contained in this Article XI, Lessee shall be entitled to claim and receive any award or payment from the condemning authority expressly granted for the taking of any personal property owned by Lessee, any insurance proceeds with respect to any personal property owned by Lessee, the interruption of its business and moving expenses, but only if such claim or award does not adversely affect or interfere with the prosecution of Lessor’s claim for the Condemnation or Casualty, or otherwise reduce the amount recoverable by Lessor for the Condemnation or Casualty.

**ARTICLE XII**

**DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES AND MEASURE OF DAMAGES**

**Section 12.01. Event of Default.** Each of the following shall be an event of default by Lessee under this Lease (each, an “Event of Default”):

(a) if any Rental or other Monetary Obligation due under this Lease is not paid when due; provided, however, any delay in the payment of Rental shall not constitute an Event of Default hereunder so long as the same is corrected within five (5) Business Days of the date Lessee receives written notice thereof from Lessor that such sums are due, provided, however, that no more than one (1) notice of nonpayment to Lessee shall be required to be given in any calendar year and any additional payments not paid within ten (10) Business Days of the date due shall be an Event of Default without notice from the Lessor;

(b) Failure to maintain insurance in accordance with Section 6.03;

(c) if Lessee fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay has resulted in the imposition of a lien against any the Property;

(d) if Lessee abandons the Property;

(e) if there is an Insolvency Event affecting Lessee;

(f) if Lessee fails to observe or perform any of the other covenants, conditions or obligations of Lessee in this Lease; provided, however, if any such failure does not involve the payment of any Monetary Obligation, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee written notice thereof and a period of thirty (30) days shall have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such thirty (30)-day period, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such thirty (30)-day period; or
Section 12.02. Remedies. Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by Law, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at Law or in equity, including, without limitation, any one or more of the following:

(a) to terminate this Lease, whereupon Lessee’s right to possession of the Property shall cease and this Lease, except as to Lessee’s liability, shall be terminated;

(b) to the extent not prohibited by applicable Law, to (i) re-enter and take possession of the Property (or any part thereof), any or all personal property or fixtures of Lessee upon the Property and, to the extent permissible, permits and other rights or privileges of Lessee pertaining to the use and operation of the Property, and (ii) expel Lessee and those claiming under or through Lessee, without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar Law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Property to Lessor, deliver to Lessor or its agents the keys to the Property, or both, such actions shall be deemed to be in compliance with Lessor’s rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any re-entry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate;

(c) to bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor;

(d) to relet the Property or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Lessor, in its reasonable discretion, may determine, with all proceeds received from such reletting being applied to the Rental and other Monetary Obligations due from Lessee in such order as Lessor may, in its reasonable discretion, determine, which other Monetary Obligations include, without limitation, all repossession costs, brokerage commissions, attorneys’ fees and expenses, and repair costs and expenses of preparing for such reletting. Lessor reserves the right following any re-entry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice;

(e) to recover from Lessee all Costs paid or incurred by Lessor as a result of such breach, regardless of whether or not legal proceedings are actually commenced;

(f) to immediately or at any time thereafter, and with or without notice, at Lessor’s sole option but without any obligation to do so, correct such breach or default and charge Lessee all Costs incurred by Lessor therein, and enforce, to the extent not enforced by Lessee, the terms of any Warranty. Any sum or sums so paid by Lessor, together with interest at the Default
Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee’s breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor’s right to exercise any or all remedies set forth herein;

(g) to immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Lessee held by Lessor under this Lease or any other Transaction Document or any Other Agreement against any sum owing by Lessee hereunder; and/or

(h) to seek any equitable relief available to Lessor, including, without limitation, the right of specific performance.

Section 12.03. Cumulative Remedies. All powers and remedies given by Section 12.02 to Lessor, subject to applicable Law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lessor under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by Law to Lessor may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor’s right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

ARTICLE XIII

SUBORDINATION AND ATTORNMENT

Section 13.01. Subordination. This Lease at all times shall automatically be subordinate to the lien of any and all ground leases and Mortgages now or hereafter placed upon the Property by Lessor, and Lessee covenants and agrees to execute and deliver, upon demand, such further instruments subordinating this Lease to the lien of any or all such ground leases and Mortgages as shall be desired by Lessor, or any present or proposed mortgagees under trust deeds, upon the condition that Lessee shall have the right to remain in possession of the Property under the terms of this Lease, notwithstanding any default in any or all such ground leases or Mortgages, or after the foreclosure of any such Mortgages, so long as no Event of Default shall have occurred and be continuing. Prior to the Effective Date, Lessor shall provide to Lessee a commercially reasonable form of non-disturbance agreement from any Lender holding a Mortgage on the Property as of the Effective Date.

Section 13.02. Attornment. In the event any purchaser or assignee of any Lender at a foreclosure sale acquires title to the Property, or in the event that any Lender or any purchaser or assignee otherwise succeeds to the rights of Lessor as lessor under this Lease, Lessee shall attorn to Lender or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and, subject to the provisions of this Article XIII, this Lease shall continue in full force and effect as a direct lease between the Successor
Lessor and Lessee. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Section 13.03. Execution of Additional Documents. Although the provisions in this Article XIII shall be self-operative and no future instrument of subordination shall be required, upon request by Lessor, Lessee shall execute and deliver such additional reasonable instruments as may be reasonably required for such purposes.

ARTICLE XIV

ASSIGNMENT

Section 14.01. Assignment by Lessor. As a material inducement to Lessor’s willingness to enter into the transactions contemplated by this Lease (the “Transaction”) and the other Transaction Documents, Lessee hereby agrees that Lessor may, from time to time and at any time and without the consent of Lessee, engage in all or any combination of the following, or enter into agreements in connection with any of the following or in accordance with requirements that may be imposed by applicable securities, tax or other Laws: the sale, assignment, grant, conveyance, transfer, financing, re-financing, purchase or re-acquisition of all, less than all or any portion of the Property, this Lease or any other Transaction Document, Lessor’s right, title and interest in this Lease or any other Transaction Document, the servicing rights with respect to any of the foregoing, or participations in any of the foregoing. In the event of any such sale or assignment other than a security assignment, Lessee shall attorn to such purchaser or assignee (so long as Lessor and such purchaser or assignee notify Lessee in writing of such transfer and such purchaser or assignee expressly assumes in writing the obligations of Lessor hereunder from and after the date of such assignment). At the request of Lessor, Lessee will execute such documents confirming the sale, assignment or other transfer and such other agreements as Lessor may reasonably request, provided that the same do not increase the liabilities and obligations of Lessee hereunder. Lessor shall be relieved, from and after the date of such transfer or conveyance, of liability for the performance of any obligation of Lessor contained herein, except for obligations or liabilities accrued prior to such assignment or sale.

Section 14.02. Assignment by Lessee.

(a) Lessee shall not assign, sublet, transfer, convey, pledge or mortgage this Lease or any interest herein or any interest in Lessee, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. At the time of any assignment of this Lease which is approved by Lessor, the assignee shall assume all of the obligations of Lessee under this Lease pursuant to a written assumption agreement in form and substance reasonably acceptable to Lessor. Such assignment of this Lease pursuant to this Section 14.02 shall not relieve Lessee of its obligations respecting this Lease unless otherwise agreed to by Lessor. Any assignment, transfer, conveyance, pledge or mortgage in violation of this Section 14.02 shall be voidable at the sole option of Lessor. Any consent to an assignment given by Lessor hereunder shall not be deemed consent to any subsequent assignment. Any assignment or transfer of this Lease by transfer of a majority interest of stock in one transaction or a series of related transactions, asset sale, merger, consolidation, liquidation or dissolution, or any changes in the ownership of, or power to
vote in excess of fifty percent (50%) of its outstanding stock in one transaction or a series of related transactions, shall constitute an assignment for purposes of this Section.

(b) For purposes of this Section 14.02, in addition to any other reasonable grounds for refusal, Lessor’s consent to any assignment or sublease shall be deemed reasonably withheld if, in Lessor’s good faith judgment, any one or more of the following apply: (i) the proposed transferee is not in a financial condition to comply with its financial obligations under the assignment or sublease; (ii) either the proposed transferee, or any affiliate of the proposed transferee, occupies or is negotiating with Lessor to lease the Property or any other building owned by Lessor and its related parties; (iii) the use of the Premises by the proposed transferee would, in Lessor’s reasonable judgment, not comply with the terms of the Lease; (iv) if the space subject to the assignment or sublease is only a portion of the Property and the physical division of such portion is, or would render the Property, irregular in shape and configuration or without appropriate ingress or egress and facilities suitable for normal leasing purposes, or is otherwise not readily divisible from the Property; (v) the proposed transferee is a government, governmental entity (or an agency or instrumentality thereof); or (vi) an uncured Event of Default exists under the Lease at the time Lessee requests Lessor’s consent to the proposed transfer.

(c) Notwithstanding anything to the contrary contained in this Section 14.02 and provided that no Event of Default has occurred and is continuing at the time of the proposed assignment or other transfer, and provided further that any assignee agrees to assume all of Lessee’s obligations under this Lease, Lessee shall have the right to assign or otherwise transfer all, but not less than all, of its interest in, to and under this Lease without Lessor’s consent to an Affiliate of Lessee.

ARTICLE XV

NOTICES

Section 15.01. Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease shall be in writing and given by any one of the following: (a) hand delivery; (b) express overnight delivery service; or (c) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt, if hand delivered; (ii) the next Business Day, if delivered by a reputable express overnight delivery service; or (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or electronic mail addresses) specified below:
ARTICLE XVI

EXPANSION

Section 16.01 Expansion. Lessee has the right (the “Expansion Right”) to acquire from the City of New Brighton, Minnesota certain real estate parcels adjacent to the Property (the “Option Property”) pursuant to that certain Contract for Private Redevelopment dated June 10, 2014 (the “Redevelopment Contract”). In the event Lessee desires to exercise the Expansion Right, Lessor shall cooperate with Lessee to exercise such rights under the Redevelopment Contract to purchase the Option Property and to construct building improvements on the Option Property, which improvements may adjoin, or connect to, the building improvements, located upon the Property. In the event the Lessee exercises its Expansion Right and acquires the Option Property during the Lease term hereof, Lessee shall not convey its fee interest in the Option Property, or any portion thereof, to any third party without providing Lessor with the following right of first refusal to purchase the Option Property (the “Option Property Right of First Refusal”). If Lessee receives an offer by a third party to purchase the Option Property, or any portion thereof, which Lessee desires to accept, Lessee shall deliver a copy of said offer to Lessor (the “Option Property Right of First Refusal Notice”). Lessee’s notice to Lessor shall state: (i) Lessee’s desire and intention to sell all or any part of the Option Property; and (ii) full details of the offer received by it, and a description of the purchase price as well as the overall transaction. Lessor shall have twenty (20) days from

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or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.
and after receiving the Option Property Right of First Refusal Notice to elect to purchase the Option Property, or such portion as may be the subject of the offer, upon the terms and conditions set forth in the Option Property Right of First Refusal Notice, including all rights, privileges and timetables contained in the offer and any amendments related thereto which had been accepted by Lessee. If Lessor elects to purchase the Option Property, or such portion as may be the subject of the offer, the closing shall occur as set forth in the Option Property Right of First Refusal Notice or at such date as may be mutually agreed upon by and between the parties. If Lessor fails to give Lessee written notice within the twenty (20) day period of its intent to purchase the Option Property, or such portion as may be the subject of the offer, then the Option Property Right of First Refusal shall terminate; provided, however, that if such closing as described in the Option Property Right of First Refusal Notice does not occur, then the Option Property Right of First Refusal shall remain in effect.

ARTICLE XVII

RIGHT OF FIRST REFUSAL

Section 17.01 Right of First Refusal. During the Lease Term hereof, Lessor shall not convey its fee interest in the Property, or any portion thereof, to any third party without providing Lessee with the following right of first refusal to purchase the Property (the "Right of First Refusal"). If Lessor receives an offer by a third party to purchase the Property, or any portion thereof, which Lessor desires to accept, Lessor shall deliver a copy of said offer to Lessee (the "Right of First Refusal Notice"). Lessor’s notice to Lessee shall state: (i) Lessor’s desire and intention to sell all or any part of the Property; and (ii) full details of the offer received by it, and a description of the purchase price as well as the overall transaction. Lessee shall have twenty (20) days from and after receiving the Right of First Refusal Notice to elect to purchase the Property, or such portion as may be the subject of the offer, upon the terms and conditions set forth in the Right of First Refusal Notice, including all rights, privileges and timetables contained in the offer and any amendments related thereto which had been accepted by Lessor. If Lessee elects to purchase the Property, or such portion as may be the subject of the offer, the closing shall occur as set forth in the Right of First Refusal Notice or at such date as may be mutually agreed upon by and between the parties. If Lessee fails to give Lessor written notice within the twenty (20) day period of its intent to purchase the Property, or such portion as may be the subject of the offer, then the Right of First Refusal shall terminate; provided, however, that if such closing as described in the Right of First Refusal Notice does not occur, then the Right of First Refusal shall remain in effect.
ARTICLE XVII

MISCELLANEOUS

Section 18.01. **Force Majeure**. Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, expressly excluding, however, the obligations imposed upon Lessee with respect to Rental and other Monetary Obligations to be paid hereunder.

Section 18.02. **No Merger**. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Property by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and (b) the fee estate or ownership of the Property or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in or ownership of the Property or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

Section 18.03. **Interpretation**. Lessor and Lessee acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant.

Section 18.04. **Characterization**. The following expressions of intent, representations, warranties, covenants, agreements, stipulations and waivers are a material inducement to Lessor entering into this Lease:

(a) Lessor and Lessee intend that (i) this Lease is a “true lease,” is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Lease are those of a true lease; and (ii) the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between Lessor and Lessee, the Lease has been entered into by both parties in reliance upon the economic and legal bargains contained herein, and none of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership (de facto or de jure) between Lessor and Lessee, to make them joint venturers, to make Lessee an agent, legal representative, partner, subsidiary or employee of Lessor, nor to make Lessor in any way responsible for the debts, obligations or losses of Lessee.
Section 18.05. Disclosures. The parties agree that, notwithstanding any provision contained in this Lease, any party (and each employee, representative or other agent of any party) may disclose to any and all persons, without limitation of any kind, any matter required under applicable Law, including, without limitation, under the Securities Act, the Exchange Act, the rules and regulations of the Securities and Exchange Commission promulgated thereunder, and stock exchange requirements, including the filing of this Agreement in its entirety with such public disclosures, and any subsequent disclosures in other public filings and announcements consistent with any such prior disclosures (including in earnings press releases).

Section 18.06. Building Reports. Lessee agrees to provide Lessor with a report prepared by a licensed building inspector or engineer as to the condition of the structural or exterior components of the Property, including without limitation the roof, heating, ventilation and air-conditioning systems, plumbing and electrical elements, on or before the expiration of the fifth (5th) year of the Lease Term and every three (3) years thereafter during the Lease Term.

Section 18.07. Attorneys’ Fees. In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, the prevailing party shall be entitled to recover all of its reasonable attorneys’ fees and other Costs in addition to any other relief to which it may be entitled. In addition, the prevailing party shall, upon demand, be entitled to all attorneys’ fees and all other Costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

Section 18.08. Memoranda of Lease. Concurrently with the execution of this Lease, Lessor and Lessee are executing Lessor’s standard form memorandum of lease in recordable form, indicating the names and addresses of Lessor and Lessee, a description of the Property, the Lease Term, but omitting Rentals and such other terms of this Lease as Lessor may not desire to disclose to the public.

Section 18.09. No Brokerage. Lessor and Lessee represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Property. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, Costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

Section 18.10. Time is of the Essence; Computation. Time is of the essence with respect to each and every provision of this Lease. If any deadline provided herein falls on a non-Business Day, such deadline shall be extended to the next day that is a Business Day.

Section 18.11. Waiver and Amendment. No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Lessor of an amount less than the Rental and other Monetary Obligations stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such Rental or other Monetary Obligations then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such
payment be deemed a waiver of Lessor’s right to collect any unpaid amounts or an accord and satisfaction.

Section 18.12. Successors Bound. Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

Section 18.13. Captions. Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

Section 18.14. Other Documents. Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease.

Section 18.15. Entire Agreement. This Lease and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided.

Section 18.16. Forum Selection; Jurisdiction; Venue; Choice of Law. For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the state of Minnesota. This Lease shall be governed by, and construed with, the Laws of the applicable state of Minnesota, without giving effect to any state’s conflict of Laws principles.

Section 18.17. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original. Furthermore, the undersigned agree that transmission of this Lease via e-mail in a “.pdf” or other electronic format shall be deemed transmission of the original Lease for all purposes.

[Remainder of page intentionally left blank; signature page(s) to follow]
IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSOR:

KRISHNA HOLDINGS, LLC,
a Minnesota limited liability company

By: /s/Ashish Aggarwal.

Printed Name: Ashish Aggarwal

Title: Chief Manager

APEX HOLDINGS, LLC,
a Minnesota limited liability company

By: /s/Ashish Aggarwal

Printed Name: Ashish Aggarwal

Title: Chief Manager
KASHI ASSOCIATES, LLC,
a Minnesota limited liability company

By: /s/Ashish Aggarwal
Printed Name: Ashish Aggarwal
Title: Chief Manager

KEVA HOLDINGS, LLC,
a Minnesota limited liability company

By: /s/Ashish Aggarwal
Printed Name: Ashish Aggarwal
Title: Authorized Signatory

S & V VENTURES, LLC,
a Minnesota limited liability company

By: /s/Ashish Aggarwal
Printed Name: Ashish Aggarwal
Title: Authorized Signatory

POLO GROUP LLC,
a New York limited liability company

By: /s/ Yonatan Nitzani
Printed Name: Yonatan Nitzani
Title: Managing Member
SPAV HOLDINGS LLC,
a Minnesota limited liability company

By: /s/Ashish Aggarwal

Printed Name: Ashish Aggarwal

Title: Managing Member

STAR ASSOCIATES LLC,
a Minnesota limited liability company

By: /s/ Anuradha Sharma

Printed Name: Anuradha Sharma

Title: Chief Manager
THE GLOBAL VILLA LLC,
a Minnesota limited liability company

By:  /s/ Nidhi Methi

Printed Name:   Nidhi Methi

Title:   Vice President/Secretary
IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSEE:

CARDIOVASCULAR SYSTEMS, INC.,
a Delaware corporation

By: /s/ Laurence L. Betterley

Printed Name: Laurence L. Betterley
Title: Chief Financial Officer
EXHIBIT A

DEFINED TERMS

The following terms shall have the following meanings for all purposes of this Lease:

“Additional Rental” has the meaning set forth in Section 4.04.

“Adjustment Date” has the meaning set forth in Section 1.06.

“Affiliate” means any Person which directly or indirectly controls, is under common control with or is controlled by any other Person. For purposes of this definition, “controls,” “under common control with,” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

“Base Annual Rental” has the meaning set forth in Section 1.04.

“Base Monthly Rental” means an amount equal to 1/12 of the applicable Base Annual Rental.

“Business Day” means a day on which banks located in Minneapolis, Minnesota are not required or authorized to remain closed.

“Casualty” means any loss of or damage to any property included within or related to the Property or arising from an adjoining property caused by an Act of God, fire, flood or other catastrophe.

“Code” means the Internal Revenue Code of 1986, as the same may be amended from time to time.

“Condemnation” means a Taking and/or a Requisition.

“Costs” means all reasonable costs and expenses incurred by a Person, including, without limitation, reasonable attorneys’ fees and expenses, court costs, expert witness fees, costs of tests and analyses, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, brokerage fees, escrow fees, title insurance premiums, appraisal fees, stamp taxes, recording fees and transfer taxes or fees, as the circumstances require.

“Default Rate” means 12% per annum or the highest rate permitted by Law, whichever is less.

“Effective Date” has the meaning set forth in the introductory paragraph of this Lease.

“Environmental Covenant” means that certain Environmental Covenant and Easement by and between Lessee and the Minnesota Pollution Control Agency, which was filed of record with the Office of the Ramsey County Registrar of Titles on May 26, 2016, as Document No. T02558659.
“Environmental Laws” means federal, state and local Laws, ordinances, common law requirements and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees having the effect of Law in effect now or in the future and including all amendments, that relate to Hazardous Materials, Regulated Substances, USTs, and/or the protection of human health or the environment, or relating to liability for or Costs of Remediation or prevention of Releases, and apply to Lessee and/or the Property.

“Event of Default” has the meaning set forth in Section 12.01.


“Extension Option” has the meaning set forth in Section 3.02.

“Extension Term” has the meaning set forth in Section 3.02.

“Governmental Authority” means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, any state or any political subdivision thereof with authority to adopt, modify, amend, interpret, give effect to or enforce any federal, state and local Laws, statutes, ordinances, rules or regulations, including common law, or to issue court orders.

“Hazardous Materials” includes: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants, the presence of which causes the Property to be in violation of any local, state or federal Law or regulation, or Environmental Law, or are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “contaminants,” “pollutants,” or words of similar import under any applicable local, state or federal Law or under the regulations adopted, orders issued, or publications promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 5101, et seq.; and (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.

“Indemnified Parties” means Lessor and its members, managers, officers, directors, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns, including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of the assets and business of Lessor.

“Initial Term” has the meaning set forth in Section 3.01.

“Insolvency Event” means (a) a Person’s (i) failure to generally pay its debts as such debts become due; (ii) admitting in writing its inability to pay its debts generally; or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against any Person (i) seeking to adjudicate it bankrupt or insolvent; (ii) seeking liquidation, dissolution, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for
it or for any substantial part of its property, and in the case of any such proceeding instituted against any Person, either such proceeding shall remain undismissed for a period of one hundred twenty (120) days or any of the actions sought in such proceeding shall occur; or (c) any Person taking any corporate action to authorize any of the actions set forth above in this definition.

“Law(s)” means any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, policy, requirement or administrative or judicial determination, even if unforeseen or extraordinary, of every duly constituted Governmental Authority, court or agency, now or hereafter enacted or in effect.

“Lease Term” has the meaning described in Section 3.01.

“Legal Requirements” means the requirements of all present and future Laws (including, without limitation, Environmental Laws and Laws relating to accessibility to, usability by, and discrimination against, disabled individuals), all judicial and administrative interpretations thereof, including any judicial order, consent, decree or judgment, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Lessee or to any of the Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of the Property, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of any of the Property.

“Lender” means any lender in connection with any loan secured by Lessor’s interest in any or all of the Property, and any servicer of any loan secured by Lessor’s interest in any or all of the Property.

“Lessee Entity” or “Lessee Entities” means individually or collectively, as the context may require, Lessee and all Affiliates thereof.

“Losses” means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, fines, penalties, interest, charges, fees, judgments, awards, amounts paid in settlement and damages of whatever kind or nature, inclusive of bodily injury and property damage to third parties (including, without limitation, attorneys’ fees and other Costs of defense), excluding, however, any punitive, consequential, special, indirect, and incidental damages and diminutions in value.

“Material Adverse Effect” means a material adverse effect on (a) the Property, including without limitation, the operation of the Property as a Permitted Facility and/or the value of the Property; (b) the contemplated business, condition, worth or operations of any Lessee Entity; or (c) Lessee’s ability to perform its obligations under this Lease.

“Monetary Obligations” means all Rental and all other sums payable or reimbursable by Lessee under this Lease to Lessor, to any third party on behalf of Lessor, or to any Indemnified Party.

“Mortgages” means, collectively, the mortgages, deeds of trust or deeds to secure debt, assignments of rents and leases, security agreements and fixture filings executed by Lessor for the benefit of Lender with respect to the Property, as such instruments may be amended, modified, restated or supplemented from time to time and any and all replacements or substitutions.
“Net Award” means (a) the entire award payable with respect to the Property by reason of a Condemnation whether pursuant to a judgment or by agreement or otherwise; or (b) the entire proceeds of any insurance required under Section 6.03 payable with respect to the Property, as the case may be, and in either case, less any Costs incurred by Lessor in collecting such award or proceeds.

“Partial Condemnation” has the meaning set forth in Section 11.03.

“Permitted Amounts” shall mean, with respect to any given level of Hazardous Materials or Regulated Substances, that level or quantity of Hazardous Materials or Regulated Substances in any form or combination of forms which does not constitute a violation of any Environmental Laws and is customarily employed in, or associated with, similar businesses located in the state or states where the Property is located.

“Permitted Facility” means an office, warehouse and manufacturing facility and all related purposes such as ingress, egress and parking, and uses incidental thereto.

“Person” means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

“Property” means those parcels of real estate legally described on Exhibit B attached hereto, all rights, privileges, and appurtenances associated therewith, and all buildings, fixtures and other improvements now or hereafter located on such real estate (whether or not affixed to such real estate).

“Regulated Substances” means “petroleum” and “petroleum-based substances” or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local Laws applicable to or regulating USTs.

“Release” means any presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials, Regulated Substances or USTs or any Threatened Release.

“Remediation” means any response, remedial, removal, or corrective action, any activity to monitor, clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits, covenants, or action plans issued pursuant thereto, including without limitation, the Environmental Covenant or any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs, including without limitation, under the Environmental Covenant.

“Rental” means, collectively, the Base Annual Rental and the Additional Rental.

“Requisition” means any temporary requisition or confiscation of the use or occupancy of the Property by any Governmental Authority, civil or military, whether pursuant to an agreement with such Governmental Authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

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“Securities Act” means of the Securities Act of 1933, as amended.

“Successor Lessor” has the meaning set forth in Section 13.02.

“Taking” means (a) any taking or damaging of all or a portion of the Property (i) in or by condemnation or other eminent domain proceedings pursuant to any Law, general or special; (ii) by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceeding; or (iii) by any other means; or (b) any de facto condemnation. The Taking shall be considered to have taken place as of the later of the date actual physical possession is taken by the condemnor, or the date on which the right to compensation and damages accrues under the Law applicable to the Property.

“Temporary Taking” has the meaning set forth in Section 11.04.

“Threatened Release” means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding the Property which may result from such Release.

“Total Condemnation” has the meaning set forth in Section 11.02.

“Transaction” has the meaning set forth in Section 14.01.

“Transaction Documents” means this Lease Agreement and all documents related thereto.

“USTs” means any one or combination of tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.
EXHIBIT B

PROPERTY

LOT 1, BLOCK 1, NEW BRIGHTON EXCHANGE 2ND ADDITION
I, Scott R. Ward, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cardiovascular Systems, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

By: /s/ Scott R. Ward

Scott R. Ward
Chairman, President and Chief Executive Officer

Dated: May 5, 2017
CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Laurence L. Betterley, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cardiovascular Systems, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

By:  /s/ Laurence L. Betterley

Laurence L. Betterley
Chief Financial Officer

Dated: May 5, 2017
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing of the Quarterly Report on Form 10-Q for the quarter ended March 31, 2017 (the “Report”) by Cardiovascular Systems, Inc. ("Registrant"), I, Scott R. Ward, the Chief Executive Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

By: /s/ Scott R. Ward

Scott R. Ward
Chairman, President and Chief Executive Officer

Dated: May 5, 2017
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing of the Quarterly Report on Form 10-Q for the quarter ended March 31, 2017 (the “Report”) by Cardiovascular Systems, Inc. (“Registrant”), I, Laurence L. Betterley, the Chief Financial Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

By: /s/ Laurence L. Betterley

Dated: May 5, 2017

Laurence L. Betterley
Chief Financial Officer